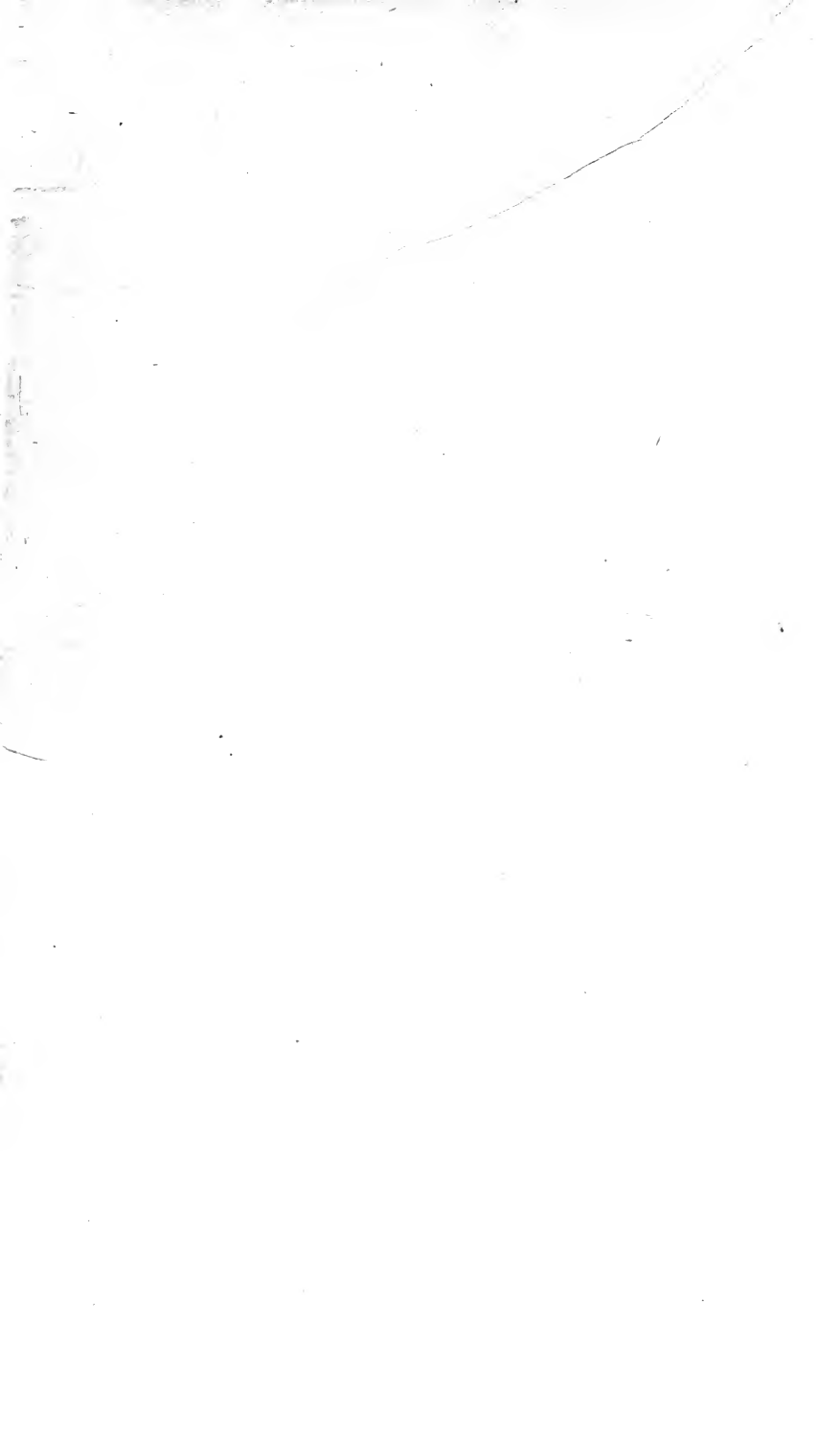




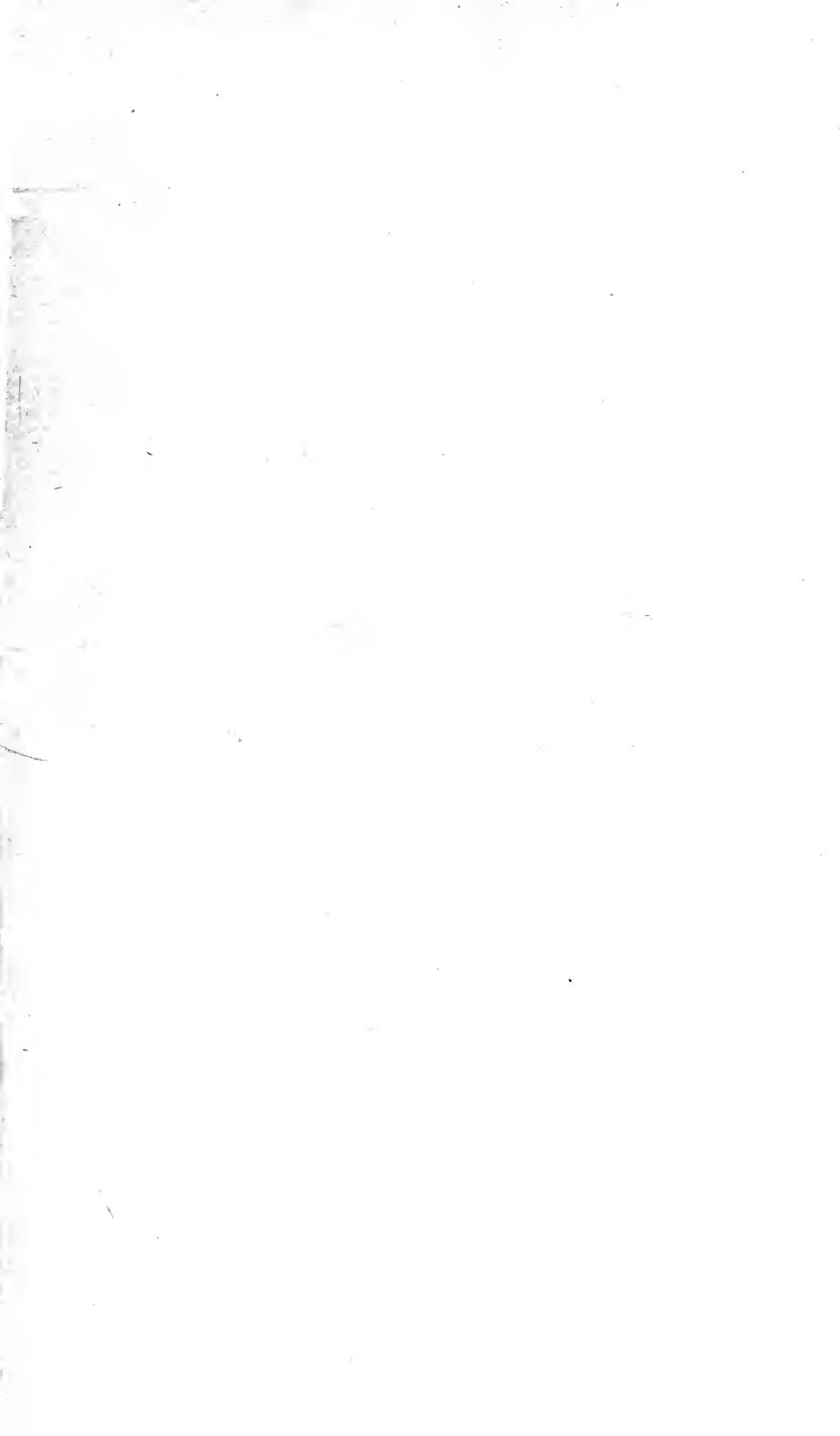
3 1761 03557 6636

PRESENTED
TO
THE UNIVERSITY OF TORONTO
BY

Mr. Justice Harlan



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation





ALASKAN BOUNDARY TRIBUNAL.

PROCEEDINGS

OF THE

ALASKAN BOUNDARY TRIBUNAL,

CONVENED AT LONDON,

UNDER THE TREATY BETWEEN THE UNITED STATES OF
AMERICA AND GREAT BRITAIN, CONCLUDED AT WASH-
INGTON JANUARY 24, 1903, FOR THE SETTLEMENT
OF QUESTIONS BETWEEN THE TWO COUNTRIES
WITH RESPECT TO THE BOUNDARY LINE
BETWEEN THE TERRITORY OF ALASKA
AND THE BRITISH POSSESSIONS
IN NORTH AMERICA.

Vol. VI.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1904.

83122
3/9/0

For index to Volumes VI and VII see end of Volume VII.

ALASKAN BOUNDARY TRIBUNAL.

MINUTES OF PROCEEDINGS OF THE ALASKAN BOUNDARY
TRIBUNAL, HELD AT THE FOREIGN OFFICE,
DOWNING STREET, LONDON.

[NOTE—Published in two volumes—VI and VII.]



1 **MINUTES OF PROCEEDINGS OF THE ALASKAN
BOUNDARY TRIBUNAL.**

FIRST DAY.—THURSDAY, SEPTEMBER 3, 1903.

PRESENT.

Members of the Tribunal appointed by the President of the United States.—Honourable ELIHU ROOT, Secretary of War of the United States; Honourable HENRY CABOT LODGE, Senator of the United States from Massachusetts; and Honourable GEORGE TURNER, of Spokane, Washington.

Members of the Tribunal appointed by His Britannic Majesty.—The Right Honourable BARON ALVERSTONE, G. C. M. G., Lord Chief Justice of England; Sir LOUIS A. JETTÉ, K. C. M. G., Lieutenant-Governor of the Province of Quebec; and Mr. ALLEN B. AYLESWORTH, K. C., of the City of Toronto.

The Honourable John W. Foster, the United States' Agent, and Honourable Clifford Sifton, K. C., the British Agent.

Honourable Jacob M. Dickinson, Mr. David T. Watson, Honourable Hannis Taylor, and Mr. Chandler P. Anderson, appeared as Counsel for the United States.

Mr. Robert Lansing, Solicitor of the United States' Agency; Mr. O. H. Tittman, Mr. W. C. Hodgkins, Mr. Otis T. Cartwright, Mr. T. John Newton, and Mr. F. R. Hanna, members of the United States' Agent's staff.

The Attorney-General (Sir Robert B. Finlay, K. C., M. P.); the Solicitor-General (Right Honourable Sir Edward H. Carson, K. C., M. P.). Mr. Christopher Robinson, K. C., Mr. F. C. Wade, K. C., Mr. L. P. Duff, K. C., and Mr. A. Geoffrion, K. C.; Mr. S. A. T. Rowlatt and Mr. J. A. Simon, appeared as Counsel for Great Britain.

2 Mr. W. F. King and Mr. A. P. Collier, members of the British Agent's staff.

Mr. Reginald Tower, His Britannic Majesty's Minister at Munich and Stuttgart, as Secretary to the Tribunal; Mr. J. R. Carter, Second Secretary in the American Embassy, London, and Mr. Joseph Pope, C. M. G., Under-Secretary of State of Canada, as Associate Secretaries.

Lord ALVERSTONE. The members of the Tribunal have met and have satisfied themselves of their qualifications and appointments, and have taken and have subscribed to the Oath that is required by the

Treaty. They have appointed Mr. Tower, His Britannic Majesty's Minister at Munich and Stuttgart, as Secretary, and Mr. Pope, from Canada, and Mr. Carter, of the American Embassy in London, as Associate Secretaries. The Agents have verified their appointments Mr. Bannerman is appointed the official Shorthand Writer of the Tribunal. In accordance with previous practice, on application to the Secreary of the Tribunal at the Foreign Office, cards of admission will be supplied to any persons who desire to be present, and to whom there is no objection. I have to state that, at the request of the members of the Tribunal, they have asked me to be the nominal President of the Tribunal. I need scarcely say that I highly appreciate the confidence that has been reposed in me, and wish to place my services at the disposal of the Tribunal. We are, of course, all equal here, but it is desirable that one should be the mouth-piece of the Tribunal when necessary; therefore, in order to conform to the wish of my colleagues, I have, of course, gladly undertaken that responsibility. I think all we have to do now is to ask first the names of the Counsel who appear, and to ask the Counsel what arrangements have been made as to the actual proceedings with the Arguments.

SIR ROBERT FINLAY. The Counsel who appear for Great Britain are the Attorney-General, the Solicitor-General, Mr. Christopher Robinson, K. C., of the Canadian Bar, and Mr. Wade, K. C., Mr. Duff, K. C., and Mr. Geoffrion, K. C., of the Canadian Bar, with Mr. Rowlatt and Mr. Simon of the English Bar.

THE PRESIDENT. And for the United States?

HONOURABLE JACOB M. DICKINSON. The Counsel who appear on behalf of the United States are Mr. Jacob M. Dickinson, Mr. David T. Watson, Mr. Hannis Taylor, and Mr. Chandler P. Anderson.

THE PRESIDENT. When do you propose to resume, Mr. Attorney and Mr. Dickinson?

SIR ROBERT FINLAY. Well, of course, that is a matter entirely for the Tribunal. I have had the advantage of some conversation with my friend Judge Dickinson, who appears on the other side, and what we suggest for the Tribunal is this, that there should be an adjournment until this day fortnight, Thursday, the 17th of September. If that meets with the approval of the Tribunal I think it will give adequate time for both sides to be prepared then to proceed with the oral Argument.

THE PRESIDENT. I think what the Tribunal would like to know before we say anything about it is what is the probable length of the Arguments and how many Counsel we are going to hear. For this reason: I had better state it at once: Mr. Root and Senator Lodge have very pressing engagements in the United States—engagements of a public character—which will make it absolutely necessary probably for one, if not for both, to leave by the 21st of October, and that being so we should like to know that there is a certainty of the oral Arguments being concluded within such time as will give the Tribunal a fair time for consideration before they assent to the adjournment to the 17th. That is the only point.

3 SIR ROBERT FINLAY. That matter would, of course, my Lord, depend to some extent upon the number of days in the week on which it was thought right to hold the sittings. So far as we are con-

cerned, we should be quite willing and anxious that the sittings should be on five days in the week.

The PRESIDENT. As it will be in the Vacation, we should set a good example, and willingly agree to sit five days a-week.

Sir ROBERT FINLAY. And as regards the hours of the sittings?

The PRESIDENT. From 11 till 4.

Sir ROBERT FINLAY. From 11 till 4.

The PRESIDENT. I think 11 is more convenient; half-past 10 if it is pressed, but 11 is more convenient if we should happen to be away on the Monday.

Sir ROBERT FINLAY. I think 11 o'clock is more convenient.

The PRESIDENT. We can always sit a little later if necessary.

Sir ROBERT FINLAY. Your Lordship asked about the number of Counsel—

The PRESIDENT. Yes. What arrangements have been made, Mr. Attorney, about the order of speaking?

Sir ROBERT FINLAY. It is this: that three Counsel should be heard in each case; that Great Britain should have the opening, and that the United States should have the reply; then, that the Counsel should be heard alternately—that is to say, that the opening for Great Britain will be followed by the opening for the United States; then will follow an Argument on behalf of Great Britain; then another Argument on behalf of the United States; then an Argument on behalf of Great Britain; and, finally, the reply—the ultimate reply—will fall to the United States.

The PRESIDENT. What is the condition of the Tribunal at the end, Mr. Attorney?

Sir ROBERT FINLAY. Well, that is for the Tribunal to say.

The PRESIDENT. How long do you want, you six gentlemen? What we really wish to do is this: we want to meet your convenience, but it is rather necessary that you should indicate to us, if you can, some definite time—arranging the time between yourselves—by which you will say on both sides by agreement that the Arguments shall be completed.

Sir ROBERT FINLAY. I find it extremely difficult to forecast at this time the exact duration, or even approximately the duration, of the Argument; but I should hope that it would be finished by the middle of October, sitting five days a-week.

The PRESIDENT. Well, do you not think that two days a-piece will be enough? I do not mean to say, it need not be two days a-piece. Do you not think twelve days for the six Counsel will be sufficient, arranged as you like?

Sir ROBERT FINLAY. I would rather not at the present stage, my Lord.

The PRESIDENT. I do not want to press you unduly.

4 Sir ROBERT FINLAY. I would rather not commit either side at the present stage.

The PRESIDENT. We do not want to press you unduly, Mr. Attorney. What were you about to say, Mr. Dickinson?

Mr. DICKINSON. Mr. Watson and I thought that seven days for our side would be sufficient.

The PRESIDENT. Well, fourteen? Mr. Attorney, I do not think this would be unduly hard; I think you might agree that the oral

Arguments should be completed by Friday, the 9th of October. That gives you seventeen days. We do not want you to fill the time if unnecessary. I think that if you have seventeen working days between you, that would be enough, would it not?

SIR ROBERT FINLAY. Well, I feel in a somewhat difficult position, because your Lordship realizes what it is to open a case of this kind. Of course, the opening speech—as that duty will devolve upon myself, I feel pressed by this consideration, that in the opening speech one necessarily has to deal with a great many matters, and sometimes a full opening ultimately saves time. If we attempted, for a moment—

THE PRESIDENT. Oh, I understand. I was not suggesting that the opening speech should be only two days. I did not mean that. What I suggested was, that seventeen days would be enough for the total speeches.

SIR ROBERT FINLAY. Well, I confess that at the present moment, when I do not clearly see my way to saying what the time would be, I would rather begin a day or two sooner, so as to make sure of a sufficient margin.

THE PRESIDENT. What do you say, Mr. Dickinson.

MR. DICKINSON. That would be entirely agreeable to us. There might be a shorter adjournment.

THE PRESIDENT. That would mean Monday, the 14th.

SIR ROBERT FINLAY. Well, say Tuesday.

THE PRESIDENT. Tuesday, the 15th.

(The Tribunal deliberated.)

THE PRESIDENT. You think seven days would do, do you, Mr. Dickinson?

MR. DICKINSON. We expect an equal time would be allotted to Counsel on both sides. Yes; that is what we thought would be sufficient.

SIR ROBERT FINLAY. I am most anxious that there should be no undue consumption of time—

THE PRESIDENT. No, I am quite sure of that, Mr. Attorney; I was not thinking of that for a moment.

SIR ROBERT FINLAY. But the first consideration is that the Case should be fully presented to the Tribunal.

THE PRESIDENT. Undoubtedly.

5 SIR ROBERT FINLAY. And having regard to its very great importance, your Lordship will understand why it is that at the present stage I cannot even appear to enter into any undertaking which further on in the Case might conflict with my views of what the interests of justice required.

THE PRESIDENT. No.

(The Tribunal deliberated.)

THE PRESIDENT. I understand that the 17th is really more convenient to the parties, and I think that the Tribunal would decide to meet on Thursday, the 17th, at 11 o'clock. We trust, without putting either side under an obligation, that the Arguments will be concluded by Friday, the 9th of October. We should be prepared to sit upon the Saturdays, if it was found necessary, in order to give extra days.

Sir ROBERT FINLAY. Perhaps I ought to say—I will do my best, but I very much doubt whether the Arguments can be concluded by the 9th of October. That is my impression, and I think I ought to say so at once.

(The Tribunal deliberated.)

The PRESIDENT. Then I think it would be better to say Tuesday, the 15th, Mr. Attorney and Mr. Dickinson—Tuesday, the 15th, at 11.

Mr. DICKINSON. The 15th will be satisfactory.

The PRESIDENT. There is nothing else, I suppose, for to-day, is there?

Sir ROBERT FINLAY. Nothing, my Lord.

The PRESIDENT. Then Tuesday, the 15th, at 11 o'clock.

(Adjourned till Tuesday, the 15th September, at 11 A. M.)

All the Members of the Tribunal were present.

The PRESIDENT. Mr. Attorney-General.

SIR ROBERT FINLAY. May it please the Tribunal, it is now my duty to state the case in opening on behalf of Great Britain with regard to this question of frontier as between the Dominion of Canada and the United States of America. It is quite unnecessary that I should say anything with regard to the importance of the question raised by this Arbitration. The territory in dispute, as the Tribunal is aware, comprises what is known as South Eastern Alaska, extending from Mount St. Elias on the north to the southern point of Prince of Wales Island—roughly speaking from the latitude of a little below 55 degrees north to 60 degrees. Having regard to recent discoveries not very far off, the territory may be of very great value in itself, but to Canada it is, of course, of very special value, having regard to the fact that through certain portions of this territory access may be had from the Yukon Territory to the Pacific.

The Tribunal is aware that recent discoveries of gold in the Yukon Territory, which is in the north-west of the Dominion of Canada, has opened up a great amount of trade with that region. Access is obtained to the Yukon Territory from the head of the Lynn Canal, which forms a portion of the territory which is now in dispute. The other access to the Yukon Territory is one which is open during, I believe, only two months of the year, from Norton Bay away far to the north, also in the Alaska Territory, but not in this portion. From Norton Bay, during the two months of July and August, access may be obtained to the Yukon Territory up the River Yukon and the other rivers which flow into the Yukon, but the main access, and one which may be of the greatest possible importance to Canada, must be from the head of the Lynn Canal, which affords a much more convenient mode of access to the territory of which I am now speaking.

Now, the question of the frontier of this territory has been in dispute ever since the year 1872. The Tribunal will find, when the negotiations are looked at, that at no time during the period has there been anything like acquiescence or consent as between the United States of America and Great Britain, as to what is the proper frontier to be drawn of the region now in dispute, and I ask the Tribunal to bear that point in mind, for it will be found to be of very great importance, as throwing a flood of light upon certain contentions which have been put forward by the United States, as to acts of possession at certain points in this territory on behalf of the United States. I shall presently have to call the attention of the Tribunal to the provisions of the Treaty with regard to the effect which is to be given to any such acts. What at the present moment I ask the Tribunal to bear in mind throughout is, that for more than thirty years

the question of boundary has been in dispute—always in dispute—sometimes actively in dispute, and always a subject of difference between the two Governments.

There is another point which I think, as the case proceeds, the Tribunal will find to be of great importance, and it is this, that the region is a very remote one, and that until very recent years it was little known. Of course, the development of the Yukon Territory has now called special attention to the Lynn Canal and to everything which takes place there, but up till, I think I am safe in saying, about the year 1896, spots like the Lynn Canal were comparatively little known, even in America. They, of course, were known to a certain number of persons, but events taking place there, acts done there, were not matters which arrested the attention of people in other parts of Canada or in the United States. In Great Britain, I need hardly say, they were almost unknown. It is within the last seven years or so that these spots have drawn to them the eyes of all who are interested in the question of America and the relations between the United States and Canada, but before that period comparatively little was known of many spots which are now extremely important.

7 The disputes which have so long existed—disputes, I am glad to say, of an extremely amicable kind—between Great Britain and the United States of America, have led to several endeavours towards adjustment. There was a survey undertaken under a Convention of 1892 of a large portion of this territory, in order to supply materials for arriving at some conclusion as between the two Powers. To the labours of that Commission on that survey the attention of the Tribunal will, by and bye, have to be drawn somewhat in detail. Another attempt to arrive at a solution was made under the arrangement of 1898—the Joint High Commission of 1898—when a number of pending points were submitted for consideration by Commissioners, and an effort was then made to secure some adjustment on the question of the Alaskan Boundary. Those efforts were not consummated by success owing to circumstances to which it is unnecessary that I should refer, and the question still remains open. The Treaty of Arbitration to which I now propose at once to call the attention of the Tribunal is the last effort which has been made for the purpose, and I need not say how intently the eyes of all who are interested in this great question are fixed upon the proceedings which have this day been initiated. The Treaty is before the Tribunal, and there are only one or two Articles in it to which it is necessary at this stage I should direct attention.

The first Article provides for the appointment of the Tribunal, and the Tribunal is appointed to consider and decide the questions set forth in Article IV of this Convention. It will be observed that no power is given to the Tribunal to do anything except to answer the specific questions which are put to it. There is no power given to draw the line of boundary. The Tribunal is to provide materials for settling the questions by answering those questions which are put to the Tribunal in the Convention, and no other.

Article I also contains a provision of which the Tribunal may find it necessary to avail itself. In the third sentence there occur these words:—

“The Tribunal * * * may employ scientific experts if found to be necessary.”

And in dealing with one, at least, of the questions which are submitted to the Tribunal the exercise of that power may be found to be very beneficial.

Article III sets out the most material Articles of the Treaty of 1825, and the first observation I wish to make is this:—That the Tribunal is appointed for the purpose of giving a meaning to that Treaty, and that acts or transactions outside the Treaty can be looked at only to the extent specified in this Article, and for the particular purposes which are there enumerated.

“It is agreed by the High Contracting Parties that the Tribunal shall consider in the settlement of the 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, which in the original text are, word for word, as follows.”

I do not think I need read them at this moment, because I shall have to read them presently when I come to deal with the Treaty of 1825 itself.

Now, after setting out the most material Articles of that Treaty of 1825, Article III of the Treaty of Arbitration proceeds as follows:—

“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 as 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.”

Now the language of that sentence requires careful consideration. The only action which can be taken into account is the action of the Governments or their Representatives. The actions of private individuals are excluded, and most properly excluded, from the consideration of the Tribunal in dealing with the interpretation of the Treaty of 1825. The acts that are to be taken into consideration are to be acts which were preliminary to or subsequent to the conclusion of the Treaty; that is to say, acts which preceded the
8 Treaties so that they can be considered to have some relevancy to their interpretation, and acts subsequent to the Treaties for the purpose which is specified in the immediately following words:—

“So far as the same tend to show the original and effective understanding of the parties interested of the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.”

The only object in view, according to this Treaty of Arbitration, in taking into account such action as is here referred to is in order to give the Tribunal help in finding out what was the understanding of the parties—that is of both parties—in respect to the limits of their several territorial jurisdictions under the Treaties. It is not enough to say that any act done, either by the United States or by Great Britain, evidenced the understanding of the Power doing the act. It is necessary to show that there was such conduct on the part of the other Power, either in expressed terms or by action, as to show that that other Power concurred in the view which the doing of that act appeared to assert with regard to the interpretation of the Treaty.

I at this early stage desire very respectfully to press this view upon the attention of the Tribunal, and I submit that what has to be ascertained in dealing with the action of the parties is this: does it show that both parties took a particular view of the Treaty? If it does not, such action is altogether immaterial. I make that observation the more pointedly because, if I may say so, with very great respect, I think that a large portion of the Case and Argument submitted on behalf of the United States of America deals, with this matter as if it were a question of showing a title by prescription or by occupation. There is a vast amount of evidence which has accumulated apparently with that view, apparently on the assumption that the question for the Tribunal is whether a title could be shown according to such canons as obtain in determining disputes of this kind between nations if there were no Treaty at all. That is not the question, for the Tribunal in the slightest degree. The question, and the only question, for the Tribunal is, how these particular points which are enumerated in the next Article are to be dealt with according to the terms of the Treaty, and action outside the Treaty, either before its conclusion or afterwards, can be looked at only so far as it is action of Great Britain or America, or their Representatives, only in so far as it tends to show the understanding of both Powers with regard to the meaning of the Treaty.

Now, the questions which the Tribunal is to answer are enumerated in the Vth Article. I propose at this stage merely to read these questions and to tell the Tribunal in one word almost, with regard to each, the answer which I ask them to give. The first is—I had better read the Article as it stands—

“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?”

I may say—that question makes it proper that I should say—that this line is in dispute at every point. The point of commencement is in dispute, and the course of the line up to the point where it strikes a meridian which it follows up to the Arctic Ocean is matter of debate as between the Representatives of the two Governments at this moment. The point of commencement of the line is specified, I submit, in the Treaty in so clear a way that hardly any discussion can take place upon it—it is the southern point of Prince of Wales Island. There is a latitude added on which some stress is laid in some parts of the Argument for the United States, but I submit that that latitude was mere matter of description. It is slightly inaccurate. The true point, and the only point, to look at as the point of commencement is the southernmost point of Prince of Wales Island.

The second question is:—

“What channel is the Portland Channel?”

With that question I shall ask the Tribunal to deal in this way. It is a simple question of identity. What channel did those who framed the Treaty designate as the Portland Channel? On that I

submit that the evidence is conclusive, that the channel which they had in view was that which runs to the north of the island known as Wales Island, to the north of Pearse Island, and away up-hill it gets to the 56th degree of north latitude. On the part of the United States the contention is that the channel in question is the wider channel to the south of Wales Island and of Pearse

Island, then bending round between Ramsden Point and Pearse Island, and so running to the north and joining the other channel and so running away to the north to near the point of latitude that I have designated. That is a simple question of identity, and for this purpose, of course, the materials which were before those who concluded the Treaty must be looked at in order to identify what is the channel which they designated when they themselves used these words.

The third question is:—

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

Well, I submit that that question really answers itself. You have the point of commencement—the southernmost point of Prince of Wales Island. As soon as you have ascertained what is the entrance to Portland Channel, which is designated by the Treaty, the line must be drawn from the one point to the other. That remark is so obvious that I almost apologise for making it, but the Tribunal will find that it is a remark which not only had to be made, but which will require development, because the great part of the Argument of the United States—a considerable part—is devoted to asserting that the governing factor in determining this line is not the two points which are designated by the Treaty, but the parallel of $54^{\circ} 40'$. That is a matter which may be of importance, and to which I shall have to recur with some detail, I am afraid, at a later period of the case. At present I only point out what our answers are.

Fourth: “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?” Well, with regard to that, the answer is a very short one. From the head of the Portland Channel the line must on the ordinary principle be taken by the shortest route to the point of commencement of what is specified as the next mark in the chain of boundary.

Then comes the 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 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?”

I ask the Tribunal to return a simple negative to that question. I shall submit that when the Treaty is examined by the light of the negotiations and the surrounding circumstances so far as they are admissible for this purpose, there is no ground for the assertion that there was to be a continuous frontier separating the British

possessions from the inlets on that coast. That is, I need hardly say to the members of this Tribunal, one question of very great importance in this case—of capital importance in this case. Is any part of the inlets which diversify this coast to belong to Canada, or are the whole of the inlets to go to the United States?

Now, the Tribunal is familiar with the general description of the region. It is a very mountainous region; it is intersected by a great number of inlets. I was about to say “lochs,” but the expression perhaps is one which the Tribunal would not accept as properly applicable to this territory. But it bears a very striking resemblance to a coast which is more familiar to some of us—the west coast of Scotland. You have a very mountainous region; you have a number of inlets which are of very great depth in comparison with their width, and the question which is put here is whether the line which was to be drawn under the Treaty was to interpose a belt of land between the Canadian dominions and the heads of all these inlets. I say emphatically no. The intention of the Treaty was this. The line is to be drawn as described. Whether it crosses any inlet or not must depend upon the nature of that inlet, having regard to the physical features with which you have to deal, and upon the distance from the point from which the 10 leagues as a maximum were to be measured—that being, as we say in answer to the next question, the general line of the coast, and not the impossible line which is created if you follow the windings of every inlet, the depth of which is altogether out of proportion to its breadth.

Then comes the sixth question. And I ask the Tribunal to look carefully at its terms, because it depends upon a double contingency. The hypothesis upon which the sixth question is put is a double one:—

“If the foregoing question should be answered in the negative”—that is to say, in the event of the fifth question being answered as I ask the Tribunal to answer it—“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?”

Now, the Tribunal will observe that the first branch of the question very nearly corresponds with the first sub-head of the second branch, and I apprehend that the true way of reading this question is not that (1) and (2) are alternative answers, but that (2) is really an explanation and development of the question put in (1), showing the various cases with which the Tribunal may have to deal in answering the question. I say that for this reason. The first case put is: Was it to be drawn from the mainland coast of the ocean, strictly so called, along a line perpendicular thereto? which is the first branch; and the second case is this: Where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, was the width of the *lisière* to be measured from the line of

the general direction of the mainland coast? That is substantially the same thing, I submit, as the case put under the first head; so that I submit to the Tribunal that the true way of looking at this question is to regard the second branch as an explanation and development of the first. But however that may be, the answer that I ask the Tribunal to give is this—that in the case where there are deep inlets the measurement is to be from the line of the general direction of the mainland coast, and that whether the inlets belong to the United States or to Canada will depend upon the situation of the mountains, which are the cardinal feature under this Treaty, or at any point where the mountains recede more than the distance of 10 leagues, which is given as a maximum as measured from the general line of the coast.

As regards the second head of the second branch of the question—“or from the line separating the waters of the Ocean from the territorial waters of Russia”—I think that the question of territorial waters may be found to be of considerable value as throwing light upon what is the general line of the coast, and it is in that way that I should desire to use it in the course of the observations which, by-and-bye, I shall have to submit to the Tribunal. But the broad answer that I give to this question is that the distance must be measured from the general line of coast.

The seventh question is:—

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

11 With regard to that, I ask the Tribunal to say that mountains do exist, and that the line of mountains is that shown on a line delineated by Mr. King and identified in his declaration which is annexed to the case to which I shall have to call attention by-and-bye—that line of mountains running very near the coast and crossing the heads of certain inlets. And in that connection I should emphasize what I alluded to when I read Question No. 6—that if we are right in our view that there are mountains within the 10 leagues limit all the way along, Question No. 6 does not arise, because the hypothesis upon which Question No. 6 is put is a double one: “in the event of the summit of such mountains proving to be in places more than 10 marine leagues from the coast.’ If there be mountains within 10 marine leagues of the general line of the coast all the way along, Question No. 6 really does not arise.

Now I do not know that any useful purpose will be served by saying anything more at this stage with regard to these preliminary matters or upon the Treaty of Arbitration itself. I may have to recur to it by-and-bye, but what I have said may suffice by way of general observation in introduction.

Now, it might be convenient to the Tribunal if I indicated the order in which I propose to deal with this somewhat complicated case. I can do so at present to advantage only in a very general way; but what I should desire to do is this: first, to deal with the Treaty of 1825, not going into any very great detail, but calling attention to its material provisions, and indicating the view which I ask the Tribunal to take of those provisions; secondly, to give a general and connected view of the negotiations which preceded the Treaty of 1825; and, thirdly, to deal with the specific questions which are put, and which

will be found to fall under two groups. The first four questions may, I think, be very conveniently dealt with together; that is to say, they are very closely connected; and I shall, after answering the first question very shortly, deal with the second and third questions really as one—for I think they are one—and then deal, in connection with that, with the fourth question, which is a sort of pendant to the first three.

Then the fifth, sixth, and seventh will fall to be dealt with as the second group, and, in connection with each of those groups, I shall have to call attention in detail, not only to the provisions of the Treaty, but to the various passages in the negotiations which may legitimately be used to throw light upon the meaning of the Treaty. I shall have to deal in connection with each of these groups with the question of subsequent action under the limitation which I have already indicated—that that subsequent action must be action tending to show the understanding of both parties with regard to the meaning of the Treaty; and, in dealing with the negotiations, I, of course, do not for one moment intend to ask the Tribunal to depart from the terms of the Treaty or to vary the Articles of the Treaty by anything in the negotiations. I submit to the Tribunal that the Treaty must speak for itself. The negotiations you may look at to throw light upon what the parties meant by various objects designated in the Treaty or to give help in the elucidation of what may be obscure when taken by itself and without the surrounding circumstances. But the negotiations cannot be invoked for the purpose of varying that which the parties have embodied in the Treaty. And I venture again with respect to submit that a very considerable part of the case of the United States will, I think, be found to trench upon that canon, which I submit is fundamental in construing any document either as between nations or as between individuals.

Now, the Treaty of 1825, with which I propose in the first instance to deal, will be found on p. 37 of the Appendix to the British Case. The first two Articles it is necessary to refer to, although they are of a general nature bearing upon another subject than that with which the Tribunal is at present conversant. The first and second Articles were no doubt inserted on account of the pretensions which had been made by Russia to assert dominion over the Pacific to a distance of 100 Italian miles from the coast, under a Ukase to which reference will have to be made. They provide as follows:—

“Article I. It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested, in any part of the Ocean commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles:

12 “‘II. In order to prevent the right of navigating and fishing, exercised upon the Ocean by the subjects of the High Contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment, without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land, without permission, at any British establishment, on the North-West Coast.’”

Now, there are two provisions really contained in these Articles. One is for freedom of use of the ocean. Well, that was wanted in

consequence of the Ukase to which I have already made reference. The other provision is that subjects of the respective Powers might land on such portions of the coast as shall not have been already occupied, in order to trade with the natives. That is a provision with regard to the use of territory appropriated by any Power which would not have been carried by the general provision as to the use of the ocean, and the Tribunal will see that on the general provision rebutting the claim which had been advanced by Russia to a distance of 100 miles from the coast, as to the right to use the ocean, is ingrafted the further provision that the subjects of the respective Powers may land for the purpose of trading with the natives at any point where the coast has not been already occupied. That is the effect of these general Articles I and II.

Then we come to Articles III and IV, which are the crucial Articles in the present controversy:—

“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 degrees 40 minutes north latitude, and between the 131st and 133rd degree 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 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 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.”

Now with regard to the words which occur very early in the despatch designating the point of commencement I call the attention of the Tribunal to this. It is designated by a point of land—a definite point by designation—the southernmost point of the Island called Prince of Wales Island. At that time it does not appear to have been accurately known—in fact it was known only very recently—which was the most southerly point of Prince of Wales Island. They say that you are to take whatever is the most southerly point of Prince of Wales Island as your starting point. They go on to say:—

“Which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133rd degree of west longitude (meridian of Greenwich).”

These words are mere description. You are to find the point which answers to the words “the southernmost point of the island called Prince of Wales Island.” You will find that point, they believe, between the 131st and 133rd degrees of longitude west, which gives you some area over which to range, and they believe that you will find it in the parallel of 54 degrees 40 minutes north latitude. But that is mere description, and if there is any error in the description it does not in the slightest degree vitiate the result which the designation of the point itself clearly indicates. I call attention at once to this point owing to the use which is attempted to be made of it on the other side with reference to the direction in which the line is to be drawn, and I at once invite the Tribunal to advert to the circumstance that the latitude, like the longitude, is mentioned only as a

description of the southernmost point of the island called Prince of Wales Island. If the latitude turns out not to be quite accurate, that does not in the slightest degree affect the result. You start from the southernmost point and then you proceed to your next point:—

13 “Then the said line shall ascend to the north along the channel called Portland Channel.”

And I may just remark, in passing, that the French of the original Treaty is:—

“La dite ligne remontera au nord le long de la passe dite Portland Channel.”

I apprehend that there is no doubt that the natural meaning of the words, “le long de la passe dite Portland Channel,” is “along the Portland Channel.”

It is not a line to be drawn necessarily in the middle of the Channel, it is a line to be drawn along the Channel as far as the point of the continent where it strikes the 56th degree of north latitude:—

“Jusqu’au point de la terre ferme où elle atteint le 56° degré latitude nord.”

Well, great controversy has raged over the question of what the pronoun “elle” refers to. One theory has been that it refers to the word “elle” refers to “la passe”; the gender suits either, and it is very north. Two other theories are that “elle” refers to “la ligne,” or that “elle” refers to “la passe;” the gender suits either, and it is very fortunate that it does not seem to make any difference whether it refers to the line or the pass—“la ligne” or “la passe”—for if the line is being drawn along the pass it is quite clear that the two must reach the point designated at the same time, so that this very interesting question, on which some light is thrown by the negotiations, is one perhaps more of curiosity than of practical utility for the purposes of the present decision. But I cannot pass it altogether unnoticed, because undoubtedly it has excited an amount of scientific interest which is perhaps out of proportion to its practical value.

MR. AYLESWORTH. Some of the earlier drafts of the Treaty seem to show that it was “la ligne.”

SIR ROBERT FINLAY. Yes, sir. Sometimes it is designated in terms to show that it was “la ligne”; at other times in correspondence it is spoken of as if it were “la passe.” But I do not desire to lay any great stress upon that point. If anything should be found to turn upon it I shall revert to it and deal with it by the light of what passed. “From this last-mentioned point, as far as the point of the continent where it strikes the 56th degree of north latitude.” Well, the Portland Channel does not strike the 56th degree of north latitude; it gets near it, but it does not strike it, and yet the language of the Treaty would seem to imply that even with the maps before the negotiators, which showed that the Portland Channel fell short of the 56th degree, they regarded the 56th degree as a point which would be reached by a line which was going along the Portland Channel. “From this last-mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast. The words are “suivra la crête des montagnes situées parallèlement à la côte”—situated in a parallel direction to the coast as far as the point of intersection of the 141st degree of west longitude of the same meridian, and finally along the meridian line of the 141st degree.

Now, that Article is qualified in its application by the following

Article, but what I want to call the attention of the Tribunal at once to is that the basis of the Treaty is the existence of a line of mountains. If that Article stood by itself, every one would say: If the mountains do not exist, the Treaty is incapable of application, because the Treaty only provides for a mountain boundary. Now, I shall call attention presently to the qualification introduced by the Article IV, and I shall submit that the qualification is very much less extensive than is supposed in the case of the United States of America. But what I do desire to put to the Tribunal is this—that Article III, when it is read by the light of Article IV, as I am presently going to do, indicates that in order to make the Treaty capable of application at all, you must have a line of mountains.

14 Now the Case for the United States, which I have spent a great deal of time in reading and in studying by the light of the Counter-Case and of the Argument, as I understand it, says definitely that in this region these mountains are not to be found at all—that the Tribunal is to give up the attempt to find mountains. Well I say that if that contention be well founded, the Treaty really ceases to have matter on which it can operate, because Article IV will not be found to have the effect of supplying another basis on which, in the entire absence of mountains, you can draw a line. Now, Article IV is this:—

“ 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, that calls for a word of observation in passing. The degree of latitude for which Russia was contending was 55 north. That was the degree of latitude which had been mentioned as the limit of the Russian dominions in the Ukase of 1799. It was a Ukase which Russia contended had not been disputed by other Powers, and it was a Ukase on the maintenance of which, as regards territorial extent, Russia felt that a great deal depended from the point of view of national dignity. The variation to the southward of 55 was introduced, as the Treaty itself says, and as the negotiations will show more in detail, for one purpose and for one purpose only. It was to give to Russia the whole of Prince of Wales Island. It would, of course, have been a very awkward and inconvenient thing if, while the bulk of Prince of Wales Island which lies to the north of latitude 55 had belonged to Russia, the southern end of it had belonged to Great Britain, and for the purpose of avoiding that contingency, and for that purpose only, the latitude of 55 was departed from, and the southern point of Prince of Wales Island, which lies a short way to the south of 55, something near 54 degrees 40 minutes, although not exactly at that point, was introduced.

“ Second: 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 the 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.”

Now, I submit to the Tribunal that the contingency contemplated by that provision which I have just read was this: You must have

your mountains, but at certain points you may find that the summit of the mountains is at a distance of more than 10 marine leagues from the ocean. Wherever that takes place, wherever the mountains recede more than 10 marine leagues from the ocean, then you are to take the limit between the British possessions by a line parallel to the windings of the coast not exceeding the distance of 10 marine leagues therefrom.

Now, the coast to be there taken is, I submit, as I have already shortly indicated, the general trend of the coast. In fact, anything else is really impossible if one comes to try to carry it out, and the proposition for which I am going to contend was very clearly enunciated by officials of the United States a great many years ago, before the year 1891 and in the year 1893. I will merely read a few words at present, but I shall recur by-and-bye to this point, because it is one of great importance. At p. 268 of the British Case Appendix, the Tribunal will find a passage set out from the last published report of the United States' Coast and Geodetic Survey, where the Director writes as follows (it is the quotation contained in the letter that I am going to read):—

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

The question of the 35 miles from it raises another matter which I am not dwelling upon at the present moment. The purpose for which I refer to this extract is to show that what is taken is the general trend of the coast.

Mr. TURNER. Sir Robert, do you not understand that there is a distinction between the “general trend of the coast” and the “trend of the general coast?” I understand you to be interpreting that, as if it read “the trend of the general coast.”

Sir ROBERT FINLAY. The general trend of the coast?

Mr. TURNER. Yes. Is there not a distinction between that and the trend of the general coast, which would be more conformable to the meaning which you are putting on it?

Sir ROBERT FINLAY. If there be a distinction, it is an extremely subtle one. I submit that “the general trend of the coast” is that you take a coast generally and you see what its trend is.

Mr. TURNER. The general trend of the coast would be measured by what the coast was, which, of course, is the crux of this very case.

Sir ROBERT FINLAY. Yes; but in either case, whether you take “the general trend of the coast” or read it “the trend of the general coast,” you must exclude the inlets, because if you take an inlet 70 miles long—70 miles deep—and no more than six miles wide, and a great deal narrower at the top, that is not either the general trend of the coast or the trend of the general coast.

Mr. TURNER. But you are now giving an application to words which are not in the letter, in which it is directed that the survey shall be made according to the general trend of the coast.

Sir ROBERT FINLAY. Yes.

MR. TURNER. If Mr. Mendenhall considered these inlets as a part of the coast, there would not be any incompatibility between that idea and that conveyed by the use of the language "the general trend of the coast," because the latter would include the inlets. But if he had said "the trend of the general coast," then it might mean the general mainland coast.

SIR ROBERT FINLAY. I submit that they come substantially to the same thing, and I think an answer to some extent to the observation which the Senator has been good enough to make to me will be found at page 276 of the British Case, Appendix, in the directions given by Mr. Mendenhall as Superintendent. This is in 1893—directions as to the mode in which the survey is to be carried out, to Mr. McGrath. It begins at page 275. The passage I refer to, merely as suggested by the question which the Senator has been good enough to put to me, is this:—

"The other Taku party will be under the charge of Assistant H. G. Ogden, and you will confer with him and arrange for the proper division of the work between the two parties. The chiefs of parties will themselves execute the triangulation from the Taku astronomical station (which will also be connected with one or more points of the coast triangulation) to a point on the inlet or river, distant not less than 30 nautical miles from the coast of the mainland in a direction at right angles to its general trend."

16 THE PRESIDENT. Mr. Attorney-General, I think everybody understands the expression you are referring to—"general trend of the coast." Do these lines amount to more than directions to the surveyors giving expression to that opinion or that view?

SIR ROBERT FINLAY. Well, this passage which I read last amounts to a good deal more, because you will observe that he says this:—

"The chiefs of parties will themselves execute the triangulation from the Taku astronomical station (which will also be connected with one or more points of the coast triangulation) to a point on the inlet or river."

He is dealing with the Taku inlet.

MR. AYLESWORTH. What page is that?

SIR ROBERT FINLAY. Page 276 of the British Case, Appendix I, " * * * to a point on the inlet or river distant not less than 30 nautical miles from the coast of the mainland in a direction at right angles to its general trend."

I submit that that amounts to a demonstration that Mr. Mendenhall was speaking of. I am ready to adopt either form of language, either "the general trend of the coast" or "the trend of the general coast," they come to the same thing; in either case they exclude the inlets, and that was the view which in 1893 Mr. Mendenhall, the Superintendent, held in giving his directions. Then there are other passages in Mr. Mendenhall's directions which tend in the same way, but I will not occupy time at present by reading them, because I am at this moment only engaged in endeavouring to enunciate as clearly as I can with reference to the Terms of the Treaty, as I read it, the view which we take. Now, in Article III the word is "coast," in Article IV the word is "ocean." Of course, "coast" and "ocean" are not the same thing, but they must denote here the same line. In Article III it is to be parallel to mountains situated in a parallel direction to the coast, "situées parallèlement à la côte"; then in Article IV, "wherever the summit of the mountains shall prove to be at the distance of more than 10 marine leagues from the ocean." Well,

there the line of the coast and the line of the ocean must be the same thing. The ocean, of course, denotes the body of water, the coast denotes the land, and the land where it meets the water, in the sense which I have endeavored to submit to the Tribunal, but they both must designate the same line which runs along and to which roughly the mountains are situated parallel. Now, wherever the line of mountains recedes so as to be more than 10 leagues from the coast or from the ocean, whichever phrase you choose to use, then 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.

Now I invite the attention of the Tribunal to the point that the provision is that the line is never to exceed the distance of 10 marine leagues therefrom. That has been read by the United States as if it were that it was never to be less than 10 marine leagues from the line of the coast. Now I call the attention of the Tribunal at once to the map put forward by the United States showing their line. It is Map No. 3 in the case for the United States. The same line is shown on Map No. 25.

The PRESIDENT. And No. 26, yes, quite so.

SIR ROBERT FINLAY. Now, the first observation I desire to make upon that—and I refer to it at this stage for the purpose of illustrating our construction of the Treaty—the first observation I wish to make is that that map assumes that there are no mountains at all.

The PRESIDENT. Disregards them?

SIR ROBERT FINLAY. Disregards them absolutely. There is a dispute as to the existence of mountains in the southern part of the territory. It is a highly mountainous region. It is contended by the United States that you cannot find any mountains there which will answer the description. I say that you can. But whatever controversy there may be as to the southern part of this territory, as to the northern part in point of physical geography there is absolutely no controversy; it is beyond the possibility of dispute that from Mount Elias to Mount Fairweather you have got a continuous chain of mountains with many of the summits very high indeed. Mount Elias is an enormously high mountain, and Mount Fairweather is a high mountain, and you have a number of mountains—you have got a continuous line. Between these two points the existence of that chain of mountains is a physical fact which cannot be disputed. I call the attention of the Tribunal to the way in which the line is drawn on this map which represents the American claim. These mountains are, I suppose, about 10 miles from the sea. Well, the line is double that distance from the sea, and in some points a great deal more than double that distance from the sea. The line takes in a large amount of territory which may or may not be of value, which may be of great value in the future, a large amount of territory which is situate to the north and to the east of a well-marked line of mountains which are shown on almost every map, which are described in detail in the Surveys by the United States officials, and which, whatever may be said of other points, supply here a definite mountain boundary. It was, I think, a French king who said, "There are no more Pyrenees," but that is nothing to the exploit of the framer of this line who has succeeded in sweeping away the Mount Elias Alps for the purpose of taking in a belt of territory situated to the north and east of that line of

hills which, whatever may be said at other points, there supplies an undeniable boundary in conformity with the Treaty.

Then when you come a little further south to the head of the Lynn Canal, looking at the map it will be found that the divide, as it is called there—the summit of the pass—is 10 miles from the head of the water at Dyea; 10 miles takes you to the summit of Perrier Pass, as it is called, but looking at the American line it goes back 35 miles from the very head of the Lynn Canal, and carries it back to a point into a different watershed altogether, where it actually cuts in two Lake Bennett—a lake part of which, according to this line, would belong part to Canada and part to the United States. Now, in calling attention to this point, I am not, of course, for one moment admitting that any line would be properly measured from the head of the Lynn Canal. On the contrary, I have said, and shall say again, that the line must be measured from the general trend of the coast. But what I do call attention to is the fact that this line seems really to be drawn in almost ostentatious defiance of the terms of the Treaty. It ignores the Treaty altogether; it substitutes a line which can be erected only by a new and an independent Treaty altogether, and the effect of which is to give a very considerable amount of territory which may be of great value to the United States.

Now, how is that result worked out? The mountains are ignored, and then Article IV is called in, and, as I very respectfully submit to the Tribunal, called in for a purpose which it will not subserve. Article IV provides, as I pointed out, that where the summit of the mountains is more than 10 leagues from the coast you shall have the boundary formed by a line which shall never be distant more than 10 leagues from the coast. Now, take this line—I do not return to the point about the general trend of the coast; I am not returning to that; I am not going to repeat that point at the present moment, but what I call attention to is this, that these words have been read (if this line is looked at) as meaning that at no point is the line ever to be nearer to salt water than 35 miles all along. Take the head of every inlet, you will find that this line is 35 miles from the head of every inlet, and that at no point will you get greater proximity to any tidal water or salt water than 35 miles. But that is not what the Treaty says. What the Treaty says is that at no point shall the line exceed a distance of 10 marine leagues; it does not say that it is never to be less. And the result is certainly very remarkable, because the length of the line, if it is measured by this line—I am told the length of this line is 630 miles. Well, taking 35 miles as the 10 leagues—35 statute miles as equal to ten leagues—

Mr. AYLESWORTH. 34½ miles.

18

Sir ROBERT FINLAY. I take 35 for convenience. If you multiply the length of the line by 35 you get 22,000 square miles—a little more than 22,000 square miles. That is what you would get with a strip 630 miles long and 35 miles wide. But if this territory comprised within the claim of the United States is measured it will be found that it amounts to 32,000 square miles. Well, that at first sight might appear to be miraculous, but it is simply the result of this, that the principle is applied of keeping it 10 marine leagues from the head of every inlet.

Now I advert to this line for the purpose of asking the Tribunal not

to endeavour to go in search of any such conventional line—a line which could be created only by a new Convention as is here indicated, but to adhere to the terms of the Treaty in answering the questions which are propounded for the consideration of the Tribunal. I submit that, in the first place, in answering those questions the Tribunal will find that the Treaty depends upon the existence of mountains, and that there is nothing in Article IV which provides for any line at 35 miles from any line of coast if there be no mountains at all; and, in the second place, that the distance of the line is not to be 10 leagues and never less than 10 leagues from salt water, but that it is never to exceed 10 leagues from the general line of the coast. What I have been saying on this head may be illustrated by attempting to draw a line parallel to this conventional line shown as representing the claim of the United States. Of course, it must be parallel, or roughly parallel, throughout.

Well, if you start with a line parallel at the northern point just below the Malaspina glacier it will be found if you were to keep up your parallelism, or anything like your parallelism, the line to which this line is parallel will be one which, so far from representing the coast, whether you take inlets or general line, is far inland. It is difficult in words to describe what I am endeavouring to state to the Tribunal, but if the Tribunal would do me the honour of looking at this map, on which a parallel line has been drawn, it will explain in one moment what I mean. In fact, I am told that the line to which this must be parallel would take the coast over the top of Mount Fairweather. (Map exhibited).

SIR ROBERT FINLAY. That is a distance of 10 marine leagues?

THE PRESIDENT. That is 10 marine leagues from the suggested American Boundary—yes.

SIR ROBERT FINLAY. And I may just say in passing that the claim to discard mountains and to substitute a width of 10 marine leagues throughout is a return to the proposal which, I have shown to the Tribunal, was made by Russia early in the negotiations and was definitely rejected by Great Britain. The same result is now sought to be achieved in the manner to which I have been calling the attention of the Tribunal.

The other Articles in the Treaty of 1825 of which mention ought to be made are the fifth, sixth, and seventh—and the seventh in particular may be found to have a good deal of bearing upon the questions with which the Tribunal will have to deal.

The Vth Article provides:—

“That no establishment shall be formed by either of the two Parties within the limits assigned by the two preceding Articles to the possessions of the other.”

I do not think I need read the rest of the Article.

Article VI provides:—

“It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the Ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.”

I submit to the Tribunal that that is an Article which will be found

to be of very great importance. That is a provision that Great Britain shall have the right of navigation down any rivers which cross the strip which Russia was to have.

Now, it has been said—it is said repeatedly in the Case for the United States—that no provision is made for the use as to the navigation of inlets; the provision is only as to the navigation of rivers.

Now, of course, where you have territorial waters, the Power to whom those waters belong has the right to prevent fishing, has the right to police, but it has not, according to the comity of nations, the right to prevent the use of those waters for the purpose of innocent passage by another Power, and where the right of passage down a river existed, of navigation up a river or down a river existed, the right to use the inlet so far as it formed territorial waters, or part of territorial waters, along the coast would be given by the general law of nations.

This Article has further, I submit, an important bearing on the contention of the United States that the intention of the Treaty was to cut off Great Britain from salt water. Why should there be such an intention? If Great Britain was to have the full right of navigating the rivers, why is she to be cut off from the right of navigating the inlets? The question in every case is where the line following the parallel to the general trend of the coast runs, and if it crosses an inlet the upper part of that inlet belongs to Great Britain.

Then Article VII:—

“It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III for the purposes of fishing and of trading with the natives.”

That is a specific provision, having regard to the case with which Article III was dealing, as to the inland seas and the inlets. The right conferred by Article I was a right which applied to the Pacific Ocean generally. This provision in Article VII is a specific provision with regard to these inland seas and inlets.

Article VII is an important Article, and I shall not launch out into a disquisition upon it at the present time, because it would take me off the main line of the argument which I am endeavouring to follow in calling the attention of the Tribunal to the issues with which they will have to deal.

I think that I have now sufficiently indicated in a general way the view which Great Britain takes of the construction of the Treaty of 1825, and I desire now to present to the Tribunal a general view of the negotiations which preceded that Treaty. I do not think it necessary again to guard myself in any detail from its being supposed that I want to vary the Treaty. On the contrary, I am protesting against any attempt to vary the Treaty by reference to the negotiations, but there are various purposes for which, as every member of the Tribunal is aware, reference may properly be made to the *pourparlers* and the correspondence which have passed before a final agreement was arrived at. What I am going to do at this stage is to ask the Tribunal to take a connected view of these negotiations. When I come to deal with each specific question I shall of course have to call

the attention of the Tribunal to the passages in these negotiations which relate to that specific question; but after a good deal of consideration I came to the conclusion that it would not be a satisfactory way of dealing with a case of this kind if I were to approach the negotiations merely in a piecemeal manner—if I were to content myself with saying on Question 2, “There are such and such passages in the negotiations which may throw some light upon what it means.” On the contrary, I think the Tribunal will be in a better position to appreciate the effect of these particular passages if I first endeavour to present them with a connected view of the negotiations, dividing them into periods, and calling attention to the salient features which each period presents, and to the despatches which passed during that period. The references to particular sentences which relate to particular points will afterwards be much more intelligible, and, I think, much more fruitful.

Now, the negotiations will be found to fall under several 20 heads; but before dealing with those heads, there are certain facts as to the situation which, of course, were in the minds of the negotiators, and which ought to be recalled to the memory of the Tribunal. They are very brief indeed. There had been explorations by Russia upon these coasts starting in the eighteenth century. It is not very clear how far down these explorations by the Russians had proceeded.

In the year 1793–94 there took place the great explorations of Captain Vancouver, which throw, of course, a very great deal of light upon this case, and whose narrative and maps supply a great part of the materials upon which the negotiators of the Treaty of 1825 must have worked.

At the time of Vancouver’s voyages the easternmost post of the Russians was Port Etches, in Prince William’s Sound. That is a very long way up—so far up to the north that it is beyond the reach of the map.

The PRESIDENT. It is north of the Aleutian Islands, I think.

Sir ROBERT FINLAY. It is very near the Aleutian Islands. It is not north of them, my Lord, but it is very near them.

The PRESIDENT. I think it is north.

Sir ROBERT FINLAY. If your Lordship will look at what is called the Alaska Peninsula, your Lordship will see from the end of that runs the Aleutian Islands, which apparently had formed part of it.

The PRESIDENT. It is in the bight just below.

Sir ROBERT FINLAY. Just below. Yes, the first bight is Cook’s Inlet; then comes Prince William’s Sound, and it is in Prince William’s Sound that Etches is situated. That was the most easterly settlement of the Russians at the time of Vancouver’s voyages. In 1799 there is the Ukase of the Emperor Paul, of which I have already made mention, and which is a fact which really lies at the very root of the negotiations; and reference ought certainly to be made to that Ukase. Your Lordship will find it at page 5 of the Appendix to the British Case.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. That is the Ukase granted in favour of the Russian-American Company for a period of 20 years, and the first Article is this. I cannot help feeling that I am going over ground

which must be very familiar indeed to one member of the Tribunal, who has had previous experience in similar matters:—

“By the right of discovery in past times by Russian navigators of the north-eastern part of America, beginning from the 55th degree of north latitude and of the chain of islands extending from Kamschatka to the north to America and southward to Japan, and by right of possession of the same by Russia, we most graciously permit the Company to have the use of all hunting grounds and establishments now existing on the north-eastern (*sic*) coast of America.”

Well, I suppose they call it the north-eastern, because they were approaching from the other side. Even making allowance for that, it is not a very accurate use of the expression, because, although it may be north-eastern from their point of view, it is not the north-eastern coast of America

Mr. AYLESWORTH. They were going north-east.

SIR ROBERT FINLAY. Yes, exactly—“from the above-mentioned 55th degree to Behring Strait, and on the same also on the Aleutian, Kurile, and other islands situated in the north-eastern ocean.

“2. To make new discoveries not only north of the 55th degree of north latitude but farther to the south, and to occupy the new lands discovered, as Russian possessions, according to prescribed rules, if they have not been previously occupied by any other nation, or been dependent on another nation.”

21 Now the Tribunal will observe there the limit of 55 degrees north latitude, which is assigned for that grant, and it will be found afterwards what an important part that played in the nature of the claim by Russia, with which the negotiators on behalf of England had to deal before the Treaty of 1825.

About the same time as that Ukase—about the end of the eighteenth century—the post of Sitka was established. That post is situated on the Island of Baranoff. On the west side of that island is Sitka, or New Archangel. It is very often referred to under the name of New Archangel in the negotiations—Novo Archangelsk, and is situated on Norfolk or Sitka Sound, according to the maps; and Sitka was the post of the Russians which was furthest to the south at the time of the negotiations which we are now approaching; Russia had no post further to the south than Sitka.

It was the extreme point which Russia had reached in the way of the establishment of posts. And on the mainland—and I call particular attention to this point—on the mainland Russia at this time had no settlement whatever at any point which is material for consideration. There were, of course, the settlements on the mainland further to the north. I have mentioned Etches, and there were settlements on Cook's inlet which the Russians, the Tribunal will find, called Kenai Inlet; but on the mainland there were no Russian settlements whatever anywhere in the neighbourhood of the territory which is now in dispute. There was this island of Sitka, and that becomes a very important factor when we are dealing with the reasons which the Russians gave for desiring to acquire a strip of territory upon the mainland. Of posts on the mainland Russia had none.

In 1821 comes the Russian Ukase of that year, which advances the somewhat extravagant claim with which the negotiators had to deal in a portion of the Treaty of 1825. It will be found on page 7 of the British Case. The Ukase itself is very short, at the top of the page. It is dated the 4th September, 1821, and is in these terms:—

“Nous étant convaincus par les Rapports qui nous ont été présentés que le commerce de nos sujets avec les Iles Alcoutes et la partie de la côte nord-

ouest de l'Amérique soumise à la Russie, éprouve des entraves, et qu'il est exposé à des pertes sensibles par suite du commerce frauduleux qu'exercent des étrangers.

“Considérant, d'autre part, que la cause principale de ces pertes est le défaut de règles positives, tendantes à fixer les limites de la navigation le long de ces côtes.”

It is the same expression which we have in dealing with the Portland Canal:—

“Le long de ces côtes et l'ordre auquel doivent être soumises les relations maritimes, tant dans ces parages que sur toute la côte orientale de la Sibérie et aux Iles Kouriles, nous avons jugé convenable d'arrêter à cet égard les principes développés dans le Règlement spécial annexé au présent Ukase.”

Then I think the first two of these regulations are the only two to which I need make any reference, at present at all events.

“1. The pursuits of commerce, whaling, and fishery, and of all other industry on islands, posts, and gulfs, including the whole of the north-west coast of America, beginning from Behring's Straits to the 51st degree of northern latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring's Straits to the south cape of the Island of Urup, viz., to the 45 degrees 50 minutes north latitude, is exclusively granted to Russian subjects.”

“2. It is therefore prohibited to all foreign vessels, not only to land on the coasts and islands belonging to Russia as stated above, but, also, to approach them within less than 100 Italian miles.

That would be somewhat less than 100 statute miles. .

“The transgressors' vessel is subject to confiscation along with the whole cargo.”

22 The Tribunal sees that was a claim to the exclusive use for 100 miles around the whole sweep beginning on the American coast at 51 degrees north latitude, and going round to the latitude of 45 degrees 50 minutes on the coast of Asia, at the South Cape of the Island of Urup. The whole of that is exclusively granted to Russian subjects, and all foreign vessels were forbidden to approach these coasts within a distance of 100 Italian miles.

Now, that was the position with regard to Russia at the outset of the negotiations. On the other side, reference must be made to the position of England as represented by the Hudson Bay Company, and that is very clearly defined in a Memorandum which was drawn up by Mr. Pelly, who appears to have been the Chairman of the Company at that time, dated the 25th September, 1822, and which will be found in the British Case Appendix, pp. 24 to 28. It might be convenient for the Tribunal if I said that the posts which Mr. Pelly mentions are marked in Arrowsmith's map of 1822, which will be found in the British Case Atlas No. 8.

The Hudson's Bay Company, of course, were approaching this territory from the other side, from inland, and this Memorandum, which was sent to Mr. George Canning in September, 1822, by the Deputy-Governor of the Hudson's Bay Company, makes the following statement with reference to the claims set up by Russia to the part of the north-west coast of America to the north of the 51st degree of north latitude.

“In the year 1793 Sir Alexander McKenzie crossed the Rocky Mountains in 56 degrees 30 minutes north latitude, and penetrated to the Pacific Ocean in latitude 52 degrees 20 minutes. Immediately after his return the British fur traders sent expeditions and established trading posts in the country to the westward of the Rocky Mountains. New trading stations have been gradually

formed, as the country was more fully explored, and until 1821 the whole trade of an extensive district named New Caledonia, and extending from the mouth of Fraser's River, situated about 49 degrees north latitude to about 60 degrees north latitude, was carried on by the British North-West Company.

"The partnership of the British North-West Company being then about to expire, arrangements were made in 1821 by which the Hudson's Bay Company acquired possession of all the forts and trading stations of that Association situated in New Caledonia, as well as in other parts of British North America.

"The principal forts or permanent and central trading stations in New Caledonia, now occupied by the traders and servants of this Company, are situated at the Rocky Mountains portage in 56 degrees north latitude and 121 degrees west longitude; on Stewart's Lake in 54 degrees 30 minutes north latitude and 125 degrees west longitude; on McLeod's Lake, in 55 degrees north latitude and 124 degrees west longitude; and on Fraser's Lake, in 55 degrees north latitude and about 127 degrees west longitude, and there are several minor trading posts the situation of which are occasionally changed according to local circumstances."

I need not refer to the position of these in detail on the map; they are generally shown. They were some way inland, and they might have communications with the coast, but they were not on the coast themselves.

"By these means an extensive trade is carried on with all those Indian tribes which inhabit the country from about 60 degrees north latitude as far south as the mouth of Fraser's River, which is in about 49 degrees north latitude, and between the Rocky Mountains and the sea.

"The British fur traders have never met with the traders of any other nation in that country, and it does not appear that any part of it has ever been occupied by the subjects of Russia or of any other foreign Power.

"All the considerable rivers which fall into the Pacific Ocean in this extent of coast have not yet been sufficiently explored to ascertain whether any of them are navigable with large boats, and have safe harbours at their discharge into the sea; the furs procured in that country have therefore been brought to England down the Peace River and through the Hudson Bay Company's territories."

That is in the other direction altogether to the eastward.

23

"But it is probable that, in such an extent of coast, some practical communication with the sea will be discovered which would save the expensive transport of goods and furs through the interior of America.

"A direct communication by sea is found to be advantageous in the country to the south of New Caledonia situated on the various branches of the Columbia River, where this Company has extensive trading establishments extending to the head waters of that river in the Rocky Mountains, and the same advantages would be derived from a direct communication by sea with New Caledonia."

Then this next sentence is important because Mackenzie's River is repeatedly referred to in the negotiation as a governing factor.

"This Company has trading establishments also in Mackenzie's River, which falls into the Frozen Ocean as far north as 66 degrees 30 minutes north latitude, which carry on a trade with those Indians who inhabit the country to the west of that river and to the north of 60 degrees of north latitude, and who, from the nature of the country, can communicate more easily with Mackenzie's River than with the trading posts in New Caledonia."

Then follows a long Memorandum with observations upon the grounds which the Russians had advanced in supporting their claim to this jurisdiction.

Now, the information which was contained in that Memorandum was used for the purpose of starting these negotiations, and it may be for the convenience of the Tribunal if I at once state the divisions into which these negotiations fall in order of date and in order of subject. They fall into five groups.

The first group is in October and November 1822, when there were

“pourparlers” between the Duke of Wellington, as representing Great Britain, and Count Lieven, as representing Russia, at Verona. These “pourparlers” had relation to the question of right to this coast as advanced on either side.

These were afterwards treated as “non-avenus,” it being agreed that the matter should be determined on the principle of some convenient compromise by Convention between the Powers. I shall have to refer to some of these letters presently, because there again comes out the cardinal fact that 55 degrees north latitude was the limit on which the Russians were insisting. That is the first head.

The second head is in 1823, next year, when a series of conversations took place between Sir Charles Bagot and Count Nesselrode and M. de Poletica.

The conversations were of a somewhat desultory character. Various points are touched upon, and ultimately they ended at the time in nothing, because it was uncertain whether the United States of America would not become parties to the negotiations and any settlement that might be arrived at. But the pourparlers at this time, as represented in the reports which were made, require attention because in the first place they show again and emphasise 55 degrees north latitude as the Russian claim, and secondly they show the origin of the claim for a barrier on that coast which is so very much emphasised in the case of the United States on their contention that the strip of territory is to run inside of all the inlets.

The third stage of the negotiations is one which is of very great importance. It took place in February and March, 1824. Sir Charles Bagot represented England, Count Nesselrode and M. de Poletica again represented Russia. And these negotiations are of very great importance, although they went off at the time without any result being achieved, not only because they again refer to that point of 55 degrees north latitude, but because they develop very fully the nature of the claim which Russia was making for a conventional arrangement which would give her a strip of territory on the coast to serve as a “point d’appui” and the explanations are there given of what Russia wanted—for what purpose she required the “point d’appui,” and what that “point d’appui” really meant.

And they also throw great light upon the contention which is raised upon the other side, as to the allegation that latitude 54 degrees 40 minutes was a governing factor—I am using an expression taken from the United States’ Case—a governing factor in the negotiations and in the Treaty. It will be found from these negotiations that although the Treaty with the United States, which was entered into by Russia in that year—in the early part of 1824—is expressly referred to; and although in the Russian Treaty with the United States the limit is 54 degrees 40 minutes—with that before them, and making reference to the American Treaty—to the Treaty with the United States, they deliberately select, not the latitude as mentioned there, but the points on the islands and the mainland to which the Treaty makes reference.

These negotiations went off in the early part of 1824, forming the third stage, because Sir Charles Bagot would not concede the line of Portland Canal on the coast. He wanted to carry the British territory to a higher point on the coast than that represented by the mouth of the Portland Canal.

The fourth stage of negotiations runs from May to September in the same year—1824. By that time Mr. Canning had instructed Sir Charles Bagot to concede the line of Portland Canal upon the main land. But these negotiations again became abortive because Russia would not concede the claims which were put forward on behalf of England with regard to trade and fishery upon the north-west coast of America generally. But in this stage of the negotiations it will be found that not only are the points which I have referred to dealt with again and emphasised, but that England proposed taking mountains as the boundary, and proposed taking the base of the mountains. Mountains were spoken of as being at a little distance from the coast, near the coast, and so on, and in one passage it is actually pointed out by one of the Russian negotiators, as the Tribunal will find, that they must have the summit of the mountains instead of the base, because if they took the base they might have no territory at all. The base of the mountains might run down to the very edge of the ocean, so that no territory would be left at all, a point which is of great importance in determining what are the mountains which are designated by the Treaty. These negotiations went off at that time on the point which I have mentioned. And then in the same year, in December, 1824, the matter was put by Mr. George Canning into the hands of Mr. Stratford Canning, as he was at that time: he negotiated with Counts Nesselrode and Poletica, and success attended these efforts at last; the troublesome trade and fishery questions being settled by adopting some of the Articles which occur in the Russian Treaty with America, while at other points the Treaty with England took a thoroughly independent line, as on that of the question of latitude or bounds of territory as indicating the southern boundary, and a Treaty was signed concluding the fifth stage of these negotiations in 1825.

Now, having indicated the divisions under which these negotiations fall, I think that it will now be my duty to call the attention of the Tribunal to certain passages in the despatches marking each of these five periods which are of any importance with regard to the questions which fall to be decided by the Tribunal. I take the first period—the *pourparlers* between the Duke of Wellington and Counts Nesselrode and Poletica at Verona in October, 1822. They open by the despatch of the 27th September from Mr. George Canning to the Duke of Wellington. It will be found on pp. 28 and 29 of the British Case Appendix. There are only a few sentences of it which I need read. He says:—

“Your Grace is already in possession of all that has passed, both here and at St. Petersburg, on the subject of the issue in September of last year, by the Emperor of Russia, of an Ukase indirectly asserting an exclusive right of sovereignty from Bering’s Straits to the 51st degree of north latitude on the west coast of America.”

The PRESIDENT. Mr. Attorney, we want you, of course, to read any passages upon which you rely. With regard to what I may call the general correspondence, that is to say, the people to whom it is addressed, and the general particulars of the letters you may assume we have read them, and therefore, if you call attention to the passages themselves, you need not trouble to read anything except that upon which you rely. I think I may say that for all the members.

Sir ROBERT FINLAY. That will enable me to shorten.

The PRESIDENT. Please do not think that we want to interfere with

25 you in anything. It is only with reference to these particular documents which we have all studied. We shall quite appreciate the points if you call attention to any passages which you think necessary.

Sir ROBERT FINLAY. I am obliged to you,—

“And to the 45th degree north on the opposite coast of Asia.”

And then he states the effect of the ships not approaching within 100 Italian miles of the coast.

Then, with regard to the portion of the despatch which relates to the Ukase, with regard to use of the ocean I need not trouble the Tribunal. It is enough to have stated its nature, which enables one to realise what was done in treaty with regard to it.

With regard to the territorial claim there is a paragraph near the bottom of p. 28, which calls the attention of the Duke of Wellington to the opinions which had been taken upon the point, and this is of importance in addition to these opinions:—

“As, in both these opinions”—I am reading the third paragraph from the bottom of the page—“As, in both these opinions, much stress is very properly laid upon the state of actual occupation of the territories claimed by Russia and the different periods of time at which they were so occupied, I have obtained from the Governor of the principal Company of His Majesty’s subjects trading in that part of the world the information which your Grace will find in the inclosed papers. That information will enable you sufficiently to prove to the Russian Ministers, not only that the point of prior discovery may be fairly disputed with Russia, but that the much more certain title of actual occupation by the agents and the trading servants of the Hudson’s Bay Company extends at this moment to many degrees of higher latitude on the north-west coast of America than is claimed as the territory of Russia by the Ukase in question.”

Now, that is important, because in the materials laid by Mr. Pelly on behalf of the Hudson’s Bay Company before Mr. Canning there was included the Memorandum inclosed in his letter which is set out, pp. 25 to 28 of the British Case Appendix; and in that Memorandum reference is repeatedly made to the researches and discoveries of Captain Vancouver. Now, a point is made, and if it can be established it would be a very important one in the United States Case that the Vancouver narrative was not before the negotiators. It is asserted that it is not shown that it was before the negotiators. Now, in this Memorandum of Mr. Pelly’s reference is over and over again made to Vancouver’s narrative in terms which leave no doubt whatever. That Memorandum formed part of the materials laid before the Duke of Wellington, and the Tribunal will find that the very same terms which were laid before the Duke of Wellington were materials afterwards to be supplied to Sir Charles Bagot for his use in the negotiations. Now, in these materials were references to Vancouver’s narrative. Then on p. 29 the Duke of Wellington—

The PRESIDENT. Give the page of Mr. Pelly’s Memorandum again, Mr. Attorney.

Sir ROBERT FINLAY. Pages 25–28. I will mention, if it would be convenient to the Tribunal at this moment, the passages where Vancouver’s narrative is referred to. Near the top of p. 27 the

Russian contention was—this is taken from the despatch of M. de Poletica—the Memorandum of M. de Poletica, as the Tribunal will afterwards find: “Vancouver was the Russian establishment in the Bay of Kenai.” That is Cook’s Inlet—the Russian name for Cook’s Inlet, immediately to the east of the Alaskan Peninsula. Then Mr. Pelly’s comment upon that is:—

“Vancouver was visited by the Russians in Prince William’s Sound, which is in upwards of 60 degrees.”

Then at the middle of the page the Russian contention was that Don Joze Martinez in 1789 did not remove the Russian colonists from Nootka. Mr. Pelly’s comment upon that again is:—

“Neither Cook nor Vancouver mentioned these settlements.”

26 And then over the page—p. 28—the Russian contention was:—

“That in 1789 the Spanish packet, *St. Charles*, found in the latitude of 48 degrees and 49 degrees a Russian colony of 20 families, which were descendants of the companions of Tchirikoff.”

The last sentence of Mr. Pelly’s comment is this:—

“It is singular if they were the descendants of Tchirikoff that neither Krusenstern nor Kotzebue mention the circumstance, and that neither Vancouver nor Cook nor any traders have noticed it.”

I have given these references a little out of their order for the purpose of explaining the emphasis I laid upon that passage. Its importance will really only become evident subsequently.

Then on p. 29 the Duke of Wellington writes to Mr. George Canning inclosing, on the 28th November, 1822, a Memorandum which he had given to Count Nesselrode regarding the Russian Ukase, and his answer. The Memorandum merely stated the British Case. The answer of the Russians, which is at pp. 30 and 31, forming the second inclosure in this despatch so far as it is material, is in these terms—I am reading from p. 31 from the translation, about six sentences from the bottom:—

“The Duke of Wellington states in his Confidential Memorandum of 17th October, that some English Settlements belonging to two Companies—the Hudson Bay and the North-West—have been formed in a country called New Caledonia, which extends along the coast of the Pacific Ocean from the 49th degree to the 60th degree of north latitude.

“Russia will not speak of the settlements which may exist between the 49th and the 51st parallels, but as to the others she does not hesitate that she is still in ignorance of their existence, as least so far as their touching the Pacific Ocean is concerned.

“Even the most recent and complete English maps do not show a single trading post mentioned in the Memorandum of 17th October, on the coast of American between the 51th and 60th degrees of north latitude.

“Moreover, since the expeditions of Behring and Tchirikoff—that is, for nearly a century—Russian settlements have been growing so steadily from the 60th degree onward, that in 1799 they had reached the 51st parallel, as the first Charter of the Russian-American Company shows, which Charter at the time received official publicity, and which has called forth no protest on the part of England.

“This same Charter accorded to the Russian Company the right to extend its settlements towards the south beyond the 51st degree of north latitude, provided that such increase of territory would give rise to no protest on the part of any foreign Power.

“No objection was made to this provision either by England. She did not even protest against the new settlements that the Russian-American Company may have established to the south of the 55th degree by reason of this privilege.”

Then on p. 32:—

“In consequence, the Emperor has directed his Cabinet to state to the Duke of Wellington (without permitting this declaration to prejudice his rights in any degree should it not be accepted) that he is ready to settle, by means of friendly negotiations, and upon the basis of mutual agreement, the degrees of latitude and longitude which the two Powers shall regard as the outside limits of their possessions and of their settlements on the North-West Coast of America.”

Now, there the latitude of 55 degrees, which is really the governing feature in the negotiations preceding the Treaty, is most clearly stated. That was the limit of the territory assigned to the Russian Company by the Ukase of 1799. Beyond that there was mere power to explore.

On that limit Russia took its stand, and it will be found that the limit of 55 degrees was departed from for the one purpose of including the southern portion of Prince of Wales Island in Russian Territory.

27 These pourparlers ended in nothing except the expression of a hope that by agreement and waiving any question of strict right either based on discovery or occupation a settlement of the respective claims of the two Powers might be arrived at as is stated in the despatch of the Duke of Wellington of the 29th November to Mr. George Canning at the bottom of p. 32. It states that the Memoranda which he inclosed should be as *non avenues* as friendly negotiations were to ensue.

Now, that is the end of that stage, and the only further reference I need make to it at the present time is with regard to the Memorandum from Baron Tuyll—he was, I think, Russian Minister in England at the time—to Count Nesselrode, under date 21st October (November 2nd), 1822, where he says:—

“It will doubtless be expedient to make all possible attempts in this direction by alleging the newness of these last establishments, the clause of the privilege (Charter), of the two united Companies, which sets a limit to their future extension, and the injury which the proximity of those posts cannot fail to cause the older Russian establishment, known under the name of Novo-Archangelsk. But supposing it to be impossible to succeed in extending the frontiers of Russia much farther toward the south, it seems that it would be indispensable to have them fixed at least at the 55th degree of north latitude.”

There it is again:—

“Or, better still, at the southern point of the Archipelago of the Prince of Wales and the *Observatory Inlet*, which are situated almost under that parallel.

“Any nearer neighbourhood of the English establishments could not fail to be injurious to that of Novo-Archangelsk, which is in latitude 57 degrees 3 minutes.”

Now, there is the first proposal, instead of latitude 55 degrees, which was the Russian limit, to take two points, the southern point of the Prince of Wales Archipelago and the Observatory Inlet, situate almost under that parallel, as a matter of fact they are from somewhat to the south of it. But I call attention to this passage not merely for that purpose, but also for the purpose of showing that Baron Tuyll had really read Vancouver's narrative. Observatory Inlet is described minutely by Vancouver, and named by him as extending to the sea; and we find the Russian Minister as early as October, 1822, proposing as the two points the southern point of

Prince of Wales Island and Observatory Inlet. That must be the mouth of Observatory Inlet.

It cannot be any point of Observatory Inlet opening into another inlet, or away from the sea. It must be the mouth where it opens into the ocean. That he must have got from Vancouver, and that proposal was thrown out. It was never acted upon, and for Observatory Inlet of Vancouver is substituted Portland Canal, as I say of Vancouver also, and I shall submit to the Tribunal that that passage has a most important bearing upon the contention that for the Portland Canal of Vancouver is to be substituted what Vancouver called Observatory Inlet, on the ground that it is the larger, the wider, and the more navigable. That is not the question. The question is identity, not width and navigability. Now, my Lord, I proceed to the second stage of the negotiations—the conversations between Sir Charles Bagot and Counts Nesselrode and Poletica taking place in 1823. And I refer to them as throwing light on those two points—the 55th degree north latitude and the question of the barrier which is very much developed in the case for the United States. I must refer to Mr. Canning's instructions to Sir Charles Bagot on p. 34 of the Appendix, on the 5th February, 1823, for the purpose of showing what the materials laid before Sir Charles Bagot were, or rather were to be, because it will be found that with the papers the inclosures apparently were not sent, and I think we must assume that Sir Charles Bagot ultimately got them, and they were not inclosed in the first letter. I am referring to this for the purpose of making good my point that Sir Charles Bagot must be taken to have had before him that Memorandum referred to by Mr. Pelly referring to Vancouver's narrative. At p. 34, Mr. Canning writes to Sir Charles Bagot:—

28 “With reference to my despatch No. 5, of the 31st December last, transmitting to your Excellency the copy of an instruction addressed to the Duke of Wellington, as well as a despatch from his Grace, dated Verona, the 29th November last, both upon the subject of the Russian Ukase of September, 1821, I have now to enclose to your Excellency the copy of a note, which has been addressed to me by Count Lieven, expressing his Imperial Majesty's wish to enter into some amicable arrangement for bringing this subject to a satisfactory termination.

And then full powers are to be given. Then on p. 35 Sir Charles Bagot writes to Mr. Canning on the 10th of the same month, saying:—

“I ought to state that in the copy of the instructions given to the Duke of Wellington by your despatch No. 6 to his Grace, of the 27th September last, and which was transmitted to me in your despatch No. 5 of the 31st December, the opinions of Lord Stowell and of his Majesty's Advocate-General upon the subject of this Ukase, and the other papers therein referred to were not enclosed.”

That was Mr. Pelly's letter and memorandum. I am not aware that it anywhere expressly appears upon the documents which are before the Tribunal, that Sir Charles Bagot got these documents; but I think it may be very reasonably inferred he did, as he calls attention to the fact that they had not been inclosed, and he was proceeding on the basis of the instructions which had been given to the Duke of Wellington, which of course, to a very great extent, mainly in fact, rested upon the facts as stated in Mr. Pelly's letter and memorandum.

I refer to that because I do not wish it to be supposed that I put my

case too high on this question of fact. It is not actually shown in these letters—as far as I know—that these papers were received by Sir Charles Bagot, but I think it is a matter of reasonable inference—irresistible inference—that he did in fact get them.

Then at p. 39 there is a letter from Mr. Stratford Canning, who was then Minister to the United States, to Mr. George Canning, dated the 3rd May, 1823, where he refers to the proposal which afterwards plays such an important part in these negotiations, that the United States' Minister should be instructed to negotiate an arrangement of the differences between Russia and the United States, while at the same time negotiations were being carried on between Russia and England. And then at p. 40 there occurs this passage near the top:—

“He added that the United States had no territorial claims of their own as high as the 51st degree of latitude, although they disputed the extent of those advanced by Russia, and opposed the right of that Power to exclude their citizens from trading with the native inhabitants of those regions over which the sovereignty of Russia had been for the first time asserted by the late Edict of the Emperor, and most particularly the extravagant pretension to prohibit the approach of foreign vessels within 100 Italian miles of the coast.”

Although that statement appears to have been made by the American Secretary of State at the time that the United States had no territorial claims as high as 51 degrees of latitude, I think that it will be found that afterwards that admission was very much qualified, and a contention was put forward that the United States had an equal claim with Russia and with England to share in any division that might be made of the territory a great deal further north than the 51st degree of latitude. That appears to have been the attitude taken up at that time.

MR. WATSON. Will you please give me the last page you quoted from?

SIR ROBERT FINLAY. Page 40. It is near the top of the page in the British Case Appendix. The next step marked in the progress of this negotiation is the despatch of the 12th July, 1823, from Mr. Canning to Sir Charles Bagot, on p. 40. He begins by saying:—

“We have no precise information as to the views of the American Government.”

29 And then at the end of the letter occurs this passage:—

“The other part of this question which relates to territorial claim and boundary is perhaps susceptible of a separate settlement; of the two principles on which the settlement could be made, viz., joint occupancy of territorial demarcation, the latter is clearly preferable. A line of demarcation drawn at the 57th degree between Russian and British settlers would be an arrangement satisfactory to us, and would assign to Russia as much as she can pretend to be due to her. Your Excellency will therefore bring this suggestion forward, and acquaint me how far a formal proposition on this basis would be agreeable to His Imperial Majesty's Government.”

Now, Sir Charles Bagot communicates the result of that proposal to Mr. Canning in a despatch which is dated the 19th–31st August, 1823, and which will be found beginning at p. 43 of the British Case Appendix, and with its enclosures running on to p. 46. The first sentence refers to the possibility of joint negotiation with the United States. Then on p. 44:—

“Mr. Middleton now tells me what I was not before aware of, that he had last year, by direction of the President, several interviews with Count Nessel-

rode and Count Capodistrias upon the subject of this Ukase, and that it was at length agreed that he should inquire officially what were the intentions of the Imperial Government in regard to the execution of it, an assurance being previously given that the answer which he should receive would be satisfactory."

Then the answer is enclosed, which was an answer with reference to the manner in which it was to be carried out so as not to give offence to other Powers:—

"In regard to the second part of this question, that which relates to the territorial claim advanced by Russia in respect to the north-west coasts of North America, I have explained to Count Nesselrode that the United States, making no pretension to territory so high as the 51st degree of north latitude, the question rests between His Majesty and the Emperor of Russia alone, and becomes, therefore, a matter for separate settlement by their respective Governments.

"I have suggested to him that this settlement may perhaps be best made by Convention, and I have declared our readiness to accede to one framed either upon the principle of joint occupancy or demarcation of boundary, as the Russian Government may itself prefer, intimating, however, that in our view the latter is by far the most convenient. Count Nesselrode immediately and without hesitation declared himself to be entirely of that opinion, and he assured me that the chief, if not the only, object of the Imperial Government was to be upon some certainty in this respect."

Then I pass on to p. 45:—

"In a second interview which I have had with Count Nesselrode upon the subject of this separate negotiation, I told him that our pretensions had, I believed, always extended to the 59th degree of north latitude, but that a line of demarcation drawn at the 57th degree would be entirely satisfactory to us, and that I believed that the Russian Government had, in fact, no settlements to the southward of that land. I am not, however, quite sure that I am right in this last assertion, as the Russian Settlement of Sitka, to which I am told that the Russian Government pretends to attach great importance, is not laid down very precisely."

Count Nesselrode did not appear to be at all startled by that proposition. That is the first proposal of these 57 degrees. And then comes a postscript that M. de Poletica is in direct communication with Mr. Middleton and with Sir Charles Bagot. Then, on the 17th October, Sir Charles Bagot writes again, and it is in this despatch that it will be found that the renunciation of any claims by the United States beyond 51 degrees is modified. I need not read the whole of the passage; the Tribunal has no doubt seen it; but at the middle of p. 47 he says:—

30 "Mr. Middleton, however, admits that the United States are not prepared to push their pretensions to this extent. He says that they are ready to acknowledge that no country has any absolute and exclusive claim to these coasts; and that it is only intended by his Government to assert that, as heirs to the claims of Spain, the United States have, in fact, the best pretensions which any of the three Powers interested can urge.

"Assuming, upon these grounds, their right to a share in the division, the United States, it seems, desire that, the division being made, the three Powers should enter into a joint Convention mutually to grant to each other, for some limited period, renewable at the pleasure of the Parties, the freedom of fishery and of trade with the natives, and whatever other advantages the coasts may afford."

Then he states that he told him that he could not go further at the present time, and that the unexpected pretensions of the United States threw some difficulty in the way; and then at the bottom of the page he goes on:—

"A full disavowal by Russia of her pretension to an exclusive maritime jurisdiction in the North Pacific Ocean will, I have no doubt, be obtained; but I am strongly inclined to believe that this Government will not easily be

brought to acknowledge the justice of any claim of the United States to any part of the territory in question north of the 51st degree, and I am still more strongly inclined to believe that, division once made, this Government will never permit the United States, if they can prevent it, either to fish, settle, or trade with the natives within the limits of the territory which may be allotted to Russia."

Then at p. 48 he states specifically the proposal which he had made. The third sentence:—

"I had, however, two conversations with him, previously to Mr. Middleton's receipt of his last instructions, upon the subject of territorial boundary as it regarded ourselves, and I then gave him to understand that the British Government would, I thought, be satisfied to take Cross Sound, lying about the latitude 57½ degrees, as the boundary between the two Powers on the coast, and the meridian line drawn from the head of Lynn Canal, as it is laid down in Arrowsmith's last map, or about the 135th degree of west longitude, as the boundary in the interior of the continent.

"M. Poletica not being authorized to do more than take any suggestion of this kind *ad referendum*, I am, of course, not yet able to inform you, as I am instructed to do by your despatch No. 12, how far a more formal proposition on this basis, or on the basis of a line drawn at the 57th degree, as suggested in that despatch, might be agreeable to the Imperial Government. M. Poletica seemed to suggest the 55th degree as that which, in his opinion, Russia would desire to obtain as her boundary; and he intimated that it would be with extreme reluctance that Russia would, he thought, consent to any demarcation which would deprive her of her Establishment at Sitka, or rather at Novo-Archangelsk. Still, I should not altogether have despaired of inducing this Government to accept Cross Sound as the boundary; and though I am aware that in suggesting this point I put in a claim to something more than I am instructed to do in your despatch above referred to, I thought that it might be for the advantage of the negotiation if I reserved the proposition of the 57th degree to a later period."

Now there is some difficulty about the proposal of Cross Sound as regards the latitude. For Cross Sound is distinctly to the north of 58 degrees north latitude, and in the note which was made by M. Poletica of what passed, he gives rather a different account of the proposal made by Sir Charles Bagot from that which is given in the passage I have just referred to. If the Tribunal would look at the bottom of p. 55, what M. Poletica says is this:—

"Chevalier Bagot then placed himself before the geographical map which we had at hand, and traced upon it with his finger a line beginning at the fifty-seventh degree of latitude, the intersection of which designated the one hundred and thirty-fifth degree of longitude west of Greenwich, precisely at the point where our establishment of Novo-Archangelsk appears to be."

31 Of course one must expect a good deal of inaccuracy in referring to what passed at a conversation. One knows how difficult it is with one's finger to designate precisely on the map the spot; and the only important matter is that at that period Sir Charles Bagot was claiming on behalf of Great Britain, as he says, up to Cross Sound—at all events, to a point a great deal further to the north than was ultimately agreed upon. In fact, he seemed to have contemplated the possibility of receding, because he speaks of reserving the proposition of 57 for a later stage of the negotiations.

Now, M. Poletica's despatch, one sentence from which I have just read, refers, in the first instance, to the very important subject of the barrier, of which so much is made on the other side.

(Adjourned for a short time.)

SIR ROBERT FINLAY. I was about to call the attention of the Tribunal to a dispatch from M. de Poletica to Count Nesselrode dated

the 3rd of November, in which he refers to the question of the barrier, and also his conversation on these two points with Count de Lambert. The question of the barrier is raised in the earlier part of the despatch. It is found in the original at p. 49, and the translation at p. 53. He is narrating what took place between himself and the Count de Lambert, who had been appointed by the Minister of Finance to represent the interests of the American Company, and what he says is this:—

“I thought that before entering into negotiations with the English Ambassador and the American Envoy, it would be well for me to be thoroughly informed as to the views of our American Company, both with regard to the question concerning the boundaries of its possessions on the north-west coast of the American Continent, and the more important subject of the maritime jurisdiction, which the Edict of 4th September, 1821, had extended to the distance of 100 Italian miles from the coasts of the mainland. My conversations on these two points with Privy Councillor Count de Lambert, whom the Ministry of Finance had appointed to represent the interests and the wishes of our American Company, convinced me that the interests would be protected and the wishes entirely satisfied if we succeeded in fixing the boundaries of the possessions of the said Company at the 54th degree of north latitude, and by giving them in depth such a degree of longitude (meridian of Greenwich) as in its prolongation towards the pole would leave the Mackenzie River outside of our boundary.

“In fixing the longitude Count de Lambert had mainly in view 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.”

Then on p. 54¹ he says that he saw the English Ambassador, and after preliminaries, at p. 55 occurs this passage:—

“This point having been explained, Chevalier Bagot requested me to inform him what, in the opinion of the Imperial Government, should be the line of separation between our possessions on the north-west coast of America and those which England thought herself entitled to claim. I thought that it would be better to meet the question frankly. Consequently, avoiding circumlocutions (I said), that the Imperial Government would think that it had made all the concessions required by its moderation and its earnest desire to maintain a good understanding with all foreign Powers by fixing the boundary between the Russian and English possessions at the 54th degree of latitude, and by giving for the longitude such a line as in its prolongation in a straight line towards the pole would leave the Mackenzie River outside of the Russian frontier.”

That is reproducing what had been said by the gentlemen who represented the interests of the original American Company.

32 “Chevalier Bagot, after a moment's reflection, replied that the point of demarcation which I had just designated was very far from being that which his Government would have wished to fix. He then told me that, according to all the researches which had been made in England, and the opinions expressed by the most learned lawyers, the right of Russia to the possession of the north-west coast of America below the 60th degree of latitude was anything but well established; that the only legitimate title to any territorial possession was, according to the opinion of the English publicists, and that of the lawyers who had been consulted, not the first discovery, nor even the taking possession, in accordance with the ancient formalities used by navigators, but the actual occupation of the newly discovered territories.”

That shows, I am reminded, and I think the observation is worth making, that by that time Sir Charles Bagot had got those papers which were not inclosed in the original despatch.

The PRESIDENT. It is very desirable to point it out, but there are other documents in the case that I think make it clear beyond question that Sir Charles Bagot had got the information contained in those papers. Whether he had the papers or not is not known. I mean he refers to certain things—certain latitudes and things of that kind—which make it quite clear he either had these papers or the information contained in these papers.

Sir ROBERT FINLAY. Exactly, my lord, and the particular point I wish to emphasize at present is that he had Vancouver's narrative.

The PRESIDENT. Of course.

Sir ROBERT FINLAY. The report. Then it goes on:—

“That this proof of the right was wanting in the evidence produced up to the present time by Russia, with the exception of the establishment of Novo-Archangelsk, which, however, only dates from the year 1802 or 1803. In support of what he had just told me Chevalier Bagot read me an opinion of the King's Counsel in London, drawn up in the sense which he had stated; and to prove to me that the claims of Russia to the possession of the points below the 60th degree of latitude on the said coast were of very recent origin, the British Ambassador read to me some portions of the correspondence (which occurred in 1790) between Count Florida Blanca and Mr. Fitzherbert, afterwards Lord St. Helens, at the time of the difference which had arisen between Spain and England with regard to Nootka Sound. (See the Annual Register for 1790, pp. 292–301.) This correspondence, said Mr. Bagot, contained, according to the assertions of the Court of Madrid, an explicit recognition on the part of Russia of the right of Spain to the possession of the North-West Coast of America, from the point of California belonging to Spain to the 61st degree of latitude inclusive.”

And then the discussion was suddenly suspended for the purpose of saying that a discussion on the question of mere right would be interminable, and that an amicable arrangement was what they had in view; and then follows the passage which I read before stating what Chevalier Bagot pointed out on the map as the line then desired, beginning at the 57th degree of latitude, which would have coincided with Novo-Archangelsk, but does not quite coincide with what Sir Charles Bagot said himself about the line he wanted:—

“This demarcation would certainly leave a considerable space between the boundaries designated on both sides, even if the Imperial Government should decide, in the interests of conciliation, to bring the line of demarcation up to the 55th degree of latitude as it had already been fixed in the Act of Incorporation granted to our American Company in 1799 by his Imperial Majesty's august predecessor.

“I thought it my duty to tell Chevalier Bagot in reply that he had good reason to say that we were both greatly out in our reckoning; that for my part I regretted it the more because I could see no consideration that could induce the Imperial Government to draw back the boundary of its possessions on the north-west coast of America 2 degrees beyond the point mentioned in the Charter of the Emperor Paul I which has just been referred to.

“I remarked that if the Edict of the 4th September, 1821, had been detrimental to the colonial and maritime interests of any of the foreign Powers, we had hastened at the first remonstrances which they had addressed to us to suspend the execution of the provisions of that Edict, especially those which gave most cause for those remonstrances; that in the subsequent explanations the Imperial Government constantly manifested the most conciliatory intentions; that it was disposed to make all the concessions which justice required, both upon the question of the territorial boundaries and upon that of the maritime jurisdiction; but that it would naturally be very unwilling to abandon a boundary established by the Charter of Paul I, and confirmed, to some extent, by an undisputed possession of about a quarter of a century.”

At the end of the paragraph he says that Russia—

“would naturally be very unwilling to abandon a boundary established by the Charter of Paul I, and confirmed, to some extent, by an undisputed possession of about a quarter of a century.”

“As the said Charter was not at that time officially communicated to the foreign powers, I will not persist in maintaining, said I, that it constitutes a *de facto* right; but that it was none the less true that the foreign Powers could not have been ignorant of the existence of that Charter, and that from the time of its promulgation in Russia to that of the Edict of the 4th September (1821), it had not occasioned any protest on their part.

“I then asked Chevalier Bagot whether he did not himself admit that it would be attempting to impose too great a sacrifice upon the dignity of the Imperial Government to require it to say now to its own subjects: ‘We have allowed you to believe for twenty-two years past that the boundaries of our possessions on the north-west coast of America extended from Behring Strait to the 55th degree of latitude; well, we tell you now that it was a mistake, and that the southern boundary must stop at the 57th degree, because it has just been proved to us that that boundary never belonged to us.’”

I submit that on the question of the latitude the assertion that 54 degrees 40 minutes was a governing factor in the negotiations, and in the Treaty that passage is of unbounded importance because it points out that what influenced their minds was that this Charter of 1799 had fixed 55 degrees, and that as a matter of national self-respect Russia could not recede from 55 degrees. It was extended lower than 55 degrees for one purpose, and for one purpose only, and that was to bring in the whole of the Prince of Wales’ Island. Then I may pass over p. 57 with the exception of the last sentence.

“When I remarked to Chevalier Bagot that his line of demarcation deprived us of the whole, or the larger half, of the Island of St. George, otherwise called Sitka (if I am not mistaken), he spoke of a pecuniary indemnity for the losses that we might sustain there.”

I think that is the last passage with which I need trouble the Tribunal upon the second stage of the proceedings—the negotiation between Sir Charles Bagot, Count Nesselrode, and M. Poletica with a view to the possibility of some conventional settlement.

The third stage is a very important one. It is the stage which occupies substantially the months of February and March 1824. Sir Charles Bagot was again acting under instructions from Mr. Canning, and at this stage I think he introduced the question of the Portland Canal, and the negotiations went off at this stage on the ground that Sir Charles Bagot was not then prepared to concede that boundary. Now the instructions will be found on pp. 60–62 of the British Appendix, but it begins at p. 59—it is in the despatch of the 15th January, 1824, from Mr. George Canning to Sir Charles Bagot, and the passage I call attention to is on p. 60, at the middle of the page:—

“Now we have good reason to believe that, in respect to the question of territorial dominion between us and Russia, an arrangement may be agreed upon which will satisfy the wishes and secure the convenience of both parties by a line of demarcation to be drawn between the southernmost settlement of Russia and the northernmost post of the North-West Company”—that was the Company to which the Hudson’s Bay Company succeeded. “The most southern establishment of Russia on the north-west coast of America is Sitka, which is not laid down in our latest maps with sufficient exactness, but which appears by the Russian map, published in 1802, to be situated, as the inclosed copy of a letter from Mr. Pelly, Chairman of the Hudson’s Bay Company, also represents it, in latitude 57 degrees, and not (as the map of which a copy was inclosed to your Excellency indicates) on the continent, but on a small island of the same name at the mouth of Norfolk Sound; the larger

islands contiguous thereto, forming (what is called by Vancouver) King George's Archipelago, are separated from each other by a strait called Chatham Strait, and from the mainland by another strait called Stephen's Strait, or Passage. Whether the Russians have extended their settlements to these larger islands is not known, but Mr. Pelly positively avers that they have no settlement on the mainland, nor any commerce to the eastward of the coast. He suggests, therefore, either the channel between the islands, or that between the islands and the mainland, as the most desirable line of demarcation to the eastward, which is agreed to; the line to the southward might be drawn so as to comprehend Sitka and all the Russian settlements upon the islands. If this agreement could be obtained it would effectually prevent all danger of a collision with Russia; and the United States not intending, as it is understood, to urge any claim in opposition to that actual occupancy, whether on the part of Russia or of Great Britain in the latitudes in which the claims of Great Britain and Russia come in contact, the intervention of the United States in such an arrangement could be necessary only as an umpire."

Then at the bottom of the page:—

"Your Excellency's despatch, No. 48, describes latitude 55 degrees as the point at which M. Poletica appeared to wish the line of demarcation between Russia and Great Britain should be drawn. By a Memorandum which I have received from Mr. Rush of what his Government would propose as a general settlement, it appears that latitude 55 degrees is the point at which the United States likewise have proposed for that same line of demarcation.

"This coincidence certainly argues either a foregone understanding between Russia and the United States, or a disposition on the part of the United States to countenance and promote what they know to be the desire of Russia."

Then he says:—

"But the question of the American claim is for the present merged in the Convention of 1818."

I do not think I need read the passage which relates to that, I may pass over the whole down to p. 62, but it just deals with the maritime claim put forward by the Russian case; then he goes on in the middle of p. 62:—

"As to the territorial question I have already stated that the line of demarcation the most satisfactory to us would be one drawn through 'Chatham Strait,' the channel separating the island on which Sitka is situated from the island to the eastward of it, or, if the Russians have establishments on that island also, then through the channel called 'Stephen's Passage,' which separates the whole archipelago from the mainland.

"If one or the other of these channels cannot be obtained as the boundary then the line must be drawn on the mainland to the north of the northernmost post of the North-West Company from east to west till it strikes the coast, and thence may descend to whatever latitude may be necessary for taking in the island on which Sitka stands.

"It does not appear from your Excellency's despatch how far the line proposed by M. Poletica, to be drawn at latitude 55 degrees, was intended to run to the eastward. If to the Rocky Mountains, it, obviously, would be wholly inadmissible by us, inasmuch as the communication of the North-West Company from Canada through those mountains with the whole of the northwest country is in a higher latitude than 55 degrees.

"Neither has Russia any claim whatever to any inland territory approaching that latitude. She has no occupancy inland. Mr. Pelly's Report
35 denies that she has any even on the coast. And it is to the coast alone that discovery could, in the nature of things, give any title."

That again is a reference to Mr. Pelly's Report which must have been forwarded to him.

"It is absolutely essential, therefore, to guard against any unfounded pretension, or any vague expectation of Russia, to the eastward, and for this purpose it is necessary that whatever degree of latitude be assumed a definite degree of longitude should also be assigned as a limit between the territorial rights of the two Powers."

"If your Excellency can obtain the strait which separates the islands from the mainland as the boundary, the prolongation of the line drawn through that strait would strike the mainland near Mount Elias, the lowest point of unquestioned Russian discovery."

The geography was not very accurately known and not always present to the mind of the negotiators, and it is very difficult to see how that line would actually strike the mainland near Mount Elias. But I do not know that it is very material, and—

"If that were too much to insist upon, the 135th degree of longitude, as suggested by your Excellency, northward from the head of Lynn's Harbour, might suffice.

"It would, however, in that case be expedient to assign, with respect to the mainland southward of that point, a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward. We must not on any account admit the Russian territory to extend to any point to the Rocky Mountains. By such an admission we should establish a direct and complete interruption between our territory to the southward of that point and that of which we are in possession to the eastward of longitude 135 degrees, along the course of the Mackenzie River."

I think the Tribunal will see that Mr. Canning, in speaking of the proposal to take a line northward from the head of Lynn's Harbour, says that with regard to the line of longitude it might be expedient to assign with reference to the mainland southward of the point, that is the limit. That proposal was never carried out, and the Memoranda which we inclosed in the letter require that I should just call attention to them without reading at all in detail. Mr. Pelly's Memorandum is the first inclosure. It deals with these various suggestions as to the boundary further to the north which was ultimately settled upon, and the limit of territory inland. I really do not think it is in the least necessary that I should go through them; I may pass on to the extremely important and crucial despatch of the 17th March, 1824, from Sir Charles Bagot to Mr. Canning, inclosing various "projets" and "contre projets," to which I am afraid I must draw the attention of the Tribunal in more detail, because we are now approaching the kernel of the matter. That despatch with its inclosures ranges from pp. 67 to 75 of the British Appendix. The first paragraph that I need read is that on the top of p. 67, stating that the proposal was:—

"That the question of strict right should be provisionally waived on both sides, and that the adjustment of our mutual pretensions should be made upon the sole principle of the respective convenience of both countries."

It goes on, then:—

"This basis of negotiation being willingly accepted by all parties I stated that so far as I understood the wishes and interests of Russia, her principal object must be to secure to herself her fisheries upon the islands and shores of the north-west coasts of North America, and the posts which she might have already established upon them; that, on the other hand, our chief objects were to secure the posts upon the continent belonging to the Hudson's Bay Company, the embouchures of such rivers as might afford an outlet for our fur trade into the Pacific and the two banks of the Mackenzie River; that, in the belief that such were our respective objects I would propose as our boundary a line drawn through Chatham Straits to lead to the head of Lynn Canal, thence north-west to the 140th degree of longitude west of Greenwich, and thence along that degree of longitude to the Polar Sea. This proposal was made by me verbally and was taken for consideration by the Russian Plenipotentiaries, who at our next meeting offered a 'contre-projet,' which I afterwards requested might be reduced to writing, and of which I inclose a copy (Inclosure 1),"

Now, to return to that "contre-projet." I invite the attention of the Tribunal to the first paragraph, which is this, at the bottom of p. 69:—

"The proposals made by the Russian Plenipotentiaries to Sir Charles Bagot, and which his Excellency has been requested to take into serious consideration, tended to have the 55th degree of north latitude recognized as a dividing-line between the respective possessions."

That is, the proposal of the Russian Plenipotentiaries tended to the 55th degree of the north latitude being recognized as a dividing-line. This same limit as has already been assigned to the possessions of Russia by the Charter.

"In order to complete the line of demarcation, and to make it as distinct as possible, the Russian Plenipotentiaries have expressed the wish to make it follow the Portland Canal as far as the mountains which run along the coast.

"From this point the limit would ascend along these mountains parallel from the sinuosities of the coast, as far as the 139th degree of longitude (meridian of London), the line of prolongation of which degree towards the north would constitute the ultimate limit between the Russian and the English possessions to the north as well as to the east."

The PRESIDENT. Is it parallel to, or parallel with?

Sir ROBERT FINLAY. It is parallel to.

"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 the same, is that, if deprived of their 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.

"As a compensation Russia would consider it a duty to open to the subjects of His British Majesty the free navigation of all the rivers which empty into the ocean within the said strip of land.

"In order to give a final proof of his anxiety to meet the wishes of the British Government, she would also open to the trade of His British Majesty's subjects and to their vessels the Harbour of Novo-Archangelsk, should the above-mentioned terms be accepted."

Now there are two points which call for passing observation in this "contre-projet." The first relates to the 55th degree of parallel that points out in terms that the only reason for even desiring departure from the 55th degree was to avoid what would be equally inconvenient "également incommode," viz.: The division of Prince of Wales Island between Russia and Great Britain. The point could not be put more clearly, and I submit that if it rested upon that passage alone the greater part of the argument advanced by the United States with regard to latitude 54 degrees 40 minutes as the governing factor would fall to the ground. The 55 degrees is the governing factor and the 55th degree is only departed from in order to include the southern point of Prince of Wales Island.

Then the next paragraph upon which I will make one remark is this:—

"The motive which forced Russia to insist upon retaining the sovereignty over the strip of land described previously as 'la terre ferme depuis le Portland Canal.'"

Well, it is this, that if deprived of this territory the Russian American Company would be left without any means of supporting the establishments—that is the Russian establishments on the island, which "ne pourroient avoir aucune solidité." That is further explained afterwards, but even in that passage I submit it is

perfectly clear that all that Russia wanted was a strip of territory on the mainland adjoining the line of the coast, in order that those establishments of hers on the island might be assured of access for the purposes of trade with the Indians on the coast; that from the Russian establishments they might go to the coast to trade with the Indians and that the Indians from these coasts might go to trade with the Russians at Sitka. That is what they wanted, and as soon as that motive is appreciated, and as soon as it is realized that no strategic reasons entered into the desire for that "lisière," for this "point d'appui," that it had reference to the support and the feeding of mercantile establishments, it would appear that, so far as the object in view is concerned, there is no inconsistency whatever between what Russia wanted and the heads of the inlets remaining British territory. The access of the Russian establishments of the Russian settlers from Sitka to the coast for the purpose of trade is assured, even though the heads of the inlets go to Britain; she gets the "lisière," the strip on the coast which is wanted as a "point d'appui" as a feeding ground for the Russian establishments upon the Islands.

Your Lordship will forgive me if, as I read these despatches, I call attention to those points which I desire to emphasise.

The PRESIDENT. Certainly.

Sir ROBERT FINLAY. It will no doubt be necessary for me to recur to them afterwards but what I am doing now may shorten the time of the subsequent references when I come to deal with this question.

Then, on p. 67, Sir Charles Bagot says, with reference to what took place when this "contre-projet" (to which I have just called attention) was read: "In offering this 'contre-projet' Count Nesselrode seemed to intimate that, however disposed the Emperor might be to retract pretensions advanced by himself which might be thought to conflict with the interests of other Powers, it would be asking too much of the Imperial dignity to require that pretensions advanced twenty-five years ago by the Emperor Paul, and which had been hitherto undisputed, should now be renounced." That is the 55th degree of latitude. Again:—

"I thought it my duty, upon an intimation of this kind being made, to declare at once that all considerations of such a nature were incompatible with the stipulated basis of our negotiations, and that if the question of national dignity was to be touched, I too should have much to say upon that head, and should probably find it quite impossible to make those concessions which, upon the simple ground of mutual convenience, I might, perhaps, without difficulty do. This explicit declaration had its desired effect, and the Russian Plenipotentiaries engaged not to introduce again arguments of this kind into our discussions.

"As the 'contre-projet' offered to me appeared to be, generally speaking, entirely inadmissible, I drew up such a modification of my original proposal as would, I thought, meet the only reasonable objection made to it (an objection made in conversation by the Russian Plenipotentiaries), viz., the inconvenience which Russia might experience by vessels of the United States claiming a right, under their Convention with Great Britain, to visit the waters lying between King George's Archipelago and the islands and continent to the eastward of it, and which might, in this matter, seriously annoy the subjects of His Imperial Majesty in their pursuits and occupations upon those shores.

"This modification of my first proposal will be found in the enclosed paper (Inclosure 2)."

Now this again is a very important document. It is Sir Charles Bagot's "contre-projet."

"As it has been agreed to recognise as basis of negotiations the mutual conveniences of both countries, it is to be noted, in answer to the proposal offered

by the Russian Plenipotentiaries, that a dividing line, starting from the southernmost extremity of the Prince of Wales Island, and extending to the mouth of the Portland Channel, thence by the middle of this channel until it reaches the mainland, thence to the mountains bordering the coast, and from that point along the said mountains up to the longitude of the 139th degree, &c., the said line would deprive His Britannic Majesty of the sovereignty over these inlets and small bays [The expression is "anses" in the French; I suppose it may be translated "cove" or "inlet"] which are to be found between the 56th and 54th 45-minute degree of latitude, many of which (as there is every reason to believe) communicate directly with the establishments of the Company of Hudson's Bay, and would consequently be of vital importance to its trade, while on the other hand the Russian-American Company does not possess any settlements on the mainland between the two above-mentioned parallels, not even on the Prince of Wales Island, nor on the islands which lie between the aforesaid and the mainland."

Pausing for one moment at that paragraph, I call attention to the fact that the southern degree of latitude, when it puts in latitude what is expressed as the Portland Channel in the "contre-projet" of the Russians, is spoken of as 54.45, and if your Lordship will look, as by-and-bye will have to be done, at Vancouver's narrative and maps, it will be found that he fixed 54.45½, I think, as the latitude of the north-west point of the Island of Kanaghunut, one of the islands which were on the left hand as he was sailing down this channel to the north of Pearse Island, Kanaghunut, and Sitklan to the open sea. That is the latitude which is given us by Sir Charles Bagot here when he translates into latitude the point which was mentioned in the "contre-projet." He takes a point which almost exactly agrees with the latitude which Captain Vancouver had given in speaking of the wonderful channel opening out into the ocean.

The PRESIDENT. It gives 54 degrees 45½ minutes as the mouth of the Portland Channel, not only of Cape Fox but of the mouth of the Channel.

SIR ROBERT FINLAY. The point I mentioned, my Lord, was not Cape Fox. We are at cross purposes for one moment. What I mean to say is that Vancouver in his narrative speaks of the land lying on the port side as he was sailing down to the open sea. He says it turns out to be composed of several islands. The only islands he was then dealing with were Sitklan and Kanaghunut.

The PRESIDENT. Certainly.

SIR ROBERT FINLAY. And he says the north-west point of that island, which must have been, I think, Kanaghunut, was 54 degrees 55½ minutes. Then he also in another passage, as has just been pointed out, speaks of the latitude as the latitude of the canal. Then Sir Charles Bagot goes on:—

"In accepting the terms of the proposal made by Sir Charles Bagot in his first conference with the Russian Plenipotentiaries, there would be (as it appears) only one inconvenience to Russia, that which might arise from the right which the United States would perhaps claim, in virtue of their Convention with Great Britain of the year 1818, of free navigation through the waters between the Island of King George and the mainland, thereby interfering in some way with the trade of His Imperial Majesty's subjects in these waters.

"In order to remove this inconvenience and to comprise in favour of Russia the absolute sovereignty over these waters and over all the islands and the coast where there are actually to be found Russian establishments, Great Britain would propose to take as a line of demarcation between the territories of the two Powers a line running from west to east through the middle of the channel which divides the Prince of Wales Island and the islands of the Duke of York from all the islands lying to the north of the said island until it strikes the mainland." That is the channel which was afterwards known as Sumner's

Strait. It was not known by that name at the time—to the north of Prince of Wales island and the Island of the Duke of York.

“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 as far as the 140th degree of longitude (of Greenwich), the prolongation or extension of which would be followed as far as the Polar Sea.”

That is the proposal which was not adopted for taking the Sumner Strait, and then striking inward 10 leagues and filling up with a belt of 10 leagues wide. Now, Sir Charles Bagot refers to that amended proposal, and at the bottom of p. 67 he says this:—

“You will observe that in making the proposal so modified, I, in fact, exceeded, in some degree, the strict letter of your instructions by assigning to Russia the islands lying between Admiralty Island to the north, and Duke of York and Prince of Wales Islands to the south, but I entertained sanguine expectations that such a proposal, coupled with the concession of a line of coast extending 10 marine leagues into the interior of the continent would have been considered as amply sufficient for all the legitimate objects which Russia could have in view, and quite as much as she could pretend to with any shadow of real claim or justice.

“So far, however, from this being the case, my amended proposal was met at our next Conference by observations which I again requested might be reduced to writing, and which will be found in the enclosed paper (Inclosure.)”

Inclosure 3 deals with most of the points really which come before the Tribunal. That is a very important document:—

“The motive which has prompted the adoption of the principle of mutual conveniences, and the first advantage of this principle is to prevent the respective establishments on the north-west coast from injuring each other and coming into conflict.

“The English establishments of Hudson’s Bay Company and of the North-west Company show a disposition to extend towards the west by the 53rd and 54th degrees of north latitude.”

That is “l’ouest par.” The word is “par”—on: “par les 53° et 54° degrés de latitude septentrionale.”

“The Russian establishments of the American Company seem to move south towards the 55th parallel and beyond, as it is to be observed that if the American Company has not yet formed permanent settlements on the mathematical line of the 55th degree, it is none the less a fact that in virtue of its privilege of 1799, against which no Power has ever entered a protest, they carry on the chase and fishing in these regions, and that as a rule it occupies the islands and the adjoining coasts during the season which allows for the sending there of its hunters and fishermen.

“It was then of a reciprocal convenience for the two Empires to assign proper limits to mutual improvements which with time could have only occasioned most serious complications.

“It was also convenient that both parties should determine these limits, taking into consideration the natural divisions, which always form the most distinct and indisputable frontiers.

“For these reasons the Russian Plenipotentiaries have proposed as the limits on the coast of the continent to the south the Portland Channel, whose head is about the 56th degree of north latitude, and to the east the chain of mountains which follow at a very small distance the windings of the coast.”

Then, again, I doubt whether “about” is an accurate translation; “dont l’origine dans les terres est par le 56° degré de latitude nord,” I apprehend, means at the 56th degree; not necessarily with precise accuracy, but speaking generally I suppose that is how we should estimate.

The PRESIDENT. Which page is that?

Sir ROBERT FINLAY. Page 71, my Lord, at the bottom of the page. Your Lordship will have observed, in looking at that passage, that the words "dont l'origine dans les terres," is not represented adequately in the translation at all. The translation is merely "whose head." It ought to be "whose origin in the interior," or "in the land," "dans les terres." It is not unimportant when we come afterwards to consider the distinction between coast and inland. I had better read it from the French at this point. "For these reasons that the
40 Russian Plenipotentiaries have proposed for limits on the side of the continent to the south, the Portland Channel, the origin of which in the land in the interior is at the 56th degree of north latitude, and in the east the chain of mountains which follows at a very small distance the sinuosities of the coast.

"According to the most recent and best maps published in England, the establishments of the Hudson's Bay Company come near to the coast only towards the 53rd and 54th degrees, and it cannot be proved that at any point they reach the Pacific Ocean.

"However, according to the principle of mutual conveniences, the Draft of Agreement of the Russian Plenipotentiaries leaves open to the gradual extension of the English Colonies:—

1. "All that part of the coast between the mouth of Portland Channel and the 51st degree of latitude north, considered as Russian possession in the Ukase of September 4th (16), 1821.

2. "All the territory line between the English Establishments on the 54th parallel and the head of Portland Channel, which lies by the 56th parallel.

3. "All the territory situated behind the chain of mountains referred to previously, as far as the point of intersection of the 139th degree of longitude, meridian of Greenwich."

I ought to observe in passing that I think the expression "Portland Channel" here appears for the first time in the course of the negotiations. Sir Charles Bagot had used the expression "le Canal de Portland," and the Russian Plenipotentiaries in their first "contre-projet," had spoken of the Portland Canal. Well, it is a small circumstance, but it goes with a number of other circumstances to show that Vancouver's narrative was before the Russian negotiators, because it will be found that the expression "Portland Channel" occurs for the first time in the second English edition of Vancouver. In the first edition he speaks of the "Portland Canal." That edition was translated into French, and there are two editions in both languages. The first edition appeared in both languages. The second edition appeared in English only, and as far as I know there was no independent translation of that edition into French. In the second edition, thinking, I suppose, that Portland Canal was really not intelligible to an English reader, that it was a phrase which, although it might be used in those parts where he had been voyaging and discovering, conveyed a totally different sense to the English reader, the Editor uses the phrase "Portland Channel," and the Russian Plenipotentiaries, in this "contre-projet" of theirs, introduced the expression "Portland Channel." It certainly seems to be a strong indication that they had before them the second English edition of Vancouver's narrative, because Sir Charles Bagot had used the expression "Portland Canal."

Mr. AYLESWORTH. What is the French word?

Sir ROBERT FINLAY. And on the maps it is canal.

Mr. AYLESWORTH. What is the French word that is used?

Sir ROBERT FINLAY. Channel. The Portland Channel.
The PRESIDENT. They use the English word "Channel."

Sir ROBERT FINLAY. They use the English word.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. The document of course was in French. The translation is not an original. It was not presented in duplicate; it was presented I presume only in French as usual.

The PRESIDENT. It was.

41 Sir ROBERT FINLAY. And in this document written in French they use this English expression, I believe I am right in saying for the first time, which occurs in the second edition of Vancouver's narrative.

Mr. AYLESWORTH. I wanted to know did they translate it or use the English words?

The PRESIDENT. The original French uses English words.

Sir ROBERT FINLAY. That is on p. 72. Then they go on:—"The Plenipotentiaries of His Imperial Majesty, foreseeing even the case when on the strip of the coast which would belong to Russia, there should happen to be rivers by means of which the English Establishments might have communication with the ocean, have hastened to offer, by a contingent stipulation, the free navigation of these rivers."

As to "contingent stipulation," "stipulation éventuelle" is the French.

"Moreover, they have notified Sir Charles Bagot that the port of Novo Archangelsk would be opened to trade for the subjects of His Majesty the King of Great Britain.

"On the other hand, the Russian Plenipotentiaries have the honour to remind him, once more, that without a strip of land on the coast of the continent from Portland Channel, the Russian establishments on the adjoining islands" [the translation is rather defective there] "would be left unsupported, that they would be left at the mercy of those establishments which foreigners might form on the mainland, and that all settlement of this nature, from being grounded upon the principle of mutual conveniences, would offer only dangers to one of the parties and exclusive gains to the other.

"Mention will not be made here of the two headlands of the Prince of Wales' Island, which are situated below the line of the 55th degree of north latitude. The two headlands could not be of any use to Great Britain, and if the nine-tenths of the Prince of Wales' Island belong to Russia, it is evidently of a reciprocal interest that the whole island should belong to it."

Now there are three points upon which I desire to make a passing observation with reference to this document. The first is in a passage at the bottom of p. 71 where the Russians say what they have to propose is a boundary on the coast of the continent, to the south, the Portland Channel, whose origin in the interior is at the 56th degree of north latitude. Now, I ask the Tribunal whether any words could more clearly indicate that the persons who drew that document were distinguishing in their own mind between the coast and the head of the inlet. The head of the inlet is "l'origine dans les terres," and is on the 56th degree of latitude. They propose as boundary on the coast of the continent to the south the Portland Channel.

The second observation I desire to make is on the paragraph in the middle of p. 72, where they develop the reasons which led Russia to desire to have this "lisière." It is again the economical reason that the Russian establishments in the adjoining islands would be left unsupported; they would be left at the mercy of the establishments, which persons might form on the mainland. Of course, it is obvious

that if the whole mainland belonged to England, England would have it in her power to exclude the traders from the Russian settlements from trading with the natives on the coast of the mainland. The trade of the Russian establishments would be largely done, in the ordinary course of events, with the Indians on the mainland. What was wanted was that the Russian settlers should have access to these Indians, that these Indians should have access to the Russian settlements, which is effected rapidly simply by a strip running along the coast, irrespective altogether of the fact that the heads of the deep inlets all along may belong to England, which would not in the least interfere with the motive which Russia has, in putting forward her desire that she should have this strip of land.

Mr. AYLESWORTH. Is it your view, Mr. Attorney, that their object would have been equally secured by a series of stations so to speak here and there along the mainland?

42 Sir ROBERT FINLAY. Well, it could undoubtedly, subject to this observation that they would naturally desire to have facilities for going to the Indians at any point along the coast. They might no doubt have established stations, which I understand to be the suggestion put forward, on the mainland, but one can understand that the difficulty was felt in bringing that forward, because it would have involved the location at once of posts at which they desired to trade with the Indians. I quite feel that object might have been carried out in the way suggested. One might perhaps understand why the Russians did not desire to commit themselves to the fixing of these particular spots if they could have known beforehand—and that I take to be the point of the suggestion of the observation made from the Tribunal—if they could have known beforehand what would be the points most convenient for trading with the Indians. Of course, it might have been done in that way, but I take it that they made it in this general way for the reason that it was not convenient to fix upon points at which they would desire to trade with the Indians, that they desired to leave that for subsequent settlement, but the essence of my observation is this, that the whole object which Russia had in view is absolutely consistent with the retention of the upper part of these fiords or firths by England. It depends upon where the line is described in the Treaty relations, whether it be the mountains or the interruption of the mountains, the conventional line.

Mr. AYLESWORTH. What was in my mind was to ascertain how you deal with the theory or idea which seems to run through the negotiations, of the desire for some cohesiveness, whether or not that view militated against your argument.

Sir ROBERT FINLAY. I submit it does not, for the reason I have stated, that what they want is a sort of post or station on the continent; that is to say, the Russian settlers on the islands must have access for the purposes of trade, to the mainland. It is not a question of strategic consideration. It is obvious that they were not speaking from a military point of view; they were speaking from a commercial point of view. These establishments would be, so to speak, stranded off without anything to feed them. But as soon as you get provision made for free trade with the Indians on the mainland, whether that is done by a series of posts or by a continuous strip, you have got what was really wanted. I think one

can see practical reasons why they selected a strip, but that is the effect, that it is to be a mere strip, "lisière." The word occurs over and over again, a mere strip, and it shows, I submit, that that was the object, and the whole object, of this stipulation.

Then the third observation I desire to make is on the paragraph which begins:—

"On ne parlera point ici des deux points de l'Île du Prince de Galles, qui sont situées au-dessous de la ligne du 55° degré de latitude nord," &c.

That is a form of expression which is very significant. They have been talking of the 55th degree of latitude, and then they say, as for these points which go below it, "it is really not worth mentioning as between you and me; such a thing is hardly worth speaking of." That is really the most emphatic way in which the governing factor of the 55th degree was departed from only to bring in those projecting points of Prince of Wales Island. It could not have been put more clearly, and it could not have been put more epigrammatically. Then these observations of the Russian Plenipotentiaries, forming Inclosure 3 in his despatch, are commented upon by Sir Charles Bagot at the top of p. 68. I should repeat that I shall be compelled to recur to these points, but I shall be able to make my subsequent references to them more brief by reason of indicating them as I go along—the reasons for these as they arise.

The PRESIDENT. I quite follow you, Mr. Attorney-General.

Sir ROBERT FINLAY. p. 68:—

"As, in this paper, parts of the main continent to which Russia cannot by possibility have acquired any claim, and of which Great Britain is at this moment actually in partial occupation, are offered to His Majesty in the light of concessions, it became necessary for me to reject any such offers as above in the most explicit terms, and you will find that I have not failed to do so in the inclosed paper (Inclosure 4) with which I replied to the paper in question."

Then, Inclosure 4, it is not necessary to read a great part of that, but at p. 73 there will be found at the middle of the page this passage:—

"But the Plenipotentiary of His Britannic Majesty cannot admit—"

I see His Britannic Majesty is represented as "she" in the translation here.

"cannot admit that Russia would grant or ensure to His Britannic Majesty a further advantage by her giving up that part of the coast lying between the mouth of Portland Channel and the degree of latitude considered as the limit of the Russian possessions in the Ukase of 1821, nor even by her giving up all claims to any part of the continent south of the establishments which have already been formed; for even if His Britannic Majesty had ever recognised that degree of latitude—"

I will read it from the French to make sure I correctly interpret it.

"For even if His Britannic Majesty had ever recognised that degree of latitude as forming the line of demarcation as far as regards the island, he could not.

"Elle ne pourroit" clearly refers to "Sa Majesté Britannique"; we should not in English render it in that way.

"He could not, according to the principle enunciated above, have recognised it as the limit upon the neighbouring continent upon which the Hudson's Bay Company had already established several important posts.

"The Company has 'en effet' (has in fact) some establishments near the

coast, north of the 55th degree; therefore His Britannic Majesty could not, without sacrificing the interests of the Company, abandon his rights to the sovereignty over the coast ('*souveraineté de la côte*') and the islands contiguous thereto ('*et des îles qui en dependent immédiatement*'), as far as the 56 degrees 30 minutes of north latitude, whatsoever may be the degree of latitude which will be definitely agreed upon as boundary between the two Powers, so far as it affects the island situated more to the west.

"The head of Portland Channel may be, as there is reason to believe, the mouth of some river which runs through the middle of the territory occupied by the Hudson's Bay Company, and it is therefore of paramount importance for Great Britain to possess the sovereignty over both shores.

"It was in the hope of conciliating these most important points with the views of the Imperial Government, and without any further delay settling a question which it seemed to be to the interest of both parties to have definitely arranged at the present moment that the Plenipotentiary of His Britannic Majesty had the honour in his last Conference with the Russian Plenipotentiaries, to propose a line of demarcation which, while securing to Russia as its southern boundary to the islands—"

I will read it from the French:—

"While preserving to Russia for southern limit on the islands the degree of latitude designed by the Ukase of 1797"—

There we again have it 55—

"would at the same time assign to Great Britain as limit on the side of the mainland the latitude of 56 degrees 30 minutes north.

"It seems that a line drawn from the southern extreme end of the straits called 'Duke of Clarence's Sound,' through the middle of this strait as far as the middle of the straits which divide the Prince of Wales and the Duke of York Islands from all the islands lying to the north of the aforesaid islands, from thence eastward, through the middle of the same channel as far as the mainland, and extending therefrom in the same direction and manner already proposed by the Plenipotentiary of His Britannic Majesty as far as Mount Elias, or to the intersection of the 140th degree of longitude, should form a line of demarcation which would conciliate the mutual conveniences
44 of both Parties, and would perhaps secure in a satisfactory way the reciprocal interests, present and future, of both Empires in that part of the world."

Sir Charles comments in his despatch upon what took place when he presented that "*projet*":—

"As, however, I feel strongly the importance of adjusting this business, if possible, at the present moment, and as I felt also that, although the Russian Plenipotentiaries had, in consequence of my former remarks, agreed to waive altogether all question of national dignity in discussing it, His Imperial Majesty might yet possibly feel an invincible repugnance to retract from the pretensions advanced by the Emperor Paul in the Charter given to the Russian American Company in 1799 (however unacknowledged by other Powers such pretension might have been); I thought that I should not act in opposition to the spirit at least of my instructions if, in deference to such a sentiment on the part of the Emperor, and with a view to finish the business quickly, I ventured to make yet one other proposition which, while it saved this point of dignity to Russia by giving to her the 55th degree of latitude as her boundary upon the islands, might preserve also uninterrupted our access to the Pacific Ocean, and secure to His Majesty the 56th degree of north latitude as the British boundary upon the coast.

"The proposition by which I had hoped to effect these objects will also be found in the paper (Inclosure 4) in delivering which I gave it clearly to be understood that it contained my ultimate proposition.

"It was not till the day before yesterday, that is nearly ten days after I had given in this paper, that I was invited to another Conference, when I was informed that the Imperial Government had after anxious consideration taken their final decision, and that they must continue to insist upon the demarcation as described by them in the first paper (Inclosure 1).

"Finding this to be the case, I repeated that I had already gone far beyond the utmost limit of my instructions, and that I was sorry to say that I must

now consider our negotiations as necessarily suspended, so far at least as the question of territorial demarcation was concerned.

“Count Nesselrode then inquired whether I should object to transmit to my Court the final decision of himself and M. Poletica as it is declared in the inclosed paper (Inclosure 5), and whether I did not think that His Majesty's Government, seeing how slight our disagreement was, might not be disposed to furnish me with such further instructions as would enable me to meet the views of the Russian Government.”

Now, this paper, Inclosure 5, which contains the ultimate decision of the Russian Plenipotentiaries, develops even more fully than before the motives of Russia for wanting this “*lisière*.” I will just read the material sentences near the bottom of p. 74:—

“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.

“That, therefore, such an arrangement would not be conformable in any manner to the principle of mutual convenience.

“That, moreover, from the examination, testimony (‘*le témoignage*’) of the most recent maps published in England, there are evidently no English settlements on the coast even of the continent nor north of the 54th degree of north latitude.

“That, therefore, even if the limits assigned to the Russian possession by the Charter of 1799 did not have in their favour for the last twenty years the tacit acceptance by all the Powers, still Russia would exercise on that portion of the coast precisely the same rights as Great Britain; hence it is inferred that the question should always be resolved not from the exclusive point of view of the interests of one of the two Empires, but in such a manner as to conciliate their reciprocal interests.

45 “That, finally, with regard to the navigation of the river, Russia thought she had opened to Great Britain all the advantages and concessions that the latter could desire.”

There, again, the object is to develop the island, and there are repeated observations made upon that question as to why it was that Russia wanted this strip of territory, or “*lisière*,” opposite. Then I think I will omit the rest of this despatch of Sir Charles Bagot. He actually states that the matter had arrived at a deadlock, and that at that stage nothing further could be done. Then there is a very important despatch of Count Nesselrode, bearing date the 17th April, 1824, which relates to this matter. It will be found in the same Appendix of the British Case, Appendix I, pp. 76 and 77. I beg your Lordship's pardon, it begins at the bottom of p. 75, and it is printed in a way which makes one at first sight suppose it is a mere inclosure, but it is an independent despatch.

The PRESIDENT. It should have been in large print.

Sir ROBERT FINLAY. Yes; your Lordship will see the translation. The date is the 5th April. That has been translated into the 17th April, and the date is really of great importance, because it is the very day that the American Treaty was signed.

The PRESIDENT. It is properly treated in the American Appendix.

Mr. LODGE. It is 5th—17th; 5th being the Russian date and 17th the date of the rest of the world.

Sir ROBERT FINLAY. I paused on the subject of the date for the purpose of pointing out it was the very day on which the American Treaty was signed, and that is a matter of some importance when we find the references given to the American Treaty with its delineation

of 54 degrees 40 minutes as the boundary of the spheres of the two Powers. The American Treaty on this point offers a contrast to the English Treaty. They do not go on the same lines. On some points they do go on the same lines. The coincidence on other points makes more marked the divergences between the two Treaties when it comes to the question of selecting a point on which the line of the boundary is to be taken. On p. 76 Count Nesselrode says this:—

“The Ukase 4th (16th) September, 1821, had carried up to the 51st degree of north latitude the limits of the domain of Russia on the north-west of the American continent.

“The Emperor, however, having been convinced that about the same time the English Company of Hudson Bay had formed settlements in the 53rd and 54th degrees of north latitude and that these settlements were not even very far from the coasts, authorized us to give, at the very opening of the negotiations, a proof of his conciliatory intentions, by declaring to Sir Charles Bagot that we would hold to the limits assigned to our American possessions by the Charter of the Emperor Paul, that therefore the line of the 55th degree of north latitude would constitute the southern frontier of His Imperial Majesty’s possessions, that on the continent and towards the east this frontier could run along the mountains which follow the windings of the coast as far as Mount Elias, and that from this point up to the Arctic Ocean we would fix of the respective possessions according to the line of the 140th degree of west longitude (Greenwich meridian).

“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.”

“A la hauteur de l’Ile du Prince de Galles” means “the latitude.”

The PRESIDENT. It means “off the island.” It is the idiomatic French for “off the island.” It is idiomatic; you will find it means “off.”

46 Sir ROBERT FINLAY. “You are by it: you are off it.”

Mr. AYLESWORTH. I thought it meant “at the level of.”

The PRESIDENT. You will find it means “off.”

Mr. AYLESWORTH. “It runs by the island—beside the island.”

The PRESIDENT. It is the French idiom for it.

Sir ROBERT FINLAY. It then continues:—

“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. You will see, M. le Comte, by the enclosed documents that we announced, moreover, the opening of the port of New Archangel, and that we promised the free navigation of the rivers which run through our territory.”

Then follows the description of Sir Charles Bagot’s last proposals. Then on p. 77:—

“If the Prince of Wales Island remains ours, it must be of some utility to us. Now, according to the view of the English Ambassador it would be only a burden to us and almost an inconvenience. Indeed, this island and the establishments which would be founded by us, would become altogether isolated, deprived of all support, surrounded by the possessions of Great Britain, and at the mercy of the English establishments on the coast. The cost of maintenance and of supervision would be ruinous, the burden of which would not be relieved by any compensation. Would an Agreement of this nature rest upon the principle of mutual conveniences?

“However we appeal to that principle with the more justice that England herself has demonstrated by an authentic deed that she considered as doubtful her rights upon the territory, the abandonment of which she is requesting. The Convention agreed to on 20th of October, 1818 between the Court of London and the United States, recognises as property common to both Powers, for 10

years, all that extent of country lying between the Rocky Mountains, the Pacific Ocean, and the Russian dominions. The titles of the United States to the sovereignty over this country are then as valid as those of England. However, the Washington Cabinet has admitted that our frontier should extend south as far as the 54th degree 40 minutes. They have admitted it by a formal transaction which we have just initialled with its Plenipotentiary; this acknowledgment does not only strengthen our pretensions, but it entails other results which we considered, with reason, of the utmost importance to us.

In that very despatch he is calling attention to the fact that the limit of the American Treaty, signed that very day, was fixed by way of latitude, while the fact that the English Treaty which was then under discussion, and was ultimately signed, is fixed differently:—

“Feeling secure on this point, we have now no fear to entertain, and the Cabinet of London will certainly admit that such a condition of affairs adds to the value of the concessions we are offering him. There is already a difference of nearly 4 degrees between the line of demarcation according to the Ukase of the 4th (16th) September, 1821, and the line which we propose to-day. The establishments of the English Company may occupy this gap. Easterly, they can connect both coasts of the continent; nothing prevents them spreading considerably towards the south. 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 up of the port of Novo-Archangelsk.”

The PRESIDENT. I do not think that is a right translation; “simple” means a simple strip, a mere strip.

47 Sir ROBERT FINLAY. Certainly; “simple lisière.”

“It is impossible for Russia to make any more concessions. She will not make any more, and she is authorised to expect some from England, but once more she only claims negative concessions. Really, it cannot be insisted upon too much that, according to the evidence of the most recent maps, England does not possess any establishments neither at the head of Portland Channel.”

That is a mistranslation. It is “à la hauteur du Portland Channel.”

Mr. AYLESWORTH. It is the same phrase.

Sir ROBERT FINLAY. It is exactly the same phrase. Your Lordship sees on the third line of p. 78: “L’Angleterre ne possède aucun établissement, ni à la hauteur du Portland Canal,” &c.

The PRESIDENT. I was only upon the point, Mr. Attorney-General, that I notice that in the American translation those words are translated “at the same latitude.” Now, if you look at the sentence, that must be a mistranslation. “A la hauteur” means “off” and that is one of the passages which illustrates the meaning. It is the common expression in French navigation books, meaning “off” an island, and the statement is that Portland Channel is off this island. If degree latitude had been intended, other words must have been used. It is only with reference to the importance of that passage which is relied on in other documents.

Sir ROBERT FINLAY. Yes, it means really off; it has got up to that point.

The PRESIDENT. Exactly; generally it is at the same latitude.

Sir ROBERT FINLAY. I have heard, in a game with which some of us are familiar, the ball spoken of as being hole high; it has got up to the latitude roughly speaking of the hole; it is off the hole “à la hauteur”; that is what the expression means.

Mr. AYLESWORTH. Abreast of.

Sir ROBERT FINLAY. And that is notably what it means at the top of p. 78.

The PRESIDENT. Exactly.

SIR ROBERT FINLAY. The third line of p. 78, "Angleterre ne possède aucun établissement ni à la hauteur du Portland Canal, ni au bord même de l'Océan."

And then it goes on, and when Russia persists in claiming the reservation of an unimportant strip on the mainland—well, unimportant strip is "médiocre espèce de terre ferme"—it is only as a means to enhance the value—nay, more, not to loose the adjacent islands. Now, I submit that that is really a very important passage. If the strip is to have the dimensions which are claimed by the United States it would be a valuable possession in itself. It is a very considerable extent of territory. What do we find Count Nesselrode saying:—

"La Russie, quand elle insiste sur la conservation d'un médiocre espèce de terre ferme, n'insiste au fond que sur le moyen de faire valoir, nous dirons plus, de ne pas perdre les îles environnantes."

It is only as a means, it is not as a thing of value in itself; it is merely as a "point d'appui" for the trading establishments on the islands.

"To summarise, Monsieur le Comte, if we consider what is right in this negotiation, we find in favour of Russia what is sanctioned by an implicit but indisputable consensus on the other side, a peaceful occupation during 25 years, which may be considered as equivalent to a continuous occupation."

48 "If the principle of reciprocal conveniences 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."

"Débouchés" may have that sense. It means openings. Here it refers probably to the right of coming down the rivers, the "débouchés" of the river—outlets, exits.

The PRESIDENT. Outlets.

SIR ROBERT FINLAY. "Débouchés" has that sense sometimes, I believe. "Débouchés" for trade your markets, your area in which you may trade. "She makes provision for the interests of her 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"—"point d'appui," without which it would not be possible for her to keep half of her dominions. I will make no further observation at present upon those passages which speak for themselves.

Now, that terminates the third stage of the negotiations in February and March, 1824, and I think that the documents I have read justify the expression I used when I said this was a very important stage, and would require very careful consideration.

The PRESIDENT. Certainly.

SIR ROBERT FINLAY. The fourth stage was one which extended altogether from May to September 1824, but was chiefly concerned with July and August of that year. Preliminary to these negotiations being opened, the statement seems to have been supplied by the Hudson's Bay Company to Mr. George Canning, which is found on p. 78 of the British Case Appendix, and another on pp. 80 and 81. The first of these statements says this:—

"I am to state that if His Majesty's Government" (I am reading at the bottom of p. 78, Hudson's Bay Company to Mr. Canning, 19th April, 1824) "consider it advisable in other respects to accede to the last proposition made by the Russian Government for the arrangement of a line of demarcation between the possessions of Russia and Great Britain on the coast of North America, they see no reason to object to it, as it will affect their particular interests, and more especially as it appears to secure to them a free access to the sea for the pur-

poses of their trade on the whole coast to the eastward of the 139th degree of longitude.

"They beg me, however, to suggest the expediency of some more definite demarcation on the coast than the supposed chain of mountains contiguous to it, and they conceive there can be no difficulty in arranging this point from the expression in the proposition of the Russian negotiators: 'La chaîne des montagnes, qui sont à une très petite distance des sinuosités de la côte.'

"Neither party have any very accurate geographical information with respect to the country in the immediate neighbourhood of the sea, and if the intentions of the Russian Government are fairly to be inferred from the words used in their proposal, the most satisfactory manner of settling this point probably would be by inserting in any Article providing for the boundary on the mainland the nearest chain of mountains not exceeding a few leagues of the coast."

And then, on pp. 80 and 81, they repeat that expression about "très petite distance"; they say the mountains may really be at a very considerable distance from the coast, and provision should be made by providing for a few leagues, say not exceeding 10 from the shore, and then they make some further observation. Now, that was preliminary to this stage, the despatch from Mr. George Canning to Count Lieven, of the 29th of May, which will be found on p. 81 of the British Case Appendix. He says that he has maturely considered the two despatches from Count Nesselrode and so on to His Excellency such instructions "on the subject-matter of both as shall meet in great degree the wishes of your Court."

"1. As to the line of demarcation to be drawn between Russia and British occupation on the North-West Coast of America; Sir Charles Bagot's discretion will be so far enlarged as to enable him to admit with certain 49 qualifications the terms last proposed by the Russian Government. The qualifications will consist chiefly in a more definite description of the limit to which the strip of land required by Russia on the continent is to be restricted; in the selection of a somewhat more western degree of longitude as the boundary to the northward of Mount Elias; in precise and positive stipulations for the free use of all rivers which may be found to empty themselves into the sea within the Russian frontier, and of all seas, straits, and waters which the limits assigned to Russia may comprehend. It can hardly be expected that we should not also put in our claim for the like privileges of trade as are, or may be, stipulated with Russia by any other nation; and we take for granted that the exclusive claims of navigation and jurisdiction over the North Pacific Ocean, which were put forward in the Ukase of September 1821 are to be altogether withdrawn."

Then Count Lieven writes to Count Nesselrode on the 20th of May, a despatch which occurs in the next page, p. 82, and the passage to which I call attention occurs in the translation at p. 84, about a quarter down the page:—

"Your Excellency will notice by Mr. Canning's despatch that the English Government agrees to accept the terms last proposed by our Court, and that Sir Charles Bagot is about to receive authority to sign, upon these bases, the Convention which will permanently settle the state of our frontiers in America. The conditions placed at the discretion of the British Ambassador on this point will probably not appear to the Imperial Ministry of a nature to diminish the value of this concession." (The concession was accepting the line of Portland Channel.)

"They consist:—

"(a) Of a more definite description of the limits within which the portion of territory obtained by Russia on the continent is to be inclosed."

"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; 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) Of the selection of a degree of longitude farther to the west than the line designated by our Court north of Mount Elias.”

I need not trouble you by reading that portion of the despatch. Accordingly on the 12th July, in that year 1824, Mr. Canning writes to Sir Charles Bagot a despatch of that date which, with the draft Convention, inclosed, extends from p. 85 to p. 88 of the British Case Appendix. The despatch itself is very short, and is of considerable importance. Mr. Canning says:—

“After full consideration of the motives which are alleged by the Russian Government for adhering to their last propositions respecting the line of demarcation to be drawn between British and Russian occupancy on the north-west coast of America, and of the comparative inconvenience of admitting some relaxation in the terms of your Excellency’s last instructions, or of having the question between the two Governments unsettled for an indefinite time, 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 southern most 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, and thence along the 139th degree of longitude to the Polar Sea.

“I inclose the draft of a Project of Convention founded upon these principles which your Excellency is authorized to sign previously to your quitting St. Petersburg.

50 “The advantages conceded to Russia by the line of demarcation, traced out in this Convention are so obvious as to render it quite impossible that any objection can reasonably be offered on the part of the Russian Government to any of the stipulations in our favour.

“There are two points which are left to be settled by your Excellency:—

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

“This is done by a proviso that the line shall in no case (*i. e.*, not in that of the mountains, which appear by the map almost to border the coast, turning out to be far removed from it) be carried further to the east than a specified number of leagues from the sea. The utmost extent which His Majesty’s Government would be disposed to concede would be a distance of 10 leagues; but it would be desirable if your Excellency were enabled to obtain a still more narrow limitation.

“2. Article V of the ‘Projet’ is copied from Article IV of the Convention between Russia and the United States of America. By the American Article the right of visiting respectively and resorting to each other’s possessions is limited to 10 years. This limitation is left blank in the ‘Projet.’

“We should have no objection to agree to the Article without any limitation of time. We should prefer a longer period (say, 20 years) to that stipulated by the Americans. Your Excellency will obtain either of these extensions if you can, but you must not agree to a shorter term than 10 years.

“Your Excellency will be careful to make it understood that this limitation of time cannot in any case extend to the use by Great Britain of the harbour of New Archangel, still less of the rivers, creeks, &c., on the continent, the use of all which is in the nature of a compensation for the perpetual right of territory granted to Russia, and, therefore, must be alike perpetual. If your Excellency shall, as I cannot doubt, conclude and sign this Convention before your departure you will make it a point to bring with you the ratification of the Russian Government to be exchanged by Count Lieven against that of His Majesty.”

Then the draft convention was inclosed.

Mr. AYLESWORTH. Before leaving that letter, Mr. Attorney, can anything be said in the way of explanation of the phrase in the opening paragraph? "a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel."

Sir ROBERT FINLAY. Well that is a matter on which I have thought a good deal, and the only conclusion I can arrive at is this, that the point at which the line was ultimately to get at the head of Portland Channel is a good deal to the north.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. And therefore he says this to get to a point to the north.

The PRESIDENT. In a northerly direction, so to speak.

Sir ROBERT FINLAY. Yes, he jumps over the intervening passage, "from the southern point of Prince of Wales Island to the entrance to the Portland Channel," and then, in speaking of the general direction of the line he is not wrong in saying that from Prince of Wales'

51 Island it runs north to the head of the Portland Channel. That is not an accurate description, of course, of the initial part of the line, which runs east a little by north. It is an accurate description of the effect of the line which gets round to a northerly point. I may, in passing, remark that any difficulty there is about the point is considerably aggravated by the contention of the United States, that the line runs right along latitude 54 degrees 40 minutes. By our contention it makes northing from the very beginning. It is a very slight northing, I admit, till it gets to the Portland Channel; then it runs a little more north. It comes to run north-east, and the latter part of the Portland Channel it runs very north, due north.

The PRESIDENT. Taking it as two points, as you put it, joined by a straight line, when it did get to Portland Channel it ran roughly south and north.

Sir ROBERT FINLAY. Yes, for the first third; for about one-third of the channel it ran north-east, I think.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. Then for the latter part it is very north; due north.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. But I may at least claim for our line on the first stage that we had to make a little northing; we do make that concession to the words of the Treaty, whereas the contention of my friends on the other side makes it run along—

The PRESIDENT. Due east.

Sir ROBERT FINLAY. I admit it is not a large concession; it is a little northing, but after all the true meaning of this Article is that the line gets to a point very considerably to the north of that at which it started. In order to go along Portland Channel, you must of course get to the beginning of Portland Channel, and that is rather jumping over in the minds of those who were framing this.

Then, turning to the draft Convention which is inclosed in that despatch, I do not think I need refer to the differences which arose in the Ist Article about the sea within Behring's Straits. The IInd Article proposed the boundary in terms which I think I ought to read:—"The line which separates the possessions of the two High

Contracting Parties upon the continent and the islands of America to the north-west shall be drawn in the manner following." The Tribunal will observe that in the initial words of the draft of this Article as sent by Mr. Canning on the 12th of July there is no mention about the general coast of the continent north-west; it is upon the continuance of the islands of America on the north-west.

"Commencing from the two points of the island called 'Prince of Wales Island,' which form the southern extremity thereof, which points lie in the parallel of 54 degrees 40 minutes, and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly along the channel called Portland Channel, till it strikes the coast of the continent lying in the 56th degree of north latitude. From this point it shall be carried along that coast, in a direction parallel to its windings and at or within the seaward base of the mountains by which it is bounded as far as the 139th degree of longitude west of the said meridian. Thence the said meridian line of 139th degree of west longitude, in its extension as far as the Frozen Ocean, shall form the boundary of the British and Russian possessions on the said continent of America to the north-west."

The proposal there is that after the head of the Portland Channel it should be at or within the seaward base of the mountains by which it, that is the coast, is bounded.

52 Then the IIIrd Article is to qualify it:—

"It is, nevertheless, understood, with regard to the stipulations of the preceding Article:

"1. That the said strip of coast on the continent of America, which forms the boundary of the Russian possessions, shall not in any case extend more than marine leagues in breadth from the sea towards the interior, at whatever distance the aforesaid mountains may be.

"2. That British subjects shall for ever freely navigate and trade along the said line of coast and along the neighbouring islands.

"3. That the navigation and commerce of those rivers of the continent which cross this line of coast shall be open to British subjects, as well to those inhabiting or visiting the interior of this continent as to those coming from the Pacific Ocean who shall touch at these latitudes."

Then the IVth Article relates to Sitka and the Vth Article to the other parts of the north-west coast of America, that is other than those dealt with in Articles II and III.

"With regard to the other parts of the north-west coast of America, and of the islands adjacent thereto, belonging to either of the two High Contracting Parties, it is agreed that, for the space of _____ years from the _____ of April, 1824, their respective vessels, and those of their subjects, shall reciprocally enjoy the liberty of visiting without hindrance, the gulfs, havens, and creeks of the said coast in places not already occupied, for the purposes of fishery and of commerce with the natives of the country.

"It being understood:—

"1. That the subjects of either of the High Contracting Parties shall not land at any spot where there may be an establishment of the other, without the permission of the Governor or other authority of the place, unless they should be driven thither by stress of weather or other accidents.

"2. That the said liberty of commerce shall not include the trade in spirituous liquors, in firearms, swords, bayonets, &c., gunpowder or other warlike stores. The High Contracting Parties reciprocally engage not to permit the above-mentioned Articles to be sold or transferred, in any manner whatever, to the natives of the country."

MR. AYLESWORTH. Could you tell me, Mr. Attorney, whether I am right in the idea that that inclosure of a draft Convention left London in both English and French?

Sir ROBERT FINLAY. No. I am afraid I cannot answer that question; I should think it probably did, but I do not know.

The PRESIDENT. I should think it could be ascertained in this Foreign Office. Mr. Tower will no doubt be able to find out for us.^a

Mr. AYLESWORTH. I thought it might be of some consequence because we have some parallel phrases very frequently.

Sir ROBERT FINLAY. I quite agree, there are expressions; it might be important to see whether it went in duplicate.

Mr. AYLESWORTH. There is that word "parallèlement."

Sir ROBERT FINLAY. There are one or two other expressions that it might be interesting to look into on that point: "At or within the seaward base of the mountains by which it is bounded." The French here is—"Sous ou dans la base vers la mer des montagnes qui la bordent."

We will endeavour to ascertain that point. Then on the next day the 13th of July, Count Lieven, the Russian Minister in London, writes to Count Nesselrode a letter of that date, which is in pp. 88 and 89 of the British Case, and the translation follows, and at p. 90 there is the passage, the only passage which I think it necessary to read from this despatch, it relates to this question of the mountains, base and summit:—

"As regards the frontier of the respective possessions to the south of Mount Elias, Mr. Canning makes it run along the base of the mountains, which follow the sinuosities of the coast. I thought it my duty to represent 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; and that, in this case, the word 'base,' from the vague meaning attached to it, and the greater or less extension which may be given to it did not appear to me adapted to protecting the delimitation in question from all controversy."

That appears to refer to the point, which is afterwards more explicitly developed in the Russian despatch, that the base might extend down to the sea itself.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. "As to the rest, M. le Comte, all that relates to the mutual rights of navigation of the two Powers in those waters appeared to me to be in perfect agreement with what has already been arranged between our Court and the United States."

I do not think I need read the rest of that paragraph, which relates to other matters. Then, on the 24th July in the same year, Mr. Canning writes again to Sir Charles Bagot, a despatch which begins at the bottom of p. 90. He says that the project of a Convention inclosed in his No. 26—that is the letter I have just been referring to—"having been communicated by me to Count Lieven with a request that his Excellency would note any points in it upon which he conceived any difficulty likely to arise or any explanation to be necessary. I have received from his Excellency the Memorandum a copy of which is herewith inclosed."

I had better just quote the Memorandum before I refer to some of

^a Mr. Tower ascertained subsequently, through the Foreign Office, that the draft Convention was sent in both English and French, in parallel columns.

the observations upon it. The Memorandum is at the bottom of p. 91. This is Count Lieven's observations:—

“The draft of the Treaty drawn up by the English Cabinet makes the limit of the Russian and English possessions on the north-west coast of America to the south of Mount Elias run along the base of the mountains which follow the sinuosities of that coast.”

This adds to the probability that the French was in the original as well as the English.

The PRESIDENT. There is no doubt about the French being the original; the real question is whether it was sent in both.

Mr. AYLESWORTH. This was undoubtedly in French, because it is Count Lieven's, but, the other being Mr. Canning's draft, I do not know whether it was translated.

SIR ROBERT FINLAY. What I mean is that he seems to quote in French, “Le projet de Convention rédigé par le Cabinet Anglais fait courir la limite des possessions Russes et Anglaises sur la côte nord-ouest d'Amérique au sud du Mont Élie, le long de la base des montagnes qui suivent les sinuosités de cette côte jusqu'aux bords même de la côte.”

I do not think I need read any more. I think, perhaps, it is as well in passing to say in regard to this document, which is set out in the American Case Appendix, at p. 189, that I think the translation is not quite accurate. I only refer to it because I think that somewhere an argument is based upon it. It is at p. 189, the third sentence of that translation:—

“In the case now under consideration the word *base*, because of its indefinite meaning, and the greater or less expansion that can be given to it, seems hardly of a nature to fix the boundary line beyond all further question, for it is principle when a chain (*chaîne*) of mountains serves to define any boundary it is always the top (*cime*) of these mountains which form the line of demarcation. 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, and 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.”

Mr. LODGE. That is not the language of the letter. The word used in the letter is “rivage,” and not “côte.”

SIR ROBERT FINLAY. “Le long de la base des montagnes.”

Mr. LODGE. But instead of “cette côte” it should be “rivage.”

SIR ROBERT FINLAY. You are perfectly right.

Mr. LODGE. The Memorandum of Count Lieven does not quote it exactly.

SIR ROBERT FINLAY. No, he does not; you are perfectly right, sir: it makes it run along “the base of the mountains which follow the sinuosities of that coast. It is observed that, as a general principle it is certainly not among the impossibilities, in view of the uncertain ideas yet prevalent in regard to the geography of these regions, that mountains chosen for boundary lines should extend, by an imperceptible declivity to the very edge of the coast.”

It is that the mountains designated as boundary should extend by an insensible slope “jusqu'aux bords même de la côte.” Then the other part of Count Lieven's Memorandum I do not think I need

read. It relates to other matters. Mr. Canning's observation is this beginning at the bottom of p. 90b:—

“Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains instead of the summit as the line of boundary; the second, the extension of the right of navigation of the Pacific to the sea beyond Behring Straits.”

As to the first, no great inconvenience can arise from your Excellency (if pressed for that alteration) consenting to substitute the mountains instead of the seaward base provided always that the stipulation as to the extreme distance from the coast to which the *lisière* is in any case to run, be adopted (which distance I have to repeat to your Excellency should be made as short as possible), and provided the stipulation be added that no forts shall be established or fortification erected by either party on the summit or in the passes of the mountains.”

(Adjourned till to-morrow to 11 a. m.)

All the Members of the Tribunal were present.

The PRESIDENT. Mr. Attorney-General.

Sir ROBERT FINLAY. When the Tribunal adjourned yesterday, I was dealing with the fourth stage of the negotiations which took place in the summer of 1824, and I had just at the adjournment begun calling attention to certain passages in the despatch of Sir Charles Bagot to Mr. Canning of the 12th August, 1824, which will be found at the beginning of p. 92, British Case Appendix. There are some passages in the despatch to which I will call attention. He begins by saying:—

“You will certainly learn with considerable surprise that, so far from having it in my power, as I had confidently hoped that I should have, to bring with me, on my return to England, a Treaty signed and ratified by the Russian Government upon the subject of the North-West Coast of America, I am already enabled to acquaint you that after only two meetings with the Russian Plenipotentiaries, I have ascertained that it is totally impossible to conclude with them any arrangement upon the subject which is at all reconcilable with the ‘Projet’ transmitted to me in your despatch No. 26 of the 12th of last month, even if I were to take upon myself to exercise, upon several points of it, a discretion which is not given to me by your instructions.”

And then he refers to the “Contre-Projet” which was offered by the Russian Plenipotentiaries on the day after the first meeting.

Now the “Contre-Projet” is set out on pp. 94 and 95 of the Appendix, and I must call attention to that “Contre-Projet” because it brings forward a proposal with reference to the width of the belt, the “lisière” which is different in principle altogether from that which is afterwards adopted in the Treaty but a return to which would be practically effected if the contention of the United States were adopted. The first Article of that “Contre-Projet” runs thus:—

“Article I.

“The line of demarcation between the possessions of the two High Contracting Parties upon the North-West Coast of America and the adjacent islands shall be drawn in the following manner: Commencing from the two points which form the southernmost extremity of the island called ‘Prince of Wales Island,’ which shall entirely belong to Russia, which points lie in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133rd degree of west longitude (meridian of Greenwich) the line of frontier between the Russian and British possessions shall ascend northerly along the channel called Portland Channel until the said pass comes to an end in the interior of the mainland, situated at the 56th degree of north latitude.”

The words in the French are:—

“* * * Jusqu’au point où cette passe se termine. * * *”

So there is no ambiguity there as to what is or is not terminated.

“From this point it shall be carried along the coast in a direction parallel to its windings as far as the 139th degree of longitude west (same meridian), and thence the boundary between the respective possessions on the said continent of America shall be formed by the line of the said degree of longitude in its extension as far as the frozen sea.”

"Article II.

"The strip of the north-west coast belonging to Russia, from the Portland Channel up to the point of intersection of the 139th degree of west longitude (meridian of Greenwich), shall not have in width, upon the Continent, more than 10 marine leagues measured from the shore of the sea.

There the Tribunal will observe that the mountains are not mentioned at all, but it is proposed there shall be a belt on the coast which is to be of not more than 10 marine leagues' width, and measured from the shore of the sea. That, of course, is a proposal of a totally different kind from what is embodied in the idea of taking the mountains as a guide; with that single exception of a point with regard to the line from which the 10 marine leagues is to be measured, it will make an enormous difference in the extent of territory; the line indicated on the map of the United States, as showing the territory obtained by them, is really a return to the principle of discarding the mountains, and taking a belt of a certain width to be measured from the sea.

Then the IIIrd Article makes provision:—

"Article III.

"It is understood:

"1. That within the possessions of the two Powers, as they are described in the preceding Articles, and specially up to the line of 59 degrees 30 minutes north latitude, but not beyond, their respective vessels and those of their subjects, for the space of ten years from the 5th (17th) April, 1824, shall reciprocally enjoy the liberty of visiting without hindrance the gulfs, havens, and creeks in the parts of the islands and coast not already occupied by either Russian or British establishments, and to fish and trade with the natives of the country."

Then there is a provision against landing at any spot where there may be an establishment of the other Power, a provision against trading in "spirituous liquors, in fire-arms, swords, bayonets, gunpowder," and so on; a provision for the free navigation of the rivers by the subjects of His Britannic Majesty on the strip of coast described by Article II. Then Sir Charles Bagot refers to that "Contre-Projet" at p. 92 of the Appendix, and goes on thus:—

"The differences between this 'Contre-Projet' and the 'Projet' which I had given in are, in many respects, unimportant, consisting either in unnecessary changes in the expressions, or in the order of the Articles, or in other minor points, none of which, as I have reason to think, would have been tenaciously adhered to, and of which some might have been safely admitted. But there are three points upon which the differences appear to be almost, if not altogether, irreconcilable.

"These points are:—

"1. As to the opening *for ever* to the commerce of British subjects, of the port of Novo-Archangelsk.

"2. As to the liberty to be granted to British subjects to navigate and trade *for ever* along the coast of the 'lisière' which it is proposed to cede to Russia from the Portland Channel to the 60th degree of north latitude, and the islands adjacent.

"As to the liberty to be given reciprocally to each Power to visit, for a term of years, the other parts of the north-west coast of America."

Then, I do not think I need read that which follows as to the freedom of access; but as to the second point on p. 93, Sir Charles Bagot goes on thus:—

" * * * The Russian Plenipotentiaries declared that the coasts of North America extending from the 60th degree of north latitude to Behring's Straits, the liberty to visit which, under certain conditions, is stipulated in the 'Projet' by Great Britain, in return for a similar liberty to be given, under the same

conditions, to Russian subjects to visit the North American coasts belonging to His Majesty are, and have always been, the absolute and undisputed territory of His Imperial Majesty, and that it is not the intention of His Imperial Majesty to grant to any Power whatever for any period of time the liberty which is required.

57 Then I do not think I need read the rest of the passage.

Near the bottom of the page he indicates how the negotiations for the time went on, and he says:—

“In closing yesterday the Conference, which assured me that all further chance of negotiation was, for the present at least, terminated, I thought it my duty to remind the Russian Plenipotentiaries that the maritime jurisdiction assumed by Russia in the Pacific, which he had hoped to see revoked in the simplest and least unpleasant manner by mixing it with a general adjustment of other points, remained, by the breaking off of our negotiations, still untracted; and that my Government would probably be of opinion that, upon that part of the question, some arrangement must yet be entered into.”

That marked the termination of this fourth stage of these negotiations, and the reasons why Russia broke off on that point are stated not only in the despatch of Sir Charles Bagot, but they are also stated in a very important despatch to Count Nesselrode, which is dated the 4th September, and will be found in the same Appendix, beginning on p. 96. The translation begins on p. 103. It is the despatch which is addressed to Count Lieven, who represented Russia, and passing over the initial portion of the despatch, I call the attention of the Tribunal to the passage which begins a little above the middle of p. 104. He had referred to the draft of the Convention, which he said was far from meeting the expectations of Russia.

“You have read it rapidly, M. le Comte, but in order that you may form a better estimate of it I send you a copy.”

That copy is set out on p. 100, and there are in the opposite column, the second column, annotations by Count Nesselrode, to which I shall refer presently.

“I have made in some marginal notes” [these are the marginal notes set out in these pages, pp. 100–3] “* * * some remarks as to minor points, and I reserve to myself the duty of making, in this despatch, the most important observations, those concerning clauses which it is utterly impossible for us to accept:—

“They are three in number:—

“1. Liberty to English subjects to hunt, to fish, and to trade with the natives of the country, perpetually, on the whole of that part of the coast which constitutes the subject of the discussion, and which extends from 59 degrees of north latitude to 54 degrees 40 minutes.

“2. Liberty to English subjects to hunt, to fish, and to trade with the natives of the country for ten years on another part of our coasts and islands, from 59 degrees north latitude to Behring Strait.

“3. The permanent opening of the port of Sitka or Novo-Archangelsk.

“As to the first: The draft of Convention of the Cabinet of London does not express itself with perfect precision upon this Article, and it was only through our oral conversations with Sir Charles Bagot that we learned that England demanded the right to hunt, to fish, and to trade, for ever, in that part of the dominion of Russia; but those explanations were so positive that they left us in no doubt as to the wishes of the British Cabinet.

“In order to know whether we had no reason to be surprised at it, and whether it is possible for us to grant it, it suffices to read again, on the one hand, the passage from Mr. Canning’s Memorandum which I cited above, and, on the other hand, to glance at our Convention with the United States.

“The Chief Secretary of State of His Britannic Majesty has declared to you officially and in writing that England would ask of us commercial privileges similar to those which we might grant to other Powers. Now, the United States

is the only Power to which we have ever granted any, and those which we have guaranteed to her by the Convention of April 5 (17) of the present year are to last only ten years.

"We would, therefore, satisfy the demands which England herself has presented to us by guaranteeing the same privileges to her for the same space of time. Besides, how could we consent to grant to British subjects privileges of this kind, which we have just refused to American subjects? The British
58 subjects—and we cannot repeat this too often—have never pushed either their establishments or their commercial operations as far as the north-west coast. The evidence of the latest maps published in England reveals and proves this fact. If the Hudson Bay and the North-West Companies have approached the coast, it is only within the last three years; whereas the American subjects have constantly frequented these waters, and it is their enterprises that have given rise to the discussions which we are labouring to terminate. Would it be possible for us, after this, even if our interests permitted it, to give them for ten years (only) what we would give for ever to the British subjects?"

I refer to that only as showing how prominently there was before the minds of the negotiators at that time the American Treaty with the terms of its provisions, and they emphasise the contention which I make, that while upon certain points the American Treaty was followed, on other points it was deliberately departed from.

"We have been willing to suppose that, in spite of a formal taking possession, a long occupation of the principal points, and a peaceful exploitation of the sources of revenue and wealth presented by the countries in question, Russia's rights of sovereignty to the 51st degree of north latitude might be the subject of a doubt. We have, consequently, confined them to the 54 degrees 40 minutes, and, to prevent any new dispute from arising on this point, we have permitted one of the Powers with which we were in litigation to share for ten years, on the whole extent of the coast where our rights have been disputed, the profits of hunting, fishing, and trading with the natives.

"We offer the same advantages to England; but to grant them for ever would be to obtain the recognition of our rights of sovereignty, only to abandon the exercise of them. It would be consenting to possess hereafter only in name what we now possess in fact.

"The English Ministry will be struck by these arguments, and we venture to believe that it will then bring back to the terms of its previous declarations the demands contained in its draft of Convention with regard to commercial privileges."

There again reference is made to the limit which is taken in the American Treaty of 54 degrees 40 minutes.

As to 2—that is, liberty to English subjects to hunt, fish, and to trade with the natives of the country perpetually in that part of the coast extending from 59 degrees of north latitude to Behring Straits, the Count says:—

"Besides the right to hunt, to fish, and to trade for ever on that part of the north-west coast which would belong to us from 54 degrees 40 minutes of north latitude to 59 degrees, the Cabinet of St. James, according to the meaning which Sir Charles Bagot attached to its propositions, demanded the same right for ten years on the coast and islands extending from 59 degrees to Behring Strait.

"Here we will again cite the Memorandum which Mr. Canning addressed to you, M. le Comte, under date of May 29th. It is there stated that England would demand the free use of all the rivers which might cross the strip of coast belonging to Russia, and of all the seas, straits, bays, &c., which might be within her dominions. * * * A few lines further down the Memorandum of the Chief Secretary of State adds that he considers it to be understood and agreed upon that Russia will withdraw all the exclusive claims which she had set up in the Ukase of 1821 with respect to the navigation and jurisdiction of the North Pacific Ocean. When we compare these two demands, which follow each other so closely, and which, so to speak, explain and complete each other with each other, it is difficult to find anything more in them than the free navigation of the waters and seas bathing the possessions of Russia. Now, we have always shown ourselves ready to guarantee this freedom [of navigation].

“Orders differing from the tenour of the Ukase of 4th of September (16th), 1821, were sent to our cruisers at the very opening of the negotiations, and we would willingly engage, by formal stipulations, to allow foreign vessels hereafter to navigate the whole extent of the North Pacific Ocean, without let or hindrance, confining the exercise of our rights of maritime jurisdiction to the distance of 2 marine leagues from our establishments and our coasts, up to and including Behring Strait, as the draft Convention sent by the Cabinet of St. James proposes; but as to hunting, fishing, and trading with the natives of the country, we cannot avoid making an important distinction.

“Russia’s rights of sovereignty over the north-west coast, beginning at 59 degrees of north latitude, have been disputed. Hence, between that degree and the parallel which would form our southern boundary, we hastened to offer special advantages to the Powers with which we were in dispute. We granted to the Americans for ten years the right to fish, to hunt, and to trade with the natives of the country, and we will make the same concession in favour of the subjects of His Britannic Majesty; but it must be well understood that this concession will only comprise the space enclosed between latitude 59 degrees and the southern boundary of our territory—to wit, latitude 54 degrees 40 minutes, for to the north of the 59th degree His Imperial Majesty’s rights of sovereignty have never been questioned, not only in no official document, but in none of the articles which the English and American newspapers have published on this subject.”

There 54 degrees 40 minutes is referred to in dealing with the question of England. I submit that when the passage is taken in connection with all the surrounding negotiations, and looked at in the language of the Treaty, it is quite clear that the 54 degrees 40 minutes there mentioned as indicating the southern part of the Russian dominions would be the southern point and reach, approximately the limit of the southern point of Prince of Wales Island.

“If any weight is attached to such a decisive fact as this, will it be asked that we shall place the disputed and the undisputed territory on the same footing; that we shall submit to the same sacrifices for both; that we shall arouse the just alarm of our American Company, and that by throwing open for ten years the hunting, the fishing, and the trade with the natives of the country, we shall expose to total ruin establishments which are increasing in number every day, in regions which belong to us by every title that can be conferred by a first discovery, an immediate and actual occupation of more than a century, and a peaceful possession against which no Power has ever protested? Assuredly, in this part of her dominions, Russia has certainly the right to be guided in the enactment of her commercial relations only by her own needs and her own convenience. She has certainly the right there to reap freely all the profits of the hunting and fishing, and, provided she respects and observes the general principles of the laws governing the mutual relations of nations, she is at perfect liberty to adopt there all such measures as she may deem useful or necessary.

“For these reasons she cannot consent to permit there the competition of foreign traders, hunters, or fishermen; but, while prohibiting trading, hunting, and fishing, she will by no means prohibit navigation, and she will confine the exercise of her maritime jurisdiction to 2 marine leagues from her coasts and her islands.”

The third part of this despatch relates to the opening of the port of Sitka. I do not think it is necessary I should trouble the Tribunal by reading that now; the draft Convention which the British Government have transmitted, and to which Count Nesselrode refers in his despatch, was annotated by him, and these annotations will be found at pp. 101–103 in the British Case Appendix. But there is one paragraph to which I ought to call special attention. It occurs at p. 101, as explaining the Russian attitude. It is opposite Article III, near the bottom of p. 101, and it runs thus:—

“ Dans le premier paragraphe de cet Article, comme dans l'Article II, nous avons supprimé toute mention des montagnes qui suivent les sinuosités de la côte. Elle devenait inutile du moment où l'on fixait en lieux marines, la largeur de la lisière de terre ferme qui appartiendrait à la Russie.”

There, he says, in terms that Russia, by the last proposal of theirs to which reference is there made, had discarded the mountains altogether, and had proposed instead of mountains to set up the principle of the belt of territory not exceeding a certain number of marine leagues of width from the coast. There could not have been a

60 clearer explanation of that proposal, and the principle which Russia then sought to have established could not have been more clearly enunciated or brought into sharper contrast with the provisions of which were ultimately adopted in the Treaty.

That brings the fourth stage of the negotiations to an end; they miscarried on the question of the privileges as to trade and fishery to be given to British subjects by Russia.

We now arrive at the fifth—and I am glad to say it is the last—stage of these negotiations, which opened in December 1824 with the instructions sent to Mr. Stratford Canning by Mr. George Canning, and the negotiations resulting in the Treaty early next year, were conducted by Mr. Stratford Canning with Count Nesselrode and M. Poletica. The trade and fishery question was settled by adopting certain words from the United States' Treaty. Whole Articles were copied from the United States' Treaty. The fact that the Treaty of Russia with the United States was followed so minutely in those particulars lends emphasis to the fact that in other points it was widely departed from.

Now, instructions were sent by the letter of the 8th December, 1824, from Mr. Canning to Mr. Stratford Canning, which will be found beginning at p. 112 of the British Case Appendix running on to p. 115, and it is followed by the draft Convention which Mr. Canning inclosed in that despatch as embodying the views which he wished to be represented by the Treaty, which he asked Mr. Stratford Canning to arrange. I think I may pass over the whole of p. 112, and begin at p. 113, the second paragraph:—

“ The right of the subjects of His Majesty to navigate freely in the Pacific cannot be held as matter of indulgence from any Power. Having once been publicly questioned, it must be publicly acknowledged.”

The PRESIDENT. I think you can go to the bottom of that page, Mr. Attorney-General. The first part of that page is all about Behring Sea.

Sir ROBERT FINLAY. It deals with the matter dealt with by the 1st and 2nd Articles of the Treaty of 1825, but I do not think I need go into that in more detail.

The PRESIDENT. The bottom of the page is important.

Sir ROBERT FINLAY. About the middle of the page this passage occurs:—

“ Perhaps the simplest course after all will be to substitute, for all that part of the 'Projet' and 'Counter-Projet' which relates to maritime rights and to navigation, the first two Articles of the Convention already concluded by the Court of St. Petersburg with the United States of America, in the order in which they stand in that Convention.

“ Russia cannot mean to give to the United States of America what she withholds from us, nor to withhold from us anything that she has consented to give to the United States.

“ The uniformity of stipulations *in pari materiâ* gives clearness and force

to both arrangements, and will establish that footing of equality between the several contracting parties which it is most desirable should exist between three Powers whose interests come so nearly in contact with each other in a part of the globe in which no other Power is concerned.

"This, therefore, is what I am to instruct you to propose at once to the Russian Minister, as cutting short an otherwise inconvenient discussion.

"This expedient will dispose of Article I of the 'Projet,' and of Articles V and VI of the 'Contre-Projet.'"

The "projet" there referred to—it will be convenient if I give the reference—is on p. 87; the "contre-projet" is on p. 95.

"The next Articles relate to the territorial demarcation, and upon them I have only to make the following observations:—

"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
61 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 that 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 and can thoroughly explain to the Plenipotentiaries to have existed on the other side of the American Continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory where we only intended to give and she only intended to ask a strip of sea coast.

"To avoid the chance of this inconvenience we propose to qualify the general proposition, 'that the mountains should be the boundary, with the condition if those mountains should not be found to extend beyond 10 leagues from the coast.' The Russian Plenipotentiaries now propose to take the distance invariably as the rule. But we cannot consent to this change. The mountains, as I have said, are a more eligible boundary than any imaginary line of demarcation, and this being their own original proposition, the Russian Plenipotentiaries cannot reasonably refuse to adhere to it.

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

"I omitted in my last instructions to Sir Charles Bagot (though I had signified to Count Lieven) that I intended to require a small extension of the line of demarcation from the point where the *lisière* on the coast terminates in latitude 59 degrees to the northward. The extension required is from 139 degrees to 141 degrees west longitude."

Now, the history of this question of the mountains is rather curious. The mountains, as the boundary of the *lisière*, were first proposed by Russia. Then England suggested, as a corrective, not more than 10 marine leagues, in case the mountains receded further from the coast than that distance. Then Russia proposed to throw over the mountains and take the qualification as the rule,—the belt of 10 marine leagues. Then England insists upon the mountains, and the mountains are adopted, with the qualification substantially as first proposed by England, and which is embodied in the Treaty. Now, alternating as before, the United States, who have acceded to the rights of Russia in substance, claim to revert to that proposal which was made by Russia, as very clearly explained by Count Nesselrode in his annotation on Mr. Canning's draft Convention at p. 101 of the British Case Appendix, declared the mountains to be the *lisière* only, with the very important modification that they claim that at no point should it be nearer to tidal water or salt water than 10 marine leagues.

Then Mr. Canning goes on: "With regard to the port of Sitka"—
I need not trouble you about that.

"We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories, which stipulation may be best stated precisely in the terms of Article IV of the American Convention.

"These, I think, are the only points in which alterations are required by Russia, and we have no other to propose.

"A 'projet,' such as it will stand according to the observations of this despatch, is enclosed, which you will understand as furnished to you as a guide for the drawing up of the Convention, but not as prescribing the precise form of words, nor fettering your discretion as to any alterations, not varying from the substance of these instructions."

Then follow the observations about the limit of marine jurisdiction. The Russians suggested 2 leagues, but Mr. Canning pointed out that 1 league was the general rule.

Now, the draft Convention which is enclosed in the letter immediately follows the letter, and I should say that there is a French copy of it, which will be found at pp. 121-123 of the Appendix. There is a note at p. 123, saying that:—

62 "The preceding 'Projet' is in the handwriting of George Canning's secretary."

So that it may, I presume, be assumed to be the draft Convention or "Contre-Projet," which was submitted to the Russians in that language, and it is necessary that I should presently compare the language of that draft with the Treaty which was arrived at, indicating the changes that were made. Article III, I will run very rapidly through; it is very like what we have had so often already.

"Article III of Draft Convention.

"The line of demarcation which separates the possessions of the two High Contracting Parties upon 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 degrees 40 minutes and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions shall ascend northerly (the whole of Prince of Wales Island belonging to Russia) along the channel called 'Portland Channel' till it strikes the coast of the continent in the 56th degree of north latitude."

It is worth pausing for a moment on that expression "it strikes the coast of the continent," because that is obviously an inaccurate expression and is corrected by the Russians as will be seen when we come to the passage indicating how they dealt with it.

"From the point where the line of demarcation strikes this degree it shall be carried along the summit of the mountains parallel to the coast as far as the 140th degree of longitude west of the said meridian; thence the said meridian line of 140th degree west longitude, in its extension as far as the Frozen Ocean, shall form the boundary of the British and Russian possessions on the continent of America to the north-west.

"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 parallel to the coast and its windings, at the said distance of 10 marine leagues therefrom, so that the said line of demarcation shall never extend farther than 10 leagues from the coast."

I call the attention of the Tribunal to the fact that this draft takes the mountains as the basis on which the whole thing is to proceed, and that the proviso of Article III in this draft, which was afterwards put into a separate Article in the Treaty itself—that proviso is strictly in the nature of a limiting qualification, that if the summits of the mountains turn out to be at any part more than 10 marine leagues from the sea, for that space the line of demarcation shall be a line parallel to the coast and its windings of not more than 10 marine leagues; that is to say, you must find your line of mountains. If at any point the mountains, the summits of which you are to follow, should recede more than 10 marine leagues from the coast, you are not to go back with the mountains; you are to draw a line across not more than 10 marine leagues from the coast, which will again join the mountains when they come within that distance of the coast.

The PRESIDENT. It may possibly, you suggest, be a horseshoe line there, but it is only in those places that it is to be substituted; that is your argument?

Sir ROBERT FINLAY. Exactly. Then Article III went on:—

“It is agreed that neither Party shall form any establishment within the limits assigned by this Article to the other Party.

“No establishment shall in future be formed by British subjects either upon the coast or upon the borders of the continent comprised within the limits of the Russian possessions designated in this Article; and in like manner
63 no such establishment shall be formed by Russian subjects beyond the said limits.”

Then Article IV deals with the navigation; Article V with the right for ten years of the vessels of the two Powers to frequent without any hindrance the inland seas, gulfs, havens, and creeks in the case mentioned in Article III, for the purposes of fishery and commerce with the natives of the country. With reference to one contention which has been put forward as to the meaning of Article VII, which represents the limitations of the Treaty with regard to trade, and this Article V, it may not be unimportant to observe with regard to Article III of this draft, and Article V referring to the coast mentioned in Article III, that Article III does not begin by saying anything about the north-west coast of America at all; it begins by simply referring to the continent and the islands of the continent of the north-west, and then it proceeds to deal with the coast on which the “lisière” was to be granted.

Then I need not read what relates to Sitka and the supplementary Articles. That draft was altered in the handwriting of M. Matusевич, a Russian official, and for the purpose of the alterations it is much more convenient to take the French version of Mr. Canning’s “Projet” as it appears in the handwriting of the Secretary at pp. 121–123. At p. 126 you will see the nature of the alterations which M. Matusевич proposed. He proposed to break up Article III as proposed by Mr. Canning into several Articles. He confined Article III in his draft to dealing with the question of how the line was to run from its commencement to the Portland Canal, and from the head of that canal northwards, and the qualifications which had been inserted as provisos by Mr. Canning, appear severally in a subsequent article, and the Tribunal will observe that the expression to which I adverted in Mr. Canning’s draft is a somewhat curious one about the line going along past the channel called the Portland

Channel till it reaches the coast of the mainland at the 56th degree of north latitude. As corrected by M. Matusevich at p. 126 in his draft of the IIIrd Article, the Tribunal will observe that he makes that passage run thus:—

“Jusqu'à l'endroit où cette passe se termine dans l'intérieur de la terre ferme au 56^{me} degré de latitude nord.”

He corrects that inaccurate form of expression which had been employed in Mr. Canning's draft in the manner I have just indicated. And then Article IV contains the provisos and qualifications which had been inserted in Article III. The Tribunal will observe that in Mr. Canning's draft the provision as to the Prince of Wales Island belonging entirely to Russia, which was put in the form of a parenthesis in the early part of Article III, is removed from Article III by M. Matusevich and appears as the first clause in Article IV.

“Il est entendu 1^o, que l'île dite ‘Prince of Wales’ appartiendra tout entière à la Russie.”

Then the second branch of Article IV is the proviso of Article III that the “lisière” of coast mentioned above, which is to belong to this same Power and to ascend from the parallel 56 north latitude to the point of intersection at 141 west longitude, should have as limit the crests of the mountains as has been said above.

“Mais que partout où la distance entre la crête des montagnes et la mer se trouverait de plus de dix lieues marines, la limite de cette même lisière sera rofinée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais s'éloigner de la mer que de dix lieues marines.”

Then the provision as to establishments not being formed by the subjects of either Power within the limits of the other is embodied in Article V, so that Article III is really broken up in that way by M. Matusevich with the correction to which I have alluded.

Then Article V of Mr. Canning's draft appears as Article VII of M. Matusevich, and I do not think there are any other alterations to which, at present at all events, I need call attention.

Then Mr. Stratford Canning writes to Mr. George Canning on the 17th February a despatch announcing what he had done, and the conclusion arrived at, which appears at p. 130. He says that he
64 has admitted certain alterations, which he believes to be in strict conformity with the spirit and substance of His Majesty's command; and then he says:—

“The Order of the two main subjects of our negotiation, as stated in the Preamble of the Convention, is preserved in the Articles of that instrument. The line of demarcation along the strip of land on the north-west coast of America, as assigned to Russia, laid down in the Convention agreeably to your directions, notwithstanding some difficulties raised on this point, as well as on that which regards the order of the Articles, by the Russian Plenipotentiaries.

“The instance in which you will perceive that I have most availed myself of the latitude afforded by your instructions to bring the negotiation to a satisfactory and prompt conclusion, is the division of the IIIrd Article of the new ‘Projet,’ as it stood when I gavé it in, into the IIIrd, IVth, and Vth Articles of the Convention signed by the Plenipotentiaries.”

That was on the lines which M. Matusevich indicated, although the change in M. Matusevich's draft is not strictly followed in the Treaty at all.

“This change was suggested by the Russian Plenipotentiaries, and at first it was suggested in a shape which appeared to me objectionable, but the Articles as they are now drawn up I humbly conceive to be such as will not meet with

your disapprobation. The second paragraph of the IVth Article had already appeared parenthetically in the IIIrd Article of the 'Projet,' and the whole of the IVth Article is limited in its signification and connected with the Article immediately preceding it by the first paragraph."

It only remains in this connection, before I refer to the Treaty and the alterations which it contained, as compared with Mr. Canning's final 'Projet,' submitted to Mr. Stratford Canning at the commencement of this last stage of the communication, to speak of the letter of Count Nesselrode to Count Lieven, the Russian Minister in England, which appears on pp. 130, 131 of the case immediately following the last despatch which I have been reading. I refer to it on account of the statement that he makes with regard to the line of mountains. I will just read from p. 131 below the middle of the page:—

"I congratulate myself on being able to inform your Excellency that my negotiations with Mr. Stratford Canning with regard to the north-west coast of America have been crowned with success.

"We have just signed the Convention, a copy of which is inclosed.

"The only point that has given rise to any difficulties in our discussions with the British Plenipotentiary related to the limits of the strip of coast which Russia is to possess on the American continent from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude.

"The Emperor would have found it more mutually just, more equally advantageous, if the natural frontier formed by the mountains bordering on the coast were adopted by both parties as the invariable line of demarcation. England would have gained thereby wherever those mountains were less than 10 marine leagues from the sea; Russia, wherever that distance was greater; and in view of the want of accuracy of the geographical notions which we possess as to these countries, such an arrangement would have offered an entire equality of favourable chances to the two Contracting Parties.

"However, Mr. Stratford Canning having declared that his instructions did not permit him to entertain the wishes which we had expressed to him on this point, the Emperor, in order to give His Britannic Majesty a last proof of his friendly feelings, authorized us to sign the Act in question such as I have the honour to transmit it to your Excellency."

Now, it will be obvious to the Tribunal that if Count Nesselrode's ideas had been followed the Treaty would have rested obviously and beyond all question on the existence of a line of mountains to be ascertained. I submit that the Treaty no less obviously rests on that basis because the qualification was introduced for which Mr. Canning stipulated. Of course, if the question of the extent of territory had been a sort of game at which Russia would win if the mountains came nearer than 10 leagues, Count Nesselrode's proposal offered a basis of solution, but Mr. Canning very naturally and very properly said: "This is not a matter on which we can gamble. We do

65 not know very much about the geography of that region; we do not know how far up or down the mountains may recede. They might make a great bay running back a long way into the interior; we cannot leave that to chance; this is not a game of chance; we are settling the boundaries of a territory on a basis which appears to be most fair and which must be defended accordingly. While we take the mountains as the boundary we have this one proviso that if they recede in the way indicated then the line is not to recede with them." With reference to that point I submit to the Tribunal that the contention put forward on behalf of the United States that no mountains exist satisfying the description of the Treaty will really make of the Treaty an absolute nullity. I shall have to refer to this point in connection with the mountains, or to put it broadly I ask the

Tribunal to advert to the fact that unless there are mountains this Treaty really cannot be worked at all. The existence of a 10 league line is not a provision that you are to have recourse to if there are no mountains at all. The whole terms of the Treaty show that you must first find your mountains, and the 10 marine league line is a qualification upon the mountains in case they recede to a point beyond that distance from the coast.

Now it may be convenient—I am entirely in the hands of the Tribunal upon that point—to call attention to the variations made in the Treaty from the final draft submitted by Mr. Canning. I have had them all taken out, and I can call attention to them; but if the Tribunal prefer to rest satisfied with the general indication that I have given for that purpose I shall not occupy time by going over them. I have marked in upon the draft Convention transmitted by Mr. Canning, the Treaty itself, the points upon which they varied, and if the Tribunal considers it convenient I am prepared very shortly, as rapidly as possible, to indicate them.

The PRESIDENT. Really, you had better adopt your own course, Mr. Attorney; but, speaking for myself, I think you have indicated with perfect clearness your argument upon this part of the Case. But if you like to put it in a written document you can do so by handing it in.

Sir ROBERT FINLAY. After all, it is merely a question of writing in red ink on the document from one point to another the points of variation, and I think it would be better that I should economize time by not doing that just now. It can be referred to any time, and I think, broadly speaking, it will be found that the indications I ventured to give in dealing with M. Matusевич's alterations represent in substance the variations between the Treaty and the final draft transmitted by Mr. Canning.

I have now concluded what I had to say with regard to the negotiations regarded as a whole, and I now proceed to deal with the specific questions which the Tribunal has to answer. I have already pointed out that the Treaty of Arbitration is framed in a very peculiar way and in a very special way. It does not empower the Tribunal to fix the line of boundary, and further than that it does not empower the Tribunal to fix the line of coast which the Treaty contemplates, although no doubt the answer to some of the questions may render it necessary for the Tribunal to arrive at a conclusion on that point. The specific questions which have to be answered fall, I think, into two groups. The first four questions may, I think, be conveniently dealt with as one group, and the fifth, sixth, and seventh form another group. The first four relate to the point of commencement of the line, the identity of the Portland Channel mentioned in the Treaty, the course to be taken by the line from the head of the Portland Channel to the 56th parallel. That is the form of grouping which, I think, may conveniently be dealt with in the first instance, and dealt with to some extent, at all events, as presenting features which render the observations made, common to more than one of these questions. The form of the fifth and sixth questions relating to the "lisière" is somewhat involved, and will require very close attention. The seventh question is perfectly simple, and relates to the identity of the line of mountains, but I think I had better reserve my observations as to the precise meaning and effect of questions 5

and 6 till I can deal with that part of the subject, and I propose now following the order which I indicated yesterday morning to deal with questions 1, 2, 3, and 4. The first question may be dismissed
66 almost at once. The point of commencement is the southern-
most point of Prince of Wales Island. I think both sides are
really agreed upon that point. The British Case will be found on
p. 46:—

“There are two southern points on this land shown on the chart—Cape Chacon and Cape Muzon—both within the limits of longitude, and both very near the latitude mentioned in the clause. And, indeed, there is also on Bean Island—a small island lying close on the west side of Cape Chacon—a point called Cape Nunez, the latitude of which is now ascertained to be below
* * * .”

That word “below” should be “between”; that is a mistake; it is corrected afterwards in the Counter Case—between instead of below—“* * * those of the two capes, Chacon and Muzon. This island may be treated as a discrepancy, and need not be separately noticed hereafter.” The text says: “The island may be treated as a discrepancy.” That should be a “dependency that need not be separately noticed hereafter.” Then a little further down, “Cape Chacon is, in fact, on Prince of Wales Island, the great island of the archipelago, and later, formally distinguished by that name; while Cape Muzon, though represented, as from a distance it appeared to Vancouver to be, on a peninsula of that same island, is, in truth, on a separate island close adjoining.

“Thus, Cape Chacon is the most southerly point of Prince of Wales Island, as now known, and is the point in this sense answering the description. And it might be from one point of view rather more favourable to Great Britain than Cape Muzon.

“But Great Britain concedes that it sufficiently appears that Cape Muzon, the more southerly point, fulfils the essential conditions of the Treaty, and should be held to be the point of departure.”

Although Cape Muzon is on a separate island close by, that island may be treated as a dependency of Prince of Wales Island. We do not seek to say you are to go to Cape Chacon because it happens to be on Prince of Wales Island, but for this purpose we agree that the Cape Muzon, which is the southerly point, although on a separate island, should be treated as a starting point. The United States' Case, on p. 103, gives the same answer:—

“The United States, upon the facts established by the evidence herewith submitted, claims that the questions referred for decision to the Tribunal, as set forth in Article IV of the Treaty, should be answered and decided as herein after stated: and it therefore recites such questions and makes specific request as to each, as follows:—

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

The United States requests—

“The Tribunal to answer and decide that Cape Muzon is the point of commencement above mentioned.”

So that on that point there is no discrepancy at all between the contentions on the one side and on the other. It might be convenient for the Tribunal to have the precise latitude of Cape Muzon stated.

It is stated in the British Case Appendix, p. 285. According to Mr. King, it was 54 degrees 39 minutes 50 seconds, and according to Mr. Duffield, the United States' Surveyor, it is 54 degrees 39 minutes 48 seconds, so that there is only a difference of 2 seconds between them.

The PRESIDENT. What is the reference to Mr. Duffield?

Sir ROBERT FINLAY. In the British Case Appendix, p. 285.

The PRESIDENT. Have you given us the reference for Mr. King? Is that the same as the reference for Mr. Duffield?

Sir ROBERT FINLAY. I think that both are given here.

The PRESIDENT. Yes. I beg your pardon. I see it is a joint report.

67 Sir ROBERT FINLAY. I think I may now pass from the first question, and I wish that all the questions in the case could be as easily answered and as briefly.

Now, Questions 2 and 3 must, I think, be dealt with together, and I propose to state specifically my answer to each, but my observations will be really common to both cases, as they are so very much connected. The question relates to what is the Portland Channel, and how the line is to be drawn from the point of commencement to Portland Channel.

Now, I submit that the Portland Channel or Portland Canal is really fixed for this purpose by the narrative of Vancouver, and that when the maps are looked at they do not in any degree displace the conclusion which irresistibly follows from Vancouver's narrative. Now, I ask the Tribunal to turn to the extracts from Vancouver's narrative in the British Case Appendix, p. 245. The extra extracts from the narrative of Vancouver begin in the British Case Appendix on p. 139.

The PRESIDENT. Have you got a copy of one of the original editions of Vancouver?

Sir ROBERT FINLAY. I have got the first edition here.

The PRESIDENT. The French?

Sir ROBERT FINLAY. No, the English—the first edition.

The PRESIDENT. I should like to have it left so that we may look at it presently. Is the French one accessible?

Sir ROBERT FINLAY. I have not got that—yes, I understand we have it.

The PRESIDENT. I do not trouble you now because I do not want to interrupt you, but I should like to look at the actual books presently. Do not let me interrupt you, Mr. Attorney.

Sir ROBERT FINLAY. I will read from the extracts set out in the British Case Appendix.

The PRESIDENT. I only wanted to know. I did not want to interrupt your argument at all, but I wanted to know if we could have the books to look at at some time or other.

Sir ROBERT FINLAY. Yes, certainly.

The PRESIDENT. They can be left in the room, and we can look at them at any time.

Sir ROBERT FINLAY. I shall have occasion to refer to certain portions of this edition with reference to the particular question now under discussion for the purpose of establishing the fact that the negotiators must have had that narrative in view.

Now, the extracts from the narrative given upon those pages contain the whole explanation given by Captain Vancouver of the Observatory Inlet and the Portland Canal. The narrative is a very minute one, and gives a very vivid impression of the extraordinary care that was taken by Vancouver in the execution of his task. When reading his narrative one could not help feeling from time to time how Captain Vancouver was devoting himself to the

work in hand, while such very great events were taking place in other parts of the world in which his brother officers were very actively interested. It is, I venture to say, one of the best pieces of work of this kind ever done, and the narrative gives one a very vivid idea of the progress of the operations.

Mr. AYLESWORTH. These extracts are from the first edition, I understand, Mr. Attorney?

68 Sir ROBERT FINLAY. The edition of 1798.

Mr. AYLESWORTH. That is the first.

Sir ROBERT FINLAY. The second edition was in 1801.

Mr. AYLESWORTH. Yes.

Sir ROBERT FINLAY. Now, it might be convenient, before I read any of these extracts, that I should just state the general course which he took. He entered from the south by a passage which is called Brown's Passage. The Tribunal will turn to the atlas accompanying the Case of the United States. It is rather easier to handle than the British atlas, which is a very big one—Map 4. What Vancouver says is this: About 54 degrees 20 minutes north latitude, or 54 degrees 30 minutes, is a passage which is marked as Brown's Passage, to the south of the Dundas Island, and then he passed through that into Chatham Sound, and then he went up from the sea, up the inlet—the larger of the two inlets. He worked up to the very head of the Observatory Inlet, passing the place where his party remained for some time, which is marked Salmon Cove. It is very near the head. He got right up to the head of the Observatory Inlet, and then he returned down to the point which is marked as Point Ramsden. He then proceeded up the channel between Point Ramsden and the island immediately to the south Pearse Island; he went right up to the head of Portland Channel or Portland Canal, and then he came down to the sea following the Portland Canal to the north of Pearse Island, passing what is known as Wales Island. Then he turned up. He left the Channel there for the purpose of going up round the island, which is a sort of bight, and when he came back he passed to the north of Sitklan and the Kanaghunut Islands, reaching again the open sea. That was his course, and in order to see what he meant when he spoke of Observatory Inlet, and what he meant when he spoke of Portland Canal, it is necessary to advert to one or two passages in his narrative specifically. Now I had better first pick out two passages which bring the thing to a point, and then I will refer again, if necessary, to the narrative in detail. At p. 145, towards the bottom of the page, occurs this sentence:—

“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.”

Now, on reference to the narrative it will be found that the examination which lasted from the 27th July to the 2nd August, was of the Portland Canal, as we say it is designated in the Treaty. It is Portland Canal running down to the sea to the north of Pearse Island, as we designated it—and Kanaghunut Island. He does say that, and I will demonstrate that presently by reading it more in detail:—

“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.”

There is a mistake of 10 miles in the length, and that, no doubt, proceeds from an error to that extent in the latitude taken at the head of the channel. The latitude taken at the head of the channel, as reference to his charts will show, if that is necessary, in detail was 55 degrees 45 minutes, instead of 55 degrees 55 minutes. Now, that explains the discrepancy in the length. It does not affect the point I am making.

The PRESIDENT. Which was his error?—Does he make it too short or too long?

Sir ROBERT FINLAY. He makes it too short.

The PRESIDENT. Exactly.

Sir ROBERT FINLAY. His narrative makes it 55 degrees 45 minutes; it should be 55 degrees 55 minutes, and 55 degrees 45 minutes also appears on the map. Now, that is merely with regard to the Portland Canal. With regard to the Observatory Inlet the passage occurs at p. 146, near the bottom of the page, "Monday 19, Tuesday 20," occurs in the margin. "A want of wind and the flood-tide prevented our weighing until 9 the following morning, when, with the ebb-tide, we again proceeded, but did not reach the entrance of Observatory Inlet until 2 o'clock in the morning of the 20th, a distance of not more than 13 leagues from Salmon Cove." That is almost exactly the distance from Salmon Cove down to the entrance of Observatory Inlet opening into the open sea.

Mr. AYLESWORTH. You mean the entrance opposite Point Wales?

The PRESIDENT. Yes, opposite Wales Island; the next passage shows it.

Sir ROBERT FINLAY. "The west point of Observatory Inlet I distinguished by calling it Point Wales, after my much esteemed friend Mr. Wales, of Christ's Hospital, to whose kind instruction in the early part of my life I am indebted for that information which has enabled me to traverse and delineate these lonely regions." It will be found that in some despatches which passed some time ago between the United States and Great Britain there was some confusion between this island—Wales Island—the point of which he named Point Wales, after an old teacher, and the other island, Prince of Wales Island, which is selected as supplying the starting point of the commencement of the line; and it will be found that in one despatch addressed to the Government of Great Britain with regard to this, Portland Canal is supported by taking as Prince of Wales Island this Wales Island of which Point Wales was named after Vancouver's old teacher, as stated. That is by the way, and that is now conceded.

The PRESIDENT. That was a mistake of Mr. Bayard's.

Sir ROBERT FINLAY. That was a mistake, undoubtedly.

The PRESIDENT. The American Case does not reproduce that.

Sir ROBERT FINLAY. That is set right and we are now all agreed that the island is Prince of Wales Island, and that point has no bearing whatever on the question of what is the Portland Canal.

The PRESIDENT. This gentleman was a Christ's Hospital man, a President of Christ's Hospital. That was why it was called Wales Island, because he was connected with Christ's Hospital, with which Vancouver, I believe, was connected also.

Sir ROBERT FINLAY. And it was to him Vancouver was indebted for the ability to make this survey.

Now, as I understand it, the contention on the other side is that what is meant in the Treaty by the Portland Canal is what Vancouver, in the passage I have just been referring to, calls the entrance of Observatory Inlet, and it is contended, as I understand it by the United States, that the lower part of Observatory Inlet, below Point Ramsden, forms the lower part of the Portland Canal, that you then turn on the left hand at Port Ramsden, and follow the channel until you get to what on all hands is admitted to be Portland Canal running away up to the north to near the 56th degree of latitude. Now, if that had been Vancouver's Portland Canal, instead of its exploration taking him, as he says, from the 27th July to the 2nd August, the exploration would have taken him only the 21st and 22nd July, and from the 27th to the 30th July, because the 21st and 22nd July were devoted to the exploration of the lower part of the end of Observatory Inlet up to Point Ramsden, and from the 27th July to the 30th July he was engaged in exploring the upper part of Portland Canal from Point Ramsden to near latitude 56 degrees. Instead of that he says the exploration took him from the 27th July to the 2nd August.

70 Now, in order to make good my position on this point, which is of capital importance, I think I must refer to some passages of the narrative by way of establishing these dates and the localities. It begins on the 20th July at p. 139. Opposite the 20th July there is an entry in these terms:—

“Whilst the ‘Butterworth’ had remained stationary, Mr. Brown had been employed in his small vessels in various directions, and to some extent about this coast, particularly to the north-westward, in procuring of furs. He very obligingly communicated to me every information he had been able to obtain. The principal circumstance was that of his having sailed up a large opening, whose southern entrance was in latitude 54 degrees 45 minutes.

“This is probably the same as that laid down in Senr. Caamano's chart, named ‘Estrecho de Almirante Fuentes.’ Mr. Brown found it extend to the north-westward, with several arms branching from it in various directions to the latitude of 56 degrees 20 minutes, where, in a south-westerly direction, it again communicated with the North Pacific. He had understood from the natives that there was in this neighbourhood a very extensive inland navigation, communicating with a sea to the northward, that employed the inhabitants nearly three months in reaching its extent, where they traded for whale oil, sea otter skins, and other marine productions. This inland navigation Mr. Brown supposed to be in an extensive arm, lying from hence towards the N.N.E., about 9 leagues distant, the entrance of which he had visited and found it spacious and large, but had not penetrated any distance into it.”

Now, it will be borne in mind that what Captain Vancouver was particularly looking for was a marine communication of an extensive kind which might supply means of access between the interior of North America and the Pacific, and he of course heard with very great interest this report of Mr. Brown about a large inland navigation which might have answered the expectations under which Captain Vancouver had been directed to proceed upon his cruise. Mr. Brown, in the report which he brought back must have been referring to the inland seas, which are all about in the archipelago to the east of the Prince of Wales Island and the other islands which lie to the north of it. Captain Vancouver entered upon the exploration of Observatory Inlet, hoping that it might be the commencement of an inland navigation which might have given him what he wanted.

Then Sunday, the 21st:—

“The weather became more temperate the following morning, yet the land was so obscured by the haze that it was late in the forenoon before we could get any tolerable view of the surrounding shores.”

The PRESIDENT. That only takes you up to Point Maskelyne—that passage.

Sir ROBERT FINLAY. Yes. “This passage, after the commander of the ‘Butterworth,’ I named Brown’s Passage.” That is the narrative.

The PRESIDENT. I see; that is it.

Sir ROBERT FINLAY. Then he gives the bearings:—

“Mr. Whidbey was despatched in the large cutter to recommence his examination of the continental shore towards the above north-north-east opening. In this pursuit I purposed to follow him with the vessels.”

Then he anchored near Stephen’s Island; then he describes the weather; then at the bottom of p. 139 begins a sentence which runs over the page:—

“In the evening we passed two clusters of low rocks, with some breakers about them to the west of us, as also the north point of the island forming the west side of Chatham Sound to the northward of Brown’s Passage. This island, in a direction N. 20 W., is 15 miles long, and 5 miles broad from east to west. To this island I gave the name of Dundas’s Island after the Right Honourable Henry Dundas.”

71 Just in passing I would call attention to the habit Captain Vancouver had of naming the points as he passed them.

“To the north of this island we had a distinct view of the ocean to the westward through a spacious channel that appeared free from interruption; and by sunset we entered the arm, up which we expected to find this extensive inland navigation. To its south-east point of entrance I gave the name of Point Maskelyne, after the astronomer royal. It is situated in latitude 54 degrees 42½ minutes, and longitude 229 degrees 45 minutes.”

The longitude is taken the other way. Vancouver had been approaching from that side, and so his longitude in his narrative is given eastward; in his chart it is given at the top, westward; at the bottom, eastward.

“And off it lie two rocky islets, and to the south of it a small island close to the shore.”

The situation of Point Maskelyne admits of no dispute whatever. It is marked at the extremity of that long point of land which runs out at the southern entrance of Observatory Inlet.

“The apparent extent of this inlet did not answer my expectations from the description that had been given of it. Its entrance is not more than 2½ miles across, and this, at the distance of a few miles, seemed to be materially contracted.”

Then I think I may pass on to the paragraph in the middle of the page:—

“From Point Maskelyne the two clusters of low rocks and breakers before noticed—”

He noticed the rocks lying in certain directions, and he points out the objection that they may constitute to the navigation of the inlet.

“Monday, 22nd. We found our station the next morning to be off the north-west part of an island lying near the eastern shore, and further up the inlet than those in the sloop had yet been; no information from them could therefore be any longer of use.

The PRESIDENT. Would you tell us, Mr. Attorney, why you want pp. 140 and 141? These refer to Observatory Inlet, as I understand.

Sir ROBERT FINLAY. I want them for the purpose of showing that he distinguishes between the two.

The PRESIDENT. I only want to understand your point. I follow. This is only to show that he first went up right to the top of Observatory Inlet.

Sir ROBERT FINLAY. That of course I desire to show, but then I want the effect of that coupled with the statement that he makes as to his return to the inlet.

The PRESIDENT. I follow you entirely. It was only minute description. I perfectly follow your point, that he went up Observatory Inlet, that he named it, and that he said it came to the sea between Wales and Point Maskelyne.

Sir ROBERT FINLAY. Yes.

The PRESIDENT. That he went up Portland Canal and he brought that down to the sea, and I wanted to know whether that is the purpose for which you are reading these passages. That is all.

Sir ROBERT FINLAY. That is the purpose.

The PRESIDENT. I follow your argument closely.

72 Sir ROBERT FINLAY. Of course it is not a very grateful task to read all these matters, but I think that point is very important.

The PRESIDENT. All we wanted to know is the purpose for which you are reading this.

Sir ROBERT FINLAY. The point is very important. I must endeavour to establish the proposition by reference to the details. I think your Lordship will appreciate that very often the attempt to abridge really leads to greater consumption of time, but I will pass over what seems immaterial as rapidly as possible.

The PRESIDENT. My desire was only that I might see the purpose for which you were reading them.

Sir ROBERT FINLAY. I quite follow you. And, of course, the dates are very important in reference to the identification which he gives by time.

The PRESIDENT. Certainly.

Sir ROBERT FINLAY.

“This made me regret that we had not one or two vessels of 30 or 40 tons burthen, calculated as well for rowing as for sailing, to assist us in this intricate investigation, by which means much despatch would have been given to our survey, and our labours would have been carried on with much less danger and hardship than we had constantly endured.

“I intended to proceed up this inlet, until I should see sufficient employment for two boat parties, which I was convinced the surrounding region would soon afford, as also to seek a convenient situation where the vessels might remain; and whilst this service was executing, to embrace the opportunity for making such astronomical observations as might be procured, and which were become necessary for correcting our survey, and ascertaining with precision the situation of the several parts of the broken region, through which we had passed in the vessels and in the boats from Restoration Cove to this inlet. Pursuant to this determination we weighed about seven in the morning, and the ‘Prince le Boo’ returned to the ‘Butterworth.’

“At our anchorage, lying from Point Maskelyne N. 24 E. distant 6 miles, the width of the inlet was scarcely half a league. On the western shore a small opening appeared to branch off in different directions. North of the island the breadth of the inlet increased again to about 2 or 3 miles, trending N. 39 E.”

Then here is the heading.

["Passes branch, leading north-westerly into the channel which was examined later."]

That is the channel which joins Portland Canal.

"In pursuing this line about 4 miles—"

That is still going up Observatory Inlet.

"—we passed the south point of an opening on the eastern shore 2 miles wide, appearing to divide itself into several arms; but the western shore seemed to be compact, from the opening opposite the anchorage, until we arrived abreast of an opening, about two miles wide at its entrance on the western shore, seemingly divided into two or three branches, taking a direction about N. 18 W. The observed latitude at this time was 54 degrees 58 minutes, longitude 230 degrees 3 minutes. The branch of the inlet we were navigating was not of greater width, nor did it appear likely to become more extensive than that to the westward of us just discovered. This made it uncertain which to consider as the main branch."

That is, whether he was to consider the continuation of Observatory Inlet, or that branch running off at Point Ramsden and joining with the upper part of Portland Canal, to use that expression:—

73 "This made it uncertain which to consider is the main branch. Four other openings had been passed on the eastern shore, whose extent had not yet been ascertained; and although I was much inclined to follow the north-westerly branch, yet I was apprehensive that by so doing we might be led too far from the continent, and by that means cause additional labour and loss of time. Our route was, for this reason, continued to the north-north-east, and another division of the inlet stretching to the eastward was soon discovered."

Then he refers to certain inquiries that he made. I think I must read them:—

"In the event of a convenient situation being found in this branch, I intended to stop the vessels there, and made the 'Chatham's' signal, who had preceded us during the forenoon, to steer for the eastern opening and shortened sail for the purpose of sending a boat before us to sound. Whilst we lay to wait the boat's return, a few of the natives visited the ship in five or six canoes; they brought little to dispose of, yet appeared to be anxious that we should remain in their neighbourhood. Several inquiries were made for Ewen Nass—"

That was the name given to the great water, apparently. It is explained in the previous page, near the top of p. 140:—

"The word 'Ewen' we understood to signify great or powerful, as 'Ewen Smoket,' a great chief; but the word 'Nass' was completely unknown to Mr. Brown and all of his party.

"Several inquiries were made for Ewen Nass, but these people seemed to be totally ignorant of the phrase, until it had been repeated several times and we had pointed in various directions;" and so on.

"At 3 o'clock the cutter returned, with a very unfavourable account of the place, so far as their examination had gone, especially on the northern side of the opening, from whence a shallow flat extended some distance, on which there was not more than from 1 to 3 fathoms water. The latter depth suddenly increased to 30, and at the distance of a cable's length from the edge of the bank to 50 and 60 fathoms. This shallow flat made the communication with the shore very unpleasant, and appeared to be continued all round. To those in the cutter the opening seemed to be nothing more than a deep bay with very shallow water, excepting in its north-east part, where a branch from which the muddy water flowed, seemed to extend into the country. Across this branch they had also sounded, and found shallow water.

As it did not, from this report, seem likely to answer our purpose, we proceeded round its north point of entrance, and again made sail up the inlet, which, beyond this bay, was in general about half a league wide.

"The shores on both sides were nearly straight and compact; in this pursuit our progress was greatly retarded by a counter-tide, or undertow, and notwithstanding that we had a fresh gale from the south-east, the strength of this repelling current was such, that the wind had no influence whatever, though in other situations the vessel with such a gale would have gone five or six knots per hour. On this occasion the ship became totally unmanageable; the wind was sometimes ahead, at others astern, abboardside, and in every other direction, and we were drifting from side to side in the most unpleasant situation imaginable for two hours and a half, when the force of the wind prevailing, we advanced slowly up the inlet until about eleven at night. The distance of its shores had now again increased, and the country became less elevated. A small cove was discovered on the eastern shore, where we anchored in 30 fathoms water."

Then Tuesday, the 23rd; Mr. Whidbey was sent in quest of a more convenient situation. He returned having examined two or three coves; one not more than a mile from their actual station afforded good anchorage, with every other convenience that they required. Here they anchored in 31 to 35 fathoms water.

"In the afternoon the tents, observatory, chronometers, and instruments were sent on shore, under the directions of Mr. Whidbey, and Mr. Johnstone, in the 'Chatham's' cutter, accompanied by Mr. Barrie in the 'Discovery's' small cutter, and supplied with 10 days' provisions, departed for the purpose of
74 recommending the survey of the continental shore northward from Point Maskelyne."

That is the point that he had passed. Then the next heading is:—

["Beginning of boat examination of the inlet from Salmon Cove northerly, and return to Salmon Cove."]

That is the point I mentioned which he selects as determining the distance from it to the mouth of the Observatory Inlet.

"The account I had received of this famous inlet from Mr. Brown inducing me to undertake the principal examination of it myself, the 'Discovery's' yawl and launch were equipped with supplies for a fortnight, being as much as they could possibly stow; Lieutenant Swaine was directed to attend me in the latter, and Mr. Puget, with Mr. Menzies, accompanied me in the yawl. The appearance of the country on the western side of this inlet left me little doubt of its being the continent; and we departed in full expectation that, during this excursion, we should finally determine the realities of the discoveries attributed to the labours of Admiral de Fonte."

Then Chapter V is headed: "An Extensive Boat Excursion—Party Attacked by the Natives—Astronomical and Nautical Observations." On Wednesday, the 24th, they started. Their course was first directed along the eastern shore. They passed an island to the west, and rapidly advanced up this arm with a southerly wind and a flood tide in their favour. Its width increased to about a mile. Then they stopped to dine about a mile short of the low border of land which composed the head of the arm. Then there are some remarks on the language of the natives.

"About 8 in the evening we reached the entrance of this arm, where we took up our abode for the night. The land of the shores which we had thus traced was, comparatively speaking, low, yet the interior country rose suddenly—"

"Thursday, 25th July.—At 4 o'clock the next morning we proceeded again, with thick, cloudy weather, attended with some flying showers of rain. Our course was directed up the branch that appeared to be the main arm of the inlet, through a narrow passage," and so on.

This is still Observatory Inlet. He describes the hopes that he had, and how he got up to the head:—

“Friday, 26th. Then at daylight we pursued the western shore of the inlet, towards the ships, where we arrived about noon.”

Then the heading is:

“Returned from Salmon Cove to branch leading north-westerly.”

That is the branch around Point Ramsden leading to the Portland Channel.

“I now entertained no doubt of this being the continental shore, and it was equally evident to me that it extended itself far up that branch which we had passed in the afternoon of the 22nd, leading to the north-north-west. Having therefore determined to prosecute my researches in that quarter, our stock of provisions was recruited, and, after dining on board, we recommenced our examination along the western shore of the inlet, and rested for the night in a small cove about 12 miles to the southward of the ships. The afternoon and night were very rainy and unpleasant, but early the next morning we set out, with fair weather, and, having a rapid tide in our favour, soon reached the east point of entrance into the north-north-west branch, which, after Mr. Ramsden, the optician, I called Point Ramsden.”

Then he gives the latitude and longitude. That is Saturday, the 27th July, and that fixes the date when he begins the exploration which extended on to the 2nd August, and relates to the Portland Canal. Then there is a long account of the weather. We come to p. 339:—

“We continued to the north-north-east without meeting any interruption or break in the shores until about 8 in the evening, when we arrived at a
75 point on the western shore situated in latitude 55 degrees 16 minutes, longitude 230 degrees 8 minutes. Near this point we rested for the night. From hence the arm took a direction N. 15 W., continuing in general about the same width. Between us and the opposite shore was a small island nearly in mid-channel.

“From hence it took a more northerly direction, and then trended a little to the eastward of north, where by 10 in the forenoon of the following day it was found to terminate in low marshy land, in latitude 55 degrees 45 minutes, longitude 230 degrees 6 minutes. The shores of this inlet were nearly straight, and in general little more than a mile asunder, composed mostly of high rocky cliffs, covered with pine trees to a considerable height; but the more interior country was a compact body of high barren mountains covered with snow. As we pursued this branch, salmon in great plenty were leaping in all directions. Seals and sea otters were also seen in great numbers, even where the water was nearly fresh, and which was the case upwards of 20 miles from its termination.”

Then, he says:—

“Mortified with having devoted so much time to so little purpose, we made the best of our way back.”

Then, Tuesday, the 30th July:—

“At noon I observed the latitude to be 55 degrees 42 minutes. * * * Wednesday, the 31st July: the night was mild and pleasant, but a thick fog the next morning not only obscured the surrounding shores, but prevented our departure until 8 o'clock. * * * We directed our examination along the western or continental shore to the south-south-west in a continuation of the branch we had seen on the morning of the 27th.”

He describes the shores. I ought to have read that passage opposite Tuesday, the 30th July:—

“At noon I observed the latitude to be 55 degrees 42 minutes; from whence to our reaching the western shore, near where we had entered this branch, occupied our time until late in the evening of the 30th, when we brought to in a small cove behind an island about half a league from us, and not far from the place where we had met the ungracious natives on the preceding Saturday.”

Then, Wednesday, the 31st July:—

“We directed our examination along the western, or continental shore, to the south-south west in a continuation of the branch we had seen on the morning of the 27th.”

He describes the shores, and gives the latitude:—

“On the western shore, about half a league to the southward of this station, we entered a small opening not more than a cable's length in width, stretching to the northward; up this we had made a little progress, when the launch which had preceded us, and had reached its extremity, was met on her return,” and so on.

Then he describes their starting to return by the way which he had come, and the difficulties that the flood-tide interposed.

Then the top of p. 144:—

“Having again reached the arm leading to the south south-west, we proceeded in that direction, and passed two small rocky islets, about a mile to the south of the last-mentioned small arm. Finding the main channel now regularly decreasing to half a mile in width, and having a strong southerly breeze, we did not proceed more than 3 miles before we rested for the night.”

Then opposite p. 343:—

“From the place at which we had slept this channel took a direction S. 42 W., about a league and a half to a point in latitude 54 degrees 48 minutes, longitude 229 degrees 39½ minutes, from whence the continental shore takes a direction N. 25 W. about a league through a narrow channel not a fourth of a mile in breadth, having in it several islets and rocks. In order to make sure of keeping the continental shore on board, we pursued this, and left the south-westerly channel, whose width had increased to about a mile, and whose shores appeared to be much broken, as if admitting several passages to the sea. At the north end of this narrow channel we came to a larger one extending N. 35 E. and S. 35 W. The former first attracted our notice; this by noon was found to end in latitude 54 degrees 55½ minutes.”

And so on. He describes pursuing the examination of the continent in a south-westerly direction:—

“Which brought us by the evening to its end in that direction in latitude 54 degrees 48½ minutes, longitude 229 degrees 31½ minutes. From hence the channel extended to the south-south-east and met that which we had quitted in the morning, making the land which formed the western shore of the narrow channel, and that before us to the eastward an island, about ten miles in circuit.”

That is, encircling that island which I mentioned in giving a general account just now of his voyage.

It is called Fillmore Island in the larger map.

Then Friday, the 2nd August—and this passage is a crucial one, as bringing him to the mouth of Portland Canal:—

“In the morning of the 2nd 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.”

That passage—well, it is variously marked. It is the passage running between Sitklan Island and Wales Island.

Mr. TURNER. Is it not marked “Tongass Passage?”

SIR ROBERT FINLAY. It is marked “Tongass Passage” on some of the charts. The expression “Tongass Passage” in other of the charts is given as relating to the passage which is to the north of Kanaghnut and Sitklan Islands, and which is nearer Tongass Passage. I only adverted to the circumstance for the purpose of avoiding confusion. What is called “Tongass Passage” in many of the charts,

and which is the passage here referred to, is a passage running in the direction stated in the sentence I have just read, between Sitklan Island and Wales Island. The text reads:—

“Through which was a passage leading south-south-east towards the ocean.”

That exactly describes the passage to which my attention has just been called:—

“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.”

That must have been Sitklan and Kanaghunut Islands:

“From the north-west point of this land, situated in latitude 54 degrees 45½ minutes, longitude 229 degrees 28 minutes, the Pacific was evidently seen between N. 88 W. and S. 81 W. Off the point, at a little distance from the mainland, was an island about half a mile from us; the opposite or continental shore, lying north-east, not quite half a mile distant. Between this and the westernmost land in sight, the shores appeared to be much divided with small rocky islets and breakers in most directions. Between these and the continental shore our way was directed N. 26 degrees W.; at the distance of two miles we passed a large deserted village on the north point of a small cove, which point may also be considered as the south-east point of entrance into a narrow arm taking nearly a north direction; half a league to the northward of this point the eastern shore formed three small bays or coves, with four or five islets before them.”

Then he took the latitude and longitude. The inlet “* * * took a direction about N. 8 degrees W.; the shores became nearly straight and compact.” And so on.

Then he goes up the inlet which is marked Nakat Inlet subsequently in the charts, particularly the larger ones which have been more recently compiled, and I need not trouble the Tribunal with what he did there, nor with his subsequent explorations further to the north until he returned on the 14th of August to the mouth of Portland Canal. Now, that is at the bottom of p. 145:—

“Our course was directed from hence across the south-east entrance of the Canal de Revilla Gigedo, with a favourable gale, though we were not more fortunate in being able to see round us than when we passed the same region on the 4th; for immediately after noon the weather became extremely thick and hazy, with intervals of fog; and towards the evening a very heavy swell rolled from the south-west and broke upon the shores with great violence, and with every other appearance of an approaching storm. Before dark, however, we reached the cove that had afforded us shelter under similar circumstances on the evening of the 3rd.”

I read that merely as identifying the spot.

The PRESIDENT. The way he went back?

Sir ROBERT FINLAY. Yes.

“Here we rested for the night, which was more temperate than we had reason to expect, and early on the following morning we again bent our way towards the vessels.

“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.”

Mr. TURNER. You are wrong there, Sir Robert. He might have reached either the small narrow channel through which he passed into the ocean or the larger channel called Tongass Passage, which he noticed on the same morning that he passed into the ocean. Now, as

he passed both of those on that morning, which cove did he refer to and identify as the mouth of that passage which you say he called Portland Channel?

SIR ROBERT FINLAY. Yes, but I submit that where he says "we reached the cove"—he reached it on Wednesday, the 14th, before dark. "We reached the cove that had afforded us shelter under similar circumstances on the evening of the 3rd." That is, on the mainland.

MR. TURNER. That is where he goes to Cape Fox, only 2 miles from Portland Channel?

SIR ROBERT FINLAY. Yes, quite right, sir, then rested there for the night:—

"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."

Well,—

"The distance from its entrance to its source is about 70 miles."

MR. LODGE. Both of these descriptions would apply to both of those mouths—both of those openings into the ocean from this channel.

78 SIR ROBERT FINLAY. Yes; but you would observe, Sir, that he says that he passed Tongass Passage leaving it on his left side, but did not go down that channel leading to the south-south-east.

MR. TURNER. He spoke of it, however as a channel leading to the ocean, and says in order to keep in touch with the continental shore he passed on in the hope of finding a more northerly and westerly passage, in which he was not disappointed, but that would not indicate much, or the particular one which he considered the true mouth of this channel.

SIR ROBERT FINLAY. Well, I submit that it is fixed in this way. That in the passage opposite, Friday the 2nd August—the day when it occurred—he says this:—

"In the morning of the 2nd 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 south-south-east towards the ocean."

Well, that passage leading south-south-east towards the ocean must, I think, be what is often marked Tongass Passage—between Sitklan and Wales Islands.

MR. TURNER. No. The later maps show it to be much the larger channel and much the most open.

SIR ROBERT FINLAY. Yes.

MR. TURNER. The other being small and tortuous.

SIR ROBERT FINLAY. Yes.

MR. TURNER. But now, inasmuch as Vancouver must have passed both of these openings on the morning of the 15th, when returning to his ship, what is there to indicate which one of them he meant?

SIR ROBERT FINLAY. There is this, Sir. I submit that he did not explore that passage—Tongass.

MR. TURNER. No. He did not explore it; he could see through it to the ocean.

SIR ROBERT FINLAY. But he did not explore it. He says expressly:—

“We passed this in the hope of finding a more northerly 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 south of us one or more islands.”

And then he gives all these details.

MR. TURNER. His narrative does not say that he did not so because he considered that the more important of the two channels, but because he wanted to keep in communication with the continental shore.

SIR ROBERT FINLAY. Yes, but then the question is this. I submit, Sir, that on the 14th August he says:—

“In the forenoon we reached that arm of the sea whose examination had occupied our time from the 27th of the preceeding to the 2nd of this month.”

MR. AYLESWORTH. He got back where he had been before.

SIR ROBERT FINLAY. He got back where he had been before. Now, whether Tongass Passage be larger or smaller—I daresay it is larger—Captain Vancouver did not explore it; he says expressly that he passed it by in the hopes of finding another channel to the ocean, and in that hope he says he was not disappointed. Now, I submit that it is absolutely impossible to suppose that when Captain Vancouver says that “on the Wednesday, the 14th of August, he reached that arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month,” he was referring to that Tongass Passage between Wales Island and Sitklan Island which he had not examined, which he had passed by, which he had neglected for another channel which he thought would communicate with the ocean, a hope in which he says he was not disappointed. Whatever the merits of those respective passages be in the matter of size and navigability—

MR. TURNER. The later maps of that country indicate that it was not necessary to go down that passage to examine it, it is possible to look through it to the sea from where he was.

SIR ROBERT FINLAY. But Captain Vancouver would not talk of having examined Tongass Passage if he had merely looked down one end of it. I mean Captain Vancouver, an explorer, would go down. When he examined the passage, he sounded, he observed the coasts, and he took observations which are incompatible with the idea that his examination consisted merely of looking down a passage.

MR. TURNER. He was speaking in a large sense of the passage which he had examined from the 27th July to the 2nd August, being from the head to the mouth. I do not understand him as meaning that he confined himself to every foot of the water that he had examined. I do not want to interrupt you, Sir Robert.

SIR ROBERT FINLAY. On the contrary, I am really very much obliged to you for directing my attention to the point.

MR. TURNER. It is an obscure thing in the narrative which it might be well to look into.

MR. AYLESWORTH. One would think from his language that he could not have seen the length of it, because he says it is leading towards the ocean.

SIR ROBERT FINLAY. Now, may I hand up this, which shows in a

convenient way extracts from the various maps? This is the United States' Coast Survey of 1822 in the corner.

(Map handed in to the Tribunal.)

SIR ROBERT FINLAY. Now, this is from the United States' Coast Survey. I call attention to the physical geography as shown there. Now, taking the course which I have been delineating and following in the narrative of Captain Vancouver, who is coming down this channel, which, on this chart, is called Pearse Canal. Well, he comes down with Pearse Island on his left hand; he then passes the inlet between Wales Island and Pearse Island. He turns up to the right, and to explore that narrow inlet between Filmore Island and the mainland, goes round Filmore Island, and comes in to rejoin the channel.

MR. DICKINSON. Have you got an extra copy of that so that we can follow you?

SIR ROBERT FINLAY. Certainly.

THE PRESIDENT. Take this copy and we can take it back afterwards.

SIR ROBERT FINLAY. I think this is taken from British Case Atlas 35. Yes, it is. What I am on will be found in the British Atlas No. 35.

80 Captain Vancouver was proceeding down this channel which is marked Pearse Canal in this survey of the United States. He gets past Filmore Island which he had circumnavigated. Then he comes to this channel which lies south-south-east. He says that he *passed* that.

THE PRESIDENT. It might be either Tongass Channel or the next one.

SIR ROBERT FINLAY. From the description I think it might be Tongass.

THE PRESIDENT. Very well. That is what Senator Turner suggests. One or the other.

SIR ROBERT FINLAY. It might be either.

THE PRESIDENT. Yes. They both go roughly south-south-east.

SIR ROBERT FINLAY. Yes.

THE PRESIDENT. They are really parallel.

SIR ROBERT FINLAY. From what he says about it being broken up to the southward into one or more islands, I think it is probably Tongass.

THE PRESIDENT. I agree, Mr. Attorney.

SIR ROBERT FINLAY. I mean that is not vital to my argument. In fact, for the purpose that I am now using the map it would be a little better if I thought it was Lincoln Channel. But he passes by that channel leading south-south-east, because, he says that he hoped that he would find on the route upon which they were proceeding roughly westward a communication with the ocean, and in that hope he says he was not disappointed. And then he explores minutely and gives particulars of that channel down until he gets to the open sea—to the open ocean. Now I put it to the Tribunal that it is absolutely impossible that Captain Vancouver should have spoken of Tongass Passage or Lincoln Channel as a passage which he had examined, the examination of which had occupied him a certain time. It is no examination at all to look down the end of it. This channel would be a good many miles long.

Mr. AYLESWORTH. It would not seem to be more than a couple of miles in length.

Sir ROBERT FINLAY. The Island of Sitklan is, I believe, 2 miles long, and the passage is quite that length—a little longer—when one takes into account the opposite shore.

The PRESIDENT. I think, Mr. Attorney, you have made your point clear, and it is not of very great importance; but if you will look at the passage at p. 144 where he describes where he got to when he saw the ocean, a little island which is near the coast situated in 54 degrees 45½ minutes and from the north-west point of this island, the Pacific was evidently seen between N. 88 W. and S. 81 W. That shows he must have gone down that channel what I would call straight out and not gone down either Tongass Channel or Lincoln Channel.

Mr. TURNER. There is no doubt he went down that channel.

Sir ROBERT FINLAY. I do not contest that, but the suggestion which I understood was made to me was this, that although he did not go down Tongass Channel and although he did go down north of Kanagahunut he might have spoken of Tongass Channel as the channel which he had examined.

81 Mr. TURNER. There is another point; that would make Vancouver's Portland Channel lie about the parallel of 54 degrees 40 minutes.

Sir ROBERT FINLAY. Yes, but I was not aware that it had ever been suggested that the channel which Vancouver named Portland Channel was one which ran down Tongass Passage and terminated there, and I submit that the narrative absolutely disproves it because what he says is that he "reached the arm of the sea whose examination had occupied our time from the 27th of the preceding to the 2nd of this month."

Well, Tongass Channel he did not examine for the reason that he gives; and I do appeal to the Tribunal to say that it is perfectly impossible to suppose that Captain Vancouver referred to Tongass Passage when he says that he reached the mouth of the channel which he had examined. There is one point I ought to mention: I am not sure that I correctly heard Senator Turner's last observation as to the latitude. The mouth of Tongass Passage is not upon 54 degrees 40 minutes.

Mr. TURNER. I say it is pretty nearly upon that.

Sir ROBERT FINLAY. It is somewhere to the north of it.

Mr. AYLESWORTH. The southern end of it would be about 54 degrees 40 minutes?

Sir ROBERT FINLAY. Not quite, Sir.

Mr. AYLESWORTH. 54 degrees 42 minutes or 43 minutes?

The PRESIDENT. I do not want to divert you, Mr. Attorney, but I do not remember anything in Vancouver that puts any part of Portland Channel at 54 degrees 40 minutes.

Sir ROBERT FINLAY. No.

The PRESIDENT. I do not remember anything, but there may be.

Sir ROBERT FINLAY. No, but I was dealing entirely, my Lord, with the observations made by Senator Turner.

Mr. TURNER. There are many expressions indicating that some negotiators thought that the Portland channel they had in mind was in 54 degrees 40 minutes. I mean that is suggested.

The PRESIDENT. I do not remember them.

SIR ROBERT FINLAY. The suggestion I was dealing with was merely this. I had not, of course, before had my attention directed to the possibility of Tongass Passage being selected as the opening of Vancouver's Portland Canal, but I do point out that the opening of Tongass Passage is not in 54 degrees 40 minutes. It is somewhere to the north of it.

MR. TURNER. Yes, I think that is so.

SIR ROBERT FINLAY. And I think that the passage that immediately follows strongly corroborates the observation I was venturing to make. At the top of p. 146—this is still on Thursday the 15th August—he says:—

“Our provisions being now so nearly exhausted, that we each dined this day on a half-a-pint of peas. We were under the necessity of keeping on our oars, or under sail all night; and about seven in the morning we arrived on board, much to the satisfaction of all parties, as we had now been almost entirely confined to the boats for twenty-three days; in which time we had traversed 82 upwards of 700 geographical miles without having advanced our primary object, of tracing the continental boundary, more than 20 leagues from the station of the vessels. Such were the perplexing, tedious, and laborious means by which alone we were enabled by degrees to trace the north-western limits of the American Continent.”

So that by the time that he got to the entrance of Portland Canal to the ocean they were nearly starving; “they had only half a pint of peas each for their dinner,” and the diners then proceeded home to where his ships were, which was at some point. So that there is no suggestion that he went by any other route, that he went up Tongass Passage, or by any route other than that which he had followed when he came down. He went straight home, and, I think, having regard to the fact that he and his men were on the very verge of starvation, we may rely on it that they took the way that they knew home to the ships without spending any further time in exploration until they had got back to their stores.

MR. TURNER. I did not suggest, Sir Robert, that they returned through that passage at all. I did not mean to suggest that Vancouver had never passed through that passage.

SIR ROBERT FINLAY. No, I understood your suggestion to be, sir, merely that he passed the head of it.

MR. TURNER. Yes, the head of it.

SIR ROBERT FINLAY. And he might say that, having passed the head of it, he had examined it.

MR. TURNER. And being so short—only 2 miles—it might be included in that bit which he had examined between the 27th of July and the 2nd August.

SIR ROBERT FINLAY. I am much obliged to you, sir; we are quite at one as to the route that Vancouver followed, and the only point I have to deal with is the question whether his having passed the head of Tongass Passage would lead to his saying that he had examined that passage.

MR. TURNER. I do not want you to understand that my mind is fixed upon this proposition. The view merely occurred to me when I was reading Vancouver's narrative, and I desired to get your views on the subject.

SIR ROBERT FINLAY. I am really extremely obliged to you, sir, for

calling my attention to it. Then we go on, and Chapter VI is headed—I am reading still at p. 146 of the British Appendix;—

“Quit Observatory Inlet—Proceed to the North-West—Description of Port Stewart—Visited by the natives—Account of two boat excursions.”

Then, Saturday the 17th:—

“The route by which the vessels had advanced to Salmon Cove, being infinitely better for them to pursue towards Cape Caamano, than the intricate channel through which I had passed in the boats, we weighed with the intention of directing our course thus about 6 in the morning, but having a strong gale from the southward, we made little progress windward.

“By 8 in the evening we had advanced about 7 miles from Salmon Cove, where we anchored for the night.”

Then the next morning, Monday, the 19th:—

“A want of wind and the flood tide prevented our weighing until 9 the following morning, when, with the ebb tide, we again proceeded, but did not reach the entrance of Observatory Inlet until 2 o'clock in the morning of the 20th, a distance of not more than 13 leagues from Salmon Cove.” Now, more than 13 leagues from Salmon Cove takes you down to the point of Cape Maskelyne, where Observatory Inlet opens into the ocean.

“The west point of Observatory Inlet I distinguished by calling it Point Wales—after my much-esteemed friend Mr. Wales, of Christ's Hospital.”

83 Now, there we have, I submit, from Vancouver, when these two passages are looked at in connection with the details of the narrative, and I think that what has occurred has shown that it was really necessary to go through the details of the narrative.

The PRESIDENT. Certainly.

SIR ROBERT FINLAY. These two passages, when taken in conjunction with the details of the narrative and with the chronology, I submit, proves to demonstration that what Vancouver in his narrative calls Portland Canal was the channel running to the north of Kanaghunut, Sitklan, Wales and Pearse Islands, and that Observatory Inlet, according to Captain Vancouver, reached the sea at Port Maskelyne. I claim to have established these two points.

Now, what is suggested on the other side? It is said that there is no evidence that Vancouver's narrative was before the negotiators, and that the narrative may be rejected—that only the charts are what the negotiators probably looked at. Now, in the first place, I submit that the probability is absolutely overwhelming that Vancouver's narrative was not only before the negotiators but had been most carefully considered by them. This whole matter of the north-west coast of America had been raised by that Ukase claiming these extensive jurisdictions.

The PRESIDENT. As far as you know, Mr. Attorney, had there been any other detailed survey of these seas, except Vancouver's, before 1825?

SIR ROBERT FINLAY. I think not.

The PRESIDENT. Detailed survey, I mean?

SIR ROBERT FINLAY. I am told not, my Lord.

The PRESIDENT. Of course, Vancouver's was translated into French, and was known to be a very great work even at that date.

SIR ROBERT FINLAY. When I hesitated for a moment in answering your Lordship's questions I had in my mind the explorations of a Russian explorer, I think Lisianski, but I am told he had never been at this spot. He is referred to somewhere in the negotiations, and he refers to Vancouver as the authority on this part of the coast.

Mr. LODGE. It would appear that there was a Spanish survey by Caamaño, by whom the Cape was named prior to Vancouver.

Mr. AYLESWORTH. He had been there, but perhaps only as an explorer.

Mr. LODGE. It is stated that he made a survey.

Mr. AYLESWORTH. His chart is referred to.

Mr. LODGE. Well, he made a chart. Of course, none of them were surveys.

SIR ROBERT FINLAY. No, of course, I do not mean to say that navigators had not been there before, but that they had not given names to certain points, for they had.

Mr. LODGE. They had charted it.

SIR ROBERT FINLAY. But I think I may say this without fear of contradiction that there had been nothing in the nature of a complete survey or elaborate survey of the coast until Vancouver.

Mr. LODGE. No.

84 SIR ROBERT FINLAY. Then Vancouver really filled up what had been a gap in the knowledge of this coast. Now, I might almost be content to rest upon the inherent probability that when this subject was being dealt with such a narrative as Vancouver's, as authority on the subject, was not neglected; but I cannot let it rest quite there, because this point is really one of very great practical importance. I referred in my opening to the fact that the communication by the Lynn Canal, especially with Yukon, was a very important point with reference to the value of this territory. That is a most important point. This point also is of very considerable value, because Port Simpson, which is just opposite Wales Island, may become a great railway terminus, with a town about it and works; a large station may develop itself there, and it is only right that an island like Wales Island, which in itself is of no great value, should be in the hands of the Power which may have this considerable station at Port Simpson.

The United States' Argument on this point will be found on p. 29 of their Argument:—

“The contention of the British Case is that the only canal known by the name of Portland at the time of the Treaty had been surveyed, charted, described and named by Vancouver as Portland Canal, and is so called in the first edition of his book, but changed in the second edition to Portland Channel. The variation seems immaterial.

“This contention is based upon the statement in the British Case, p. 50, that Vancouver's narrative was known to have been before the negotiators. In view of the fact that Vancouver's narrative is not referred to anywhere in the negotiations by any of the negotiators, this statement calls for affirmative proof, but no evidence is offered in its support. On the contrary, it appears in the negotiations as shown below that Vancouver's narrative was not followed by the negotiators in the astronomical locations or in the geographical references, and it further appears that Vancouver's charts rather than his narrative were the final expression of his conclusions, and were so regarded by the cartographers who followed him.”

Now, I think I had better dispose of that point at once—the assertion that Vancouver's charts, rather than his narrative, were the best expression of his conclusions. If the Tribunal will refer to the advertisement to the first edition of Vancouver's work, published in 1798, it will be found that it is stated that the narrative had been

revised and compared with the charts by Vancouver himself up to a certain point. It is at the beginning of the advertisement from the editor. Captain Vancouver had unfortunately died before the thing was quite completed.

The PRESIDENT. Has it got a page?

Sir ROBERT FINLAY. It has not a page. It is the first page of the advertisement.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. It comes just before the list of the prints.

The advertisement from the "Editor":—

"As a considerable delay has necessarily taken place in the publication of this work, in consequence of the decease of the late Captain Vancouver, it becomes of absolute necessity to give an accurate account of the state of the work at the period when his last fatal indisposition rendered him incapable of attending any more to business, lest the melancholy event which has retarded its completion should tend to affect its authenticity in the public opinion. The two first volumes, excepting the introduction, and as far as p. 288 of the third and last volume, were printed, and Captain Vancouver had finished a laborious examination of the impression, and had compared it with the engraved charts and headlands of his discoveries, from the commencement of his survey in the year 1791 to the conclusion of it at the port of Valparaiso, on his return to England in the year 1795. He had also prepared the introduction, and a further part of the journal, as far as p. 408 of the last volume. The whole, therefore, of the important part of the work, which comprehends his geographical discoveries and improvements, is now presented to the public exactly as it would have been had Captain Vancouver been still living."

So that we have the fact that Captain Vancouver had examined and compared the narrative and the charts. The other point made in this passage, which I had better dispose of at once also, is the fact that the negotiators did not follow Vancouver in his astronomical locations. Yet it is perfectly true, as I said before, that Vancouver in his narrative takes the eastern longitude—he was coming from that side—but if any of his charts are looked at, it will be found that they give both.

At the top—I take No. 4 in the United States' Case Atlas, the first map that happens to lie open before me—at the top the west longitude from Greenwich is given, and at the bottom the east longitude is given from Greenwich. So that the negotiators had before them both longitudes. Even if they had not had the map, with that help, I do not think it is a calculation which would be beyond the power of either Russian or English diplomatists.

Now, it is said in the passage that I have just read that Vancouver's narrative is not referred to anywhere in the negotiations by any of the negotiators. Well, I think I can give the Tribunal affirmative evidence that that narrative was before the negotiators. I shall here touch upon passages which I have already read in giving a general and connected view of the negotiations; but it is absolutely necessary to focus them in this connection. Baron Tuyl mentions Observatory Inlet in that despatch; it is set out in the British Case Appendix at p. 33. A despatch of the 21st October, 1822, very early in the day, addressed to Count Nesselrode. What he says is this. I omit the first sentence:—

"But supposing it to be impossible to succeed in *extending* the frontiers of Russia much farther toward the south, it seems that it would be indispensable to have them fixed at least at the 55th degree of north latitude, or, better still, at the southern point of the archipelago of the Prince of Wales and the *Observatory Inlet*, which are situated almost under that parallel."

Well of course we know that they are not under the 55th parallel exactly; but Baron Tuyll says: "*situés à peu près* under that parallel."

MR. TURNER. You were referring yesterday to Baron Tuyll as being the Minister to Great Britain. Was he not at that time the accredited Minister to the United States, and on his way to his post in the United States?

SIR ROBERT FINLAY. That was a mistake of mine. I thought some reference was made to his being in London, and I had hastily assumed that he was Minister to England. I am obliged for the correction.

MR. TURNER. Baron Tuyll had nothing to do with the negotiations after the writing of that letter.

SIR ROBERT FINLAY. No, but Baron Tuyll was the Russian Minister, and Baron Tuyll was in communication with Count Nesselrode, and this is dated from Liverpool, and I think it was probably the fact that it is dated from England that led me into the error of supposing that he was Minister to England.

MR. AYLESWORTH. He was probably on his way.

SIR ROBERT FINLAY. Very likely.

MR. TURNER. That communication was some three years prior to the making of the Treaty now under consideration.

SIR ROBERT FINLAY. Oh, certainly; it was at the inception.

86 MR. AYLESWORTH. It is just before the Verona Conference.

SIR ROBERT FINLAY. Its importance is this—that it is at the very inception of the negotiations, and I am glad to have the opportunity of calling attention to the fact that the first stage of the negotiations in October to the 22nd of November coincides with the date of this letter. This matter originated in the *pourparlers* between the Duke of Wellington and Counts Nesselrode and Lieven at Verona; these *pourparlers*—the details, as narrated in the despatches I gave yesterday—took place in October and the 22nd of November and here on the 21st of October, 1822. We have Baron Tuyll writing to Count Nesselrode suggesting that the boundary should be fixed at the southern point of the archipelago of the Prince of Wales and Observatory Inlet, situated nearly under this parallel of 55 degrees.

(Adjourned for a short time.)

SIR ROBERT FINLAY. I was dealing with the question of the position of Baron Tuyll and his communication with Count Nesselrode. If reference is made to p. 39 of the Appendix it will appear what Baron Tuyll's position was. This is a despatch from Mr. Stratford Canning, who was then, I believe, the English Minister at Washington, to Mr. George Canning. On the 3rd of May, 1823, he writes:—

"The Russian Envoy, Baron Tuyll, who arrived here about three weeks ago, has proposed to the American Government, in the name of his Court, to send instructions to Mr. Middleton, at St. Petersburg, for the purpose of enabling him to negotiate an arrangement of the differences arising out of the claims asserted by the Emperor of Russia, to an exclusive dominion over the north-west coast of America and the neighbouring seas as far as the 51st degree of north latitude. The proposal I conceive to be similar to that which was made by Count Nesselrode to His Majesty's Plenipotentiary at Verona, relative to the same object, as it affects Great Britain."

I need not read further. My object is only to show that Baron Tuyll was actively concerned in this matter, and this letter of his

was sent to Count Nesselrode, who was the Russian Foreign Minister at the time, or Chancellor.

Mr. AYLESWORTH. Mr. Attorney-General, with reference to that letter that you are referring to on p. 33, is there anything in that letter in its language which the writer could not have obtained from consulting maps without Vancouver's narrative?

Sir ROBERT FINLAY. I think there is this, Sir, that when he suggests taking "the southern point of the archipelago of the Prince of Wales and the Observatory Inlet, which are situated almost under that parallel," he must refer to the mouth of the Observatory Inlet.

The PRESIDENT. But he could get that from the map, Mr. Attorney, that language. I looked, and I happened to see he could get all that information from the map.

Sir ROBERT FINLAY. Yes, on the other side, of course, that is contested.

The PRESIDENT. Yes, I know that is another point, but Mr. Aylesworth's question was that it is not proved at present that they had the narrative before them—that particular document.

Sir ROBERT FINLAY. It does not establish it. It tends that way. On the other side it is said that the maps rather tend to the opposite conclusion. I do not admit that at all. I say that when the maps are looked at you may take it that they went to the maps, and to that

87 extent it may be that Baron Tuyll took that from the maps. But the narrative is perfectly clear upon the point, and I submit that, in writing that letter, Baron Tuyll no doubt had in his mind not only the maps, but also the narrative. The essential point to observe is that he must be referring to the mouth of the Observatory Inlet, a mouth opening into the ocean. It could not possibly be a reference to an interior mouth opening off another inlet. The terms of the letter, I submit, entirely negative any idea of that kind.

Then this proposal with regard to Observatory Inlet was never renewed. Instead of it the Portland Canal was taken, and taken, as I shall submit to the Tribunal, for the reason that they desired to deal with the mainland, and that the islands which are to the south were to be excluded.

Now, the next point that I desire to bring forward in this connection, as showing that the narrative must be taken to have been before the negotiators, is the despatch of M. Poletica to Mr. Adams, dated the 28th of February, 1822. That will be found in the United States Case Appendix, p. 33. It begins at p. 32. It is a paragraph in the middle of p. 33. It begins:—

"In 1763 the Russian establishments had already extended as far as the Island of Kodiak (or Kichtak). In 1778 Cook found them at Ounalaska, and some Russian inscriptions at Kodiak. Vancouver saw the Russian establishment in the Bay of Kinal. In fine, Captains Meares, Portlock, La Peyrouse, unanimously attest the existence of Russian establishments in these latitudes."

Now, "Kenai" is the Russian name for "Cook's Inlet." It will so appear if the Russian chart in the British atlas is looked at. It is No. 5.

The PRESIDENT. What sheet?

Sir ROBERT FINLAY. No. 5.

The PRESIDENT. In the British atlas?

Sir ROBERT FINLAY. In the British atlas. If your Lordship will

look at this, you will see an inlet immediately to the east of the Alaska Peninsula, which is delineated in the Russian characters. I do not pretend to be able to read them myself, but my friend, Mr. Simon, who, since this Case began, has added to his great knowledge in other directions some knowledge of Russian, informs me that the word there is "guba," which means a gulf or inlet, and is used to designate the mouth of Kenai.

The PRESIDENT. I think it is still called the Kenai peninsula?

Mr. LODGE. Yes; it is called the Kenai peninsula.

Sir ROBERT FINLAY. And the word opposite on the mainland here apparently ought to be pronounced in the same way, and I think the map before the Tribunal has the same annotation as mine has, "Guba Kenaiska" is Cook's Inlet. Now, if the Tribunal will look at volume 3 of Vancouver, first edition, beginning at p. 140 onwards, it will be found that he gives an account of Russian settlements and settlers on Cook's Inlet. Cook's Inlet is the name that he gives it, but it is the same inlet. I need not occupy the time by reading the passage. I give the reference. It is from volume 3, first edition, p. 140 onward.

Mr. TURNER. Do you observe, Sir Robert, in Mr. Pelly's Memorandum, in reply to this it says that M. de Poletica got the information contained in his letter from Coxe's "Russian History." That is the comment that Mr. Pelly, the Deputy-Governor of Hudson's Bay Company, makes on his letter.

Sir ROBERT FINLAY. What page are you referring to, Sir?

Mr. TURNER. I do not remember; I have not the books before me. It is used in the same connection in your Case, I imagine, there; it is said to be a Memorandum prepared in reply.

88 Sir ROBERT FINLAY. Yes, I have got that. My doubt was as to what point of the Memorandum you are referring to.

Mr. TURNER. It states in that, that M. de Poletica had derived his information from Coxe's "Russian History."

The PRESIDENT. I think the Senator is referring to the top of p. 26 of the British Appendix: "See Coxe's 'Account of Russian Discoveries.'"

Sir ROBERT FINLAY. I think the reference must be to p. 27.

The PRESIDENT. Yes, the middle of p. 27. Quite right.

Sir ROBERT FINLAY. The middle of p. 27. I am going to refer to this Memorandum. It is the next point I am going to touch upon. I will then comment upon that point to which the Senator has been good enough to call my attention.

Mr. TURNER. It is in regard to the Poletica letter, that statement of Mr. Pelly's.

Sir ROBERT FINLAY. No, but I will deal with the point at once. At p. 27 Mr. Pelly commenting upon this says:—

"Ounalaska and Kodiak are both islands unconnected with the north-west coast, but Captain Cook had discovered and taken possession in the name of His Britannic Majesty of the whole coast," and so on. I think that is a comment upon paragraph 5 of the extracts from Mr. Poletica's contention:—

"If the Imperial Government had at the time published the discoveries made by the Russian navigators after Behring and Tchirikoff, viz., Chodiloff, Serebrianicoff, Krassilnicoff, Paycoff, Poushearoff, Lazeriff, Medwedeff, Soivnieff, Lewasheff, Krimstin, and others, no one could refuse to Russia the right of first discovery, nor could even any one deny her of first occupation."

What Mr. Pelly says is this: "On a reference to Coxe's 'Russian Discoveries' it is evident that the whole of these expeditions were

confined to the Fox and Aleutian Islands, and from the order in which the names are placed, it would appear that M. de Poletica took his information from this work." I do not know whether I am right that that is the passage to which the Senator was good enough to call my attention. That sufficiently answers the point raised by Mr. Turner.

Mr. TURNER. That is the passage I had in my mind.

Sir ROBERT FINLAY. Well, then, that has no relevance to the point that M. de Poletica speaks of Vancouver having found Russian settlers in Kenai Bay or Cook's Inlet. That is referring to a totally different head, namely, the discoveries made by Russian navigators after Behring and Tchirikoff, and what Mr. Pelly says is that it appears M. de Poletica took his information as to these Russian discoveries, which were confined to the Fox and Aleutian Islands, from Coxe's "Russian Discoveries." I submit it does not affect the point that I was making with regard to M. Poletica's reference to Vancouver seeing Russian settlers on the Bay of Kenai. The next paragraph following this 5th paragraph from which I have just read the comment or an extract is this. M. Poletica observes: "That Don José Martinez, in 1789, did not remove the Russian colonists from Nootka, and that the Spaniards acknowledged, by the Report of Captain Malespina, that they had no right beyond Cape Blanc in latitude 42 degrees 50 minutes." The comment on that is:—

"Neither Cook nor Vancouver mention these settlers. So little did the Court of Madrid know of settlers at Nootka that in its State paper to Mr. Fitzherbert it mentions that they are informed that Russia intended forming establishments."

Now, I submit that a perusal of these passages, demonstrates that Mr. Pelly's statement that M. de Poletica took his information from Coxe's "Russian History," has no reference to the point. The point on which we are is as to Russian settlers on Kenai Bay seen by Vancouver, because the reference to Coxe is made solely in connection with the account of Russian discoveries which M. de Poletica gives in the same order in which they are to be found in Coxe's narrative.

I do not think that anyone can look through this despatch of M. de Poletica without seeing the extreme care with which he had worked up the subject.

The PRESIDENT. Certainly.

Sir ROBERT FINLAY. And, in fact, the attention of Russia had been prominently called to it by the necessity for dealing with these various Ukases; and M. de Poletica, while he had consulted Coxe's narrative, had, as I submit, from the passage which I have just cited, evidently also consulted Vancouver's narrative, which testifies to the existence of Russian settlers upon what is now known as Cook's Inlet.

Mr. AYLESWORTH. Was Coxe's earlier than Vancouver?

Sir ROBERT FINLAY. No; Coxe's is a mere narrative. I understand that Coxe himself was not an explorer, but a mere historian or narrator. I am not familiar with the book myself, but I should infer, from the way it is mentioned, that Coxe's narrative was simply an account of Russian discoveries. It is mentioned in somewhat similar terms at the top of p. 26: "See Coxe's 'Account of Russian Discoveries.'" So that I fancy that Mr. Coxe was a literary man who gave an account of Russian discoveries.

Mr. AYLESWORTH. I thought if he were earlier than Vancouver he, of course, could not say what Vancouver had found when he reached Kenai Bay.

SIR ROBERT FINLAY. I am sorry that I do not know the date of the writings of Mr. Coxe, but that can be found out I have no doubt. It could easily be found out. That will be ascertained, and I will mention it to the Tribunal to-morrow morning—what is the date of Coxe's "Russian Discoveries," what the date of the book is. Now, that establishes that M. de Poletica had consulted Vancouver's narrative.

Now, the next point that I desire to make in this connection is, that Mr. Pelly's Memorandum refers over and over again to Vancouver, and that Mr. Pelly's Memorandum was in the hands of the English negotiators, so that, having established that it was known to the Russian Minister to the United States, who was writing to Count Nesselrode on this subject, and having established that it was known to M. de Poletica, who represented Russia during the greater part of these negotiations, I now proceed to show that it was known to the English negotiators. Now, Mr. Pelly's Memorandum begins at p. 25 of the Appendix. I have just been referring to it, and the passage is where Vancouver's narratives are mentioned occur twice. On p. 27, near the top, he says Vancouver, commenting upon M. de Poletica's reference to the Russian establishment in the Bay of Kenai, says:—

"Vancouver was visited by Russians in Prince William's Sound, which is in upwards of 60 degrees."

Then, about the middle of the page, in commenting upon the statement that Don José Martinez in 1789 did not remove the Russian colonists from Nootka, and so on, Mr. Pelly says:—

"Neither Cook nor Vancouver mention these settlers," and on p. 28, commenting on the statement "That in 1789 the Spanish packet 'St. Charles' found in the latitude of 48 and 49 a Russian colony of 20 families, which were the descendants of the companions of Tchirikoff," M. de Poletica says:—

"This establishment, even if authentic that they were the descendants of Tchirikoff, would be on Nootka, an island, and therefore giving no right of possession to the mainland. It is singular, if they were the descendants of Tchirikoff, that neither Krusenstern or Kotzebue mention the circumstance, and that neither Vancouver or Cook, or any traders have noticed it."

THE PRESIDENT. Mr. Attorney, you need not trouble as to Coxe's book; Secretary Root has pointed out that in the book that has been handed to us, the dictionary, it is stated that Mr. Coxe "spent some time in St. Petersburg prior to 1780, and while there specially interested himself in the discoveries made by the Russians in Asia and America between 1741 and the date of his writings. His results were published in 1780 under the title 'Account of the Russian Discoveries between Asia and America, &c.' This passed through several editions, the third appearing at London, 1787, and the fourth in 1803. Two French translations appeared in 1781, and a German one in 1783." It would seem that substantially it was before Vancouver.

SIR ROBERT FINLAY. I am much obliged to your Lordship—a long time before. Vancouver was published in 1798. Of course, it demonstrates that the reference in the passage that I cited must be in Van-

couver's narrative. Now, I have just called attention to the three references to Vancouver's narrative in Mr. Pelly's Memorandum. Now, that Memorandum was sent to Mr. Canning on September 22nd, and sent on to the Duke of Wellington as appears in the British Case Appendix, at p. 28. It is the middle of a longish paragraph near the bottom of p. 28. He refers to certain information given by Lord Stowell to the Advocate-General, and says:—

"And as in both these opinions much stress is very properly laid upon the state of actual occupation of the territories claimed by Russia, and the different periods of time at which they were so occupied. I have obtained from the Governor of the principal Company of His Majesty's subjects trading in that part of the world the information which your Grace will find in the inclosed papers."

That was the information supplied to the Duke of Wellington. Then, in the British Case Appendix, pp. 34 and 35, it appears that Mr. Canning sent to Sir Charles Bagot, or intended to send on to Sir Charles Bagot, his despatch of the 5th February, 1823, the instruction addressed to the Duke of Wellington. That is the despatch of the 5th February, 1823, p. 34. Sir Charles Bagot, it is true on the 10th February says, at the end of his letter, on that date, p. 35:—

"I ought to state that in the copy of the instructions given to the Duke of Wellington by your despatch, No. 6, to his Grace of the 27th September last, and which was transmitted to me in your despatch, No. 5, of the 31st December, the opinions of Lord Stowell and of His Majesty's Advocate-General upon the subject of this Ukase, and other papers therein referred to, were not inclosed."

But I submit it cannot be doubted that he got them, and reference was made yesterday several times to several passages in which it incidentally appears that he had them, as in the ordinary course of things he must have had them. Now, I come to the knowledge of the American Minister, Mr. Middleton, and I will cite from a Memorandum which he prepared, dated the 1st December, 1823, which was for communication to the Russian Government, and was actually delivered to the Russian Government, in which a reference is made which must be to Vancouver's narrative. I will give the reference first to Vancouver's narrative, and then show that it was transmitted to the Russian Government. In the United States' Appendix, on p. 61, occurs the passage in question; the Memorandum in question begins at p. 59, being an inclosure in a despatch from St. Petersburg on the 1st December, 1823, from Mr. Middleton to Mr. Adams. He says at the beginning of that letter to Mr. Adams, p. 58:—

"I have prepared, and shall deliver in on the first fit occasion for His Imperial Majesty's inspection, a confidential memoir on the North-west question, and I now forward a copy of it, marked (a)."

In the confidential memorial which is inclosed and which begins on p. 59 there is a motto at the heading:—

"Great men never fear the truth, and wish nothing to be concealed from them."

91 In p. 61 occurs this passage:—

"Captain Vancouver learned, in 1794, from the Russians themselves upon the spot, that their most easterly establishment was then at port Etches, in Hinchin Brook Is'and (*Tchatcha* island of the Russians, and *Magdalena* of the Spaniards, in latitude 60 degrees 25 minutes), where they were established the preceding summer, and that *the continent* in the vicinity of that place was barren and *uninhabited*."

“From these facts, incontestably proved by historical documents, an irresistible conclusion follows, which agrees with the declaration of Russia in 1790; and it ought to appear definitive that she had no right to claim, either under the title of discovery or of possession *on the continent* east or south of Behring's Strait about the 60th degree of north latitude.”

Now, there is a distinct reference to what Vancouver learned in 1794 from the Russians themselves upon the spot, and then further down on the same page, in the paragraph last but two on that page 61 in the United States' Case, occurs this passage:—

“The two ships which had been seized by Martinez were released by him to continue the navigation which they had attempted around the globe. During this voyage the sloop ‘Columbia’ anchored, the first in a great river, which had been but imperfectly discovered by Quadra, and which Vancouver was unable to find again, but which is since known under the name of Columbia.”

Now occur these two references to Vancouver's narrative. Now, that was the long memorial intended for presentation to the Russian Government for His Imperial Majesty's inspection, as stated in the letter on p. 58 of the United States' Case. That it was actually delivered to Count Nesselrode on the 17th December, 1823, is established by the letter of the 5th February, 1824. On p. 67 of the United States' Case, this again is a letter from Mr. Middleton to Mr. Adams, and he says this:—

“Sir Charles Bagot not having received any instructions from his Court in relation to the North-west question up to the middle of December last, I was unwilling to lose any further time, and took occasion (as I informed you in my last it was my intention to do), from Count Nesselrode having expressed an opinion to me “*qu'il y avoit beaucoup de vague dans toute cette question,*” to assure him that it was far otherwise, and to request him to receive for his own and for the Emperor's perusal and *Confidential Memorial*, of which I forwarded you the first sketch in my No. 33.”

No. 33 is that letter of the 1st of December, 1823, which I have already referred to, so that that establishes that this Memorandum from Mr. Middleton was delivered to the Russian Government, as represented by Count Nesselrode, on the 17th of December, 1823. The reference to Vancouver in regard to the Settlement of Port Etches is the third volume of the 1st edition, p. 199. The next point that I call attention to in this connection, as to whether the narratives were before the negotiators or not, is that which I have already touched upon yesterday—that the Russian Plenipotentiaries for the first time, in a document which is the third enclosure in Sir Charles Bagot's despatch of 17th March, 1824, use the expression “Portland Channel.” The reference to that document is British Case Appendix, p. 72. Now, I remind the Tribunal again that the expression that Sir Charles Bagot had used in his communications with them was “Canal de Portland,” which is the equivalent of the Portland Canal. All the maps which could have been before the negotiators used the expression “Portland Canal.”

I can verify that by reference to the maps, if it is desirable. The first edition of Vancouver, in the French translation of that edition, used the expression “Portland Canal.” “Portland Channel” is the expression used in Vancouver's second edition, which appeared in 1801. There was no French translation of his second edition, and it would seem to follow that the Russians used this English expression, which they introduced into a document drawn up in French, must have taken it from the second English edition of Vancouver, which

therefore must have been before them. On that point, with regard to its being called channel or canal, it may just be convenient to say with regard to the phraseology that after that the expression Portland Channel was introduced in this way by the Russian negotiators. Sometimes it is canal, sometimes channel, but Mr. Canning's draft Treaty—final draft—speaks of Portland Channel, and this was followed in the subsequent draft and in the Treaty itself. Well, if I may add to these proofs I may further mention that the narratives and the maps were published together.

The PRESIDENT. That is what I wanted to know.

Sir ROBERT FINLAY. If your Lordship will look at the first volume of the edition of 1798 at the end of the advertisement—the advertisement follows the introduction—will be found lists of plates. A sheet which comes in directly after the advertisement and before Chapter I on the first page of that sheet is a list of the plates contained in the first volume with directions to the binder, and then follows the lists of plates with the pages opposite to which they appear. Then turning over the leaf on the next page one finds a list of the plates contained in the folio volume, and that is obviously the Atlas. For instance take one, No. 7, here. Survey of part of the coast of north-west America from latitude 51 degrees 45 minutes north, longitude 223 degrees to latitude 57 degrees, longitude 225 degrees 30 minutes east. That is the No. 7 which is so often referred to in the course of the documents—No. 7 of Vancouver. It appears as in the British Case Atlas, No. 2, in the United States Case Atlas as No. 4, so that we have it here that there were really two parts of this work, the one is the quarto with the texts and illustrations—plates; the other is the folio volume with the maps. The fact that they were issued together is several times referred to. I may take a passage from Mr. Bayard's despatch of the 20th of November, 1885, at p. 250 of the Appendix to the British Case. He speaks of the chart accompanying the narrative of Vancouver. It is near the bottom of the page. I am not going to deal with his argument, of course, just now; that is another matter. I am citing it for this specific purpose. He says, moreover, the wording of the Convention of 1825 was found to be in complete accord with the features presented by Vancouver's chart, and especially with chart No. 7 in the atlas accompanying the narrative of his voyage. That is the No. 7 which is represented by the plates in the British and United States Atlases respectively which I have just mentioned, and Mr. Dall, in his Memorandum inclosed in that letter of the 19th December, 1888, and which is set out in the United States Counter-Case Appendix at p. 99, speaks of Vancouver's report and atlas. He says:—

"In this connection it must be borne in mind," p. 99 I am reading from, "that Vancouver's charts were at that time, and remained practically up to 1880, the only charts worthy of consideration, all others being based upon them with but trifling changes, and these not always for the better. It is certain as anything can be of which we have not documentary evidence, that the maps used by the Agents of the Contracting Parties were those of the French translation of the official edition of Vancouver's report and atlas. This translation was issued in the same form as the original at Paris in 1799. There are others, but of later date and more or less abridged or modified in the translation. French being the diplomatic language, the French rather than the original edition would have been used."

I think that requires a little modification, because it is tolerably clear from the point that I last made, that the Russian negotiators

had before them the second edition, which was English and English alone, because it is there they must have found the expression, Portland Channel. I have got here the second edition, which was published in six volumes—the edition published in 1801. It is described as a new edition, with corrections illustrated with nineteen views and charts, and the charts appear to be in the volume.

Mr. TURNER. You still find the charts were not separate and apart from the volume? Do you understand that there were no publications of the charts separate and apart from the volume?

93 Sir ROBERT FINLAY. With the second edition?

Mr. TURNER. Up to 1825 do you understand that there had been no publication of the charts separate and apart from the volumes?

Sir ROBERT FINLAY. The charts, I understand it, form the folio volume.

The PRESIDENT. A separate volume with the first edition?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. But in the second edition they are in the text. That is what you suggest?

Sir ROBERT FINLAY. The second edition appears to give charts in the text. Whether there was an atlas published also with the second edition I do not know, but there are certainly some charts which are in the text of the second edition.

Mr. TURNER. What I should like to know, Sir Robert, is whether you have made any investigations whether or no any of these Vancouver charts were published by any publisher separate and apart from the volumes of the narrative.

Sir ROBERT FINLAY. They were published along with the volumes of the narrative.

Mr. TURNER. Undoubtedly they were, but do you know whether they were published separately from them or not. Have you any knowledge on that subject?

Sir ROBERT FINLAY. I cannot tell you, Sir. What we have got is that there were the three volumes in quarto of the first edition, and that list of plates at the end of the advertisement to which I have just referred says that with these three volumes there was published a folio volume containing the charts. I really do not know whether it was possible to buy the charts without the narrative. I do not know what terms were made by the publisher. It may have been so or it may not—I really am not in a position to affirm one way or the other on that subject. There is a very curious incident to which my friend Mr. Rowlatt has just called my attention in that connection. It is stated in the advertisement to the second edition, it appears that the copper-plates of the charts contained in the folio volume were all stolen. It is very short; it explains the point to which the Senator has been good enough to direct my attention; I had better read the advertisement:—

“The publisher finds it necessary only to state, for the information of this new edition, that the copper-plates of the charts contained in the folio volume, which accompanied the first edition, were all stolen, and may therefore be considered as irrecoverably lost.

“The whole of the views, except the headlands,^a are retained. The general

^a These are six in number and may be had, price 7s.”

chart, and that of the 'New Discoveries,' &c., are re-engraved, and will, it is conceived, completely satisfy the majority of his readers.

"It must, however, be observed, that the other charts are indispensably necessary for such as may hereafter navigate those seas. This edition has received throughout the requisite corrections of the Editor, John Vancouver, Esq.

"No work has maintained a higher character in the public estimation than this voyage, and the expense of the quarto edition could alone have prevented its being universally read.

"The class of the plates has, of course, greatly enhanced the value of the few copies of the original edition which were not at the time sold. They may, however, be had until Christmas next, with the folio volume of charts at 94 Twelve Guineas; but should any then remain they will be advanced to Fifteen Guineas."

A very curious incident, so that they seem really to have been sold together. That appears to answer the question which the Senator put to me.

Well, I submit all these circumstances when they are added to the overwhelming probabilities of the case, tend only to establish completely that the negotiators must be taken to have arranged the terms of their Treaty with Vancouver's narrative before them.

Well, what suggestions are made on the other side? One suggestion I have already dealt with. It is made in the United States' Counter-Case at p. 10, and is to the effect that the degrees of longitude are given from the west and not from the east.

I referred to a passage in the Argument where the same point was stated. It is also stated at p. 10 of the Counter-Case:—

"Furthermore it should be noted that throughout the correspondence between the negotiators and in the Treaty the astronomical locations are given in longitude *west* of Greenwich, while in the narrative of Vancouver the longitude given is *east*. On all the English maps referred to in the negotiations the longitude appears as *west* of Greenwich."

Well, it appears, as I pointed out on Vancouver's plates, both are given at the top and at the bottom, and I do not propose to say anything further upon that point, in which, I submit, there is really nothing.

Then the next point taken is one which is made at p. 9 of the Counter-Case and at p. 40 of the United States' Argument. I will read the Counter-Case first:—

"Again, in his reply to the observations of the Russian Plenipotentiaries, Sir Charles Bagot said: 'The head of Portland Channel may be, *as there is reason to believe*, the mouth of some river flowing through the midst of the country occupied by the Hudson Bay Company, and it is, consequently, of great importance to Great Britain to possess the sovereignty of the two shores thereof.

"But both of these statements show an ignorance of Vancouver's narrative, of the purpose of the expedition, and of the careful execution of its object. But as further proof that the British negotiator was unfamiliar with the text of Vancouver when he made the above statement with regard to the Portland Canal, attention is called to the fact that the explorer in his description of his reconnaissance of that inlet specifically stated that "*it was found to terminate in low marshy land in latitude 55 degrees 45 minutes, longitude 230 degrees 6 minutes.*"

Then in the Argument, p. 40, the same point was recurred to:—

"There is no affirmative to show that the negotiators of the Treaty of 1825 ever had any knowledge of Vancouver's narrative, 'a Voyage of Discovery to the North Pacific Ocean.' Upon the contrary, there is conclusive evidence of the fact that Sir Charles Bagot, who for the greater period of time carried on the British negotiations, was ignorant of it, certainly of that part of it relating to Portland Canal.

"This statement is borne out by the following:—

"Vancouver, in rebutting the idea that Portland Canal was the outlet of an interior river system, said:—

"From hence it took a more northerly direction, and then trended a little to the eastward of north, where, by ten of the forenoon of the following day, it was found to terminate in low marshy land in latitude 55 degrees 45 minutes, longitude 230 degrees 6 minutes." In March, 1824, Sir Charles Bagot in his reply "to observations of Russian Plenipotentiaries," said, "The head of the Portland Canal may be, as there is reason to believe, the mouth of some river flowing through the midst of the country occupied by the Hudson's Bay Company, and it is, consequently, of great importance to Great Britain to possess the sovereignty of the two shores thereof."

95 Then they refer to the point about an astronomical location which I have already dealt with:—

"Is it to be presumed" (the argument goes on) "that the negotiators generally were better informed as to Vancouver's narrative than the experienced representative of Great Britain, who for some years had been charged with her interests at St. Petersburg, and who contradicted Vancouver in a vital particular. That the Russian negotiators were either ignorant of, or in conflict with the narrative as to the latitude of the termination of Portland Canal, which Vancouver had determined to be in latitude 55 degrees 45 minutes, is established by the British Case (p. 20), where the following averment is made: 'In this reply to Sir Charles Bagot's amended proposal, the Russian Plenipotentiaries re-stated their reasons for proposing as the boundary on the coast of the continent to the south ("*sur la côte du continent au sud*") the Portland Canal, the origin of which inland ("*dans les terres*") they said was at the 56th degree of north latitude, and to the east the chain of mountains which followed at a very little distance the sinuosities.' The divergence between the two statements is 15 nautical miles."

Now, the statement of Sir Charles Bagot as to the possibility of Portland Canal communicating through some river with the territory occupied by the Hudson's Bay Company is not at all at variance with Vancouver's narrative. It is perfectly true that Vancouver did not find any such river. It is a very curious circumstance, I may observe in passing—the Stikine River is not described in Vancouver's narrative. That is an observation, by the way, as showing that it was not to be taken that a river could not have existed because Vancouver did not describe it. There are features, I believe, at the mouth of the Stikine which may account for Vancouver having passed it by. But as a matter of fact, Vancouver, the Tribunal will recollect, in the passage from his narrative which I read an hour ago, speaks of the water being fresh for 20 miles down from the head.

It is perfectly true that he speaks of low marshy land at the head, but that is not in the least inconsistent with there being some river which might afford communication between the territories of the Hudson's Bay Company and Portland Canal. It is one thing to have a great river which will afford such a passage in that territory, or from the Pacific to the Atlantic, as Vancouver was in search of; it is another thing altogether to have a river which will afford accommodation for the navigation of such craft as would be used by the Hudson's Bay Company in bringing down their merchandise from the interior to the coast of the Pacific.

I submit that this observation made on the other side is not one of any force whatever; that when Sir Charles Bagot says that it is possible that the Portland Canal may through a river communicate with the Hudson's Bay Company, it does not in the least show that he did not know of Vancouver's narrative. What Vancouver had said was that they terminated in low, marshy ground, and that for 20

miles down it was fresh water, and Sir Charles Bagot may very well have considered that it was a possibility—at all events a possibility which might be thrown out in the course of diplomatic negotiations by way of making a point—a possibility that there was that river there. As a matter of fact, there are two rivers which run into the head of Portland Canal. I believe they are not very big rivers, but they are there, and they account for the phenomenon which Vancouver notes as to the existence of fresh water.

Now, what Vancouver was really looking for was some great communication between the Atlantic and the Pacific. The gentleman who certainly had Vancouver's narrative before him, Mr. Pelly, says in the statement at p. 25 of the Appendix that it is probable that there was such communication. It is in the despatch of the 25th September, 1822, to Mr. Canning, at p. 24 of the Appendix to the British Case and in that is enclosed that Memorandum to which I have so often had occasion to refer. In the third paragraph, on p. 25, he says this:—

"All the considerable rivers which fall into the Pacific Ocean in this extent of coast have not yet been sufficiently explored to ascertain whether any of them are navigable with large boats, and have safe harbours at their discharge into the sea; the furs procured in that country have therefore been brought to England down the Peace River and through the Hudson Bay Company's territories. But it is probable that, in such an extent of coast, some practical communication with the sea will be discovered which would save expensive transport of goods and furs through the interior of America."

Now, the passage which is relied upon for this purpose in the United States Counter Case really as to the purpose of Vancouver's search looking for rivers and sea communication really relates to his endeavour to get a navigable channel from the Pacific Ocean up to the Atlantic. That was the idea which led to those most valuable researches of Vancouver, and if the Tribunal will look at p. 8 as well as p. 9 of the Counter Case of the United States they will see reference made to this point, which I will illustrate by reference to the dedication of Captain Vancouver's work. At p. 8 the Counter Case contains this passage:—

"The expedition under the command of Captain George Vancouver was sent out to acquire accurate information as to the existence of 'any water communication' between the north-west coast and the British territory on the opposite side of the continent 'by means of any considerable inlets of the sea, or even of large rivers.'

"He was instructed especially to survey 'the direction and extent of all such considerable inlets, whether made by arms of the sea or by the mouths of large rivers.' And he was informed that 'the discovery of a near communication between any such inlet or strait, and any river running into, or from the lake of the woods, would be particularly useful.' With fidelity and perseverance Vancouver accomplished the task set before him; and in the dedication of his published narrative it is announced that, within the limits of his researches, there was no 'navigable communication' with the Atlantic seaboard.

"There had existed for many years prior to his voyage the tale of a great river of North-western America, up which De Fonte was said to have sailed 60 leagues after passing for 260 leagues through the tortuous channels of a vast archipelago. This river, known as 'Rio de los Reyes,' was placed by English geographers in latitude 53 degrees north. For it Vancouver sought."

These passages give an idea of the sort of communication of which Vancouver was in search—a sort of communication absolutely different from that river communication which Sir Charles Bagot suggests as possible in the passage which is so much pressed on behalf of the United States.

Now, on referring to the dedication of Vancouver's work and to the 3rd volume at pp. 504 and 505 it will be found that he indicates the nature of the communication of which he was in search. The dedication is to the King. It is a dedication by the editor:—

“Under the auspices of your Majesty, the late indefatigable Captain Cook had already shown that a southern continent did not exist, and had ascertained the important fact of the near approximation of the northern shores of Asia to those of America. To these great discoveries, the exertions of Captain Vancouver will, I trust, be found to have added the complete certainty that within the limits of his researches on the continental shore of North-West America, no internal sea, or other navigable communication whatever exists, meeting the Pacific and Atlantic Oceans.”

And in the third volume, at pp. 504 and 505, there is an appendix in the shape of notes and observations apparently by Captain Vancouver himself, because it begins by referring to his return to England. He refers to this alleged “Rio de los Reyes” :—

“The Rio de Los Reyes, Mr. Dalrymple states (according to the Spanish geographers, under the authority of which nation De Fonte is said to have sailed) to be in the 43rd, according to the English in the 53rd, and according to the French in the 63rd degree of north latitude, on the western coast of North America. If it be necessary to make allowance for the ignorance of De Fonte, or the errors in his observations, any other parallel along the coast may be assigned with equal correctness.

97 “Under the 43rd parallel of north latitude on this coast no such archipelago nor river does exist; but between the 47th and 57th degrees of north latitude there is an archipelago composed of innumerable islands and crooked channels; yet the evidence of a navigable river flowing into it is still wanting to prove its identity; and as the scrupulous exactness with which our survey of the continental shore has been made within these limits precludes the possibility of such a river having been passed unnoticed by us as that described to be of Rio de los Reyes, I remain in full confidence that some credit will hereafter be given to the testimony resulting from our researches, and that the plain truth undisguised, with which our labours have been represented, will be justly appreciated, in refutation of ancient unsupported traditions.

“I do not, however, mean positively to deny the discoveries of De Fonte. I only wish to investigate the fact, and to ascertain the truth; and I am content with having used my endeavours to prove their improbability as published to the world. The broken region which so long occupied our attention cannot possibly be the Archipelago of St. Lazarus, since the principal feature by which the identity of that archipelago could be proved is that of a navigable river for shipping flowing into it, and this certainly does not exist in that archipelago which has taken us so much time to explain; hence the situation cannot be the same, and for that reason I have not affixed the name of De Fonte, De Fonte or Fuentes to any part of these regions. It is, however, to be remembered that our geography of the whole coast of North-West America is not yet complete, and that the French navigators, who have stated the archipelago of St. Lazarus to be in the 63rd degree of north latitude, may yet not be in an error.

“The stupendous barrier mountains certainly do not seem to extend in so lofty and connected a range to the northward of the head of Cook's Inlet, as to the south-eastward of that station; and it is possible that in this part the chain of mountains may admit of a communication with the eastern country, which seems to be almost impracticable further to the southward. In this conjecture we are somewhat warranted by the similarity observed in the race of people inhabiting the shores of Hudson's Bay and those to the northward of North-West America.

“In all the parts of the continent on which we landed we nowhere found any roads or paths through the woods indicating the Indians on the coast having any intercourse with the natives of the interior, nor were there any articles of the Canadians or Hudson's Bay traders found amongst the people with whom we met on any part of the continent or external sea shores of this extensive country.”

Now, I submit that a reference to these volumes merely shows that what Vancouver had been looking for was some great communication

such as is there described, and that nothing whatever can be founded upon the suggestion that because Sir Charles Bagot said that there might be rivers communicating with the Hudson's Bay territory opening into the Portland Canal or into the other inlets south of 56 degrees, he had not read Vancouver's narrative, a fact which in itself, I need hardly add, is improbable to the last degree. And I may just add, by way of clinching this matter, that I observe that in the United States' Argument they refer to the narrative as throwing light upon the negotiation in one or two passages. At p. 113, in dealing with the question of the mountains, this sentence occurs:—

“The line is still to follow the ‘sinuosities of the coast,’ from where, drawn through Portland Channel, it strikes the mainland in latitude 56 degrees, but ‘along the base of the mountains nearest the sea.’”

He does not speak of a mountain chain, but of mountains, and the “base of the mountains nearest the sea.” If this means the “mountains nearest the sea and not the base nearest the sea, then these mountains were not the chain referred to by Russia. They could not be, for Vancouver showed in his maps and his narrative that there were mountains to the seaward of this chain.”

Well, of course, I do not desire to say that my opponents are in any way estopped by that, but it is worth noticing that when a point can be made they refer to the narrative as showing what they say could not be the meaning of the Treaty. And the same thing occurs again at p. 118 of their argument, where at the bottom of the page they speak of those peaks being visible from the waters which had been navigated by Vancouver. But after all this, references to their argument are of subsidiary importance. I say they are perfectly right in referring to the narrative, and for the reason that I have given.

Now, the whole of this matter was dealt with by Mr. Dall, Mr. Dall was, I think, director of the Geodetic Department of the United States—I think that is a correct official description—he deals with the whole of this matter in the passage which was printed in the Appendix to the Counter-Case of the United States at p. 105. I refer to it for two purposes. The first is to show that Mr. Dall recognised that so far as the narrative is concerned it bears out the British contention. The second is for the purpose of adverting to the way in which he seeks to extenuate the narrative by reference to the maps and charts before the negotiators, more particularly Vancouver's charts, in order that I may examine those charts and see whether they lend countenance to the contention which Mr. Dall is putting forward.

The passage began at the bottom of p. 104 of the Appendix to the Counter-Case of the United States. This Memorandum was sent to Mr. Bayard on the 19th of December, 1888.

“At this point we come across another difficulty, or rather one which 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.* ii, 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."

Now, I do not agree in the suggestion that Vancouver in his narrative varied a little in his notions. I do not think there is any variation at all, as I have shown, by going through his narrative. It is certainly true that he extends, as Mr. Dall says, Observatory Inlet to Points Wales and Maskelyne, but it is not the case, as elsewhere, that he regards Observatory Inlet as the beginning of Point Ramsden. One must take the whole narrative together, and I submit that there is one uniform view which prevails throughout. He began by exploring Observatory Inlet, which extends from the sea a great many miles inland, and, secondly, he explored Portland Inlet, coming down from that point north of Wales Island. I entirely agree in Mr. Dall's conclusion "that if the Treaty is to be tried by Vancouver's text, it would result in giving to Great Britain the above-mentioned islands and some other small ones."

Now the way in which Mr. Dall seeks to disprove that deserves all attention, and I shall endeavour to appreciate it by referring to the maps. What he says is this, that on Vancouver's charts the name of Portland Canal and Observatory Inlet are not extended southward to the main body of the inlet south of Point Ramsden. They are attached to the two notifications extending northward of which Portland Channel is the longer and most important. This is especially marked of chart 7, where there is abundance of room for extending the names southward if that had been desired by the cartographer. On the other chart, that of the North-West Coast in general (No. 3, French Edition), which is on a very much smaller scale, the names, especially "Entrée de l'Observatoire," do extend some distance south of Point Ramsden; but when compared with the larger and much more detailed Chart 7, where this is not the case, the inference by a non-critical observer would be merely that there is not room for the name on Chart 3 alongside the inlet northward from Point Ramsden, and that the extension was merely accidental. At all events, the larger and more detailed chart would be likely to produce the strongest impression on the minds of those examining both, and we may be quite certain, in view of the education at that time in vogue, that none of these gentlemen were geographers or qualified geographical critics.

"There will, therefore, be little improbability in the assumption that the longer northern part and the broader southern part were regarded as one inlet, under the name of the Portland Channel or Canal, to which Observatory Inlet became tributary at Point Ramsden. This, on the same principle, 99 by which of a newly-mapped river the largest and most important ramification is selected to bear the river name from its source to the sea, while others are regarded as tributaries.

"This is the natural view to take, as nobody would mouse out the minutiae of Vancouver's text when they had, as they might justly infer, the resultant of it in the graphic form of his detailed chart. This view I believe to have been taken by the negotiators, as it certainly has since been taken by the British Admiralty Office, on its charts (1853) and by everybody else until the present revival of controversy."

Now the suggestion was one of several which are put forward on behalf of the United States, and I take it to be this that the name of Portland Canal denotes, towards the sea, the whole inlet consisting of channels, one to the north of Pearse Island, the other to the south of Pearse Island, that these words denoted; the whole of that

is denoted by the term Portland Channel, and before I proceed to take that hypothesis I would just make this observation that, if that were established, it would not in the slightest degree follow that the line was to be drawn to the south of Pearse Island because the words of the Treaty are that the line to be drawn "le long de la passe." Well "le long de la passe," I apprehend, rather indicates going to the side of the pass than in the middle of it. I am sensible that French is a native language in many parts which are concerned in this controversy, and I speak with deference, but I apprehend that when one speaks of "le long de la passe," it corresponds really to the English expression, "along the pass," and rather suggests going by the side of it, so that I suggest to the Tribunal that even if this view here thrown out were to prevail, that you have regard to the pass, that what they were dealing with was not the details at this point, but the mainland; if that view were to prevail that "le long de la passe" should be drawn to the north of Pearse Island.

But I do not for one moment concede the hypothesis which Mr. Dall there advocates, and I shall proceed to test his observations by reference to the charts. I may observe before I go to the charts, that in the United States Argument two passages occur in which they speak of the charts as if they were in some way in point of authority superior to the narrative. These two passages occur in the United States' Argument on p. 29 and p. 35. At p. 29 of the United States' Argument the sentence at the end of the paragraph last but one on the page they say this:—

"It further appears that Vancouver's charts rather than his narrative were the final expression of his conclusions, and were so regarded by the cartographers who followed him."

And on p. 35 at the bottom of the page occurs this passage in the argument of the United States:—

"It is hardly necessary to state that Vancouver's maps or charts embody the final and revised form of his work. In the map in question is the statement that it was 'prepared under his immediate inspection.'"

Well, I really do not know what authority there is for these statements. I will at once dispose of them by referring the Tribunal to the first volume—the advertisement. I mentioned it yesterday, but I must just refer to it again in this connection. On the first page of the advertisement from the editor to the first edition, it is stated that Vancouver had compared it, that is, that Captain Vancouver had finished a laborious examination of the impression, and he compared that with the engraved charts of headlands of his discoveries from the commencement of his survey in 1791 to the conclusion of it at the port of Valparaiso.

Now, let us look at those charts—the charts and the narrative must be taken together—and see whether there is anything in the charts which disposes of the very clear statement in the narrative. Take first the British Case, Atlas No. 1. Taking first the large Vancouver No. 1 in the British atlas I submit that so far from being inconsistent with the narrative it is absolutely consistent with it.

100 You have the two channels delineated, perfectly distinct, both going to the sea. On the western side you have got the words "Portland Canal," and I submit that it is impossible to look at these words "Portland Canal," the beginning of which the "P" of which

goes to the south a little to the south of the junction between Observatory Inlet and Portland Canal, I submit that it is impossible to look at the printing of these words without regarding Vancouver as having intended to designate by these words the whole of that inlet from the head down to the sea at the point north of Kanaghunut Island.

The PRESIDENT. Could one of your juniors hand us that now in the folio; not to interrupt you; in Vancouver it is?

Mr. AYLESWORTH. In the second edition.

The PRESIDENT. No, I mean in the first edition. Have you got the folio of Vancouver; I thought you had it before you?

Sir ROBERT FINLAY. It can be got, I have no doubt, my Lord.

The PRESIDENT. I thought it was in the room; do not trouble.

Sir ROBERT FINLAY. We could send for it to the London Library; it will be here to-morrow morning.

The PRESIDENT. Thank you; I only mention it because you have been referring to some volumes; I thought you had them all.

Sir ROBERT FINLAY. Then, the words "Observatory Inlet"—the printing of that begins above the sort of bay or gulf of Observatory Inlet, but again, I submit there is nothing there whatever to rebut the idea that the description "Observatory Inlet" applies to the whole channel down to the sea. So far from rebutting the narrative I submit that it confirms the very clear conclusion in the narrative upon this point.

Then we come to the British Case Atlas No. 2, and I think there is a clearer impression of that in the United States' Atlas No. 4. It has come out a good deal more clearly. This is a little blurred, having been reproduced by photography.

The PRESIDENT. I shall be glad if you can get that folio for me to-morrow morning; because of that blurring which I have noticed, I want to look at the original print on the map.

Sir ROBERT FINLAY. I will endeavour to get it. No. 4 of the United States. Now there again "Portland Canal;" take the printing of "Portland Canal," which is in large capitals, the "P" is just opposite the opening of the cross passage between two branches. It is in capitals and there again I submit to the Tribunal that there is nothing in any way to overrule the conclusion which the text of Vancouver, the statements of Vancouver, the positive statements of Vancouver, as to what he named "Portland Canal." No one reading this chart with the narrative could possibly arrive at any conclusion other than that the words "Portland Canal" in the chart designated the same thing which Vancouver described in the narrative. On the other side you have got the words "Observatory Inlet," which are printed on the west side of "Observatory Inlet" and I suppose it is said that that implies that Vancouver regarded "Observatory Inlet" as only consisting of that and not consisting of anything else. Well, whatever observation might be based upon that that if it stood alone I submit that it cannot prevail against the express statements of Vancouver. When you find one of his charts pointing, if taken alone, to the same conclusion with the text, when you find that all that you have is the printing of "Observatory Inlet" upon the other chart in a manner which if alone might suggest doubt, I

submit that that conclusion is not in the slightest degree disturbed that Vancouver by "Portland Canal" meant the channel running to the north of Pearse Island.

101 The Tribunal will recollect that Mr. Dall referred to the French edition of Vancouver's narrative with the accompanying maps, and I have got here a copy of the map which was published with that edition. It is appended to a message from the President of the United States transmitting a report on the boundary line between Alaska and British Columbia in 1889. I just give the reference; it is, 50 Congress, Second Session, Executive Document, No. 146 Senate. Now, I will ask the Tribunal to look at this map. On the west side is the expression "Canal Portland," going below that cross channel on the east side is the expression "Entrée de l'Observatoire" evidently going down to the sea.

The PRESIDENT. May we look at that, Mr. Attorney?

(Map handed in to the Tribunal.)

Sir ROBERT FINLAY. As regards that map accompanying the French edition, I think it is most potent evidence of the fact that Vancouver carried the Observatory Inlet down to the sea to the south, and Portland Canal down to the sea to the north.

Mr. LODGE. The French map is supposed to be a reproduction of map No 1 in the British Atlas. We identify it by the name of the officer who made the map. He was Roberts, and that is stated on the French map.

Sir ROBERT FINLAY. No doubt it is.

Mr. LODGE. So it was intended to be a reproduction of that.

Sir ROBERT FINLAY. I do not know, of course, who actually saw to the bringing out of the map accompanying the French edition, but it does say most clearly that the person bringing it out took that view. And the important question, after all, is what did the negotiators of the Treaty, what did those who drew the Treaty, intend? and the importance of that map for this purpose is just as great as if it had been prepared by Vancouver himself.

Mr. LODGE. Oh, certainly, but my point was that it was not a new or a different map; it was intended to be a reproduction of one of the Vancouver maps.

Sir ROBERT FINLAY. Oh! Certainly. And I appeal very strongly to that map for the purpose of showing that if, as Mr. Dall said, probably the French edition was in the hands of the negotiators as well as the English, they must have meant that Observatory Inlet went to the sea to the south and Portland Canal went to the sea to the north. Now I am glad to say, my Lord, I have got here the atlas, which I will hand up.

The PRESIDENT. Thank you; what you call the folio?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. Is that 1799?

Sir ROBERT FINLAY. Well it is not dated at all.

The PRESIDENT. But it was referred to in 1799?

Sir ROBERT FINLAY. I do not know whether it is there exactly in the form in which it appeared, but it appears to be a mere dependency upon the narrative unless some title page or something of that kind has been removed.

(Volume of maps handed up to the Tribunal.)

102 The PRESIDENT. Where does this come from, Mr. Attorney?

Sir ROBERT FINLAY. I am told it is from the Parliamentary library at Ottawa.

The PRESIDENT. It would be rather worth while to get the British Museum copy to see if there is any title page to that.

Sir ROBERT FINLAY. That occurred to myself. We will get a copy from the London Library or from the British Museum by to-morrow morning. These maps and charts of Vancouver's of course possess for this purpose an unique importance, but there are certain other maps which may have been before the negotiators to which I will call attention—I mean maps published before the date of the Treaty. If your Lordship will look at map No. 10 of the British Case Atlas, it represents a map published in the year 1823, by Mr. James Wyld, successor to W. Faden; it is referred to as Faden's map commonly.

The PRESIDENT. Is this the map that the American Argument says was before the—

Sir ROBERT FINLAY. I think it is referred to. In the table of contents it is referred to as Faden's map.

The PRESIDENT. Well, I have it now.

Sir ROBERT FINLAY. Faden of 1823 and Faden of 1824.

The PRESIDENT. We have it now, Mr. Attorney. Is No. 10 also 1823?

Sir ROBERT FINLAY. And then No. 11 is the 1824.

The PRESIDENT. What do you point out upon No. 10?

Sir ROBERT FINLAY. I point out upon No. 10 that the words "Portland Canal" run down almost the whole length of Pearse Island on the west side of the inlet. On the other hand, I suppose the observation would be made by the United States that the words "Observatory Inlet" are printed in smaller type and across.

The PRESIDENT. It is right at the head, is it not?

Sir ROBERT FINLAY. No, not at the head. Salmon Cove is delineated first; then below that your Lordship will see "Observatory Inlet."

The PRESIDENT. I see, yes.

Sir ROBERT FINLAY. But, of course, the same observation might be made as I represented, possibly on one of Vancouver's maps, that "Observatory Inlet" was printed in such a way as not necessarily to imply that it went down to the sea—in such a way as rather to suggest the contrary. I submit that that is an observation which might have some weight, but it cannot displace the fact that the words "Portland Canal" on the other side are carried right down, and that that denotes, according to the map, the northern channel, and the northern channel alone.

Then the next map, the edition of 1824, differs in no material particular, I think, from that on which I have now been commenting. It is No. 11 in the British Case Atlas. Then there are two maps of Arrowsmith's which might have been before the negotiators. One is dated 1822; No. 8 is dated 1822, but below that in small type is "additions to 1824," so that this map must have been published in 1824. That, of course, would be the year before the Treaty was concluded. Then there is another Arrowsmith.

The PRESIDENT. What do you say about that one, please?

103 Sir ROBERT FINLAY. What I say about that one is this: that "Portland Canal" runs down below the channel connecting the two.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. And that a very distinct channel is shown the whole way down to the ocean on the north side of Pearse Island. On the other hand, the observation may be made that "Observatory Inlet" is put across in a way which, to a careless observer, might suggest that it referred only to that small projecting ear at the head of Observatory Inlet.

Then if the Tribunal would turn to the next map—the uncoloured Arrowsmith No. 9 of the British Case Atlas—there it will be found that the word "Observatory Inlet" is printed across in the same way, but in large and bold type, in fact, it gets bolder type than "Portland Canal" does. No. 9—the uncoloured Arrowsmith—is an important map in this connection, because "Observatory Inlet," it will be observed, is printed in large bold type, although it is printed across in that way. It is printed in a way as if they were speaking of something considerable, and lends colour to the view that the framer of that map intended to treat Observatory Inlet as an inlet on its own account, and not a mere dependence of Portland Canal, as an inlet from the sea. Then looking to the west of the channel, our Portland Canal, the Tribunal will see that the words "Portland Canal" are printed beginning from a point to the south of Pearse Island, and actually covering by the type a portion of this channel beyond the arm which connects the two together.

Then there is another atlas which might have been before the negotiators which is printed No. 7 of the United States Case Atlas. It is a German map, published in the year 1807 by Walch at Augsburg, and on looking at that it will be seen that Observatory Inlet is carried right down to the sea. The words "Observatory Inlet" to the east begin actually at the coast, and the framer of that map, at all events, had no doubt in his own mind that "Observatory Inlet" extended from the head right down to the ocean. Portland Canal, on the other side, is printed apparently from want of room commencing from the head and running inland. The channel is again shown on both sides of Pearse and the other islands which run down the channel.

Then there is one other map which might have been before the negotiators. It is No. 9 in the United States' Case Atlas. It is a map of Brué, published in the year 1815. Now, then, it will be observed that the "Entrée de l'Observatoire" is carried right down to the sea. I do not say that the printing goes accurately to the sea, but in such a way as to show clearly that it was intended to go to the sea, and on the other side the Canal Portland is printed—the word "Canal" beginning at a point below the upper end of Pearse Island, so that I submit that that map is again entirely in favour of the view that the Observatory Inlet ran down to the sea that the Portland Canal described the northern passage. I ought first again to call attention to an observation which I have made in passing before, that in all these the word that occurs I think is "canal" in all the

maps. These are, I think, all the maps which could have been before the negotiators.

The PRESIDENT. I suppose, Mr. Attorney, as you have said that—I have not looked—that none of the notes on the Russian—on Sir Charles Bagot's map give any names for these channels; I suppose they have been examined. It is No. 5 of the British Atlas; I cannot give you the number in the American Atlas.

Sir ROBERT FINLAY. It is No. 5 in the British Case Atlas.

The PRESIDENT. And in the American Atlas No. 6.

Sir ROBERT FINLAY. I think they give none, my Lord.

The PRESIDENT. No names?

Sir ROBERT FINLAY. I believe not.

104 The PRESIDENT. I see they show the channels, but do not give any name. That answers it. I have no doubt you would have been told if they had any.

Sir ROBERT FINLAY. No, they give no names. I was just looking at the various annotations upon this map to see if there was anything that threw any light upon it. Upon the map itself there are certainly no names.

The PRESIDENT. There are two channels shown clearly, but there are no names to either of them.

Sir ROBERT FINLAY. They are shown very distinctly, each of them going down to the sea on its own account, if I may use the expression.

Mr. AYLESWORTH. And nearly of equal size?

Sir ROBERT FINLAY. Yes, they are. This map, of course, is of some importance, as it may have been supposed to have been particularly under the attention of the Russian negotiators. Now, there may be other maps which possibly might have been before the negotiators. I am not aware of any others; none other has been brought forward on either side, and I submit that when these maps are looked at the definite conclusions which one reaches from Vancouver's narrative, conclusions which are so clear that they cannot be displaced on any examination of that narrative, these conclusions, so far from being impugned by the charts are on the whole most strongly confirmed. There are certain of these maps on which if they stood by themselves observations in a different sense might be made, but when they are taken as an whole, taking all the maps together, I submit that, even apart from the narrative if you take all the maps together, their effect is entirely in favour of the British contention. When to that you add the effect of the narrative I submit there is no escape from the conclusion to which we invite the Tribunal to come.

The PRESIDENT. With reference to the question which was put to you yesterday, as to whether the draft Convention on p. 86 of the British Case went to Russia in French only or in English only, or in both, Mr. Tower has ascertained through the Foreign Office that it went in parallel columns, English and French together.

Sir ROBERT FINLAY. I am much obliged.

The PRESIDENT. And as we are breaking off, Mr. Attorney, would you kindly leave us the volumes of Vancouver? You have both editions; you shall have them back to-morrow morning.

Sir ROBERT FINLAY. Certainly. Oh! I should say this: we have taken out the extracts from the maps anterior to the date of the Treaty in a very convenient form.

The PRESIDENT. Is that what you gave us this morning—it is headed “Portland Canal?”

Sir ROBERT FINLAY. “Maps of Portland Canal.”

The PRESIDENT. We have not got it. Will you hand it in?

Sir ROBERT FINLAY. From the British Case and the United States’ Case.

The PRESIDENT. Let us have more than one.

Sir ROBERT FINLAY. It gives the maps before the Treaty and after.

105 The PRESIDENT. Let us have more than one, if you will hand one in please.

Sir ROBERT FINLAY. We have got the French edition also of Vancouver here.

The PRESIDENT. Will you hand it in?

(Maps and books handed into the Tribunal.)

(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

SIR ROBERT FINLAY. To-day we have got the atlas from the London Library which accompanied the original edition of Vancouver. I will hand it up.

The PRESIDENT. Thank you very much.

SIR ROBERT FINLAY. It will be found exactly like the atlas which was produced from the Parliamentary Library yesterday, but there appears to be no title to it, and with reference to the French edition of Vancouver handed in yesterday I think it is before the Tribunal.

The PRESIDENT. Yes, Mr. Attorney-General.

SIR ROBERT FINLAY. I was about to call attention to a point on the French edition of Vancouver which was handed in yesterday. On the title-page it is headed:—

“Voyage de Découvertes à l’Océan Pacifique du Nord, et Autour du Monde, dans lequel la Côte Nord-Ouest de l’Amérique a été soigneusement reconnue et exactement relevée: ordonné par le Roi d’Angleterre, principalement dans la vue de constater s’il existe, à travers le continent de l’Amérique, un passage pour les vaisseaux de l’Océan Pacifique du Nord à l’Océan Atlantique septentrional; et exécuté en 1790, 1791, 1792, 1793, 1794, et 1795, par le Capitaine George Vancouver. Traduit de l’Anglais. Ouvrage enrichi de Figures, avec un grand Atlas.”

And there is a curious note at the end of the advertisement overleaf, which is not quite accurate in its reference to the English edition because they say this:—

“L’original Anglais ne contient aucune notice de l’Atlas. Il nous a paru utile de suppléer à cette omission.”

The original English edition does contain a notice of the atlas; it refers to it as a folio volume and gives a list of the charts which are contained in that atlas. It is on p. 7. I draw attention to it the day before yesterday. I think the notice which is given in the French edition is absolutely faulty. On the page following that there is the sentence to which I have already drawn attention. There is what is called a “notice des planches qui composent l’atlas du voyage de Vancouver.”

When the Tribunal adjourned yesterday, I had been dealing with the evidence which relates to the identity of the Portland Canal
107 and I was about to proceed to advert to one argument which is developed at some length on behalf of the United States, to which, therefore, it is necessary I should direct the attention of the Tribunal. It is what has been spoken of as the thalweg theory. It is developed in the Argument of the United States in a passage which begins on p. 39.

The PRESIDENT. That is as to the upper end of the Portland Canal, is it not?

SIR ROBERT FINLAY. No, I think it is rather as to the opening into the sea, and as far as I can follow, the argument is this: That the southern channel, that to the south of Pearse Island, is a better and more navigable channel, and that, therefore, it ought to be taken in preference to the other.

THE PRESIDENT. Yes.

SIR ROBERT FINLAY. I have already drawn attention to the earlier part of this passage, which begins at p. 39. At the bottom of p. 41 the American Argument proceeds to deal with what is headed as: "The Thalweg as the boundary of Conterminous States," and the argument is this:—

"If the maps and narrative of Vancouver shall both be looked to, and if, on the whole evidence, there shall be a doubt as to what the negotiators meant, then the result should be controlled by the rule of international law, which declares that, if there be more than one channel in a body of water dividing conterminous states, the deepest channel is the mid-channel or thalweg for the purposes of territorial demarcation. According to Grotius: 'A river that separates two Empires is not to be considered barely as water, but as water confined within such and such banks and running in such and such channel.' According to Vattel: 'If, of two nations inhabiting the opposite banks of the river, neither party can prove that they themselves, or those whose rights they inherit, were the first settlers in those tracts, it is to be supposed that both nations came there at the same time, since neither of them can give any reason for claiming the preference; and in this case the dominion of each will extend to the middle of the river.'

"Sir Travers Twiss has well said that 'Grotius and Vattel' speak of the *middle of the river* as the line of demarcation between two jurisdictions, but modern publicists and statesmen prefer the more accurate and more equitable boundary of the *mid-channel*. If there be more than one channel of a river, the deepest channel is the mid-channel for the purposes of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed. Thus we find in the Treaty of Angovie (17th September, 1808), concluded between the Grand Duchy of Baden and the Helvetic Canton of Angovie, that the *thalweg*, or water frontier line, is defined to be 'the line drawn along the greatest depth of the stream,' and as far as bridges are concerned, 'the line across the middle of each bridge.' The islands on either side of the mid-channel are regarded as appendages to either bank; and if they have been once taken possession of by the nation to whose bank they are appendant a change in the mid-channel of the river will not operate to deprive that nation of its possession, although the water frontier line will follow the changes of the mid-channel."

Then Bluntschli and Rivier are referred to:—

"Hall says that where the boundary 'follows a river, and it is not proved that either of the riparian states possess a good title to the whole bed, their territories are separated by a line running down the middle, except where the stream is navigable, in which case the centre of the deepest channel, or, as it is usually called, the thalweg, is taken as boundary.' The rule is not limited however, to cases in which rivers are boundaries between conterminous states; it extends as well to the thalweg of 'a strait, sound, or arm of the sea.'

108 That view is thus stated in Field's International Code, p. 16, '*Boundary by a stream or channel*, 30. The limits of national territory, bounded by a river or other stream, or by a strait, sound, or arm of the sea, the other shore of which is the territory of another nation, extend outward to a point equidistant from the territory of the nation occupying the opposite shore; or, if there be a stream of navigable channel, to the thread of the stream, that is to say to the mid-channel, or, if there be several channels, to the middle of the principal one.' To the same effect is Halleck, who says, 'But where the river not only separates the conterminous states, but also their territorial jurisdictions, the thalweg or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea.'

"As a general rule, this line runs through the middle of the deepest channel,

although it may divide the river and its estuaries into very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river and its bays would follow the same rule.

"In this case it is proven that the channel contended for by the United States is the deepest, broadest, and by far the most important, because it is, in fact, the only really navigable and safe one. Vancouver, if his narrative shall be regarded as admissible evidence, put that fact at rest by describing the narrow, rocky, and really unnavigable channel contended for by Great Britain as an 'object of no great value or consideration.' In describing his boat exploration to the sea, partly through this channel, he says, 'and though our utmost exertions had been called forth in tracing the continent *through this labyrinth of rocks* we had not advanced more than 13 degrees in a right line from the ships to the entrance of this inlet.' He never dared to traverse that part of it, heretofore designated as the 'foul ground,' even in open boats."

Perhaps it would save time to read the whole of this part of the argument; there is not much more of it:—

"At no time, either before or after his boat excursion, did he ever venture to enter the smaller channel with his ships. His charts fix the fact that he navigated with his ships the larger channel, into the junction with Observatory Inlet, both in and out. The reason he gives in his narrative for this preference is that 'the route by which the vessels had advanced to Salmon Cove, being infinitely better for them to pursue towards Cape Caamano, than the intricate channel through which I had passed in the boats.' As hitherto pointed out the smaller channel is of an average depth of 64 fathoms, and of an average width of only three-quarters of a nautical mile, at two points, narrowed to a width of about an eighth of a mile, while the greater channel, of an average depth of 218 fathoms, is of an average width of 2.58 nautical miles. As stated heretofore, the volume of water contained in the larger channel is about eleven and a-half times as great as that contained in the smaller, while the narrowness of the smaller produces a choking of the waters passing through it, in its tidal action, to such an extent that about 90 per cent. of the tidal flow is through the channel contended for by the United States.

"Is it, therefore, a matter of wonder that the British Admiralty chart of 1868 should have entirely ignored the smaller channel as unworthy even of a name or survey, while the larger was carefully designated as 'Portland Inlet'? There is no question here of weighing evidence in order to determine which one of two channels running through 'an arm of the sea' is the deepest, widest, and most navigable. The proof does not leave any room for doubt. It is simply a question of substituting for the general rule of international law, designating such thalweg as the boundary, *a special and conventional rule*, declaring a smaller, narrower, and 'shallower' 'labyrinth of rocks' as the boundary. The only possible way in which Great Britain could work out that result would be to establish affirmatively that such was the special Contract and Agreement entered into with Russia in the Treaty of 1825, the effect of which would be the suspension of the general rule of international law declaring the deepest and most navigable channel the midchannel, and the substitution in its place of a special and conventional rule declaring the contrary."

109 Then follows a list of references:—

"Reference in this connection is made to the rule of construction No. 6, set forth above, which provides that it is not to be presumed without very strong reason that one of the Contracting Parties intended to favour the other to his own prejudice. It is not to be presumed, therefore, that the Russian Government intended to abandon the use of the only channel leading to its possessions along the southern boundary of the *lisière*, which it knew to be navigable and safe, and to confine itself to the use of a channel which was not of sufficient importance to be clearly shown on some of the charts, and on others was shown to be so broken and tortuous that its dangerous and undesirable character both for navigation and as a boundary is evident at a glance."

Now, the first observation that I wish to make upon that is that the rule in question is one applicable to rivers, and to what may be properly designated as the estuaries of rivers. All the earlier citations

relate to rivers specifically. The suggestion is made at the top of p. 43, that the rule extends:—

“As well as to the thalweg of ‘a strait, sound, or arm of the sea.’”

The only authority given for that is a quotation from Field’s “International Code,” where, on p. 16, this expression occurs:—

“After referring to the rule that where there is a river or stream, or a strait or a sound, or an arm of the sea, the point is a point equidistant from the territory of the nation occupying the opposite shore.”

He goes on to say:—

“Or if there be a stream or navigable channel, to the thread of the stream, that is to say, to the mid-channel; or if there be several channels, to the middle of the principal one.”

I submit that it is perfectly clear, when that summary contained in Field’s “International Code” is read in connection with the authorities, the rule as to the thalweg or deepest part of the channel can be read as having reference to the river, or what may be regarded as forming in one way the part of the river, the estuary, but the rule of the thalweg has no reference whatever to the case of a strait or a long channel like this, which cannot be considered at the lower part of it as the estuary of the river.

Now, the second observation I wish to make upon that passage relates to the concluding paragraph, in which it is suggested that the Russian Government could not possibly intend to abandon the use of the only channel, the only good channel leading to its possessions along the southern boundary of the *lisière*. It is not a case of the Russian Government abandoning the right of passage, down which they would be able to proceed to any point they pleased at the southern point of the *lisière* which adjoins the upper part of the canal. Therefore, I contend this contention fails at these two points when it is examined.

But we desire further, to bring forward very broadly the consideration that the whole of this thalweg theory can have no application to the present case where the only question is one of identity. The question here is what channel the negotiators designated when they spoke of the Portland Channel. It is not a question of their taking a river or an estuary as the boundary, in which case the thalweg theory might be invoked for the purpose of determining at what point of the channel the line of the boundary was to be drawn. The Treaty says that you are to take the line as going “le long de Portland Channel” or along the Portland Canal. The only question that that raises is, what is the Portland Canal which the framers of the Treaty had in view? The width of Portland Canal running to the north of Pearse Island has nothing to do with the question. I do not dispute that Observatory

Inlet near the sea is a wider and better channel for navigation than the northern channel which Vancouver designated the Portland Canal. That is not a matter in controversy but I do say it is absolutely irrelevant.

There is a further observation which arises upon this point. It does not very clearly appear whether the thalweg theory is adduced as a reason for choosing the bigger channel as the Portland Canal in preference to the smaller channel, or whether it is adduced as a reason for drawing the line south of Pearse Island, assuming that the whole of the two channels together, nearer to the sea, separated by Pearse

Island, Sitklan, and Kanaghunut are to be treated as one channel. There is somewhat of a divergency of view in the Argument presented on behalf of the United States on this point, and I desire to compare the two passages, one of which occurs in the Argument of the United States at p. 35. In the Counter-Case at p. 14 this passage occurs, beginning at the middle of the page:—

“One of two views must have been taken by the negotiators after examining the region about 54 degrees 40 minutes, as shown on the maps. Either that the whole estuary bounded by the mainland on either side, and comprising both Portland Inlet and Pearse Canal, was to be considered as Portland Canal, in which lay Pearse, Wales, and other islands; or that the estuary as far inland as Point Ramsden was an unnamed arm of the sea, from which diverged two branches, Portland Canal and Observatory Inlet.

“The Arrowsmith Maps, relied upon at St. Petersburg, would have conveyed the idea that the entire estuary was named ‘Portland Canal.’ No method of reasoning would have applied the name ‘Observatory Inlet,’ which extends at right angles to that branch from a point far above Ramsden Point to any portion of the waters below that headland.

“On the other hand, the Vancouver Chart of this region appears to name each branch without giving a name to the main inlet below their junction. But in any event an examination of this latter chart would never suggest that the name ‘Observatory Inlet,’ which appears in small letters on the western side of that channel, and above Point Ramsden, was intended to be applied to the body of water below the Point. Nor would such an examination indicate that the name ‘Portland Canal,’ placed to the west of the channel, which is clearly delineated as passing Point Ramsden, was applicable to the passage behind Pearse and Wales Islands.”

Now, in the Argument at p. 35 there occurs this statement at the top of the page:—

“The statement heretofore made that Vancouver’s Narrative clearly indicates the fact that he regarded Observatory Inlet only as a ‘branch’ of the main body of water or ‘arm of the sea’ to which he applied the name of Portland’s Canal is confirmed by his chart outlining ‘part of the coast of North America,’ which appears as No. 2 in the British Atlas, and as No. 4 in the American. No minute examination is necessary to perceive that the name ‘Portland Canal’ is so printed along one entire side in large letters as to indicate that it is given to the ‘arm of the sea’ or fiord as a whole, while the name ‘Observatory Inlet’ is printed in smaller type along that ‘branch’ in such a way as to preclude the idea that it was intended to apply to any water below Point Ramsden. The accompanying reproduction demonstrates the relative size of the type employed.”

Then follow observations in detail upon the size of the type which is employed. Various views are there suggested as to what is to be regarded as the proper nomenclature of the lower part of the channel, and I am not at all certain that the thalweg theory is not intended to be applied to the view that the whole inlet at the lower part is to be regarded as Portland Canal, and that the negotiators in framing the Treaty were content to accept the whole of the channel extending from Cape Fox, I think, on one side to Point Maskelyne on the other, as designated by the term Portland Canal. It seems extremely improbable that they should have taken a channel of that kind, which is divided naturally into two, without saying which it is they meant; but even if that view could be accepted for one moment, I call the

attention of the Tribunal again to the fact that it is nowhere
111 said that the line is to run in the middle or in the deepest part of the channel. The expression is that the line is to go “along the Portland Channel.”

I apprehend that the words “along the Portland Channel” would rather denote by the side of it, and as everywhere fixing the bound-

ary of the mainland. I submit that even if it were possible to take this view as to that lower part, that arm of the sea being all designated as Portland Canal, even if it were possible to take it, the words of the Treaty "le long de Portland Channel" negative any idea of the thalweg theory, taking the deepest part of the Channel as the boundary.

I pass now, my Lord, to what is closely connected with the question of the identity of the Portland Channel, that is the contention put forward on the other side, that the latitude of 54 degrees 40 minutes is the governing factor in this matter. I need hardly say that if that contention were well founded it would be an extremely material one. It would do away with all necessity for identifying the points which the negotiators in framing the Treaty thought it necessary to mention. It would substitute a parallel of latitude which is to be followed as giving the southern boundary on the mainland as well as on the other.

Now, that cannot in any way do justice to the view put forward on this point, which, I think, a little fluctuates in the different documents presented on the part of the United States, and I should desire to give the references to the passages on which I am going to comment. They occur in the United States' Case at p. 68 and in the Counter Case at p. 11, and in the Argument of the United States at p. 54 and the following pages. I do not say that there are not a good many passages which relate to this matter, but I have chosen these as bringing out most neatly and pointedly what appears to be the discrepancy. At p. 68 of the United States' Case appears this passage:—

"Russia secured by the Treaty of 1825 complete sovereignty over the islands north of 54 degrees 40 minutes and over a strip of coast extending in a north-westerly direction from that parallel, bounded on the east by a line which followed up Portland Canal to its head, and thence ran parallel with the indentations of the coast, and distant from their shores about 10 marine leagues, as far as Mount St. Elias. Upon these islands and this continental territory British subjects are prohibited from establishing settlements."

Then in the Counter-Case, at p. 11, occurs this passage. The second paragraph is that to which I refer, but I think it ought to be taken, in justice to the Argument, along with the first paragraph upon that page:—

"As to the point of commencement of the line of demarcation, the United States understands that Great Britain concedes that it was the intention of the negotiators, and it is the meaning of the Treaty of 1825, that such point was Cape Muzon. It therefore deems further discussion of that subject unnecessary. Nevertheless, to the reasoning by which Great Britain reached this conclusion in the Case submitted, and to the deduced interpretation of certain clauses of Article III which appear in the discussion, the United States cannot assent.

"The southern boundary was intended by the negotiators to be the parallel 54 degrees 40 minutes, and the clause of Article IV which states that 'the island called Prince of Wales Island shall belong wholly to Russia' was inserted for two obvious reasons: that in case any portion of the island lay below the boundary parallel named, it should still form part of the Russian possession; and, further, that in the event of the eastern point being the most southern, then, even if both headlands extended below 54 degrees 40 minutes, the one lying to the westward should nevertheless be Russian territory."

Now, before I pass on to the argument, I would like to say with regard to that paragraph that the provision that the island called Prince of Wales Island should belong wholly to Russia has no refer-

ence whatever to any designation of 54 degrees 40 minutes as the parallel of boundary. The line forming the southern boundary at this point shall run from the most southerly point of Prince of Wales Island. It was then to get to the Portland Canal. The latitude not being very accurately known, and I think it will be found that they varied in the statements made for a long time after the date of the treaty, this contingency had to be faced, that in drawing a line from the most southerly point of Prince of Wales Island to the mouth of the Portland Canal, you might cut another point of Prince of Wales Island which was between, which intervened in the course of the line drawn from the most southerly part to Portland Canal, and in order to prevent any danger of that happening this provision appears in the Treaty, that the whole of Prince of Wales Island shall belong wholly to Russia. It is obvious that if the line from the most southern point of Prince of Wales Island was run upon a parallel, it would be absolutely impossible that that line should cut any other point, and I submit that that is the reason, and the only reason, why this provision was inserted.

This matter is further dealt with at somewhat greater length in the Argument of the United States, beginning at p. 54, where the questions and the answers which the United States proposed, as well as the Argument which is advanced on this head, appears, I think, rather more fully than in either the Case or Counter-Case:—

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

“The United States requests the Tribunal to answer and decide that the line from Cape Muzon should be drawn in an easterly direction until it intersects the centre of Portland Channel at its opening into Dixon Entrance.”

The British Case says:—

“The question rightly assumes that the course of the line must be from the point of commencement to the entrance of Portland Channel.”

Now, with regard to the answer quoted from p. 104 of the United States' Case in this passage, that the line from Cape Muzon should be drawn in an easterly direction till it intersects the centre of the Portland Channel, no great objection can be taken. The expression, “in an easterly direction,” is a perfectly harmless one, and corresponds generally with the fact that it was to go to Portland Channel, which certainly lies east after the southern point of Prince of Wales Island, although as a matter of fact it is a very little to the north of a parallel drawn from that point, a little way to the north. But then we come in the Argument to the commentary upon that answer which had been given in the Case, and this commentary reminds one of a great many other commentaries which really eat up the text altogether and result in an interpretation which the original author can hardly have attributed to his own words:—

“The view of the United States can be more definitely stated by saying that the line should be drawn along the parallel of latitude 54 degrees 40 minutes through Dixon Entrance until it intersects the centre of Portland Channel at its opening into Dixon Entrance. Fixing the latitude of 54 degrees 40 minutes, as the boundary was a dominant idea in the negotiations. The boundary was to be carried below 54 degrees 40 minutes on Prince of Wales Island, only for the purpose of giving all of that island to Russia, and it would be in harmony with the plain intent which the parties had in view by this departure, to accomplish this particular purpose, and then carry out the general intent of the Treaty by running the line along the parallel 54 degrees 40 minutes.

“The language of the Treaty is:—”

Then the Treaty is quoted on this point; I need not read that again.

"It further provides:—

"'Que le dite Prince of Wales appartiendra toute entière à la Russie.'

"This would seem to indicate that in the description the parallel was regarded as the real point of departure, and so to guard against the result that Prince of Wales Island might be divided, the express provision was inserted so that, notwithstanding the designation of the parallel, the whole of the island should belong to Russia. This shows the significance given by them to the parallel and the necessity they felt for adding the special provision to guard against the possible effects of running the line from the commencement along that parallel. This view is reinforced when taken in connection with the discussion of the question as to what channel was meant by Portland Channel, in 113 which it was endeavoured to show that the parallel 54 degrees 40 minutes, it was considered and treaty by the negotiators, is demonstrative of what they meant by Portland Channel.

"Different lines are proposed by the United States and by Great Britain, but the difference arises out of the controversy as to what constitutes the entrance to Portland Channel.

"If the Tribunal shall agree upon an answer to the second question, then from the positions assumed by both parties in respect to the third question, the answer to that question involves no difficulty. If it be decided that Portland Channel is a body of water which enters Dixon Entrance between Wales Island and Compton Island, as is contended for the United States' Case, then the line should be drawn from the southernmost point of Cape Muzon to the parallel 54 degrees 40 minutes, and along this parallel to the channel, until it strikes its centre.

"The line does not, as Great Britain claims, go north from the beginning, except so far as may be necessary to gain the latitude of 54 degrees 40 minutes, if it shall be determined from all that appears that it was the intention that it should proceed along that parallel.

"In this event it will go north from the southernmost point of Prince of Wales Island only in obedience to the controlling intent, and on account of the relative positions of the end of the island and the parallel, and not on account of the words 'au nord' in the text. They apply only to the direction of the line as it proceeds up Portland Channel to the 56th degree. This is not only the fair grammatical construction, but it is demonstrated by the physical situation. The mouth of neither of the channels claimed by the contestants to be Portland Channel is so located in respect to the southernmost point of Prince of Wales Island as to make it at all probable that the negotiators would have described a line connecting them as proceeding 'au nord.' Both mouths are almost due east from the southernmost point of the island."

Now, I submit that that commentary upon the proposition which had been stated in answer to this question in the Case of the United States puts forward a totally different point of view. The answer given in terms in the Case was that the line was to be drawn from Cape Muzon in an easterly direction until it intersects the centre of the Portland Channel. To that no objection can be offered, and then the commentator says that the line is to be drawn along the parallel of latitude 54 degrees 40 minutes. But, then, Cape Muzon is not in 54 degrees 40 minutes. It is a little way from it, a little way south of it. How are you to get 54 degrees 40 minutes? Well, if I rightly appreciate this argument, it is that from Cape Muzon you are to run up alongside the point until you get to 54 degrees 40 minutes, and then follow 54 degrees 40 minutes.

MR. AYLESWORTH. Then you would cut off Cape Chacon?

SIR ROBERT FINLAY. Yes, certainly. I mean you have two extraordinary notches in this line, that Cape Muzon is to run up to 54 degrees 40 minutes, and then Cape Chacon is to run down. I submit to the Tribunal that all this is introducing perfectly gratuitous difficulties into what is a very plain matter indeed; 54 degrees 40 minutes is not the governing factor. The governing factor was 55

degrees N. latitude which was claimed by Russia. That was departed from for the purpose of giving to Russia the whole of Prince of Wales Island and as soon as that fact is appreciated all these difficulties really disappear.

Now, I have endeavoured to do justice to the contention put forward by referring to the various passages and documents on the other side in which it is advanced. The first observation, of course, arises upon the language of the Treaty itself. The Treaty says that the point of commencement is the southernmost point of Prince of Wales Island, and then follow these words:—

“Which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133rd degree of west longitude.”

The PRESIDENT. You are entitled to say, and, of course, it is the simplest thing in the world to say “Go along 54 degrees 40
114 minutes.” It does not want any argument at all. That is your argument upon that part of the case.

Sir ROBERT FINLAY. That is my argument, 54 degrees 40 minutes is not mentioned as the parallel along which the line is to go. It is merely mentioned as forming part of the description of the southern point of Prince of Wales Island. It is an elementary rule of law that an error in description does not vitiate the designation of a thing. The designation is as clearly as can be the southern point of Prince of Wales Island; 54 degrees 40 minutes was simply put for the purpose of helping any person to look for that southern point. What makes it more noticeable in this case is that they also give the longitude, and they give it as between the 131st and the 133rd degrees of west longitude. You are to look between these lines, and as they supposed at 54 degrees 40 minutes, for this point. As a matter of fact, it is between those degrees of longitude, and it is very near the 54 degrees 40 minutes, although it is in fact somewhat to the south. 54 degrees 40 minutes occurs as the designation not of a line but of a point. It is the description of the point of commencement.

Well, if it begins at the southern end of Prince of Wales Island, and that is some way to the south of 54 degrees 40 minutes, how does it remain 54 degrees 40 minutes? There is no provision made whatever, except that from the southern point of Prince of Wales Island it shall proceed to the north along the pass called Portland Channel. The suggestion that the 54 degrees 40 minutes is the governing factor, and the provision as to the whole of Prince of Wales Island belonging to Russia being introduced merely for the purpose of providing against any part of Prince of Wales Island being south of that parallel is, I submit, contrary to the whole tenour of the negotiations, and contrary to the plain terms of the Treaty. The object of that provision about the whole of Prince of Wales Island belonging to Russia was this: That when you took a line from the southernmost point of Prince of Wales Island to the entrance to Portland Canal, it is perfectly possible that that line might intercept any part of Prince of Wales Island not lying quite so far south. I am obliged to my friend, the Solicitor-General, for reminding me of a very apposite passage in one of the drafts of the Russian Plenipotentiaries. It is the draft that is inclosed by Sir Charles Bagot, on the 12th August, 1824, to Mr. Canning. It occurs at p. 94 of the British Case Appendix, and the way in which in the 1st Article of that counter-draft the point of description and the point of starting is given is this:—

“A partir des deux points qui forment l'extrémité méridionale de l'île dite du Prince de Galles, laquelle appartiendra toute entière à la Russie, points situés sous la parallèle de 54 degrés 40 minutes de latitude nord, et entre les 131 degrés et 133 degrés de longitude ouest (méridien de Greenwich) la ligne de la frontière entre les possessions Russes et les possessions Britanniques remontera au nord.”

And so on. Then the line was to run that way, so that thereby specifying the two points which form the southern extremity the possibility of any such question arising would be obviated altogether. If you take these two points the words which are parenthetically inserted, “laquelle appartiendra toute entière à la Russie,” are really more by way of describing the effect of what you are doing than anything else. I submit that if the point wanted clinching, it is clinched by the passage which has been handed to me. There is no mention whatever of the latitude 54 degrees 40 minutes as any guide to the Portland Canal. 54 degrees 40 minutes is mentioned in the description of Prince of Wales Island, but in that only.

Now, my attention was called yesterday to the fact that the provision is that the line was to ascend to the north. Well, that, I submit, is satisfied by the fact that when the line does get to the Portland Canal it goes away to the north. There is no provision, it is true, for its going easterly from the southern point of Prince of Wales Island to the Portland Channel, but of course you have to do that in order that you may get the channel which is to conduct you to the northerly point. Now, if 54 degrees 40 minutes is taken as indicating an east and west astronomical point in the latitude of the south point of

115 Prince of Wales Island, there never could be any cutting off of any other portion of the Prince of Wales Island, because if you draw a parallel of latitude from a southern point you can get to any point which is north of that, but if 54 degrees 40 minutes is taken as the point of commencement, then that, as a matter of fact, is not the southern point of Prince of Wales Island.

The truth is that the line of Portland Canal was to be drawn as straight as you could draw it from the southern point; Cape Chacon was to be Russian. The statement made in the Case, the defined answer given in the Case, is one to which no exception can be taken by the British Government; but I do take exception to the commentary upon it—the variation which, under the guise of commentary, is introduced into the Article. The truth is that in the course of those negotiations 54 degrees 40 minutes was mentioned generally and vaguely. It is near the latitude of the southernmost point of Prince of Wales Island, which was mentioned in a general way, but then Mr. Canning's instructions leave it out altogether, and substitute the definite words “the southern point through the Portland Canal,” and that was followed afterwards in all the drafts and in the Treaty.

There is one other consideration which I ought to call attention to as showing that 54 degrees 40 minutes was not taken in dealing with the question of boundary as between coterminous Powers, and that is that there was a good deal of uncertainty as to this precise latitudes at the time the negotiators were dealing with this matter; 54 degrees 40 minutes, it is true, was laid down as the boundary in the American Treaty, but then the American Treaty with Russia was dealing with a different class of matters, although the United States had not withdrawn their claim to share in the territory further

up the western coast of America. Effectively this was a limit which was drawn for the purpose of dealing with trade and with possible settlements for the purpose of trade, and 54 degrees 40 minutes was taken as a sufficiently good boundary for that as between the two Powers. As a matter of fact, as the negotiations with the British Government had proceeded for two years before the Treaty with the United States was concluded, it must have been perfectly obvious to every one that there was no danger of the United States having the territory up to 54 degrees 40 minutes or anywhere near it; but when you come to limiting the frontier with an adjoining Power, and saying up to what point the territory of the United States is to go, then you want accuracy, and for that reason, instead of having recourse to any parallel, they take points, and say that the line is to be drawn from point to point.

The discrepancy in the latitudes given in the maps at that time I have taken out in the form of a table which can be supplied to the Tribunal. It would be dreary work to read it out, and nothing is more difficult in the world than to follow the figures, but this table will be handed to the reporter, and it will appear in the print. It has been supplied to me as being an accurate statement of the latitude given in the various maps which can be supposed to be before the negotiators—in some of the maps; I do not think it extends to two of them which I mentioned yesterday. The latitude is given in Vancouver's two maps.

The PRESIDENT. Of the southern point or what?

Sir ROBERT FINLAY. Of Cape Muzon, of Cape Chacon, of the mouth of the Portland Canal, and of the mouth of the Observatory Inlet.

The PRESIDENT. Thank you, yes.

Sir ROBERT FINLAY. It shows variations, not very great, but still they are variations, in some cases of a marked and distinct character, and the fact of these variations existing is, I submit, quite enough to show the reason why, with the American Treaty before them, they discard latitude as a guide, and select fixed points. The maps from which these latitudes are taken are the two maps of Vancouver, the Russian map of 1802, the two Arrowsmith maps of 1822 and 1824, and the two Faden maps of 1823 and 1824.

The PRESIDENT. You will hand it in, Mr. Attorney-General. It will be upon the note.

116 Sir ROBERT FINLAY. I will hand it in now; it will be upon the note.

The following was then handed in:—

Latitudes from the Maps in British and United States Atlases.

Map.	Reference.	Cape Muzon.		Cape Chacon.		Portland Canal (Mouth).		Observatory Inlet (Mouth).	
		°	'	°	'	°	'	°	'
Vancouver (General Map).....	Br. No. 1.....	54	43	54	45	54	45	54	41½
“ (part).....	{ Br. No. 2.....	54	42½	54	42½	54	45½	54	41½
“.....	{ U.S. No. 4.....	54	42½	54	42½	54	45½	54	41½
Russian, 1802.....	{ Br. No. 5.....	54	44	54	46	54	49	54	44
“.....	{ U.S. No. 6.....	54	42½	54	44½	54	47½	54	43½
Arrowsmith, 1822.....	Br. No. 9.....	54	43	54	41	54	49	54	44½
Arrowsmith, 1824.....	{ Br. No. 8.....	54	43½	54	43½	54	47½	54	43½
“.....	{ U.S. No. 10.....	54	44	54	44	54	47½	54	44
“.....	{ Br. No. 12.....	54	42	54	41	54	47	54	43½
Faden, 1823.....	Br. No. 10.....	54	41½	54	39½	54	45	54	41
“ 1824.....	Br. No. 11.....	54	41½	54	40	54	45	54	40

Of course, what I have been endeavouring to submit to the Tribunal may be put in a more epigrammatic way, for which I am indebted to my friend, Mr. Rowlatt. It must be conceded, it is conceded in fact, that 50 degrees 40 minutes does not control the southern end of Prince of Wales Island in connection with which it is mentioned. The contention appears to be that it does control the Portland Channel in connection with which it is not mentioned. I have handed in the table relating to most of the maps which could not have been supposed to be before most of the negotiators, and it is worth pointing out in connection with this very important contention that is enunciated in the United States Case that the latitude varies a good deal in subsequent maps. I will just mention a few of them. I will not weary the Tribunal by going to subsequent maps and descriptions of the coast. In the Colonial map of 1831 Muzon is given as 54 degrees 45 minutes, and Point Nunez, which is a little point near Chacon, is given as 54 degrees 42½ minutes. In the Russian chart of 1849 Cape Muzon is given as 54 degrees 42 minutes, and Cape Chacon as 54 degrees 42½ minutes. In Finlay's "Directory of the North Pacific Ocean and the Coast of Japan," at p. xxxviii, that is the edition which was published in 1851, Cape Muzon is given as being 54 degrees 43 minutes on the authority of Quadra, while Chacon is given, at p. xxxix, as 54 degrees 43 minutes; it is also given as 54 degrees 43 minutes on the authority of Vancouver.

In the "United States' Pacific Coast Pilot," published in 1883, at p. 64, Muzon, Chacon, and Nunez are given as doubtful, but about 54 degrees 42 minutes. Then at p. 65 in the "United States' Coast Pilot" it is stated that all these capes were determined by Brundige as 54 degrees 42 minutes 15 seconds; and on the same page Muzon is stated to be on the authority of Commander Nichols of the United States' Navy, it is stated to be 54 degrees 41 minutes 4 seconds. In the edition of 1886 of Findlay's "North Pacific Ocean and Japan Directory," at p. 17, Chacon is given on the authority of Vancouver as 54 degrees 42 minutes. I may just add to that, that with regard to the mouth of Portland Canal and Observatory Inlet, I am using these terms in the sense which the British Government attached to them. In the United States' Coast Geodetic Survey of 1899, 117 corrected to 1903, No. 8100, the latitude for the mouth of Portland Canal is given as 54 degrees 45·8 minutes, and the mouth of Observatory Inlet midway between Point Wales and Point Maskeleyne is given as 54 degrees 40·6 minutes, which will be about 3,600 feet, about half a nautical mile, or rather more than half a nautical mile to the north of 54 degrees 40 minutes.

I cannot help thinking the importance attached and the prominence given to this idea of latitude 54 degrees 40 minutes in the Argument of the United States is due to the fact of it appearing in the American Treaty which was entered into just the year before.

Now, there are one or two observations I wish to make upon the documents in that connection. It will be recollected that stress is laid in one passage of the United States' Case upon a version of the British Treaty said to have been given to Mr. Middleton by Sir Charles Bagot. The passage occurs at p. 62 of the United States' Case.

MR. AYLESWORTH. To Mr. Middleton by Mr. Stratford Canning?
 Sir ROBERT FINLAY. By Mr. Stratford Canning. I am much

obliged. I said Sir Charles Bagot; I ought to have said Mr. Stratford Canning. It is a passage in the middle of p. 62:—

“Although Mr. Stratford Canning does not appear, from the correspondence available, to have placed in writing any interpretation upon the Treaty which he had signed, he gave a verbal explanation of it, which on 1st March, 1825, Mr. Middleton reported in detail to the American Secretary of State. On that day, which was the day following the signature of the Treaty, the British Envoy had an interview with the American Minister. From the latter's report it is apparent that a copy of the Convention was not shown him, but its contents were explained to him by Mr. Canning, and therefore, in repeating Mr. Canning's language, he gave the latter's understanding of its terms. Mr. Canning's version of the IIIrd Article, which defined the boundary line agreed upon, Mr. Middleton reported as follows.”

I may say it is an extraordinary way to interpret a Treaty to refer to an interview at which Mr. Stratford Canning gave his impression of the meaning of the Treaty, but I pass that by at present because I am going to point out that it is not suggested, so far as I am aware, in the course of this Memorandum of this interview that the latitude of 54 degrees 40 minutes was treated as the governing factor in the line of demarcation, although, of course, Mr. Middleton must have had fully in mind the terms of the American Treaty. Mr. Middleton reported as follows:—

“The third Article of this Convention establishes the line of demarcation between the possessions of the two Powers upon the continent and islands as follows:—

“It begins at the southernmost point of Prince of Wales Island (about 54 degrees 40 minutes), leaving the whole of that island to Russia. It follows the strait called Portland Passage up to the 56th degree.”

The passage is cited for the purpose of showing that Mr. Stratford Canning's statement to Mr. Middleton was that from the head of Portland Canal the line turned eastward to the range of mountains, and that the word “shores” is used instead of the east coast; but there is no suggestion that 54 degrees 40 minutes was the governing factor, and in that negative way I think one may with advantage refer to this, although I must again say it is a very odd way when dealing with a treaty to refer to conversations, the effect of which is reported in this way.

Then Mr. Canning had the United States treaty before him when he wrote his instructions of the 12th July, 1824. I will just refer to the passages in the British Case Appendix at pp. 80 and 85. Mr. Canning, writing to Sir Charles Bagot on the 12th July, 1824, at the bottom of page 85 selects these points:—

“His Majesty's Government have resolved to authorize your Excellency to consent to include the south points of Prince of Wales Island within
118 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.”

That dispatch was written when the American Treaty had been executed, as was, of course, well known to Mr. Canning. Well, it must have been known to him, of course, in other ways. He had it because in the Memorandum of Mr. Pelly, of the Hudson's Bay Company, to the Foreign Office, dated the 6th May, 1824, on the first of the two pages I have mentioned—p. 80, at the very bottom of the page, there is this sentence:—

“But the copy of the Convention between Russia and America seems to have rendered the concessions proposed to be made by Great Britain (founded

on the basis of mutual convenience) quite unnecessary, for by it Russia has bound herself, in the IIIrd Article, not to form any establishment to the southward of 54 degrees 40 minutes, or Prince of Wales Island, and by the IVth Article it is covenanted that for ten years all vessels belonging to the two powers may reciprocally frequent all the harbours for the purposes of trade with the natives."

So with that before him, with that knowledge, Mr. Canning deliberately rejects the other basis, which, on every principle of convenience for the purpose of determining the precise boundary where the precise boundary is not exactly known, was preferable.

The third reference I wish to make in this connection as to the American Treaty is to be found in two despatches of Count Nesselrode; the first, dated the 31st March, 1824, when he was writing to Count Mordvinof, occurs in the United States' Appendix at p. 166, and the other is another dispatch of Count Nesselrode to Count Lieven, dated the 5th April, 1824, the very day of the signature of the United States' Treaty, which occurs in the United States' Appendix at pp. 170 and 171. I prefer to refer to these because the point is intelligible. The first of these two despatches occurs at p. 166. It is dated the 11th April, 1824, and in it Count Nesselrode draws the contrast between the position of England and the United States in this matter. I will begin about ten lines down on p. 168:—

"To lose subjects who have voluntarily subjected themselves to his sceptre, and are sons of the Russian Church, would, of course, always be regretted by our noble-minded Monarch; but, according to all the information I have gathered, it appears that neither along the coast below 55 degrees, nor yet in the interior of the country at a great distance from the sea, are there any Settlements of the Company, nor any natives professing the Russo-Greek faith; at the same time, our apprehended retirement to the north is, I venture to opine, not very probable. Having thus denoted (as far as the secrecy necessary in diplomatic negotiations permitted), the present position of our negotiations with England, I hasten to inform your High Excellency and the whole board of Management of the Company, that the other negotiation concerning its affairs with the North American Republic has been brought to a conclusion, and with the success desired. The Convention concluded on the 5th April, 1824, and herein inclosed in copy for your information, contains the ratified conditions mutually consented to, and these are, in my opinion, reciprocally and completely satisfactory. In Article III the United States recognize the sovereign power of Russia over the western coast of America, from the Polar Seas to 54 degrees 40 minutes of north latitude; while we, on our part, promise not to found Settlements below this parallel, as a matter of course only in those places, and without extending this provision to the Colony of Ross, far distant to the south."

And in the second of these despatches, the one written by Count Lieven to Count Nesselrode, on the 5th April, the date of the Treaty with America, he says (I am reading at p. 172 of the translation):—

"The Ukase of the 4th (16th) September, 1821, carried the domains of Russia on the north-west coast of the American continent down to the 51st degree of north latitude. Nevertheless, the Emperor, being convinced that at almost the same epoch the English Hudson's Bay Company had formed establishments about 53 degrees and 54 degrees north latitude, and that these establishments were not very far removed from the coast, has authorized us to give at the outset of the negotiations a proof of his conciliatory intentions in declaring to Sir Charles Bagot that we would confine ourselves within the limits assigned to our American possessions by the charter of the Emperor Paul; that in consequence the line of the 55th degree of north latitude would constitute on the south the frontier of the States of His Imperial Majesty, that upon the continent and towards the east this frontier could run along the mountains which follow the sinuosities of the coast as far as Mount Elias, and that from this point we would fix the limits of the respective possessions according to the 140th degree of longitude west from the meridian of Greenwich.

"In order not to cut Prince of Wales Island, which, according to this arrangement, would remain to Russia, we proposed to carry the southern frontier of our domains to latitude 54 degrees 40 minutes, and to make it abut upon the continent at the Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island, and which has its origin inland between 55 degrees and 56 degrees of latitude.

I think one ought to refer to the French there, at p. 170, because what he did say was:—

"Afin de ne pas couper l'Île du Prince de Galles, qui, selon cet arrangement, devait rester à la Russie, nous proposons de porter la frontière méridionale de nos domaines au 54 degrés 40 minutes de latitude et de la faire aboutir sur le continent au 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 le 55 degré et 56 minutes de latitude."

One could not have a more concise and neat description of the principle upon which the negotiation of the Treaty proceeded of taking degree 55, but departing from that to the extent of giving the whole of Prince of Wales Island to Russia, which necessitated going down to about 54 degrees 40 minutes, or whatever was the southern boundary of Prince of Wales Island. Then when you come to the continent the line is to abut on the continent at the Portland Canal of which the opening is, I may say, abreast of or off the Prince of Wales Island. Then in the same despatch, at p. 171 in the French, and at the bottom of 173 in the translation, Count Nesselrode says:—

"If Prince of Wales Island remains to us, it is necessary that it can be of some utility to us. Now, according to the plan of the British Ambassador, it would be for us only a burthen, and perhaps an inconvenient one. That island, in fact, and the establishments which we might set up thereon, would find themselves entirely isolated, deprived of all support, surrounded by the domains of Great Britain, and at the mercy of the English establishments of the coast. We would exhaust ourselves in the cost of guarding and watching our part without any compensation to alleviate the burthen. Would such an arrangement be founded on the principle of mutual expediency?"

"We have all the more right to appeal to this principle, since England herself has proved by an authentic act that she regarded her rights to the territory, the surrender of which she demands, as doubtful. The Convention of October 20, 1818, between the Court of London and the United States, declares that all the extent of country between the Rocky Mountains, the Pacific Ocean, and the Russian possessions shall be the common property of the two Powers for 10 years. The titles of the United States to the possession of this territory are, therefore, as valid as those of England. Nevertheless, the Cabinet of Washington has admitted that our boundary should come down as far as 54 degrees 40 minutes. This has been admitted in a formal agreement that we have just signed with its Plenipotentiary, and the strengthening of our arguments is far from being the only result of this admission. It has other consequences to which we rightly attach the greatest importance."

Now, there you have in that very despatch Count Nesselrode comparing the two Treaties. He is pointing out what the United States have given, and he points out what is the proposal with regard to England in totally different terms, and he gives the reason which I have submitted for departing from the latitude of 55 degrees.

120 The reason for that latitude is, of course, the Ukase of the Russian Emperor, from which they did not desire to depart. They departed very much to the extent, and the extent only, mentioned in the despatch of Count Nesselrode. The fact that the British Treaty in certain of its Articles follows *verbatim* and *literatim* the United States' Treaty lends point to the observation that in this matter it departs from it.

Now, I propose to call attention in this connection very briefly to the portions of the negotiations which bear upon this point. I have touched upon them from time to time, but I think the Tribunal ought to have a connected view focussing the negotiations and see how far they bear out the contentions on one side or the other.

Now, this matter opens in 1823 with the application of the Russian Fur Company to M. Poletica to try to obtain 54 degrees as the boundary. That will be found at p. 53 of the British Case Appendix, in the despatch of the 3rd November, 1823, from M. Poletica to Count Nesselrode. I will read only one sentence; it is near the bottom of the page:—

“My conversations on these two points with Privy Councillor Count de Lambert, whom the Minister of Finance had appointed to represent the interests and the wishes of our American Company, convince me that the interests would be protected and the wishes entirely satisfied if we succeeded in fixing the boundaries of the possessions of the said Company at the 54th degree of north latitude, and by giving them in depth such degree of longitude (meridian of Greenwich) as, in its prolongation towards the Pole, would leave the Mackenzie River outside of our boundary.”

M. Poletica made this suggestion to Sir Charles Bagot on the 2nd October, 1823. That is stated at p. 55 of the British Case Appendix, near the top of the page:—

“Consequently, avoiding circumlocutions, [I said] that the Imperial Government would think that it had made all the concessions required by its moderation and its earnest desire to maintain a good understanding with all foreign Powers by fixing the boundary between the Russian and English possessions at the 54th degree of latitude.”

As appears lower down on the same page, Sir Charles Bagot suggested the 57th degree of latitude by tracing on the map with his finger the line; but M. Poletica was ready to go back to 55, the limit under the Ukase of the Emperor Paul of 1799, which, he said at that interview with Sir Charles Bagot, was practically a limit beyond which he could not go. That appears at the top of p. 56:—

“I thought it my duty to tell Chevalier Bagot in reply that he had good reason to say that we were both greatly out in our reckoning; that for my part I regretted it the more because I could see no consideration that could induce the Imperial Government to draw back the boundary of its possessions on the north-west coast of America 2 degrees beyond the point mentioned in the charter of the Emperor Paul I, which has just been referred to.

“I remarked that if the Edict of the 4th September, 1821, had been detrimental to the Colonial and maritime interests of any of the foreign Powers, we had hastened at the first remonstrances which they had addressed to us to suspend the execution of the provisions of that Edict, especially those which gave most cause for those remonstrances; that in the subsequent explanations the Imperial Government constantly manifested the most conciliatory intentions; that it was disposed to make all the concessions which justice required, both upon the question of the territorial boundaries and upon that of the maritime jurisdiction, but that it naturally would be very unwilling to abandon a boundary established by the Charter of Paul I and confirmed to some extent by an undisputed possession of about a quarter of a century.

“As the said Charter was not at that time officially communicated to the foreign Powers, I will not persist in maintaining, said I, that it constitutes a *de facto* right,” and so on.

“I then asked Chevalier Bagot, ‘Whether he did not himself admit that it would be attempting to impose too great a sacrifice upon the dignity of the Imperial Government to require it to say now to its own subjects, “We have allowed you to believe for twenty-two years past that the boundaries of our
121 possessions on the north-west coast of America extended from Behring Strait to the 55th degree of latitude; well, we tell you now that it was a mistake, and that the southern boundary must stop at the 57th degree, because it has just been proved to us that the boundary never belonged to us!”’

"Lastly, I requested Chevalier Bagot to take notice that in this whole matter, as far as Russia was concerned, it could be only a question of concessions; that by replacing the boundary of her possessions on the continent of America at the 55th degree (provided always that the Imperial Government decided to do so, which I could not take upon myself to predict), and by modifying at the same time her theory of maritime jurisdiction, Russia not only complied with the reasonable wishes of all moderate people in England, but that she would also silence the extravagant declaimers of the Opposition party, who were incessantly haranguing the public, either in the daily papers or in the Sessions of Parliament, about what they called the unbounded ambition of Russia."

And Sir Charles Bagot's account given of this interview agrees that the limit of 55 degrees was suggested on that ground. His despatch will be found beginning at p. 48 of the British Case Appendix, the third paragraph:—

"M. Poletica seemed to suggest the 55th degree as that which, in his opinion, Russia would desire to obtain as her boundary; and he intimated that it would be with extreme reluctance that Russia would, he thought, consent to any demarcation which would deprive her of her establishment at Sitka, or rather at Novo-Archangelsk."

Now, there we have it neatly brought out that Russia was insisting upon 55 degrees north latitude as the limit, and on the ground that by the Ukase of 1799 she had asserted it, and could not recede from it. That was in 1823. In 1824, on the 16th February, Sir Charles Bagot proposed Chatham Strait and Lynn Canal. That appears on p. 67 of the British Case Appendix. Then at the next meeting the Russians made proposals which tended to have the 55th degree admitted as the line of demarcation. That appears at the bottom of p. 69, but the proposals made by the Russian Plenipotentiaries tended to have the 55th degree of north latitude recognised as the dividing line between the respective possessions on the north-west coast of America. They pointed out in that draft "projet," as appears on p. 70, that it was the boundary in the Charter of 1799 granted by the Emperor Paul, and they asked to depart from it only so far as to avoid cutting Prince of Wales Island. That is so important, I think I must call the attention of the Tribunal to it. After stating that their proposals tended to have the 55th degree admitted as the limit, the "contre-projet" goes on thus:—

"This same limit has already been assigned to the possessions of Russia by the Charter which the late Emperor Paul I granted to the American Company.

"Inasmuch as the 55th degree of parallel intersects the Prince of Wales Island at its southern end, leaving outside two points of land, the Russian Plenipotentiaries have proposed that these two points should be included within the Russian limits, intending thereby to avoid a division of territory inconvenient equally to the two parties interested in the case."

There it is: 55 degrees on account of the Ukase of 1799; Prince of Wales Island, which would be cut by the 55th degree, at its southern extremity, to belong to Russia; 55th degree to be departed from for that reason and to that extent only. Sir Charles Bagot's comment upon that proposal is that which appears at the bottom of the same page where he refers to it as a dividing line, starting from the southernmost extremity of the Prince of Wales Island, and extending to the mouth of the Portland Channel, which was open to certain objections in respect of the inlets, coves, and small bays to be found between 56 and 54°45 degrees of latitude. 54°45, I may remind the Tribunal, is the latitude of the Portland Canal according to the British Government. Then he proposed, as appears at p. 71, a line

through the Channel which runs north of Prince of Wales Island, which is afterwards called, I think, Summer Strait. Then the Russians, in reply, return to the 55th degree in their observations on Sir Charles Bagot's amended proposal. At p. 71 they say:

122 "The Russian establishments of the American Company seem to move south towards the 55th parallel and beyond, as it is to be observed that if the American Company has not yet formed permanent settlements on the mathematical line of the 55th degree, it is none the less a fact that in virtue of its privilege of 1799, against which no Power has ever entered a protest, they carry on the chase and fishing in these regions, and that, as a rule, it occupies the islands and the adjoining coasts during the season, which allows for the sending there of its hunters and fishermen.

"It was then of a reciprocal convenience for the two Empires to assign proper limits to mutual improvements which with time could have only occasioned most serious complications.

"It was also convenient that both parties should determine these limits, taking into consideration the natural divisions which always form the most distinct and indisputable frontiers.

"For these reasons the Russian Plenipotentiaries have proposed as the limits on the coast of the continent, to the south the Portland Channel, whose head is about the 56th degree of north latitude, and to the east the chain of mountains."

Now it is observed that while referring there to the 55th degree, again the Russian negotiators say, and very reasonably say, that when we are fixing a question of boundary we ought to take natural features into account. They then mention the natural features which appear in the Treaty. That is further developed at p. 72 in the same set of observations by the Russian Plenipotentiaries, and some passages in the observations at p. 72 are so directly in point that I would ask the Tribunal to look at them. They say, near the top of p. 72, that:—

"The draft of agreement of the Russian Plenipotentiaries leaves open to the gradual extension of the English Colonies:—

"1. All that part of the coast lying between the mouth of Portland Channel and the 51st degree of latitude north, considered as Russian possessions in the Ukase of September 4th (16th), 1821."

Now if they had in view anything but natural features as the line of division why, when they were mentioning the 51st degree of latitude north as the southern boundary of that which was left open to England, did they not designate the northern boundary also by latitude? On the contrary they select the natural feature—the mouth of Portland Channel which they had preferred to any degree of latitude as a boundary. Then they recur to expressions of latitude in the next sentence where they speak of "all the territory lying between the English establishments on the 54th parallel and the head of Portland Channel which lies by the 56th parallel." Then, near the bottom of the page, there occurs this paragraph to which I direct the very particular attention of the Tribunal:—

"On ne parlera point ici des deux pointes de l'île du Prince de Galles, qui sont situées au-dessous de la ligne du 55^e degré de latitude nord. Ces deux pointes ne pourroient être d'aucune utilité à la Grande-Bretagne, et si les neuf-dixièmes de l'île du Prince de Galles appartiennent à la Russie, il est évidemment d'un intérêt réciproque que l'île lui appartienne toute entière."

One could not have it put more positively that the two headlands of Prince of Wales Island which are situate below the line to the 55th degree of north latitude are a matter which Russia for reasons of convenience stipulated for, but which really between such negotiators was hardly worthy of mention. That is how they put it. And up to this point 54 degrees 40 minutes had never been mentioned at all

except as a rough designation of the situation of the southern point of Prince of Wales Island, although 54 degrees 40 minutes of course was present to the minds of all, and is repeatedly referred to as the boundary constituted by the Russians.

I think I admitted too much against myself when I said that it had been mentioned even to the extent of the designation of the approximate situation of the southern point of Prince of Wales Island. Up to this point I do not think it had been mentioned at all. What has been mentioned up to this point is 54 degrees 40 minutes in connection with the American Treaty, 55 degrees as the line which Russia was holding out for, and then the southern points of Prince of Wales Island to belong to Russia, although they are south of 55 degrees, but I do not think that 54 degrees 40 minutes up to this point has been mentioned in any connection at all. In reply to these last observations, Sir Charles Bagot contends that the Russian claim by occupation did not go further on the mainland than 60 degrees or 59 degrees. That appears at p. 73 of the British Case Appendix; and he says that he cannot go below latitude 56 degrees 30 minutes, which is the latitude of the channel north of Prince of Wales Island proposed by him before. It is at the bottom of p. 73 and the top of p. 74:—

“It was in the hope of conciliating these most important points with the views of the Imperial Government, and without any further delay settling a question which it seemed to be in the interest of both parties to have definitely arranged at the present moment, that the Plenipotentiary of His Britannic Majesty had the honour, in his last conference with the Russian Plenipotentiaries, to propose a line of demarcation which, while securing to Russia as its southern boundary to the islands the degree of latitude mentioned by the Ukase of 1799, would, at the same time, assign to Great Britain as boundary on the mainland coast the latitude of 56 degrees 30 minutes north latitude.”

On that page he recognizes in the islands the limits of the Russian claim and he does it by giving them the whole of Prince of Wales Island, pp. 73 and 74. And it is important to look at the terms of his despatch in reporting on this point to Mr. Canning; and it will be found that at p. 68 he says that he gave Russia the 55th degree of latitude as a boundary upon the islands. That is at p. 68 near the middle of the page.

“As, however, I felt strongly the importance of adjusting this business, if possible, at the present moment; and as I felt also that, although the Russian Plenipotentiaries had, in consequence of my former remarks, agreed to waive altogether all question of national dignity in discussing it, His Imperial Majesty might yet possibly feel an invincible repugnance to retract from the pretensions advanced by the Emperor Paul in the Charter given to the Russian American Company in 1799 (however unacknowledged by other Powers such pretension might have been)—I thought that I should not act in opposition to the spirit, at least, of my instructions if, in deference to such a sentiment on the part of the Emperor, and with a view to finish the business quickly, I ventured to make yet one other proposition which, while it saved this point of dignity to Russia by giving to her the 55th degree of latitude as her boundary upon the islands, might preserve also uninterrupted our access to the Pacific Ocean, and secure to His Majesty the 56th degree of north latitude as the British boundary upon the coast.”

And there is a despatch of Count Nesselrode dated the 11th April, 1824, which will be found in the Appendix to the United States' Case, where he speaks of there being no Russian settlement below 55 degrees either on the coast or inland, and then the next paragraph contrasts the United States' negotiations and the Treaty of 54 degrees 40 min-

utes. I have read that so recently that I am not going to read it again; and the following letter, which is at pp. 170 and 171 of the United States' Case, deserves to be read in this connection. I did not read it again because I have read the material parts this morning already.

Now, summarizing the position of the negotiations up to this point, we find both sides treating the southernmost point of Prince of Wales Island as the point to be taken, carrying out the 55th degree boundary with the insignificant variation to avoid cutting Prince of Wales Island in two. Well, it is rather remarkable, in view of all that, to find that in the Argument for the United States, at the middle of p. 55, this is asserted, after referring to the terms:—

“This would seem to indicate that in the description the parallel was regarded as the real point of departure, and so, to guard against the result that Prince of Wales Island might be divided, the express provision was inserted, so that, notwithstanding the designation of the parallel, the whole of the island should belong to Russia.”

124 That is applied to the latitude of 54 degrees 40 minutes. I submit that a more complete inversion of the whole course of the negotiations resulting in the Treaty cannot be imagined. The negotiations at that time went off because the Russians were insisting on a boundary on the mainland which Sir Charles Bagot was not at the time prepared to concede. Then, on the 12th July, 1824, negotiations were resumed under instructions from Mr. Canning, which appear at p. 85 of the British Case Appendix, and there Mr. Canning states explicitly:—

“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.”

But, in the meantime had occurred the first mention of 54 degrees 40 minutes which has now come to play so important a part in this matter. It occurs in a despatch from Count Nesselrode to Count Lieven, which is contained in the British Case Appendix beginning on p. 75. It is the same despatch which has been referred to; in fact, it is the despatch some parts of which I read from the American Case this morning. It is the third paragraph on p. 76. I think I am right in saying that this is absolutely the first mention which is made in these negotiations of 54 degrees 40 minutes in connection with the Treaty with England. I need not read again the paragraph where he speaks of the 55th degree of north latitude. Then he goes on:—

“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 54 degrees 40 minutes of latitude and to make it strike on the continent the Portland Canal.”

Now, there I submit that it is as clear as anything can be that he refers to 54 degrees 40 minutes merely as the point to which it would have to be carried in order to avoid cutting the Prince of Wales Island, and that 54 degrees 40 minutes has no application as the general parallel of division is demonstrated by the following words, where he says that they proposed to make it strike on the continent the Portland Canal, the mouth of which on the ocean is *à la hauteur* of the Prince of Wales Island and the head inlet between the 55th

and 56th degrees of latitude. Now, that is the first mention of 54 degrees 40 minutes, and there I submit that it is absolutely clear that it is introduced merely by way of general description of the point to which on the islands the boundary should be carried down for the purpose of avoiding the division of Prince of Wales Island. These instructions of Mr. Canning of the 12th July, 1824, which I was reading when I turned aside to notice that this 54 degrees 40 minutes had been mentioned in that way by Count Nesselrode, inclosed the draft.

It appears at p. 86 and the following pages of the British Case Appendix. In this, and in all the subsequent drafts, the southern point of Prince of Wales Island is described substantially in the same way—a mere matter of description: “Commencing from the two points of the island called Prince of Wales Island which form the southern extremity thereof, which points lie in the parallel of 54 degrees 40 minutes and between the 131st and 133rd degree of west longitude (meridian of Greenwich), the line of frontier between the British and Russian possessions” shall run so and so. I need not refer to the subsequent drafts but call attention to the fact that in that, as I have read it, two points are mentioned, and, to go through the subsequent drafts down to the Treaty would really be a work of supererogation. The same words are used with the exception that the two points are omitted and the one point is substituted.

Now, there is another point which is worthy of observation in the negotiations. I have been dealing with them so far as they relate specifically to the question of the parallel of latitude; but there is another point worthy of being observed in the negotiations, and that is, that the *lisière* about which they were negotiating was to be a *lisière* upon the mainland from Portland Canal. They had been dealing in carrying it down as far as the 54 degrees 40 minutes, which is approximately the latitude of the southern point of Prince of Wales Island—they had been dealing with the islands.

125 But when you come to take the boundary at the point to which the line is to be drawn from the southern point of Prince of Wales Island, they are dealing with something which is to be upon the mainland and not upon the islands. The contest here is as to whether certain islands, Pearse Island, Wales Island, Stiklan, and Kanaghunut, are to belong to the United States or to Great Britain, and I must call the attention of the Tribunal to the fact that the question of the *lisière* was one that was agitated with reference to what Russia was to have upon the mainland. Now, the proposals by the Russians—this, I am sorry to say, involves referring to passages which have already been referred to for another object, but one must just mention them from this point of view. At p. 70 the Russian Plenipotentiaries in their counter draft refer in the fifth paragraph to the *lisière* on the mainland:—

“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; and it will be observed that the previous description had traced the line following the Portland Canal to the mountains “qui bordent la côte”; and in referring to what would be given by that to Russia they say expressly that it is sovereignty of a strip indicated above on the mainland from Portland Canal to that point of intersection.

Mr. AYLESWORTH. What page, Mr. Attorney?

Sir ROBERT FINLAY. P. 70, in the 5th paragraph and beginning "Le motif principal."

They give as the principal motive for insisting on the sovereignty of the strip described above upon the mainland from the Portland Canal is so and so on. Then Sir Charles Bagot replies with a difficulty from the British point of view as to inlets and small bays between the 56th degree and 54 degrees 45 minutes of latitude. As I have pointed out, that is the latitude of our Portland Canal. The Russians, on p. 71, say at the bottom of the page:—

"For these reasons the Russian Plenipotentiaries have proposed as the limits on the coast of the continent to the south, the Portland Channel."

And at p. 72 they say in the 8th paragraph from the top of the page:—

"On the other hand, the Russian Plenipotentiaries have the honour to remind him once more that without a strip of land on the coast of the continent from Portland Channel, the Russian establishments on the adjoining islands would be left unsupported."

And so on—

* * * "sans une lisière sur la côte du continent à partir du Portland Channel."

At p. 74 Sir Charles Bagot speaks of a proposal which while he would give to Russia a line of demarcation—

* * * "which, while securing to Russia as its southern boundary to the islands the degree of latitude mentioned by the Ukase of 1799, would, at the same time, assign to Great Britain as boundary on the mainland coast the latitude of 56 degrees 30 minutes north latitude."

That is what he wanted. He is contrasting the mainland with the islands: that is the point for which I am referring to this—not as to the precise point of latitude. Then the Russian final decision is given on the same page, and what they say on this point is contained in the fourth paragraph of that document:—

"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."

And then again, lower down the coast of the continent is mentioned in the paragraph last but one of that page.

126 Then Count Nesselrode, in his despatch to Count Lieven, at this stage of the negotiations says:—

"We proposed to carry" [I read the paragraph just now] "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 ('et de la faire aboutir sur le continent au Portland Canal')."

That was to make the line strike on the continent on the mainland at the Portland Canal. And then in the next sentence he says:—

"This proposition only secured to us a narrow strip on the coast itself."

Now, I submit that all these passages with reference to the fact that in taking the Portland Canal they were taking it as a boundary upon the "terre ferme" upon the continent, upon the mainland, upon the coast—go strongly to confirm the view that what is to be dealt with is the Portland Canal according to Vancouver, which furnishes a boundary north of which you are upon the mainland.

On this part of the coast, with regard to the negotiations, I do not know that there is anything to be added to what I have said, and I now proceed to deal with the subsequent action of the parties with reference to this portion of the territory in dispute.

Now, the point to which I am going to call attention relates to what was done with regard to the island of Tongass. Tongass is a small island situate to the north of the mouth of the Portland Canal, not very far from Cape Fox.

The PRESIDENT. We know it, Mr. Attorney.

Sir ROBERT FINLAY. And the Russian-American Company, in the year 1835, speaks of Tongass as being on the frontier of their straits. The document that I refer to will be found in the United States' Case Appendix at p. 233. On p. 233 there is this despatch, dated the 8th March, 1835, from the Governor of the Russian-American Company to the Commander of a Russian vessel:—

“After having prepared your vessel for the expedition, I recommend you to set sail at the first opportunity, and direct your course by the most convenient route to Tumbaz (Tongas). The aim of your expedition is twofold:—

“1. The occupation of a station on the frontiers of our straits for the purpose of preventing the foreigners to enter them and to trade with the natives, as they have lost the right to do so on account of the expiration of the ten years' term of the Convention, as you may see from the inclosed copy.

“2. For trading with the natives.

“I deem it necessary to observe the following with regard to these two points:—

“I. Occupation of a station: As we may say that the only place in our straits visited by the foreigners is Tongas, you must select this bay as the place of your sojourn. Here you may always hear from the Kolosh about the appearance of some vessel, and consequently, having your brig always ready to set sail, you will always be able to proceed to where the foreigner will show herself.

“Upon receiving from her answers to the questions marked in the enclosed papers, you will declare to her that the term of the Convention has expired, giving each vessel a letter from the nine copies here inclosed (six written for captains of the United States, and three for the English), and demand that in consequence of this the vessel should leave our possessions. Should the captain allege some indispensable reason which forced him to enter and to stop, as dire necessity of repairs or dangers from winds, after having ascertained the truth of the statement you will use all means of giving him aid, in order that you may send him out of the strait after having removed the obstacle. It stands to reason that the foreigner must under no circumstances carry on trade with the natives.

“If, contrary to all expectations, the captain should insist on staying, and should continue to carry on trade, you in your turn, must not employ any
127 violent measures against him, but report his actions to the Colonial authorities at your earliest opportunity.

“But should insolence go so far that some one should use violence against you, it is your duty to repulse it by military measures and punish the brigands, maintaining the honour of your flag and uniform. A vessel taken under such circumstances is a legal prize.

“II. Trade with the natives.

“It is known to you that the most important influx of furs to the southern parts of our straits is at Tongas, and that in April and up to the middle of May, in Tongas and the neighbouring localities all the Kolosh are absent as they go to Naas with their furs.”

Now, what is referred to as “the Straits” there is obviously the inland seas and passages which are situate between the Prince of Wales Island and the other islands to the north of the mainland. And the situation of Tongass is immediately to the north of the Portland Canal of Vancouver, and exactly answers to the description given by the Russian American Company of Tongass as being on the fron-

tiers of their straits. Then, to follow up this question of Tongass it will be found that in 1869 General Thomas, of the United States, speaks of Tongass as being on the boundary. I will read his exact language. It will be found in the United States' Case at p. 358 in the Appendix. It is a report of Major-General George H. Thomas, dated the 27th September, 1869, made to the Adjutant-General of the United States' Army. He says at p. 358 this:—

“After touching at Victoria, Vancouver's Island, for coal, I proceeded direct to Alaska; reached Fort Tongass 18th July. This post is one of the small islands of the Tongass group, at the southern end of the Alaska Archipelago, and is occupied by one company of artillery. As it has been useful in checking illicit trade with the Tongass, Cape Fox, and other Indians, and is on the boundary between Alaska and British Columbia, I have not thought it wise to discontinue it at present.”

Now there is a direct statement by General Thomas in the year 1869, two years after this territory had been taken over by the United States from Russia, that Tongass is at the southern end of the Alaska Archipelago, and is on the boundary between Alaska and British Columbia.

I submit that it is quite impossible that that language could have been employed if the boundary between British Columbia and Alaska had been constituted by the Observatory Inlet of Vancouver, as is now contended.

In 1870, General Davis writes a letter dated the 20th August which will be found at p. 357 of the United States' Case, the page before that to which I was referring just now. He says:—

“Within the past few months I have visited in person most of the tribes living on the islands forming the Alexandrian Archipelago, as well as the mainland east and north of them from Fort Tongass to the Taku and Chilcat rivers. I have also visited those in Cook's Inlet, Island of Kadiak, and several of the Aleutian islands, including St. Paul and St. George, in Behring Sea. With the exception of the two last-named (which will be more fully reported upon in detail hereafter), I found a very satisfactory state of affairs existing among the natives.”

There Tongass is referred to in a way, I submit, which seems to indicate that it was the southern part of the United States' territory.

And in 1898 an official of the United States' Education Department, in a document which will be found at p. 481 of the Appendix to the United States' Case, referred to the position of Tongass with reference to territory. The document is from the Rev. Sheldon Jackson to the Secretary of State. It is dated from the Department of the Interior Bureau of Education, Alaska Division, the 15th September, 1898. It states that he went to Alaska as Superintendent of Presbyterian Missions in 1877. It is the paragraph fourth from the bottom:—

“In 1885 I sent Mr. and Mrs. Lewis Paul as missionaries of the American Presbyterian Church to Fort Tongass on Tlekhonsiti Harbour, at the extreme south-eastern point of Alaska, where they remained for several years. In 1895 this Mission was transferred to Saxman on Tongass Narrows, where Mr. James W. Young and the Rev. Edward Marsden were in charge.”

Then Tongass is again mentioned near the end of the document, where he says that “a detachment of the United States Army had encamped at Kadiak, Kenai, Sitka, Fort Wrangell, and Fort Tongass from 1867 to 1877 inclusive.”

Then he goes on:—

“Upon the withdrawal of the military in 1877 a naval vessel—at first the *Jamestown* (Captain Henry Glass), afterwards the *Adams* and the *Wachusett*, the latter commanded by Captain Lull—was stationed at Sitka, cruising as circumstances required to preserve order among the natives from Fort Tongass in all the inlets to the head of Lynn Canal.”

Now in these two passages this gentleman, an official, writing as an official, describes Tongass as at the extreme south-eastern point of Alaska, and refers to the cruising which was done for the purpose of preserving order as being from Fort Tongass in all the inlets to the head of Lynn Canal—again obviously indicating that Fort Tongass is treated as the southern point of the United States territory.

Now, there is another reference to Fort Tongass contained in a report which was made by Major Scott in the year 1867, with which I ought also to deal with at this point, as I submit it bears out our contention with regard to the position of Tongass as the extreme limit of the frontier. It will be found in the Appendix to the Case of the United States at p. 437 and the following page. And with this despatch should be looked at a sort of rough sketch or rough chart which he drew. It is numbered 31 in the atlas appended to the Counter-Case of the United States. At least, it is numbered 31. The numbering of the United States' Counter-Case is consecutive; they run on from the Case to the Counter-Case—No. 31. This island is here referred to under the name of Tonnis—it seems so to be spelt; it is marked off the point. Wales Island is marked by name. Sitklan and Kanaghunut are also shown, and various islands, and then to the south the words “Portland Channel” appear as applied to Vancouver's Observatory Inlet.

Colonel Scott's instructions are contained on the previous page, dated the 3rd September, 1867, from John Haddon.

On p. 347 of the United States' Case Appendix occurs this passage in his instructions:—

“It is said that Indians living near the boundary line between Northern British Columbia and the ceded Russian-American possessions have made several hostile incursions into the Settlements in British Columbia and Washington territory, which hostile incursions might have been checked or prevented by a proper military force in the vicinity of Fort Simpson or Portland Canal. To accomplish this object it may be necessary for the United States to establish a military post within their own territory, on the north side of Portland Canal. You will carefully inquire into this matter.”

Now the Report on this point is dated from the head-quarters of the Military Division of the Pacific at San Francisco, and contains an estimate of the number of Indians. Under these instructions Colonel Scott took action, which he reports as follows. The passage occurs at p. 349 of the same Appendix:—

“The Portland Channel is an important inlet for trade with the interior tribes. It is desirable as a means for developing the country and for the purpose of affording protection to our traders and revenue officers, as well as to preserve peace within our own and the British Indians, to establish a small military post on or near the Channel. Such an establishment would also have a good moral effect upon the tribes living or trading for many miles around the vicinity.”

There again it will be found that Colonel Scott, when he selects a post, as he is directed to do, on the north side of Portland Canal, chooses Tongass.

Now, there have been certain transactions which have been referred to in connection with the subsequent action at this point of the territory. The first of these is the lease which was made in the year 1839 to the Hudson's Bay Company.

The second is the action of the United States in the year 1896 in putting up certain store-houses upon the islands which lie to the south of our Portland Channel. I will deal with these in their order.

The lease of 1839 will be found in the Appendix to the British Case at p. 150.

The PRESIDENT. Mr. Attorney, could we get the original of that lease? I think some of the members of the Tribunal would rather like to see it. Would you make some inquiries from the Hudson's Bay people?

Sir ROBERT FINLAY. I certainly shall endeavour to do so.

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. We will endeavour to get that, my Lord. It is the more important, I think, to get it because in one passage in the document produced by the United States it appears without the words "or thereabouts."

The PRESIDENT. Yes; we had noticed that.

Sir ROBERT FINLAY. The arguments adduced by my friends on the other side are adduced on either hypothesis, one set of arguments making it out that the claim of the United States is based on the assumption that the words "there or thereabouts" do not occur, and another set of arguments equally cogent reasons on the assumption that the words "there or thereabouts" do occur.

The PRESIDENT. It only shows their resource, Mr. Attorney.

Sir ROBERT FINLAY. That is the point of view which I desire to illustrate, my Lord.

Mr. AYLESWORTH. There is, at the same time, a letter which Mr. Ware was searching for; that letter he refers to in his Declaration, which perhaps he may have found by this time. It may be of importance.

Sir ROBERT FINLAY. Could you give me the reference?

Mr. AYLESWORTH. You will find it referred to on p. 306 of the Appendix.

Sir ROBERT FINLAY. 306.

Mr. AYLESWORTH. Yes, that letter from the Russian-American Company, which they had not at that time found and were still searching for.

Sir ROBERT FINLAY. I see here he says that the original lease is in possession of the Company.

Mr. AYLESWORTH. Oh, yes, they have the lease.

Sir ROBERT FINLAY. Yes, certainly, we will endeavour to get that. We will get both these I hope by to-morrow. Now I will deal with the lease as it is set out on p. 150 of the British Case. It is necessary to read the earlier part of the terms to render intelligible the arguments which are based on it from any point of view on behalf of the United States.

"The Governor, Deputy-Governor, and Committee of the Hudson's Bay Company of London, and the Directors of the Russian-American Company at St. Petersburg, being desirous of drawing still closer the ties of good understanding and friendship which unite them, by means of an agreement which may settle upon the basis of reciprocal convenience and advantage different points connected with the commerce of the said Hudson's Bay

Company and the Russian-American Company, have named agents to conclude an agreement for this purpose, that is to say: The Hudson's Bay Company of London have appointed Mr. George Simpson, Governor of their territories of Rupert's Land, to act in their behalf, and the Russian-American Company have appointed his Excellency Baron Wrangell, Rear-Admiral in the service of His Majesty the Emperor of Russia, to act in their behalf, who, after having communicated to each other their respective full powers found in good and due form, have agreed upon and signed the following Articles:—

"Article 1st.—It is agreed that the Russian American Company, having the sanction of the Russian Government to that effect, shall cede or lease to the Hudson's Bay Company, for a term of ten years, commencing from the 1st of June, one thousand eight hundred and forty, for commercial purposes, the coast, exclusive of the islands and the interior country belonging to His Majesty the Emperor of Russia, situated between Cape Spencer, forming the north-west headland of the entrance of Cross Sound, and latitude 54 degrees 40 minutes or thereabouts, say the whole mainland coast and interior country belonging to Russia, together with the free navigation and trade of the waters of that coast and interior country situated to the southward and eastward of a supposed line to be drawn from the said Cape Spencer to Mount Fairweather, with the sole and entire trade or commerce thereof. And that the Russian American Company shall abandon all and every station and trading establishment they now occupy on that coast and in the interior country already described, and shall not form any station or trading establishment during the said term of ten years, nor send their officers, servants, vessels, or craft of any description for the purpose of trade into any of the bays, inlets, estuaries, rivers, or lakes in that line of coast and in that interior country."

I do not think it is necessary that I should read the other parts of this Article or refer to the other parts of the Agreement. I, of course, will do so if it is desirable that anything further on this should be read at this stage, or it can be done subsequently. I have, I think, read the words which raise the question. Now, the first observation I wish to make is one which is rather in another connection, but I ought to make it upon this document. It will be observed that it provides that it is to be "situate to the southward and eastward of a supposed line to be drawn from the said Cape Spencer to Mount Fairweather, with the sole and entire trade or commerce thereof."

Now, if the Tribunal would do me the honour to look at the map—

The PRESIDENT. Which map, Mr. Attorney?

Sir ROBERT FINLAY. If you will take No. 24 of the United States' Case Atlas. It is a map published in 1867. It is a map showing the territory ceded by Russia to the United States, compiled for the Department of State at the United States Coast Survey Office (Pearse, Superintendent, 1867).

Now, the observation that I was going to make, which really relates to another part of the case, but ought to be made here because it arises on this document, is that when they say:—

"The territory situated to the southward and eastward of a supposed line to be drawn from the said Cape Spencer to Mount Fairweather,"

and so on, they obviously mean that they are ceding the southern portion of the *lisière*, and that a line drawn from Cape Spencer to Mount Fairweather reaches the inner boundary of the *lisière*. And if this map is looked at it will be seen that that exactly corresponds with the view which was taken by the official gentleman who compiled this map in 1867.

The PRESIDENT. Mr. Attorney, that map does not mark Cape Spencer.

Mr. AYLESWORTH. At Cross Sound.

The PRESIDENT. At Cross Sound.

131 Sir ROBERT FINLAY. It is the point at Cross Sound

The PRESIDENT. It is the point at Cross Sound—I understand.

Sir ROBERT FINLAY. It will be observed if that map is looked at that the boundary runs from Mount St. Elias down to Mount Fairweather, and that the boundary is at Mount Fairweather. That exactly agrees with the indication, the irresistible presumption afforded by the document upon which I am commenting, that at Mount Fairweather was to be found the inland boundary of the territory. Because it is impossible to suppose that when they selected a line from Cape Spencer to Mount Fairweather, and said that the territory which was being demised was the territory situate to the southward and eastward of that line, they were not bisecting the *lisière*.

It would be a most extraordinary thing if they had left undealt with territory situate to the north of Mount Fairweather which belonged to Russia. They were evidently at this point bisecting the *lisière* and giving to the Hudson's Bay Company what lay, roughly speaking, to the south and east.

That shows that the line was treated at that time by every one as being at Mount Fairweather. Now would the Tribunal do me the honour to turn to the next map in this same atlas, which shows the line now claimed by the United States? Well, that shows the boundary at a point distant from the sea about three times as far as Mount Fairweather is at this very point.

The PRESIDENT. You are rather being diverted to a *lisière* argument than a Portland Channel argument at the moment.

Sir ROBERT FINLAY. Yes, I am turning aside.

The PRESIDENT. Yes, you are quite right.

Sir ROBERT FINLAY. Because I think that it would not be right to pass it by—

The PRESIDENT. I quite follow you; quite proper.

Sir ROBERT FINLAY. —in dealing with this document which really relates to another part of the case.

The PRESIDENT. You were first going rather to consider it with reference to the Portland Channel.

Sir ROBERT FINLAY. Purely; that is the object with which I am doing it.

The PRESIDENT. You will undoubtedly have to refer to that on another part of the argument—on the *lisière* argument.

Sir ROBERT FINLAY. I turned aside on this point because it would seem odd if I passed by, when I read the document, without mentioning it. But I am not going to develop it further.

The PRESIDENT. This is a good point for you to break-off, Mr. Attorney.

(Adjourned for a short time.)

Sir ROBERT FINLAY. I was calling attention to the terms of the lease, and was about to consider the arguments which are based upon the lease from the point of view of the United States. The passages in which those arguments are contained occur in the Counter Case for the United States at pp. 17 and 18, and in the Argument at pp. 49 to 51. Now, before I deal, as I shall specifically, with the conten-

tion of the other side, I shall submit in very few words to the Tribunal the view that is put on behalf of the British Government of the meaning of this lease. It is a lease for commercial purposes of the coast and the territory belonging to Russia situate between
 132 Cape Spencer and latitude 54 degrees 40 minutes or thereabouts, say, the whole mainland coast belonging to Russia south and east of a supposed line drawn from Cape Spencer to Mount Fairweather. What it meant was this: that the coast and territory exclusive of the islands belonging to Russia between Cape Spencer and latitude 54 degrees 40 minutes or thereabouts are to be demised. The words "or thereabouts" are introduced as qualifying the latitudes. That is the general way of speaking, and, according to the view which I submit, these words have no reference—no particular reference—to the territory comprised in the lease more than they have to the territory belonging to Russia. What was intended was that everything south and east of an imaginary line to be drawn from Cape Spencer to Mount Fairweather should be demised for commercial purposes to the Hudson's Bay Company, and the southern latitude is roughly given as 54 degrees 40 minutes. The southern latitude of the Russian territory and of the lease is really coincident; 54 degrees 40 minutes or thereabouts is given as the point where, as you go to the south, the territory upon which the lease could operate ceases, and therefore the lease ceases there.

Now, the argument which is adduced on behalf of the United States in the Counter-Case will be found to begin at p. 17 near the bottom of the page.

"During the correspondence which took place at the time of the lease of the *lisière* to Hudson's Bay Company in 1839, which will be considered later, the subject of the southern limits of the Russian territory is several times mentioned. It should be borne in mind that none of the islands was included in the lease; Count Nesselrode, one of the negotiators of the Treaty of 1825, reported to the Emperor that the Russian-American Company believed that 'it would be advisable to cede to the Hudson's Bay Company the exclusive right of trade *on the shore of the continent* between latitude 54 degrees 40 minutes and the Cross Strait.' The territory covered by the lease is described in the Russian version of the lease 'the coast (the islands excluded) and the interior portion of the land * * * situated between Cape Spencer * * * and latitude 54 degrees 40 minutes.'"

It will be observed that there the words "or thereabouts" do not occur.

"In his narrative of a journey around the world, published in 1847, Sir George Simpson, the Governor of the Hudson's Bay Company, who signed the lease on behalf of that Company, stated: 'Russia, as the reader is of course aware, possesses *on the mainland*, between latitude 54 degrees 40 minutes and latitude 60 degrees, only a strip, never exceeding 30 miles in depth.' When testifying before a Select Committee of the House of Commons in 1857, Governor Simpson said: 'There is a margin of *coast* marked yellow in the map [United States Counter-Case, Atlas, No. 35] from 54 degrees 40 minutes up to Cross Sound, which we have rented from the Russian-American Company for a term of years.'

"Mr. R. M. Martin, in his defence of the Hudson's Bay Company, published in 1849, states that the territory of the Russian American Company 'includes all the Pacific coast and islands north-of 54 degrees 40 minutes.'

"Again he writes that the lease provided that 'the Hudson's Bay Company should enjoy for ten years the exclusive use of the *continent* assigned to Russia by Mr. Canning in 1825, and extending from 54 degrees 40 minutes north to Cape Spencer.'

"In the application made in 1859 by the Russian-American Company to the Russian Government for the privilege to renew the lease, the territories

stated to be a part of our possessions on the north-west coast of America, a strip of land extending in a north-westerly direction from 54 degrees 40 minutes north."

And then they go on to another matter, which I will have to advert to by-and-bye. Then in the Argument, at pp. 49 to 51, this same matter is dealt with, and the contention is put forward in terms that the lease was not meant to go so far south as the Russian territory on the mainland, that the Russian territory went further south, and that the lease stopped short because it did not include the island to the south of what we call the Portland Canal. Near the bottom of p. 49 the Argument is thus put forward:—

133 "The lease of the *lisière* to the Hudson's Bay Company recited that it included the coast, exclusive of the islands, and the interior country belonging to His Majesty the Emperor of Russia, situated between Cape Spencer forming the north-west headland of the entrance of Cross Sound and latitude 54 degrees 40 minutes or thereabouts, say the whole mainland coast and interior country belonging to Russia," &c. "It is to be noted that the words 'or thereabouts' used to qualify 54 degrees 40 minutes as the location of the southern extremity of the territory leased, do not signify any doubt as to the location of the boundary line at that parallel, but on the contrary show that it was well understood that the leased territory was not to extend fully to the boundary at that point. The lease was limited expressly to the mainland coast, and all the islands were in terms excluded."

Now, I do submit, by no ingenuity can that meaning be extracted from the document which is before the Tribunal. The agreement is for a demise for commercial purposes of the coast of the territory belonging to His Majesty the Emperor of Russia situated between Cape Spencer and latitude 54 degrees 40 minutes, or thereabouts. I do submit that if the words are construed in any ordinary way, that means that they excluded the islands. The Hudson's Bay Company were to take a lease of the whole territory from a line from Cape Spencer to Mount Fairweather, belonging to Russia, to latitude 54 degrees 40 minutes, or thereabouts, and that the words "as to the latitude 54 degrees 40 minutes, or thereabouts," refer to territory belonging to Russia. I mean that all one's argument on this point comes to reading the words over and over again, and asking whether they can bear any other meaning. I go on with the Argument as presented on p. 50 of the United States' Argument:—

"An examination of the maps will show that the mainland coast was some distance above 54 degrees 40 minutes at that point, and that in the intervening space were Wales Island, Pearse Island, and several other smaller islands. The significance of the expression '54 degrees 40 minutes or thereabouts,' as the southern limit of the lease therefore, is that it was recognized that if the description was carried to the boundary at 54 degrees 40 minutes without qualification it would extend beyond the mainland and include these islands which would have conflicted with the other provisions of the lease. The only escape from this conclusion would be in the assumption that the lease was not prepared with care and precision. The character of the lease forbids such an assumption, however, and it appears upon the record that the reverse is true. Mr. Simpson, who negotiated the lease with Baron Wrangell, in writing to him for preparation for it says that it had been understood that the islands would be included within the leased area, but on the understanding that they were to be excluded he continues:

"'But such being the new state of affairs, it is necessary to enter into the minutest considerations and details * * * in order to guarantee that we shall be protected from all direct or indirect rivalry in the trading in the leased territory.'

"The fact that care was taken to describe the southern end of the leased territory, so that it would not extend to the line of the boundary on the water

at the entrance of Portland Channel, therefore indicates that it was done in order that there should be no question of its extending beyond the mainland, and including the islands lying between the mainland and the boundary at 54 degrees 40 minutes."

They had already done that. They had said it was a lease of the territory excluding the islands.

"This was a mutual recognition that such islands above 54 degrees 40 minutes belonged to Russia, and consequently that the Portland Channel of the Treaty was not limited to the channel wholly separated from 54 degrees 40 minutes, and lying between the islands and the mainland.

"The translation of the lease as given in the United States Counter-Case Appendix, p. 6, differs from the translation in the British Case Appendix at p. 150, and omits the words 'or thereabouts,' in connection with the reference to 54 degrees 40 minutes. It is immaterial, however, which translation is relied upon, for in either case the proof is complete on the point that there was 134 a mutual recognition that the islands above 54 degrees 40 minutes belonged to Russia, and consequently that the Portland Channel of the boundary was not above such islands."

I do submit that there is no such recognition that could be extracted from these words:—

"Throughout the proceedings leading up to this lease, and in subsequent references to it, the understanding on both sides is uniformly shown to have been that the boundary extended to 54 degrees 40 minutes, and that the Portland Channel of the boundary was the channel, through the entrance of which that parallel is found. The following extracts leave no doubt on that point:—

"Our Company believes that * * * it would be advisable to cede to the Hudson's Bay Company the exclusive right of trade on the shore of the continent between latitude 54 degrees 40 minutes and the Cross Strait (Report of Count Nesselrode).

"In the letter of the Directors of the Russian-American Company to the Minister of Foreign Affairs, January 25th, 1859, the lease is referred to as 'of a part of our possessions on the north-west coast of America, a strip of land extending in a north-westerly direction from latitude 54 degrees 40 minutes north, etc.'

"In the Memorandum submitted by the Russian Minister of Finance to the Vice-Chancellor in his letter of the 16th March, 1867, he says of the lease that it related to 'that part of the mainland belonging to Russia which lies between Cape Spencer and 54 degrees 40 minutes northern latitude, &c.'

"He also says that the United States agrees, &c., with reference to another point:—

"In the testimony of Sir George Simpson before the Committee of the House of Commons, 1857, he says:—

'There is a margin of coast marked yellow in the map from 54 degrees 40 minutes up to Cross Sound which we have rented from the Russian-American Company for a term of years.'

"Sir George Simpson also, in his 'Narrative of his Journey Round the World, 1841-2,' speaking of the lease, says:—

"Russia, as the reader is, of course, aware, possesses on the mainland, between latitude 54 degrees 40 minutes and latitude 60 degrees, a strip, &c."

"Russia was fully informed of the terms of this lease, and sanctioned it, as appears from the recital in Article I of the lease, and also from the reports of the Russian officials printed in the record. There can be no doubt, therefore, as to the Russian understanding that the southern boundary of her possessions on the coast extended to 54 degrees 40 minutes, and her intention to express that understanding in this lease.

"It is equally clear that the attention of the British Government was directed to the making of the lease and to its terms. The lease was the direct outcome of the Dryad claim, for the settlement of which the British Government was vigorously pressing; and it is not to be presumed that the settlement, through the medium of this lease, was agreed to without a full understanding and approval of the circumstances on the part of Great Britain. Furthermore, the Hudson's Bay Company had full knowledge of how the lease was understood by Russia; and the testimony of Sir G. Simpson, the Governor of that Company, quoted above, is itself sufficient to show that that Company acquiesced in such understanding, and that knowledge of the lease, and its bearing on the ques-

tion of the boundary at 54 degrees 40 minutes was brought home to the British Government. Further evidence of official knowledge of this lease on the part of Great Britain is furnished by the Neutrality Agreement with Russia, which was made expressly because of the existence of this lease.

"In view of these considerations, therefore, even if Great Britain should plead official ignorance of the lease prior to the definite information brought home to her as shown above, there certainly can be no doubt as to her notice at that time, and her acquiescence in the lease, and her action with respect to it, impute to her full knowledge of all that it involved."

Now, I should submit that if anything were wanted to displace the argument submitted on behalf of the United States with reference to the terms of the lease, it is supplied by those various passages which are recited in the letters relating to the negotiations for the lease. As to the evidence of Sir George Simpson before the House of Commons, and the narrative of Sir George Simpson of his journeys in those parts, he speaks over and over again of the Hudson's Bay Company having a lease of the territory from 54 degrees 40 minutes northwards. The argument on the other side is that they did not have a lease from 54 degrees 40 minutes northwards; that 54 degrees 40 minutes designated the southern boundary of the Russian possessions, but that the lease taken by the Hudson's Bay Company was from a point somewhat to the north of 54 degrees 40 minutes. The fact that in all these passages which are collected in this argument, as well as in the Counter-Case of the United States, language of that sort is used relating to this lease, that it was from 54 degrees 40 minutes shows that "54 degrees 40 minutes" is merely a somewhat loose way of speaking. They are speaking generally of the southern boundary of the territory. They do not designate it with perfect accuracy, and "54 degrees 40 minutes" is used, as in the lease itself it is used, with the addition of "or thereabouts." It is really imposing too much of a burden upon human nature to expect that every time you are referring generally to a locality you are to give the minutes and the seconds. If every time one refers to any particular locality or any particular boundary—no one could go through the burden of reciting every time the precise latitude with all the minutes and with all the seconds; and to clinch that observation that I was making upon this point, I draw particular attention to this passage at the bottom of the page I have just read, where Sir George Simpson, in his narrative of his journey round the world, says, speaking of the lease: "Russia," as the writer is, of course, aware, "the possessors of the mainland between 54 degrees 40 minutes and latitude 60 degrees, a strip, &c." What it possesses on the mainland is between a latitude somewhat to the north of 54 degrees 40 minutes.

Now, having gone through the arguments which are so liberally piled up on, as I shall submit, an inadequate foundation in regard to this lease, for the purpose of establishing 54 degrees 40 minutes as the southern boundary, I would ask the Tribunal just to turn to Vancouver's Chart, No. 2, in the British Atlas.

Sir EDWARD CARSON. No 4 in the United States.

Sir ROBERT FINLAY. The line designated 54 degrees 40 minutes. If one traced upon this chart the latitude 54 degrees 40 minutes, it would be found that that passes not through the entrance of Observatory Inlet. It passes through the land to the south of Point Maskelyne. If the members of the Tribunal will look at the margin of the chart, it will be seen that the minutes 15, 30, 45, sub-divisions for

each, so that one could find out exactly what is 40. Now, if you take what is 40 on this, take off 5 minutes from the 45, and draw a line from side to side—one is enabled to do that because they are marked on the other side as well—it will be found that the line does not pass through the mouth of Observatory Inlet at all. It passes through the land at some little distance south of Point Maskelyne, a very perceptible difference; it is about 2 minutes at least—rather more—to the south of Point Maskelyne— $2\frac{1}{2}$, really.

Mr. AYLESWORTH. You do not mean that it is so in fact, but that it would appear to be so from this map?

Sir ROBERT FINLAY. That it is so on this chart—Vancouver's chart—which was before the negotiators.

Mr. AYLESWORTH. Not that it is so, in fact?

136 Sir ROBERT FINLAY. I am not meaning that it was accurately ascertained, but for this purpose one must look at, of course, what materials the negotiators had. Now, how is it possible to suppose that with that chart before them, the only chart of Vancouver which the United States placed in their atlas, how is it conceivable that they took the 54 degrees 40 minutes, which does not coincide with the entrance of any part of the two inlets, which are known as Observatory Inlet and Portland Channel? It strikes land south of Observatory Inlet, and that point is furthered by reference to Vancouver's narrative. If the members of the Tribunal will look at p. 140 of the British Case, near the top, they will find this statement:—

“To the north of this island we had a distinct view of the ocean to the westward through a spacious channel that appeared free from interruption; and by sunset we entered the arm, up which we expected to find this extensive inland navigation. To its south-east point of entrance I gave the name of Point Maskelyne after the Astronomer Royal. It is situated in latitude 54 degrees $42\frac{1}{2}$ minutes, and longitude 229 degrees 45 minutes, and off it lie two rocky islets, and to the south of it a small island close to the shore.”

Well, we are actually asked to believe, that with Vancouver's narrative before them, stating that Point Maskelyne was in 54 degrees $42\frac{1}{2}$ minutes north latitude and with that chart before them, which shows that it was in the same latitude the negotiators took as the governing factor in their Treaty, the line of 54 degrees 40 minutes, which would have carried them to a point on the land south of the entrance to the mouth of the Observatory Inlet altogether.

Mr. AYLESWORTH. Nearly 3 miles.

Sir ROBERT FINLAY. Yes, $2\frac{1}{2}$ nautical miles, which is very nearly 3 miles. I submit that that really amounts to a demonstration that all these arguments which are based upon the language which was used in the negotiations for that lease of the Hudson's Bay Company and in the lease itself, even if they had any foundation as applied to that document, and the steps preliminary to it, altogether fail of their effect that the deduction sought to be made from them is that the negotiators intended 54 degrees 40 minutes to be the governing factor. It demonstrates that the negotiators could not have intended anything of the kind.

But I further submit that the arguments based upon this lease and the negotiations preliminary to it, and the statements by Sir George Simpson collapsed altogether when one once appreciates what the real meaning of the lease is, and how Sir George Simpson in his letters

and statements was using "54 degrees 40 minutes" in a loose way as designating approximately the boundary of the Russian possessions in the mainland, which in point of fact it was not.

Now, the next point that I propose to deal with in this connection in regard to the subsequent action has relation to the establishment of certain storehouses upon the islands to the south of Portland Channel in the year 1896.

Mr. AYLESWORTH. Mr. Attorney, probably at some stage of your Argument you intend to discuss the question of the extent to which Great Britain would be bound by any action of the Hudson's Bay Company, but are you able to tell us what evidence there is of the knowledge of the British Government that this lease had been accepted by the Hudson's Bay Company.

Sir ROBERT FINLAY. I am not aware of any evidence upon the point. I have read the passage from the Argument of the United States, which is directed to fixing the British Government with notice. It may be that it makes out a sort of case of constructive notice of a rather remote character, but beyond that there is nothing, and, of course, the Hudson's Bay Company were a commercial Company; their Charter will, I hope, be before the Tribunal to-morrow.

The PRESIDENT. Well, I should have doubted whether it was likely that they did not know something about it, but if you were
137 right in saying that it was a lease of a strip of the mainland between these latitudes it does not matter whether they knew of it or not.

Sir ROBERT FINLAY. No, I do not think it would, but at the same time one is anxious, of course, to see that every point is fully brought out, and I submit that the Hudson's Bay Company in no way for this purpose represented the British Government. I think that the other day I spoke of the British settlements in the north-west of America, I spoke of Great Britain as represented by the Hudson's Bay Company having settlements which are mentioned in the report of Mr. Pelly, and are shown by one of the maps according to that report. Of course, when I used that form of words I was merely dealing with the fact that in a certain sense the subjects of a country represent that country; British enterprise has been pushed to a certain point in a country by the British subjects who had established their stations there. The form of words which I used, having regard to the connection in which they were used and the subject on which I was speaking, of course, was never meant to imply, and did not imply for one moment, that the Hudson's Bay Company can be treated as the representatives of the British Government for any purposes of negotiation. The Hudson's Bay Company were a commercial Company, and the fact that they took such a lease as this would not in the slightest degree affect the position, as I submit, of the British Government. But, further than that, it may be that some officials of the British Government knew of this lease.

Mr. LODGE. May I ask, in that connection: Was not this first lease made in connection with the Dryad case? It is stated, p. 52 of the United States' Argument, that:—

"The lease was the direct outcome of the Dryad claim, for the settlement of which the British Government was vigorously pressing."

No doubt the Dryad Case may have brought home to the Hudson's Bay Company the great desirability of their obtaining control of this

territory. I think that any evidence in the way of presumption that there is, is collected in this paragraph, p. 52, but is it not distinctly stated in Article IX of this lease that the Dryad Case was involved?

Sir ROBERT FINLAY. Yes, it is certainly.

Mr. LODGE. Was not the Dryad Case a subject of diplomatic negotiations between the Governments?

Sir ROBERT FINLAY. Undoubtedly it was.

Mr. AYLESWORTH. The British Government was asserting the claim of one of its subjects.

Sir ROBERT FINLAY. Yes, that is all that it comes to.

Mr. LODGE. And this lease disposed of that claim which the British Government was pressing.

Sir ROBERT FINLAY. It did.

Mr. LODGE. Then the Government must have known.

Sir ROBERT FINLAY. Well, I will read the IXth Article and comment upon it.

“It is further agreed by the Hudson’s Bay Company, in consideration of the arrangements entered into under the Provisions of this Agreement, that they shall relinquish their claim now pending on the Russian Government, the Russian-American Company, or whoever else it may concern, for injury and damage said to be sustained by the Hudson’s Bay Company arising from the obstruction presented by the Russian Authorities on the north-west coast
138 of America to an expedition belonging to the Hudson’s Bay Company at the entrance of the River Stekine, on the North-West Coast of America, in the year eighteen hundred and thirty-four, outfitted and equipped by the said Hudson’s Bay Company for the purpose of forming a commercial station in the Interior British territory on the banks of the said Stekine River.”

It, of course, would be communicated to the British Government that the matter had been settled, that the claim was not further to be pressed, but I do submit that to say that establishes knowledge on the part of the British Government of the details of the lease is pressing the doctrine of notice to a point almost beyond that to which it has been carried by the Courts of Equity as to constructive notice. By this lease, and in consideration of this lease, the Hudson’s Bay Company are satisfied in respect of their claim, and they say that they accept what has been done in full satisfaction, and I have not the slightest doubt that the British Government must have been notified that the claim had been satisfied, that the lease had been taken, but it does not follow from that for one moment that the British Government had notice—had their attention directed to the precise terms of the lease. If they had, I say it really does not matter when the terms of the lease are looked at, but I do respectfully protest against its being laid down as a canon applicable to such transactions that when the Government is notified that a particular claim is settled they are to be taken for all purposes to be fixed with notice of every word of every clause which is contained in the instrument by which the settlement was effected. That is the answer I make; I say it really does not matter one way or the other, but I do submit on general principles that it would be most mischievous if any countenance were lent to the idea that a Government was fixed with notice of the precise terms under such circumstances. I am told the lease was negotiated privately between Mr. Simpson, afterwards Sir George Simpson, and Baron Wrangell at Berlin, where they had met for the purpose.

Mr. LODGE. It was signed at Hamburg.

The PRESIDENT. It appears from the correspondence that negotiations did go on there.

Mr. AYLESWORTH. It began there.

The PRESIDENT. Page 1 of this document.

Sir ROBERT FINLAY. I think reference may be made in this connection to a despatch of the 9th December, 1838, from Count Nesselrode to Count Kankreen. Who was Count Kankreen?

Mr. SIMON. A representative of the Russian-American Company.

Sir ROBERT FINLAY. A representative of the Russian-American Company. I am obliged to you. At the top of p. 308, Appendix, United States' Case, Count Nesselrode says to him this:—

“In bringing this to your Excellency's notice, I consider it my duty to refer to my Report of the 19th March, on which I had the honour of informing you that His Imperial Majesty, after having duly considered the matter, was pleased to admit that it would be more in accord with the rules of strict justice to admit the principles on which the claim is based, and to enter into negotiations with the Hudson's Bay Company in regard to the amount of the indemnification claimed by the Company, rather than to continue a dispute, which we shall be obliged ultimately to give in to, because the clear provisions of the Treaty are not calculated to strengthen the side we have defended until now.”

And then the two Companies negotiated through their respective representatives Sir George Simpson and Baron Wrangell, and the lease is the outcome and the claim is settled.

139 Mr. LODGE. And in the same letter, Mr. Attorney, that you are reading—that same despatch—he goes on to say, does he not, “in view of the unusual urgency with which the English Government demands a prompt settlement of the affair.”

Sir ROBERT FINLAY. Oh, yes, certainly.

Mr. LODGE. I mean it had been in the hands of the Government?

Sir ROBERT FINLAY. Oh, undoubtedly. I admitted that fully from the beginning—not the question of the lease, of course—the claim in respect of the Dryad.

Mr. LODGE. Certainly, I mean the claim of the Dryad.

Sir ROBERT FINLAY. Of course, the claim in respect of what had been done in the matter of the Dryad could be preferred only through the Government; I mean in the ordinary course of things the Hudson's Bay Company, having a grievance in respect of the Dryad, go to their Government and get their Government to represent the matter to the Russian Government, and that was the course that was taken, and the English Government did press this matter with some insistence, and when the matter was settled, of course, the English Government must have been notified by the Hudson's Bay Company of the fact that the settlement had been arrived at, but what I very respectfully protest against is the idea that such a notification as that fixes the English Government for the purpose now in view with knowledge of the precise terms of the lease. That is the protest which I make and I submit it is one which on every principle is well founded. And there is a memorandum—turning over to p. 311 of the Case for the United States—there is a report of the Board of Directors of the Russian-American Company, dated 20th December, 1839, at p. 311. They deal with this particular matter in the following terms:—

“Wishing to renew our friendly relations with the Hudson's Bay Company and come to an agreement in regard to our respective interests and avoid unpleasant collisions in the future, Rear-Admiral Baron Wrangell, a member of the Board of Directors, entered into correspondence with the Directors of the

Hudson's Bay Company. This correspondence is as yet quite unofficial and is principally for the purpose of preparing and facilitating the official negotiations through preliminary personal explanations. From this correspondence it is evident that the Hudson's Bay Company would consent to lease a part of our dominions, adjacent to their frontiers north and south from the Stakine River for a yearly rental to be paid in a fixed quantity of furs and for a definite term, say 20 years."

The Board of Directors thinks that, in order to avoid misunderstandings, it would be useful to grant to the Hudson's Bay Company the exclusive right of trading on the coast of the continent between latitude 54 degrees 40 minutes and the estuary of the Cross Strait, for a yearly payment in furs, in such quantity as to assure the Russian-American Company against any loss from the arrangement. The Hudson's Bay Company would have the advantage of ridding itself of a dangerous rival in its fur trade with the natives. Moreover, the Hudson's Bay Company proposes to supply the Colonies at moderate rates with a full yearly supply of goods and provisions:—

"In order to settle this question it is the intention of the Hudson's Bay Company to send a member of the Company to Berlin or Hamburg, in the middle of January, to there meet a delegate of the Russian-American Company and definitely sign the Treaty.

"The Board of Directors thinks that in this manner the question in dispute would be satisfactorily solved for both parties. But supposing that they have no right to enter into official negotiations, and to conclude a Treaty without a special permission, the Board of Directors begs that this permission may be granted if it be found convenient to do so."

Now the Tribunal will observe that in that passage they speak of avoiding misunderstandings in the future by granting to the
140 Hudson's Bay Company the inclusive rights of trading on the coast of the continent between latitude 54 degrees 40 minutes and the estuary of Cross Strait. It is a general way of speaking as to the boundaries of the territory which was proposed to be dealt with. These arrangements were made between the Hudson's Bay Company and the Russian-American Company. Negotiations took place between them; they were concluded. It is perfectly true that they were settling a claim in respect of the Dryad which they brought to the notice of their Government, and which had formed the subject of diplomatic correspondence between the two Governments, and it follows from that that when it was settled the respective Governments would be notified of that fact. Further than that, I very respectfully submit that the matter cannot possibly be pressed as fixing the English Government with any notice of the terms.

MR. LODGE. Of course, as far as the Russian Government was concerned the lease was made with its direct sanction?

SIR ROBERT FINLAY. Yes.

MR. LODGE. That is stated in the lease?

SIR ROBERT FINLAY. Yes.

MR. LODGE. And this letter of the Directors is addressed to the Minister of Finance, and is a reply to the English Ambassador?

SIR ROBERT FINLAY. That is so, I admit all that, but I say when it comes to the point nothing for this purpose follows from it; it does not convey any knowledge of the precise terms of the lease. Even if some clerk in the Foreign Office had read the lease, what would follow that he saw the southern limit of the Russian territory was there mentioned as 54 degrees 40 minutes or thereabouts, and that the Hudson's Bay Company were taking a lease of that territory exclusive of the

islands. That throws no light whatever upon the point which we are discussing.

Mr. Root. Mr. Attorney, at the end of p. 307 of the Appendix to the American Case I see that Count Nesselrode, under date of the 9th December, 1838, writes to Count Kankreen that the English Ministry would like, even before the opening of Parliament, to obtain some satisfactory answer from us in order to be able to answer any questions of the position in regard to the Stikine affair. That is the same letter in which Count Nesselrode refers to the unusual urgency with which the English Government demands a prompt settlement of the affair.

Sir ROBERT FINLAY. Yes.

Mr. Root. It is not quite improbable that this lease being made on the 5th February, and being in fact the settlement of the affair in which the English Ministry was pressing for an answer, was not communicated to the English Ministry as the answer; is it not quite improbable that that was not done?

Sir ROBERT FINLAY. I think it is very possible indeed that that took place, and it is perfectly certain that the Hudson's Bay Company must have informed the British Government that the matter had been settled. I concede all that; it is perfectly certain they must have informed them, and I think it is very possible. Whether it took place or not I do not know. I am not aware that there is any evidence whatever—it is possible that a copy of the lease was transmitted, but for all that I submit that for the purpose nothing whatever followed.

Now I pass to the other matter, the subsequent action which I said I would have to deal with—that was the foundation of storehouses upon these islands to the south of Portland Channel by the United States in the year 1896. Now, it is necessary to go back a little further for the purpose of seeing the true bearing of what was then done. In 1885 a despatch had been sent by Mr. Bayard 141 which deals very specifically with this part of the claim. It will be found in the British Case Appendix, at p. 249; and I refer to this despatch in this connection because I think it is suggested in the Argument for the United States that it was in consequence of the non-reply to this portion of Mr. Bayard's despatch that the action was begun in 1896 with regard to the storehouses. Now, this despatch of Mr. Bayard's is addressed to Mr. Phelps, who, I think, was then the American Ambassador here. I am reading at p. 248 of the British Case Appendix. He says:—

“Shortly after assuming the duties of this office my attention was drawn to the circumstance that the existing boundary line between the Territory of Alaska and Her Majesty's possession of British Columbia is not only open to doubt in certain quarters, although not in doubt so far as this Government is concerned, in respect of the water boundary from Prince of Wales Island through the Portland Channel, but that it is, also, with regard to the inland frontier, which is supposed to follow a mountain range, an impracticable one to survey, if not a geographical impossibility.

“The Territory of Alaska was acquired by the United States from Russia, subject to the existing demarcation of the eastern frontier-line between Russian America and British America, under the convention between Great Britain and Russia of 28th (16th) February, 1825, and the description of the line contained in Articles III and IV of that Convention was incorporated literally as to the English text thereof in the 1st Article of the Treaty between the United States and Russia, concluded the 30th March, 1867. Copies of the Treaty are hereto annexed for your information.

"I am not aware that any question concerning the true location of the line so stipulated ever arose at any time between Great Britain and Russia prior to the cession of Alaska to the United States. If any such question had arisen and was pending at the time of the cession, the United States would naturally have succeeded to the Russian interest therein, just as to any other right of Russia affecting the ceded territory. This Government, however, had no intimation then, and has had none since, from Her Majesty's Government that any such question existed, as the inlet and the country through which the boundary line of 1825 ran were, in 1867, still practically unexplored.

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

"It is certain that no question has arisen since 1867 between the Governments of the United States and Great Britain in regard to this boundary:

"The ascertainment of the true line of demarcation under the Anglo-Russian Treaty would, however, appear to have been the subject of informal consultation soon after Russian Alaska passed to the United States, but no record of any official correspondence between the two Governments is found.

"In his annual Message to Congress, 2nd December, 1872, President Grant, after referring to the then recent settlement of the San Juan Island dispute, said:—

"Experience of the difficulties attending the determination of our admitted line of boundary, after the occupation of the territory and its settlement by those owing allegiance to the respective Governments, points to the importance of establishing, by natural objects or other monuments, the actual line between the territory acquired by purchase from Russia and the adjoining possessions of Her Britannic Majesty. The region is so sparsely occupied that no conflicting interests of individuals or jurisdiction are likely to interfere to the delay or embarrassment of the actual location of the line. If deferred until population shall enter and occupy the territory some trivial context of neighbours may again array the two Governments in antagonism. I therefore recommend the appointment of a Commission, to act jointly with one that may be appointed on the part of Great Britain, to determine the line between our territory of Alaska and the coterminous possessions of Great Britain."

Then Mr. Bayard goes on to say that—

"The suggestion of President Grant was not then acted upon by the Congress, and does not appear to have been since revived before that body.

142 Since that time the condition of increasing settlement apprehended by President Grant has assumed marked proportions. A territorial Government has been organized for Alaska, and enterprise and capital are slowly but steadily making their way toward those distant shores.

"In the judgment of the President the time has now come for an understanding between the Government of the United States and that of Her Britannic Majesty, looking to the speedy and certain establishment of the boundary-line between Alaska and British Columbia. And this necessity is believed to be the more urgent inasmuch as the Treaty line is found to be of uncertain if not impossible location for a great part of its length.

"In the first place the water boundary line, from the southernmost point of Prince of Wales Island to the 56th degree of north latitude, is not found uniformly located on the charts of different modern geographers. On a majority of such charts, as, for example, those of Staff-Commander D. Pender's survey for the Admiralty in 1868, and those of the Geological Survey of Canada recently published, the boundary follows the central line of the main channel known as Portland Inlet, while in other charts prepared by British geographers the line deflects to the northward from the broad waters of Dixon Entrance and passes through a narrow and intricate channel lying north-westward from Portland Inlet, known on the United States Coast Survey chart of 1885 as Pearse Channel, until it suddenly deflects southward again at right angles to re-enter Portland Inlet, thereby appearing to make British territory of Pearse and Wales islands, and throwing doubt on the nationality of several small islands at the south-western extremity of Wales Island."

The PRESIDENT. Will you tell me what your point is that you are reading this for?

SIR ROBERT FINLAY. For this reason, my Lord, that Mr. Bayard,

in this portion of his despatch with which I am going to stop—I am not going to read the rest of the despatch relating to the other boundary—deals with the question of the Portland Canal—what was the Portland Canal. Then Mr. Phelps wrote to Lord Salisbury on receipt of this despatch, and a brief acknowledgment was received from Lord Salisbury. This asserted, on behalf of the United States, that, in reliance of Lord Salisbury not having contradicted the Argument contained in this dispatch, they established these store-houses on these islands.

The PRESIDENT. Thank you.

SIR ROBERT FINLAY. "This latter construction is at the outset in manifest contradiction with the Treaties, which provided 'that the island called Prince of Wales Island shall belong wholly to Russia' (now by cession in 1867 to the United States)."

Of course, that refers to Prince of Wales Island. It is manifestly a confusion that crept into that despatch. No one now asserts that Prince of Wales Island is Wales Island.

The PRESIDENT. We quite follow you, Mr. Attorney.

SIR ROBERT FINLAY. It is not the only confusion, I think, that there is in this description.

The PRESIDENT. No.

SIR ROBERT FINLAY. Because I think that when the statement in the paragraph which I have just read is followed with the charts it will be seen that very great injustice is done to the line of the true Portland Canal.

Mr. Bayard goes on to say "there would seem to be ground in the text of Vancouver, the original explorer and geographer of the region, for supposing that he at one time regarded Pearse Canal of later geographers as the lower part of Portland Canal."

Well, there is further ground for saying that he always regarded it as Portland Canal, but he never regarded anything else as Portland Canal.

"But there are very evident reasons for believing that this was not the construction intended by the authors of the Anglo-Russian Treaty of 1825, and that their purpose was the location of the natural boundary-line in the broader channel called Portland Inlet on the Admiralty and United States' Coast Survey Charts. For a clear understanding of the subject, Chart No. 7 of Vancouver's Atlas, the British Admiralty Chart No. 2431, corrected to June, 1882, or any later edition, the United States' Coast Survey Chart No. 700 of 1885, and the charts of the Coast Pilot of Alaska recently issued by the United States' Coast Survey should be consulted. Of these, photographic copies of Vancouver's Atlas, Chart No. 7, and copies of the Coast Survey publications are herewith sent you. You can doubtless obtain copies of the British Admiralty chart by application in the proper quarter."

Then he goes on:—

"So far the Treaties relate to the water boundary, and it is to be remembered, as already remarked, that the line so described was intended to leave Prince of Wales Island Russian territory in 1825, and a possession of the United States in 1867."

That seems to be a recurrence to the point about Wales Island and Prince of Wales Island:—

"No record has been found, in print or otherwise, so far as sought, of the circumstances attending the drawing up of the Anglo-Russian Convention of 1825 which would throw light on the understanding of the negotiators on this point, but it may be assumed with confidence that the charts employed in the negotiation were those of Vancouver. They were made by a British officer

under the direction of the British Government, and would therefore be acceptable as a standard by that party to the Convention."

Now I am not going to criticise in detail the language of that despatch, because the arguments that I have already put forward are all directed to the points which are raised by Mr. Bayard, and I submit that if Mr. Bayard had possessed a fuller knowledge of the facts and circumstances attending the making of the Treaty he never could have come to the conclusion that the water mark of this boundary line cannot be called in question between the two Governments. If that form of expression were to be used, I should ask that it should be used rather as conveying a proposition that the contention of the British Government could not be called in question. Mr. Bayard puts it forward as a statement that the contention of the United States Government could not be called in question. I submit that this statement of Mr. Bayard, when it is tested, contains a very great many inaccuracies, and that when the matter is looked at in the detail with which the Tribunal is becoming familiar, it will be found that it bears a very different aspect from that which it bore on the face of that statement.

That despatch was sent to Mr. Phelps, who was in this country, and on p. 253 of the same Appendix—British Case Appendix—will be found Mr. Phelps' despatch to Lord Salisbury on this point. He begins by saying that:—

"Referring to the conversation held with your Lordship on the 12th inst. relative to the boundary between the British possessions in North America and the territory of Alaska, I have the honour to transmit herewith a copy of the statement of the facts contained in the instructions sent me by my Government, together with copies of the maps therein referred to."

It will be seen by the note that what was sent was the copy of the foregoing despatch from Mr. Bayard by himself. Then Mr. Phelps goes on to quote the Articles of the Treaty. He says:—

144 "The boundary thus indicated has no apparent ambiguity; but it was established and described when the region through which it runs was entirely unexplored."

And so on.

And then he proceeds to advance very weighty arguments to which I shall afterwards call attention for consideration in another connection, and which I need not submit now, as to the importance, as he said, of fixing the line according to the directions in the Treaty. He makes no specific reference to that question about the identity of Portland Canal mentioned in the Treaty, but devotes himself entirely to the other part of the line. Then the acknowledgment by Lord Salisbury will be found in the United States' Counter-Case on p. 91. It is dated the 26th January, 1886, and is from Lord Salisbury to Mr. Phelps:—

"I have the honour to acknowledge the receipt of your letter of the 19th inst., forwarding the statement of the facts relating to the boundary between the British possessions in North America and the territory of Alaska, accompanied by copies of the maps referred to in Mr. Bayard's despatch.

"In reply I have the honour to inform you that the proposal of the United States' Government for the appointment of a joint commission for the purpose of arriving at an understanding in regard to the boundary line separating the territories in question will receive the immediate attention of Her Majesty's Government.

"I beg leave at the same time to acquaint you that I have instructed Her Majesty's minister at Washington to send home some copies of the work called

'United States Pacific Coast Pilot,' and I shall not fail on receiving them to return the volume which you have been so good as to forward to this department.

"In the meanwhile application will be made to the proper department of Her Majesty's Government for copies of the British and Canadian official maps, referred to in the statement enclosed with your letter of the 19th instant, and I shall have much pleasure in supplying you with copies of the same as soon as I receive them."

Now then all that that contains is an acknowledgment, a statement that the proposal for a Commission would have very favourable consideration, and I submit from it there cannot be extracted any admission that the southern inlet was that which was referred to in the Treaty as the Portland Canal. The maps were sent, and with the maps was sent the letter from Lord Iddesleigh to Mr. Phelps, which contained a statement that Her Majesty's Government could not in any way recognize the correctness of that line laid down in the particular map.

The particular map forwarded is that which appears in the British Case atlas, No. 32, and it is the copy of the map of the Dominion of Canada geologically coloured from surveys made by the Geological Corps, 1842 to 1882, on this map. This is a geological and natural history survey of Canada. I think it may be regarded as conveying in some respects a warning to every department to stick to its own business, because this geological and natural history survey of Canada is appealed to in a matter which has nothing to do either with geology or natural history. It marks a large territory as unexplored which, I suppose, means unexplored for the purposes of geology or natural history. And then it puts in a colour which denotes the Russian territories.

The PRESIDENT. The United States' territory?

SIR ROBERT FINLAY. The United States' territory. That colour is extended to Pearse Island and Wales Island.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. That, I take it, is the whole point, for this purpose, of the natural history and geological survey map. Well, the Tribunal will not be surprised to find that Lord Iddisleigh, in forwarding that, says:—

145 "I have the honour to invite your attention to the fact that the Alaska boundary-line shown therein is merely an indication of the occurrence of such a dividing-line somewhere in that region. It will, of course, be clearly understood that no weight could attach to the map location of the line now denoted, inasmuch as the Convention between Great Britain and Russia of the 28th February, 1825, which defines the line, making its location dependent on alternative circumstances—the occurrence or the non-occurrence of mountains, and, as is well known to all concerned, the country has never been topographically surveyed.

"Her Majesty's Government therefore feel that they are bound distinctly to disavow the recognition of the correctness of the line shown on the edition of the map in question forwarded herewith as the boundary-line between the province of British Columbia and Alaska."

MR. TAYLOR. Would you please give me that page?

SIR ROBERT FINLAY. Page 255 of the British Case Appendix, and as far as I am aware, no other answer was sent, but in the United States' Counter-Case at p. 20 will be found this statement. At the middle of the page, after setting out the reference to the despatch of Mr. Bayard in Mr. Phelps' letter, they go on thus:—

"To the assumption on the part of the United States that the boundary, which had been unquestioned 60 years and accepted as passing east of Pearse and Wales Islands, was not in controversy, the British Government made neither denial nor comment, leaving the United States for over 12 years to conclude that its statement as to the southern boundary was in accord with the views of Great Britain. Having no indication from the British Government that it did not fully agree with the statement made by Mr. Bayard, and having received apparent confirmation of that Government's acquiescence in the fact that the joint survey of 1893 and 1894 commenced its operations at the head and not at the entrance of Portland Canal; the United States in 1896 erected storehouses on Pearse and Wales Islands and the western shore of the upper reach of Portland Canal."

Now I submit that, as regards both of the two points which are there made in the way of allegation of acquiescence, there is nothing which can be relied upon.

That despatch of Lord Salisbury merely expresses acquiescence in the view that a Commission would be a very desirable thing, and how that can be construed as an admission that Portland Canal ran south of Pearse Island, I confess, is a little puzzling.

Then the second point of acquiescence made in this paragraph is this—that the joint survey of 1893 and 1894 commenced its operations at the head, and not at the entrance to Portland Canal; and it is said that that encouraged the United States to believe that their statement as to what Portland Canal was at the entrance was not in dispute. Well, the reason for commencing the survey at the head of Portland Canal, and not at the entrance, was that we called for a survey at the entrance. The dispute as to what is Portland Canal is not one that turns in the slightest degree upon any surveys of the natural features of the country, and I do not know of any of these allegations of acquiescence which are said to have lulled the United States into the fond belief that their detail of Wales and Pearse Islands was not in dispute. It is a mere flimsy. There is nothing in either of them.

Now, it should not be forgotten, in dealing with that point, that despatches had passed in the meantime between Lord Rosebery and Mr. Phelps. I will only refer to one of them, at p. 92 of the Appendix of the Counter-Case of the United States, after Lord Rosebery had become Secretary of State for Foreign Affairs. On the 15th April, 1886 Lord Rosebery wrote to Mr. Phelps:—

"DEAR MR. PHELPS: With reference to our conversation of the 12th instant about the Alaska boundary, I find that the views of the Canadian Government on the proposal contained in your letter of the 19th January, which inclosed the purport of a despatch from Mr. Bayard, were communicated to the Foreign Office on the 31st ultimo. Sir L. West has, in consequence, been instructed to inform the Government of the United States that Her Majesty's Government are prepared to take part in a *preliminary* investigation of the boundary question. This would not commit the two Governments to a joint Commission such as that suggested in your note of the 19th January. Meanwhile, we do not propose to move further in the matter until we know what action is taken by the United States' Government in regard to applying to Congress for an appropriation."

Now, the action which is said to have been taken on the strength of these two pieces of acquiescence consisted in the erection of two storehouses on these islands, with two storehouses on other points of the Portland Channel, and I shall ask the Tribunal to look at the account of the ceremonial observed, and observe that it is exactly the sort of ceremonial which would be observed when you take possession for the first time of something which you regard as open to

occupation. It will be found beginning at p. 300 and going on to p. 304 of the British Appendix. The narrative is inclosed in a letter of the 3rd November, 1896, from Captain Gaillard to General Craig-hill, from the office of the Chief of Engineers at Washington.

And what is inclosed is a preliminary examination of the Portland Channel or Canal, South-East Alaska. There is a general description of Portland Canal and then there follows a Report upon the construction of the storehouses upon the Portland Channel or Canal, South-East Alaska. Near the bottom of p. 301 he says:—

“The head of Portland Canal was reached at 5 p. m. on the 2nd September and the site of storehouse No. 4 at Eagle Point, north-east of the mouth of the Salmon River.”

Salmon River is one of the rivers falling into the head of Portland Canal.

“We left the head of Portland Canal at 6 a. m. on the 4th September, and arrived at Halibut Bay at 11.30 a. m.; selected the site of storehouse No. 3 on the west side of the bay, north of the mouth of a creek; and erected tents for the party, in a pouring rain, on the same afternoon. The working party, materials, and provisions were landed on the following morning, and excavation for the foundation of the storehouse was at once begun. Previous investigation having shown that there was little probability of finding sand for use in the construction of the masonry of storehouses Nos. 1 and 2, near their sites, the 5th and 7th September were spent in filling 357 sacks with sand, carrying them about 1½ miles in small boats to the “Manzanita,” and loading them on board. We left Halibut Bay at 5 a. m., the 8th September, and arrived at Lizard Cove, Pearse Island, at 7.45 a. m., selected the site of storehouse No. 2 at the head of the cove just south of Lizard Point, Pearse Island, landed party, pitched tents, excavated foundation for storehouse, landed building materials, provisions, and 135 bags of sand, and sailed for Manzanita Cove north of Red Cliff Point, Wales Island, at 4.30 p. m., arriving there at 6 p. m., and selecting the site for storehouse No. 1 at the head of a small cove opening into Manzanita Cove about 250 yards west of Red Cliff Point.”

Then follows a description of the storehouses; Nos. 1 and 2 are the storehouses which are in question. Storehouse No. 1 describes the walls:—

“The walls are of rubble masonry laid with Portland cement mortar. The foundation walls are 24 inches thick, and the side walls 18 inches. Its interior dimensions are 10 feet by 15 feet by 7 feet 5 inches in the clear, and it is surmounted by a gable roof with a pitch of 2 on 3 covered with cedar shingles. At one end of the building is a door 3 feet by 6½ feet in the clear, and at the opposite end a window 2 feet by 3 feet in the clear. The floor is of 1-inch boards. On the corner of the house, to the left of the door and about 3 feet above the foundation, is a dressed stone with a force 8 inches by 24 inches, set flush with the wall, on which is neatly cut the inscription, ‘U. S. property. Do not injure.’ This storehouse contains 31.6 cubic yards of masonry. It was commenced on the 9th September and completed on the 28th September. About 60 feet to the right of the storehouse is a flagstaff.”

147 The PRESIDENT. We do not want all the details of the storehouses, Mr. Attorney.

Sir ROBERT FINLAY. No, you do not want all the details. And then there is the “flagstaff 60 feet in height and 18 inches in diameter at the base, made by trimming and dressing a straight spruce tree. On this staff is carved ‘U. S., September 12th, 1896,’ the date on which the United States’ 4 feet 9 inches by 8 feet ‘storm-flag’ was first hoisted, which was done with a salute, three cheers, and uncovered heads. This flag was kept flying during the day until the party left Manzanita Cove on the 28th September.”

Then, storehouse No. 2, we have got exactly the same thing and the

same ritual observed. There is the stone with the inscription "United States' Property. Do not Injure" the flag-staff. "This storehouse contains 31·8 cubic yards of masonry. It was commenced on the 8th September, and completed on the 28th September. About 15 feet to the left of the storehouse and the same distance in the rear is a flag-staff, about 60 feet in height and 14 inches in diameter at the base, made by trimming and dressing a straight spruce tree. On the staff is carved 'U. S., Sept. 14th, 1896.'"

And then again the salute, the three cheers and the uncovered heads, and the flag is hoisted.

Then on p. 303 there is a general notice of the storehouses that they are neatly and strongly built, and would make comfortable quarters for small parties. Then that Captain Harry Taylor was left one complete set of storehouse keys, the other set being here in my possession. Captain Harry Taylor is of Seattle, in the State of Washington, the other set of keys was at Washington, the capital; so that these storehouses had two sets of keys—one of them was at Seattle, in the State of Washington, the other at Washington capital; and I am not aware that those storehouses have ever been occupied or used, or that those keys were ever employed. I do not know who may have called there to read the description about the property of the United States; but so far as these keys are concerned I am not aware that there is any evidence whatever.

Now, that is the Act which is relied upon as evidence of possession by the United States. Well, in the first place it happened in the year 1896, when the controversy had been long pending, when surveys had been held with a view to settle some parts of the boundary; and an Act done at that time, I submit, cannot possibly have the slightest bearing upon the controversy now in existence between the two Governments, having regard to the Treaty by which the preliminary or subsequent acts of the parties are to be taken into account so far as they throw light on the original and effective question—I am quoting from memory, but I think accurately—of the parties to the Treaty.

Now this Act did not pass without protest, for in the year 1902 Sir Julian Pauncefote drew attention to the subject in a despatch which will be found on p. 294. Lord Pauncefote drew attention to the subject in a despatch to Lord Lansdowne, dated 20th March, 1902. It is on p. 294 of the Appendix of the British Case. He says:—

"I have the honour to acknowledge the receipt of your Lordship's despatch No. 14, of January 23rd, transmitting copy of a letter from the Colonial Office with inclosures from the Canadian Government, in which it was suggested that representations should be made to the United States' Government in regard to certain storehouses marked on a chart of part of the Pacific coast, copy of which was inclosed, published by the United States' Geodetic Survey. On the receipt of this despatch I addressed a note to Mr. Hay, stating that I had been directed by your Lordship to make an inquiry as to the nature of these storehouses, and the reason for their erection in territory the title to which was, and still is, the subject of diplomatic negotiations between Great Britain and the United States.

"Mr. Hay informed me, in reply, that he did not find upon examination of the charts of the region referred to any indication of storehouses marked thereon. He added, however, that the storehouses were upon territory which had been in possession of the United States since its acquisition from Russia, and the designation of Portland Canal was such as had been noted on all the charts issued by the United States since that acquisition. Mr. Hay further stated that he was not aware that His Majesty's Government had ever advanced any claim to this territory before the signature of the

Protocol of May 30th, 1898, preliminary to the appointment of the Joint High Commission."

So far from the territory being in the possession of the United States ever since its acquisition from Russia in 1867, it was a territory which was taken possession of, so far as possession was taken by putting up these storehouses, with a sort of ceremonial that might be observed on landing in a strange country. Then the despatch from Mr. Hay to Lord Pauncefote is inclosed, which contains a statement substantially in the terms which I have quoted. Then, on p. 295, there is another despatch from Mr. Raikes, dated the 6th September, 1902, where Mr. Raikes, after referring to what had taken place between Lord Pauncefote and Mr. Hay, says:—

"In reply to this statement," that is, the statement that Mr. Hay was not aware that here had been any dispute as to the territory, "I am directed by the Marquess of Lansdowne to inform you that the Canadian Government, to whom copies of the correspondence have been forwarded, call attention to the note addressed by His Majesty's Minister at Washington to the United States' Secretary of State on the 5th June, 1891. In view of a certain passage in the report of the United States' Coast and Geodetic Survey, your Government was reminded in this note, at the desire of the Government of Canada, that the question of the boundary in the neighbourhood referred to was the subject of some difference of opinion, and that the actual line could only be properly determined by an International Commission.

"The Canadian Government point out that shortly after that date provision was made in the Convention of the 22nd July, 1892, for the delimitation of the boundary line in accordance with the 'spirit and intent of the Treaties,' and an agreement was entered into that the boundary was to be considered and established as soon as practicable after the receipt of the Report of the Commissioners. That Report was signed on the 31st December, 1895, and laid before the Parliament of Canada and the United States Congress early in 1896; but in the same year, before the High Contracting Parties had met to consider the boundary line, and while the matter was still *sub judice*, the United States erected the storehouses on part of the 'territory adjacent,' which was the subject of the operations of the joint survey and of the diplomatic negotiations.

"The Canadian Government conceive that occupation effected under such circumstances would not in international law have any validity, but they are of the opinion that nevertheless the matter should not be allowed to pass without protest, and they have, therefore, expressed the desire that your Government should be informed of their views on the subject. In making this communication and with reference to Mr. Hay's above mentioned statement, I have also to draw your attention to the remarks contained in Lord Salisbury's despatch No. 213 of the 14th October, 1899, to Mr. Tower, a copy of which was left with Mr. Hay on the 30th of that month."

Now, I submit that that for all purposes disposes of the erection of these storehouses, that they cannot be relied upon under the terms of the Treaty. And I should say in this connection that I rather understated my case on the point which the United States' Counter-Case makes with regard to the survey being only at the head of the canal. I said that the question of the entrance of Portland Canal does not depend upon survey; it depends upon identity to be collected from the materials before the negotiators, but I find, as a matter of fact, that the survey was carried out.

THE PRESIDENT. There is an American set—an American survey—which covers Portland Channel altogether. I forget the number of it, it is numbered on that.

SIR ROBERT FINLAY. It is No. 1.

THE PRESIDENT. Yes; I thought it was the first one. They found an argument upon it, you know, with reference to how the line ought to go from the Portland Canal up that valley on that survey.

149 Sir ROBERT FINLAY. Of course, when the argument was put forward that they were encouraged to erect these storehouses, from the fact that the survey was confined to the head of the canal, they had forgotten that the survey was carried on at the mouth of the canal as well, and by themselves. But, in truth, it does not matter a straw for this purpose where the survey was carried out. It depends upon totally different considerations.

Now, there are two very minor points which are raised in the Counter-Case and arguments of the United States with reference to this question of Portland Canal which I must just advert to. One of them I have touched on already. It relates to the proposal which was made by the United States' Adventurers—a syndicate they are called—a certain number of merchants of the United States in the year 1867. I think the word "adventurers" is in the papers in the Old English sense of those undertaking the enterprise, and arguments are based upon it in the United States' Counter-Case at pp. 18 and 19, and in the argument at p. 51, while the document itself will be found in the Appendix to the Counter-Case of the United States at pp. 33 and 34. It is a Memorandum enclosed in a letter from the Russian Minister of Finance to the Vice-Chancellor, and the enclosed Memorandum had been sent by the President of the Board of the Russian-American Company.

The PRESIDENT. Could you, that I might follow this, for I do not know at present, tell me what they, roughly, say about it?

Sir ROBERT FINLAY. What they say is this, that they describe the southern boundary of the territory as 54 degrees 40 minutes.

The PRESIDENT. I see, yes.

Sir ROBERT FINLAY. That is really the whole point. There is a certain amount of wearisome reiteration among all this, but one must deal with all the points which are made, because the southern boundary at the southern point is very important.

The PRESIDENT. I am afraid I was only displaying my ignorance, Mr. Attorney. What I wanted to know is what the points were.

Sir ROBERT FINLAY. The matter is one of really very great importance to Canada at this point as well as at the other.

The PRESIDENT. Certainly.

Sir ROBERT FINLAY. On p. 34 occurs the passage which I understand is relied upon:—

"But before the Hudson's Bay Company made this offer" (that was an offer for the renewal of the lease) "the Minister of the United States made the following proposition to the Board of Direction of the Russian-American Company on behalf of certain merchants in California, to wit:—

"(1.) To grant to them the exclusive right of fishing, hunting, and trading with the natives within the following limits:—

"Beginning at the point on the Pacific Ocean where the 54 degrees 40 minutes north latitude intersects 134 degrees 30 minutes west longitude."

Now it will be seen that is far out into the seas—54 degrees 40 minutes intersects 134 degrees 30 minutes. That would take you well out to the westward of the southern point of Prince of Wales Island. It is on the longitude 134 degrees 30 minutes; it is almost on the line really of Chatham Strait, Christian Sound, and Chatham Strait.

"Beginning at the point on the Pacific Ocean where the 54 degrees 40 minutes north latitude intersects 134 degrees 30 minutes west longitude, along the Christian Sound and Chatham Strait to the 59th degree of north latitude on the chief promontory of Chilcate Peninsula, shown on the charts under the name

of Lynn Channel; thence northward to the boundary between Russian and English possessions; thence southward along the above-mentioned boundary to latitude 54 degrees 40 minutes, and thence west to the point of beginning, including all islands, headlands, rivers, &c., within the said limits, with the right of navigation on the River Mackenzie, from its mouth to the British frontier."

I do not very well see how a proposal of that kind could possibly affect the construction of the Treaty, but if the Tribunal will refer to the Counter-Case and Argument at the pages which I have mentioned it will appear how it is sought to use it. In the Counter-Case it is at the bottom of p. 18.

"In 1867 an American Company attempted to enter into a lease with the Russian-American Company, as the term of the Agreement with the Hudson's Bay Company was about to expire. The Russian Company reported the circumstances to its Government and stated the area desired by the Americans was inclosed by the following limits:—

"Beginning at the point on the Pacific Ocean where 54 degrees 40 minutes north latitude intersects 134 degrees 30 minutes of west longitude, 'thence up Chatham Strait to the head of Lynn Canal, thence north to the boundary, thence southward along that boundary to latitude 54 degrees 40 minutes, and thence west to the point of beginning.' The report further stated 'that the said territory—excluding the islands—is exactly that which is now leased to the Hudson's Bay Company. It is manifest from this statement that the parallel 54 degrees 40 minutes was considered the Russian boundary to the south, and that the astronomical rather than the geographical description was intended to control the line of demarcation until it entered Portland Canal."

Surely that is a very extraordinary way of throwing light upon the construction of the Treaty concluded in 1825. It is merely another instance of the somewhat loose use of language by persons who are seeking to acquire this territory. It is to be ranked in the same category with Sir George Simpson speaking of 54 degrees 40 minutes as the southern boundary of Russian possessions upon the mainland, and even if anything more than that were intended it could not have the slightest effect upon the rights of the British Government under the lease of 1825. But it is dealt with in the Argument upon p. 51 to the extent of recurring a good deal to the subject at the middle of the page. In the Memorandum submitted by the Russian Minister of Finance to the Vice-Chancellor in his letter of the 16th March, 1867, he says of the lease that it related to "that part of the mainland belonging to Russia which lies between Cape Spencer and 54 degrees 40 minutes northern latitude," &c.

He also says that the United States Minister, on behalf of certain merchants in California has offered to lease exactly the same territory leased to the Hudson's Bay Company, together with the islands, and this territory he describes as running part of the way "southward along the above-mentioned boundary (the boundary between Russian and English possessions) to latitude 54 degrees 40 minutes, &c."

That is, put into the middle of the passage in which the various statements of Sir George Simpson, in the letters preliminary to the lease to the Hudson's Bay Company, are contained, and I submit that the same answer which is made to these statement applies to this.

There is one other point that is made on behalf of the United States, and I refer to it more particularly because of the terms in which they refer to a portion of the British Case Appendix. It relates to an extract from the journal of the Royal Geographical

Society of 1869, which was in the appendix to Mr. Cameron's report of 1878.

Mr. DICKINSON. Mr. Attorney-General, permit me to interrupt you. I wish to say that that is a mere mistake, that you need not address your attention to that.

Sir ROBERT FINLAY. I am very much obliged to Judge Dickinson for his courtesy in relieving me of the necessity of dealing with that part. I am very glad to know that there is nothing in the nature of an attack upon the intention completely to present everything relevant to the case.

151 Mr. DICKINSON. It is simply an inadvertence which arose from an incomplete examination of the record. A more careful examination disclosed that that was a mistake.

The PRESIDENT. Will you give us the page you refer to?

Sir ROBERT FINLAY. The passage occurs in the Counter-Case of the United States on p. 19, but after what Judge Dickinson has said—

The PRESIDENT. It is not the least necessary; nothing could be fairer.

Sir ROBERT FINLAY. After what Judge Dickinson has been good enough to say, I am entirely relieved of any necessity of dealing with it. I was going to deal now with the subsequent maps.

(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

SIR ROBERT FINLAY. Yesterday, when the Tribunal adjourned, I was about to refer to the subsequent maps. I have already dealt with the maps which might have been before the negotiations, but the subsequent maps were a good deal referred to in the course of the Cases and Arguments, and it is only right that I should now deal with them. The first map subsequent to the Treaty is in the year 1826. It is the Russian map which is in the United States' Atlas, Map No. 11; the inlet is shown very distinctly with the two branches, and then there are two dots representing the islands near the outlet, and then the name appears to be given at the top of the western branch, something in Russian characters.

THE PRESIDENT. I believe that is Canal Portland?

SIR ROBERT FINLAY. Yes.

THE PRESIDENT. I was told so. What is the word immediately above the Canal Portland, Mr. Attorney?

SIR ROBERT FINLAY. It relates to Revilla, the island opposite.

THE PRESIDENT. Thank you.

SIR ROBERT FINLAY. As your Lordship said, the legend at the top of the western inlet is clearly Canal Portland, and then below is the Observatory Canal or Observatory Inlet.

MR. AYLESWORTH. What are the words that occupy the place in Dixon's Passage? Will somebody tell us?

SIR ROBERT FINLAY. I think one can make the word out to be Dixona.

THE PRESIDENT. It is Canal Dixona, I think.

SIR ROBERT FINLAY. I am told that the other word is Cordova,

MR. AYLESWORTH. That is the other name for it—I suppose, the Spanish name.

MR. LODGE. It refers to the Spanish navigator, I suppose?

SIR ROBERT FINLAY. I think it does.

THE PRESIDENT. I must apologise for troubling you, but would you, or Mr. Simon, read the words above that line?

153 SIR ROBERT FINLAY. I am told, my Lord, these words are "the boundary under the Treaty with England of 1825."

THE PRESIDENT. "With America," is it not?

SIR ROBERT FINLAY. No; the date is 1825, and I think one can see that the word is not America.

THE PRESIDENT. That is a manifest mistake, but I should guess it is England.

SIR ROBERT FINLAY. If your Lordship would look at the top of the map, where the boundary runs due north from Mount Elias, the same words at greater length occur. There is the boundary.

THE PRESIDENT. That is translated in one of the English maps.

SIR ROBERT FINLAY. The words are:—

“The boundary between Russian and English America under the Convention of 1825.”

THE PRESIDENT. Thank you.

SIR ROBERT FINLAY. And at the lower point your Lordship will see what a very odd line that takes; it is the marked boundary according to the Treaty with England of 1825. It runs across and then away down, and it is difficult to understand what is the significance of that line although it undoubtedly is marked as if it were the boundary of the Treaty with England.

MR. DICKINSON. Mr. Attorney-General, I beg your pardon, but do I understand you to say that this inscription at the lower line is England or America?

SIR ROBERT FINLAY. England, I am told, and the date agrees with that. I do not know whether our information agrees upon that.

MR. DICKINSON. Yes, I agree with you.

MR. AYLESWORTH. While you are looking at that map, Mr. Attorney-General, you will find the boundary goes away behind Mount Fairweather.

SIR ROBERT FINLAY. Yes, it does. I have endeavoured to keep the different parts of a Case of such magnitude separate.

THE PRESIDENT. Certainly.

SIR ROBERT FINLAY. It is very desirable as we go through the maps that we should clear up points of this kind, and that is the one purpose for which I am referring to the map at present on the question of the Portland Canal, to which I am now directing the attention of the Tribunal.

THE PRESIDENT. We quite follow you, Mr. Attorney-General.

SIR ROBERT FINLAY. What I point out there is that both channels appear quite clearly, and they are separately marked at the head, one being Portland Canal and the other Observatory Inlet, with the two dots representing the islands in the centre. Each channel reaches the sea, and there is nothing to indicate that the one has any pre-
154 dominance over the other. I think that after all the explanation of that inscription about the Treaty with England of 1825 must be that it is a blunder, because they show what professes to be the line of boundary running from the head north of Portland Canal, and that has no connection whatever with the line which is put in with the legend importing that it is the boundary under the Treaty with England. I suggest that it must be a blunder.

THE PRESIDENT. That is what it looks like; something of that kind; it seems to have some reference to the boundary.

MR. AYLESWORTH. It seems to be almost exactly on the line 54 degrees 40 minutes.

SIR ROBERT FINLAY. But even then it turns round in a very odd way towards the eastward.

THE PRESIDENT. It does not matter very much, but it is difficult to follow it. I quite agree.

SIR ROBERT FINLAY. It is quite clear. I suggest that it is a great blunder putting on that line that inscription which represents it as the boundary under the English Treaty, because it has no relation whatever to the boundary indicated by the Treaty and no connection whatever with the line from the head of Portland Canal, which this map gives as professing to be the boundary under the Treaty.

Mr. AYLESWORTH. Very probably. I will suggest that that is the cartographer's idea of the probable boundary between the land claimed by the American Government at that time and that claimed by the British Government.

Sir ROBERT FINLAY. Yes, this map is published in 1826, and the cartographer seems, while taking the point between the American and Russian settlements as fixed by Treaty of 1824 between Russia and America, on his own account to have deflected it at the eastern end.

Mr. DICKINSON. Mr. Attorney-General, it will simplify the discussion of this question if I say that we advance no argument whatever based on that line that you are discussing.

Sir ROBERT FINLAY. It will be observed that this line does not run across from the islands. It is only upon the mainland.

The PRESIDENT. No, but Mr. Dickinson has just said, Mr. Attorney-General, they do not found any argument upon it.

Sir ROBERT FINLAY. But it is very desirable that that point should be cleared up, my Lord.

The PRESIDENT. Quite so..

Sir ROBERT FINLAY. The next map to which I invite attention is the Colonial Office map of 1831, No. 13 of the British Case Atlas; it is part of the Colonial Office map by Hebert Senior, dated 1831, and there we observe that the two channels are delineated as both running very distinctly indeed to the sea, separated by Pearse Island and Wales Island, which appear to be coloured red as being part of British territory. The name Portland Canal is affixed to the southern channel. It begins nearly opposite to that arm, reaching from one to the other. The name Observatory Inlet is affixed to the lower channel beginning a little higher up at the same point. I submit that, so far as that map is to be looked at, it is undoubtedly in favour of the contention of Great Britain that the northern channel was the boundary, because the colouring of these islands is British.

Well, the next map is one of 1833, a map by Arrowsmith.

The PRESIDENT. What number?

Sir ROBERT FINLAY. No. 12 of the United States Atlas. That map, in one respect, is distinctly against the British contention. In another respect it is for it, because, as regards the colouring, it will be observed that Pearse Island and Wales Island are coloured as if they were part of the Russian dominions, as if they were part of the *lisière*, while, on the other hand, the name Portland Canal extends down towards the channel connecting the two branches opposite the upper portion of Pearse Island, while the name Observatory Inlet is printed transversely in large bold type, from which I take it that one would infer that it extended the whole way to the sea; that it is a principal inlet and not a mere dependency of any other arm of the sea, so that this map really may be used either way. As far as the colour goes I admit that it might be used by the United States in support of their argument, but so far as the delineations of the channels go and the legend indicating each channel, I submit this is in favour of our case.

Mr. AYLESWORTH. Before leaving that map of Arrowsmith's, have you noticed the dotted line extending from the head of Observatory Inlet towards the eastward?

Sir ROBERT FINLAY. I have.

Mr. AYLESWORTH. What explanation of that can be given?

Sir ROBERT FINLAY. I do not know what that is.

Mr. AYLESWORTH. There is an arrow marked by the side of it. I do not know whether it might possibly signify a trail?

Sir ROBERT FINLAY. My impression is that it is a conjectural river, for this reason: that there is a little bit of river.

The PRESIDENT. At the other end of it?

Sir ROBERT FINLAY. Just at the margin, marked as a river would ordinarily be; and then there is a series of dots, a system which is very often adopted for the purpose of marking the portion of a river which is merely conjectural.

Mr. AYLESWORTH. The map has been prepared and inscribed as for the Hudson's Bay Company, and I thought perhaps it might have some reference to their business operations.

Sir ROBERT FINLAY. I think it will be found that there is a river lower down in other maps there, and that is my suggestion with regard to that. If Mr. Aylesworth would look at No. 10 in the same volume—

Mr. AYLESWORTH. That is the map of 1823?

Sir ROBERT FINLAY. The map I mean is an Arrowsmith map in the same volume, prepared in 1822. I referred to it as one of the maps before the Treaty. In this map No. 10, of 1822, by Arrowsmith, the same dotted line will be observed ending at the end of one branch of Observatory Inlet and then connecting the rivers which come out of Bear Lake and White Fish Lake, and a lake called Babine Lake. So it seems quite clear that in this map, No. 10, it denotes the conjectural course, the imagined course of a river which had taken its origin in those lakes, and probably that dotted line which is in very much the same direction in Arrowsmith's map, No. 10, as in the map also of Arrowsmith's, No. 12, in the same way denotes the imagined course of the river. No. 12 does not go far enough to the east to show the course, but if the Tribunal would look at No. 12 of the British Case Atlas I think that is further borne out. That is also an Arrowsmith map, corrected up to 1824. It is one of those that I referred to as a map that might have been before the negotiators. On that map No. 12 of the British Atlas that imaginary river, the imaginary course of that river, will be found designated by the arrow also.

The PRESIDENT. And leading up to these same lakes or supposed lakes.

Sir ROBERT FINLAY. Yes.

Mr. ROOT. I see that in No. 13 of the United States' Atlas there are a number of rivers designated in the same way.

Sir ROBERT FINLAY. Yes.

Mr. ROOT. And this same line appears running up to the Observatory Inlet, the dotted line. There are half a dozen rivers indicated in that way.

Sir ROBERT FINLAY. Yes, that is the next map I was going to refer to.

Mr. DICKINSON. While you are on map No. 12, Mr. Attorney-General, will you oblige me by giving me the date of that map? It does not appear here, the date of that map and the title of it.

Sir ROBERT FINLAY. No. 12, in the British Case Atlas, I think it is 1824.

Mr. DICKINSON. Will you give me the title of that; I have never been able to identify that map.

SIR ROBERT FINLAY. I am taking my information from the table of contents at the beginning of the Atlas. There is nothing on the map itself, I think, to show what the date is.

MR. DICKINSON. I presume you have the original here. We can inspect that.

SIR ROBERT FINLAY. I will have that looked into, but what I am saying just now really does not go higher than the source from which it is taken, namely, the table of contents at the beginning.

MR. DICKINSON. You will oblige us by letting us see the original.

SIR ROBERT FINLAY. I will have that verified. Now, I turn to the next map which is also one of 1833. It is No. 13 in the United States' Atlas, the map to which Mr. Root has just referred, of Brué. Now with regard to that there is a curious division in the matter of colour.

THE PRESIDENT. You mean by the different colouring of the islands, Mr. Attorney-General?

SIR ROBERT FINLAY. Yes.

THE PRESIDENT. I think it generally occurs from it being done by hand—these little tiny bits. We always found you could not attach very much reliance to this marginal colouring. It was not printed, you know. It was done by hand in those days.

SIR ROBERT FINLAY. If it was done unintentionally it seems to have been making what the mapmaker might have thought a fair compromise.

157 THE PRESIDENT. Yes.

SIR ROBERT FINLAY. Because he gives Wales Island to Russia and Pearse Island to England. Passing by that which one cannot lay very much stress upon it will be observed that Observatory Inlet is carried right down to the sea. Alongside the Portland Channel occur these words, which begin very near, not very far from Port Maskelyne, "Entrée de l'Observatoire," so that it is quite clear that according to this map Observatory Inlet goes right down to the sea exactly according with Vancouver. The legend of the Canal de Portland is put on the east side and upper part—very much the upper part—of that branch, so that this map I cite as being entirely in our favour as far as Observatory Inlet is concerned, and it certainly does not damage us as far as the Portland Canal is concerned. But this same observation occurs there which was made just now by a Member of the Tribunal as to the dotted line.

MR. TURNER. What is the object of this dotted line running by Muzon and Chacon into the head of the "Entrée de l'Observatoire?"

SIR ROBERT FINLAY. Were you referring, Sir, to the dotted line running into the head of the "Entrée de l'Observatoire?"

MR. TURNER. Yes the one commencing at Cape Muzon.

SIR ROBERT FINLAY. I take it that is the imagined course of a river as it was in the other maps to which we have been referring.

MR. TURNER. This line commences out in the sea, not by Cape Muzon.

SIR ROBERT FINLAY. I beg your pardon. I do not follow the question.

MR. TURNER. It runs into Observatory Inlet.

SIR ROBERT FINLAY. I do not know, because it corresponds with nothing. It does not represent a parallel. It does not represent 54

degrees 40 minutes, or any other parallel; it is not drawn from any point on Prince of Wales Island.

Mr. LODGE. Does not that indicate, Mr. Attorney-General, a supposed continuation of the river or the inlet? You will see above the meridian line a number of these continuations of the river.

Sir ROBERT FINLAY. What Mr. Turner was referring to was the line that runs away to the south of Cape Muzon and Cape Chacon in that sea. I do not know what that can be.

The PRESIDENT. However, we have quite enough to consider in what we can explain, Mr. Attorney, without considering what we cannot.

Sir ROBERT FINLAY. The next map is dated 1839, and is No. 14 of the United States' Case Atlas. There again the names entirely bear out the British contention. The Observatory Inlet is in bold type, running right down to the sea. The map is by Mr. H. S. Tanner.

Mr. AYLESWORTH. One would think it is published in America from the plate showing the Falls of Niagara and the natural Bridge.

Sir ROBERT FINLAY. The plate vividly recalls Fenimore Cooper's novels to one's mind. I do not know whether Judge Dickinson can assist us by telling us whether this map of Tanner's is published in Philadelphia? That is so, yes. No. 14.

Mr. DICKINSON. 1839.

Sir ROBERT FINLAY. 1839, yes; this is an American map.

158 Mr. AYLESWORTH. It is in the index in the biographical notes. He is said to have spent his life in Philadelphia.

Sir ROBERT FINLAY. It is part of a map of North America, constructed according to the latest information, by H. S. Tanner, 1839. "Published at Philadelphia. Reproduced on Original Scale." I call attention to the fact that the legend Portland Canal and Observatory Inlet is in favour of the view which I have been presenting to the Tribunal. As regards the island in the middle he seems to have left it uncoloured altogether. It is very difficult to tell.

Mr. AYLESWORTH. And he only has one.

Sir ROBERT FINLAY. There is one island which is either left uncoloured or is coloured so that it is extremely difficult without better eyes than mine are to be certain.

Mr. LODGE. He has omitted most of the small islands.

Sir ROBERT FINLAY. Yes.

Mr. LODGE. He has only got one there.

Sir ROBERT FINLAY. He has only got one, which seems to be Pearse Island.

Mr. LODGE. I suppose so.

Mr. AYLESWORTH. You observe that this colouring seems to show everything south of 54 degrees 40 minutes as belonging to the United States.

The ATTORNEY-GENERAL. Yes, I was about to call attention to the boundary of 1824 as marked there 54 degrees 40 minutes.

The PRESIDENT. Mr. Attorney, may I suggest to you, only as the result of very long experience and having had to do with this sort of maps, as you know, on several occasions, that with regard to legends and popular representations of the names of places, channels, and things of that kind, they are extremely valuable; but with regard to these minor details, such as the colouring, we have always found them

to be something that you cannot act upon, for the reason that they are done by hand, and very often done by people who did not understand what they were doing? On broad lines they are useful to both sides, but on the minor points I do not think they give us much assistance.

SIR ROBERT FINLAY. I quite agree, my Lord.

THE PRESIDENT. I think that is our general feeling.

SIR ROBERT FINLAY. I quite agree, and, of course, in any case this subject of colouring is extremely neutral, because he seems to have given it up as insoluble, and it is just worth noticing before I turn from this map that the boundary of 1824, which is given as the apparent boundary of the possessions of the two States, 54 degrees 40 minutes, runs across the point on the south side of the entrance to the Observatory Inlet, and, as I pointed out yesterday, that agrees with Vancouver's charts, and is according to his description.

The next map is one published in 1844 by Mr. Greenhow. This also is an American map. It is compiled by Mr. Robert Greenhow to illustrate the history of California, Oregon, and the other countries on the North-West Coast of America.

This map shows very clearly the Portland Canal and Observatory Inlet, and it marks what would appear to be intended as the boundary starting from the southern point of Prince of Wales Island, 159 which the mapmaker takes to be Cape Chacon, and it carries the dotted line to the north of those islands, which he puts at the lower part of the inlet, so that both as regards the Russian Portland Canal and Observatory Inlet and the delineation of the inlets themselves, I claim that this is in favour of the British Case, and that is very much emphasized by the way in which he draws what he appears to intend as the boundary-line starting from the south point of Prince of Wales Island on his map, and running up what we say is Portland Canal, the channel to the north of those islands at the mouth of the inlet.

MR. AYLESWORTH. And we now have our river running into the Observatory Inlet.

SIR ROBERT FINLAY. Yes.

MR. AYLESWORTH. Simpson River.

SIR ROBERT FINLAY. Yes, exactly, and coming out of that very lake, the Babine Lake.

Then the next map is one of the same year, 1844, which is a French Foreign Office map. It is No. 16 in the United States' Atlas, and was published in Paris in 1844. It is drawn up by M. Dufлот de Mofras, Attaché of the French Legation in Mexico, "pour servir à l'intelligence de son voyage d'exploration, publié par ordre du Roi sous les auspices de M. Le Maréchal, Duc de Dalmatie, Président du Conseil des Ministres, et de M. le Ministre des Affaires Étrangères." Now, on looking at that map it will be found that the legend "Canal de Portland" is on the west side of the whole inlet, and that it starts from the point well to the south of the north extremity of Pearse Island.

It seems to indicate that the Canal de Portland runs down to the sea, and the name is put on the side of a channel which we say should be north of the island. Now, as regards the name of the Observatory Inlet, it is put to the west side also of the upper part of the Inlet. It may have been from considerations of space, because the name is a

very long one, "Entrée de l'Observatoire," and there are other names printed on the eastern side which would make it inconvenient, and then there is "Baie de Nasse" down near the entrance to the inlet, so it may have been from motives of convenience it was put there, but the "Entrée de l'Observatoire," or Observatory Inlet, appears in that way. Of course it is just worth noticing, although I quite agree that in matters of colour no great importance can be attached to it, that while the Russian portion is coloured green, Pearse Inlet and Sitklan Island are left uncoloured, as is the territory south of that line which is marked as being "Traité entre la Russie et les États-Unis du 17 Avril, 1824."

The next map is the map of 1844, which is a Russian official map. It is No. 15 in the British Case Atlas.

The PRESIDENT. It is No. 22 in the American.

Sir ROBERT FINLAY. No. 22, they seem very much the same.

The PRESIDENT. They are the same, Mr. Attorney, I think. I thought they were when I looked at them.

Sir ROBERT FINLAY. I think they are exactly the same. The title is exactly the same.

The PRESIDENT. And that little monogram at the top is the same, you see, 1844, only the United States have not printed quite so much of it. That is all the difference I can see.

Sir ROBERT FINLAY. I think No. 22 of the United States' Atlas is the same as No. 15 of our atlas. Now, there we have each channel delineated very clearly as going down to the sea. The Portland Channel is marked at the top, and the Observatory Inlet is marked at the side just above some words which I am told denote an 160 "English factory set up in 1835." Now, this map, I claim, is in our favour in so far as the delineation of the inlets is concerned. They are both distinctly shown as separate channels running to the sea, and the legend, I submit, when the situation of the words Observatory Inlet is looked at, would rather point to the fact that the mapmaker intended that word to denote the channel as running down to the sea, because it puts it in that way and at an angle which seems to apply to the whole of the inlet down to the sea. As regards Portland Canal, it is put in such a way that it throws no particular light upon the question.

Then the next map is 18 in the British Atlas, and was published in 1849. This is, I think, a Russian official map.

The PRESIDENT. What number?

Sir ROBERT FINLAY. No. 18 of the British Atlas. I do not know that there is any observation to be made upon this, except that the northern channel is very distinctly shown indeed, and the legend "Canal de Portland" begins at a point just opposite the north end of Pearse Island. It runs along the west side of the Canal de Portland. I do not find any legend about the "Entrée de l'Observatoire" (the Observatory Inlet) at all.

The PRESIDENT. Is it not rather like a copy of a bit of Vancouver?

Sir ROBERT FINLAY. I think it is.

The PRESIDENT. I thought it was when I looked at it. It is very like that No. 7 of Vancouver, Baker's map. It does not carry it very much further. I see there is something on it about Vancouver.

Sir ROBERT FINLAY. There is. The title is translated at the bottom of the map, and it appears to be:—

“Part of map of the Straits of the North-West Coast of America from latitude 54 degrees to 56 degrees.

“From the list (or inventory) of Vancouver, corrected by Colonial navigators.

“New Archangel.”

If the title is right this map was brought out at Sitka.

Then, in 1853, we come to a Canadian map, No. 17, in the United States' Atlas. In this map, which is Bouchette's map, published in Canada, the two channels are shown ending in a broad channel going to the sea, and marked as Observatory Inlet. And Observatory Inlet is not written on the line at all, but is written on the sea towards the land running up towards the mouth of the inlet.

The PRESIDENT. It is rather an indication of what I was pointing out that there was an earlier Bouchette, which is No. 14, I think, of the British Atlas—I think it is twenty years earlier—which has the same mistake upon it, and it has been copied.

Mr. AYLESWORTH. And Queen Charlotte Island is coloured green.

The PRESIDENT. It is.

Mr. AYLESWORTH. Coloured as though it were Russian.

Sir ROBERT FINLAY. Of course, I do not attach any very great importance to maps. The question of what value is to be attached to the maps depends entirely on the circumstances under which it was made. If a map merely represents something taken from an earlier map, or the impression which the mapmaker formed, which was a convenient one to put on paper, then it comes to nothing. It is mere hearsay. When it comes to accurate investigation of boundaries, really the evidence of the maps requires to be very carefully weighed before it is determined what importance should
161 be attached to any particular map. Then the next map is one of the same year—1853.

Mr. AYLESWORTH. Before we leave Bouchette's map Mr. Attorney-General, it might be in that connection worth noticing that as a matter of fact the boundary that this gentleman has taken has narrowed or minimised the Province of Ontario to the extent, I suppose, of 100,000 square miles at the very least. He starts his boundary from the head of Lake Superior, whereas it should be the Lake of the Woods. He shortens it down to the height of the lake instead of running to Hudson's Bay.

Sir ROBERT FINLAY. Yes.

Mr. AYLESWORTH. It shows the value of the interpretation of a boundary by a mapmaker.

Sir ROBERT FINLAY. Exactly so, Sir. However, I am glad to say that on the west coast he is more or less neutral. So far as he goes it may be cited on my side as well as on the other.

Then in the same year, 1853, there is a Russian map which is numbered 20 in the British Atlas. It is from the Hydrographic Department of the Minister of Marine. The title is translated and it is worth looking at.

“Mercator Map of the Southern half of the Koloshenski Archipelago.

“Compiled from various journals and maps, and engraved in the Hydrographic Department of the Ministry of Marine, 1853.”

Well, there the northern channel is distinctly shown, and the legend is perfectly unambiguous because it is written in on either

shore; it is written in the channel itself, and it begins half-way down the island on its western side. So that beyond all question the Russian Department who were entrusted with the preparation of this map regarded the Portland Canal as being the channel on the north side of the island. There is no ambiguity about that at all.

Then in 1857 there is a map which is reproduced in the United States' Counter-Case Atlas No. 35, which I think is the map which was used by Sir George Simpson before the House of Commons Committee.

The PRESIDENT. It is No. 19 of the British Atlas; No. 35 of the United States'.

Mr. DICKINSON. I would call your Lordship's attention to the fact that these maps are not the same; they are very similar maps. The British Map No. 19 is 1850, while No. 35 of the United States' Atlas is 1857.

The PRESIDENT. Oh! I see; thank you, Mr. Dickinson.

Sir ROBERT FINLAY. No; they are not the same.

The PRESIDENT. No; I was mislead by something stated upon them, thank you. What date do you say, Mr. Dickinson, No. 19 is?

Sir ROBERT FINLAY. The date is 1857.

Mr. DICKINSON. No. 19 of the British Atlas is 1850; No. 35 of the United States' Atlas is 1857.

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. 1857; I am much obliged.

162 Mr. DICKINSON. If you will permit me, I will add that the British Atlas map No. 21 is the same as No. 35 of the United States' Atlas.

The PRESIDENT. Thank you. You are quite right, Mr. Dickinson; I had got the wrong number put upon it.

Mr. LODGE. Is not this House of Commons' map 1858?

Mr. DICKINSON. 1857.

Mr. LODGE. I find the date at the bottom.

Mr. DICKINSON. You see it at the bottom of p. 21 of the British Atlas.

Mr. LODGE. And p. 35 of our Atlas.

Mr. DICKINSON. That is 1857.

Mr. LODGE. Published 1858, it says.

Mr. DICKINSON. And published in 1858.

Mr. AYLESWORTH. Ordered to be printed in 1857.

Mr. LODGE. Oh yes, I see.

Sir ROBERT FINLAY. I see No. 19 was ordered to be printed by the House of Commons on 12th July, 1850. No. 21 was ordered by the House of Commons to be printed July and August, 1857. I will compare these two maps. Taking the one of 1850, the channels are shown in a general way; there are some dots, which mean islands, running down to the sea, but there are no names at all. In the map of 1857 the name Portland Canal to the western side clearly goes down to the sea. It starts from the corner, and very nearly the same observation may be made about Observatory Inlet, which starts directly above the word Nasse, which denotes a bay there. So that the map of 1850 only shows the channels, and the map of 1857 shows the channels and has the names in such a way as, I submit, to indicate

that the Portland Canal extended to the sea on the north and Observatory Inlet extended to the sea on the east or south. Then No. 35 in the United States' Case Atlas is the same as No. 21 in the British Atlas.

The next map is a map of 1861, which is the Russian map. It is No. 20 of the United States' Case Atlas. There we have got the Canal Portland marked transversely at the top, and Observatory Inlet written a good deal further down, and somewhat obliquely, as in a previous map to which I called attention, and just below it is the same legend about an English factory established in 1835. Both channels appear very distinctly as getting to the sea, and then there is a dotted line, and there is a legend above it which for some time I thought might relate to the line, but I am told that denotes Forester's Island.

THE PRESIDENT. I see; it is to carry the name in, you mean?

SIR ROBERT FINLAY. No; I do not think so. I do not think the dotted line has anything to do with the legend. That is the name of an island.

MR. LODGE. It is simply the name of an island that is indicated there.

SIR ROBERT FINLAY. Yes, it is; there is an island situated there.

MR. LODGE. It is indicated on the map.

163 SIR ROBERT FINLAY. Forester's Island, I am told, is what that represents. The dotted line, as far as one could gather, would appear to be the boundary indicated by the Treaty between Russia and the United States, but there is nothing printed on the map to explain it. It runs a little south. The Tribunal will see that it hits the land a little south of Point Maskelyne. I think it must be the line indicated by the Russo-American Treaty.

MR. AYLESWORTH. 54 degrés 40 minutes.

SIR ROBERT FINLAY. Yes; I again claim this map as being substantially in favour of the British Case.

Then in 1867 there is the United States' map, which is No. 24 in the United States' Atlas, where we have got Portland Channel on the west side, and represented as going right to the sea. This is published in 1867. It professes to be a map of "North-Western America, showing the territory ceded by Russia to the United States, compiled for the Department of State at the United States' Coast Survey Office. B. Pierce, Superintendent, 1867."

It shows distinctly Portland Channel running to the sea. On the other side there is no mark with reference to Observatory Inlet at all, but in largish type the English factory is marked which had been shown upon the Russian maps to which I called attention as having been founded in the year 1835. The colouring of Pearse Island coincides with that which denotes the Russian territory which the United States had just acquired, but as regards the delineation of Portland Channel it clearly indicates that Portland Channel runs down to the sea. There is a map in the British Atlas which I ought to have referred to; I am sorry that with the multiplicity of maps I passed it by. It is No. 22, an Arrowsmith map, published in the year 1863. It is an uncoloured map. And there again the print of Portland Canal clearly carries it down to the sea. It is marked on the west side, while Observatory Inlet is marked on the east side, and starts immediately above the word Nasse, thereby, and as I submit, indicat-

ing that on the east side Observatory Inlet, on the west side Portland Canal went down to the sea. Then, in 1868, there are the Admiralty Survey Maps, Nos. 23 and 25 in the British Atlas. No. 23 is the Portland Canal from the Admiralty Survey of 1868, and No. 25 is the chart of Port Simpson and Nasse Village from the Admiralty Survey of the same year, 1868. In No. 12, which is a chart of Portland Canal, the channel to the north has not been surveyed, and it is marked in the usual way. As is explained, where a channel has not been surveyed we put these dotted lines. The part that is surveyed is shown by the soundings and the legend upon it. Then, in No. 25, which is Port Simpson with Nasse Village, there appears the same feature. The channel on the north has not been surveyed. As we are told, it is not suitable for navigation, and has been left out of the survey. It is indicated by dotted lines, and there appear the words to the east of Pearse Island. The lower part of Observatory Inlet is here called Portland Inlet, which is a new expression, while the passage running from Point Ramsden pretty nearly north to the other inlet, north-west it would be, is marked as Portland Canal, and then Observatory Inlet is marked at a point above Point Ramsden on the other side. This is a new nomenclature which for the first time as far as I am aware appears in these Admiralty Surveys of 1868. It will be observed that on the map or chart No. 25 there is a statement dated the 17th April, 1886, by Mr. Wharton, the hydrographer. This map, of course, has been published from time to time, and the copy containing this note is a good deal subsequent in date to the first survey. This is dated 1886.

“The name Portland Canal on this sheet was inserted by the surveyors without authority.

“The name Portland Inlet, as applied to the southernmost part of what Vancouver called Observatory Inlet, was copied from an Admiralty chart of 1853. By whose authority this name was applied in drawing that chart is not known.

“The name ‘Wales,’ applied to the island at the entrance of Observatory Inlet (or Portland Inlet now so called), the south point of which Vancouver 164 named ‘Point Wales,’ after a friend, first appears in an Admiralty chart published in 1853.

“No authority is known for this, and the name was probably given, as is the ordinary practice in the Hydrographic Office, for the sake of convenience.”

The PRESIDENT. I see, Mr. Attorney-General, Mr. Wharton, who was a gentleman of very great position, dates that note 17th April, 1886, but is there any explanation of why he made that note then, or is it known why he made that note then?

Sir ROBERT FINLAY. I think there had been some correspondence on the point some months previously, but I have not got all the letters before me.

The PRESIDENT. It is only two years before Lord Iddesleigh’s letter of August, 1888, saying that the line was not agreed.

Sir ROBERT FINLAY. I think that communications had passed between the United States and England bearing upon the point, but I have not got the letters before me at the moment.

Mr. AYLESWORTH. Mr. Bayard’s letter was in 1885, and Mr. Phelps’ after.

The PRESIDENT. Quite so; it was about the time the thing was being looked up. Mr. Wharton’s note, of course, is many years before this Convention.

Sir ROBERT FINLAY. What I am saying is really a matter of conjec-

ture. One would conjecture that his attention had in some way been called to this matter. If I am right in thinking that there had been communications between the two Governments about the canal, it would account for putting this in. Mr. Bayard's letter was the 20th November, 1885.

The PRESIDENT. 1886 is the date of Lord Iddesleigh's letter. I gave the date 1888 just now by mistake.

Sir ROBERT FINLAY. I think, my Lord, the coincidence of dates is nearer.

The PRESIDENT. It was; I made a mistake. Lord Iddesleigh's letter was in 1886.

Sir ROBERT FINLAY. Mr. Bayard's despatch was in 1885. Then it was communicated to Mr. Phelps in January, 1886, and then there is Lord Iddesleigh's letter.

Mr. AYLESWORTH. In August, 1886.

Sir ROBERT FINLAY. In August, 1886. There were those interruptions between the two, so, I think, it is a matter of very reasonable inference that this note had been put on owing to the attention which had been called to the question. This nomenclature, which appears for the first time in the charts of Portland Inlet, has since been followed in some other maps. For instance, I refer only to two which occur in the United States' Case Atlas, Nos. 36 and 37—the atlas of the Counter-Case of the United States. This is a map published by Arrowsmith in 1859, subsequent, of course, to the date when this name first appeared according to that note by the hydrographer to which I have called attention. It will be observed that while the Portland Canal is printed in capital letters on the western side of the channel, the Observatory Inlet is printed in smaller type on the eastern side, at the mouth in very small type, and in the channel itself occur the words "Portland Inlet." And then in the next map, No. 37 in the atlas of the United States, the volume which is annexed to the Counter-Case, we have the same nomenclature. This is a map published by Imrie in 1869. The words "Portland Inlet"

165 are printed transversely opposite the lower part of the channel, while Portland Canal is printed on the western side in clear type, and Observatory Inlet is printed in italics at the heading of the indents. In 1880 there was a map published by Mr. Dawson, of Montreal, which is No. 40 in the United States' Atlas. This is a map which professes to show the country to be traversed by the Canadian Pacific Railway; it is a railway map, and there we have Portland Channel, Observatory Inlet opposite the upper parts, and the lower part of the Observatory Inlet is marked "Portland Inlet" in the channel itself. There is nothing to show how far across the fiord that extends, whether it comprises what is to the west of the islands or not. It is put in the lower part of the inlet, and runs up and touches Point Ramsden.

So far as the colouring goes these islands are left white as the Alaska Territory is. Then there is the geological map No. 41, Geological Survey of Canada, published under the direction of Mr. Selwyn, to illustrate a report by Mr. Dawson, and the date given is 1879-1880. There you have got the words "Portland Inlet" again, and you have got marked upon it "Presumed Boundary," and the presumed boundary is laid down as running by a waving line just below the words "Dixon's Entrance," and running up what is marked

as Portland Inlet, which is the southern channel which Vancouver called Observatory Inlet. I do not know how that can be presumed to be the boundary. It certainly in no respect coincides with what the Treaty provides, because it is represented as a waving line, not a straight line at all. It does not run along the parallel; it does not run from one point to another; it is a waving line, but it is represented as running up Portland Inlet. I really do not know how in a geological map a presumed boundary found its place. Then there are three maps in the British Atlas, Nos. 28, 29, and 30. The first of them was published in the year 1880; the other two were published in the year 1882. They are both by Ivan Petroff. I am told that Mr. Ivan Petroff was an American.

The PRESIDENT. No, I do not think we need consider what he figured as. I do not think it right to attribute him to America. We attach much importance to anything Mr. Ivan Petroff put down.

Sir ROBERT FINLAY. Well, he is described on the map. I said I thought he was an American, my Lord, from the fact that the map is headed "Tenth census of the United States," and the map is stated to be "compiled by Mr. Ivan Petroff, Special Agent, Tenth Census, 1880."

The PRESIDENT. He was a Russian and he was at one time in the employ of the American Government, but I do not think anybody would attach much importance to anything Mr. Ivan Petroff put down. However, I see he was called the Special Agent for the Tenth Census, but he certainly was not an American so far as I recollect.

Sir ROBERT FINLAY. When I said he was an American I saw he was in the employ of the United States.

The PRESIDENT. Yes, he was.

Sir ROBERT FINLAY. And I presumed he was an American. Whether he was naturalized or not I do not know. I have no knowledge on the subject at all. This first uncoloured map, No. 28, seems to give a waving line which runs to the south of the islands and then away up the channel by Point Ramsden to the head of Portland Canal, but I do not know that much need be said about that. Then the two maps 29 and 30 are published in 1882. As far as I can make out, the first of the maps published in 1882, No. 29, seems to show the boundary as being distinctly the north side of the islands, but the scale is so small that it is difficult to be sure about it; and in No. 30, again, the same observation applies. When one looks closely at either of these, it would appear the boundary is carried along the north channel. However, I pass from those maps of Mr. Petroff's to call attention now to the map published in 1882, which is in the second volume of the United States' Counter-Case Atlas No. 42. Again in

166 this map No. 42 occurs the word Portland Inlet, but this time it is with a variation, because Portland Inlet is not only used to denote the lower part of Observatory Inlet, as had been the case in the British Admiralty chart, but the words Portland Inlet are carried up from the lower part of that channel, through the cross channel connecting the two branches, and away up into a portion of the channel which hitherto had been universally known by consent as Portland Channel, so that this is a new nomenclature altogether. This is a map from the Department of Railways in Canada. Then in No. 43 in the same volume of maps published in 1883, the next year, it is not marked Portland Inlet at all; it is marked Portland Canal,

which is shown distinctly on the one side of Observatory Inlet, and then the island in the middle is left uncoloured altogether. There is no name to the lower part of the inlet. Then in 1884 there is a map in the British Case Atlas, No. 31, of the province of British Columbia, where the Portland Canal is marked just at the top, and Observatory Inlet is marked at the top. No name is given to the lower part, but there is drawn a line purporting to show the boundary, and apparently because it is a continuation of the other boundary line which runs to the south of Pearse Island, and the colouring of Pearse Island is in conformity with the colouring of Alaska.

The PRESIDENT. In No. 31?

SIR ROBERT FINLAY. It is No. 31 in the British Atlas.

The PRESIDENT. It only shows how deceptive it is. In my copy of 31 it is coloured the same as British Columbia, not the same as Alaska.

SIR ROBERT FINLAY. Pearse Island?

The PRESIDENT. Yes.

SIR ROBERT FINLAY. Well, it is really very difficult to say. I should not like to be too confident about it.

The PRESIDENT. But they are such minute details; I do not attach much weight to them.

SIR ROBERT FINLAY. Then the next atlas, No. 32, is the geological map to which I made reference yesterday, and which I need not comment upon again. There Portland Inlet is carried up through that cross channel away up into Portland Canal in the strictest sense of the term.

Then in 1884 there comes a British Admiralty map, Oliver Bay to Cross Sound, where the words "Portland Inlet" occur again as denoting the lower part of Observatory Inlet.

The PRESIDENT. That is obviously a reproduction of that larger chart; there is the same dotted line, you know, and it has got Mr. Wharton's note on it too, you will notice.

SIR ROBERT FINLEY. Yes, it has.

The PRESIDENT. But a month earlier—No. 33, 1886.

SIR ROBERT FINLAY. And then, in 1887, there is an official Canadian map which is numbered 34 in the British Atlas next that which gives the name Observatory Inlet to the lower part as well as to the upper part and marks Portland Canal as extending the whole way. It shows the two channels. I am glad to say that completes the examination of the maps which is a very fatiguing process, physically at least.

Perhaps a reference should be made to two books which are referred to in the Argument for the United States—Findlay's "Directory for the Pacific Ocean," which is set out in the United States' Appendix, pp. 521 and 522; and the other is Dufflot de Mofras', which is quoted in the United States' Appendix at p. 521. They are not maps, but they are books. I refer to them in connection with the maps as they are in the nature of directions. I will take them in the order in which they occur on these pages which I have just given.

167 The first is Dufflot de Mofras', p. 521, United States' Case Appendix, and I really do not think he helps at all. He refers to the Perez entrance, which the English improperly call Dixon's entrance, which lies between Queen Charlotte Island and the Prince of Wales Archipelago."

The PRESIDENT. He practically only quotes the Treaty. Does he do nothing more than cite the Treaty?

Sir ROBERT FINLAY. I do not think he carries it further at all. Then the "Directory of the Navigation of the Pacific Ocean" by Mr. Findlay, published in 1850-51. The passage quoted is this:—

"Portland Canal (so named from the noble family of Bentinck) diverges from Point Ramsden in a N. by W. $\frac{1}{2}$ W. direction for about 5 miles, thence it bears in a more northerly direction 5 leagues farther, and then trends a little to the eastward of north, terminating in low, marshy land, in latitude 55 degrees 45 minutes, 70 miles from its entrance into Chatham's Sound. * * * The northern shore of the inlet, between Point Wales and Point Ramsden, is formed by several islands, behind which a channel runs parallel with the direction of the main inlet,

"Observatory Inlet.—The principal inlet runs in a north-east direction, and at 21 miles above Points Maskelyne and Wales the Portland Canal diverges from the principal one at Point Ramsden."

He seems to treat Observatory Inlet as going down to the sea, and talks of this other inlet, which he calls Portland Canal, diverging from it at Point Ramsden. I do not know that there is anything further to be said upon that. I do not know that it adds very much to the context.

Now, I have thought it my duty to go through these maps, calling attention to what they show. I am very sensible of the fact that, after all, these subsequent maps are of no very great value in a matter of this kind. The maps that were before the negotiators may be very useful indeed. Subsequent maps merely show the impression of the mapmaker, and we do not always know from what source he derived it; they very often copy from one another, and when it comes down to a mere question of boundary, as indicated either by colour or by drawing a line, the information of the mapmaker is not necessarily of any particular value. So that the evidence of the maps must be discounted by all these considerations. But, making every allowance for remarks of that kind, which may be most justly made on one side or the other, I submit that taking the maps as a whole—I am now speaking of the subsequent maps (the earlier maps that might have been before the negotiators I have dealt with before), I am now speaking of the maps which were subsequent to the date of the negotiations—I submit that their general effect is strongly in support of the British Case.

Now that completes all that I have to say with regard to the second and third questions, and I leave the consideration of the identity of the Portland Canal over which we have spent so much time. I pass to the consideration of the fourth question, and I invite the attention of the Court to the terms in which that question is put. It is the fourth question on p. 3 of the Appendix to the British Case where the Treaty of Arbitration is set out:—

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

Now, it is necessary to look at the Treaty, and to see what the Treaty says upon this point, and the language of the Treaty affords in some respects rather a contrast to the language of the question, because the Treaty, so far as material—the IIIrd Article—is in these words:—

"* * * * 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 situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude (of the same meridian); * * * .”

168 Now, from the language of that Article it seems to be tolerably clear that the terms of the Treaty assumed that the Portland Channel reached the 56th degree of latitude. It is very odd that they should have done so.

The PRESIDENT. Unless “it” means line——

Sir ROBERT FINLAY. Yes, but even in that case the same result follows. If your Lordship would advert to the fact that the preceding words say, “Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and the 133rd degree 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 * * * .”

Well, if that is going along the channel called Portland Channel, whether “elle” refers to “la ligne” or to “la passe” it seems to come to the same thing.

The PRESIDENT. Now, as it is only important with reference to its bearing upon what happens to the *lisière* afterwards on that point, would you mind stating what the two contentions are upon this, because it does not seem to me to be very important which particular line it is taken from the top of the Portland Channel.

Sir ROBERT FINLAY. Certainly.

The PRESIDENT. I may be overlooking something, but it does not seem to me by itself to be of very much importance.

Sir ROBERT FINLAY. I am not at all sure that this question does not involve a slight misconception of the terms of the Treaty. Of course, the question has been put; it is embodied in the Treaty of Arbitration, and must be answered, but I should have thought that from the head of Portland Canal what you have to do is to get to your next point—to your starting point—for the continuation.

The PRESIDENT. Well then, supposing that there are mountains on parallel 56 degrees, does it matter much which way the line goes?

Sir ROBERT FINLAY. I do not think it does very much.

The PRESIDENT. We are not now considering your contention which would be involved in the *lisière* question, which is much more difficult, but getting to the head of the Portland Canal, does it matter whether you go straight up or or go a little to the right or go a little to the left?

Sir ROBERT FINLAY. I do not think it does; you have to get to your next point. A good deal of stress is laid by the United States upon that conversation between Mr. Middleton and Mr. Stratford Canning, where Mr. Middleton thought that Mr. Stratford Canning said that from the head of Portland Canal the line went eastward. Well, I submit that Mr. Stratford Canning must have been misunderstood.

The PRESIDENT. It really is not evidence, Mr. Attorney; conversation upon such a point is not evidence.

Sir ROBERT FINLAY. It is not.

The PRESIDENT. And it must have been a mistake unless it meant that it went up the valley.

SIR ROBERT FINLAY. At the same time two pages of the Case of the United States are devoted to this point, and one knows
169 that although clearly in a Court of law a matter of this kind would not be evidence at all, yet very often, in determining questions between nations, a good many things are looked at as influencing the mind one way or another, which would be rejected in an English Court of law, and, of course, some principle of that kind is almost inevitable. The rules of evidence in America and here are, I presume, the same, or very nearly the same; but if a question arose between France and England—

The PRESIDENT. You are quite right.

SIR ROBERT FINLAY. France would say, with very great reason— We cannot have your English ideas about evidence applied in France. We follow Bentham.

The PRESIDENT. But my observation was not pointed to that. I perfectly agree with you. What I meant was that we could not take interpretations of a Treaty from a conversation which used the word eastward, which we cannot very well understand—that is all.

SIR ROBERT FINLAY. No. Of course, many countries take the view that there ought to be no law of evidence, that the objection is not to the admissibility, but merely to the weight of the evidence.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. And that is a view which has been maintained by jurists of very great repute.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. And so one can clearly understand how, in international controversies, it is difficult to apply the law of evidence.

MR. TURNER. I must dissent from the suggestion that a conversation between a British Ambassador and an American Minister concerning the Treaty of 1825, and reported by the latter to his Government, is not evidence in this case.

SIR ROBERT FINLAY. I think, out of respect to the treatment which is given to the question in the Case of the United States, I had better advert to it.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. The passage occurs at pp. 62 and 63 of the Case of the United States, and the document referred to is at p. 224 of the Appendix. Now, the comment made upon it is this:—

“Although Mr. Stratford Canning does not appear, from the correspondence available, to have placed in writing any interpretation upon the Treaty which he had signed, he gave a verbal explanation of it which, on 1st March, 1825, Mr. Middleton reported in detail to the American Secretary of State. On that day, which was the day following the Treaty, the British Envoy had an interview with the American Minister. From the latter's report it is apparent that a copy of the Convention was not shown him, but its contents were explained to him by Mr. Canning, and, therefore, in repeating Mr. Canning's language he gave the latter's understanding of its terms. Mr. Canning's version of the IIIrd Article, which defined the boundary line agreed upon, Mr. Middleton reported as follows:—

“The IIIrd Article of this Convention establishes the line of demarcation between the possessions of the two Powers upon the continent and islands
170 as follows: It begins at the southernmost point of Prince of Wales Island (about 54 degrees 40 minutes), leaving the whole of that island to Russia. It follows the strait called Portland Passage up to the 56th degree; then turns eastward upon that latitude until it touches the highest ridge of the

chain of mountains lying contiguous to, and nearly parallel with, the coast; it follows that ridge up to the 60th degree,"

and so on. I do not think I need read further. Then the comment upon that is in the next paragraph.

"The interpretation placed upon this article by its negotiators shows clearly the course of the line intended by the terms of the Treaty, as well as the extent of the *lisière* which it established. The notable features of Mr. Canning's statement are, that the line from the head of Portland Canal turns *eastward* to the range of mountains; that the word 'shores,' in describing the width of the *lisière*, supplants the word 'coast' used in the Treaty, although the latter is retained in referring to the mountain range; and the statement that the boundary-line follows the mountain ridge up to the 60th parallel of north latitude and then takes the direction of that degree until it intersects the 141st parallel of west longitude.

"This explanation of the Article fixing the boundary, while it differs in language from the Treaty, agrees with it if it is interpreted naturally, and with knowledge of the discussions which had preceded its signature, and were explanatory of the protective character of Russia's possessions on the continent."

Mr. LODGE. Mr. Attorney, is the point at which the *lisière* boundary begins to be first determined? Then all that remains is to join the head of the canal.

Sir ROBERT FINLAY. I think so. I quite agree.

Mr. LODGE. It is like the southernmost point of Prince of Wales Island being found, and the opening of Portland Canal being found and then joining them.

Sir ROBERT FINLAY. I entirely agree, and for that reason I ventured to suggest that, if one may say so, even in the Treaty of Arbitration there is a little misconception as to the precise question upon this point, because the Treaty assumes that the line, falling along the Portland Canal, gets to the 56th degree of latitude. It does not say that from Portland Canal it is to be taken to 56 degrees; but then this passage from Mr. Middleton's conversation is cited for the purpose of indicating that the line from the head of Portland Canal to get to that point is to turn eastward. I take it that that is why it is cited by the United States. Well, I submit that in this passage for eastward you should read westward. "Eastward" must be a mistake. It is impossible that Mr. Stratford Canning can have meant eastward, because you do not come to any coast eastward until you get to the Atlantic. Westward, of course, you are getting nearer the coast, and he was speaking of a line of mountains which is to follow the coast.

The PRESIDENT. Or Mr. Canning may have said westward and Mr. Middleton may have written eastward when he wrote it down.

Mr. TURNER. The line of mountains portrayed on the maps is northward. Why should it be presumed that Mr. Canning said westward? The line of mountains as shown on the maps of that day was still to the northward of the 56th parallel.

Sir ROBERT FINLAY. I will deal with the question of the mountains under the head in the Treaty devoted to them, but at the present moment I do submit that Mr. Middleton must have made a mistake in supposing that Mr. Stratford Canning said that the line was to turn eastward.

Mr. TURNER. Assuming that he made a mistake with reference to the eastward, why should you assume that Mr. Canning said westward when the mountains were still to the northward?

171 Sir ROBERT FINLAY. I am not going to lay any stress upon that. I merely say that Mr. Stratford Canning might more reasonably have said westward than eastward. I am not going to assume that he said either. He may have said westward and Mr. Middleton may have misunderstood him, or he may have said northward. It is really impossible in dealing with a conversation of that kind to attach any importance to it, and I do submit that eastward is *the* one direction which Mr. Stratford Canning cannot have given. Eastward and southward seem alike out of the case.

MR. LODGE. But Mr. Attorney, if I read this correctly, he does not turn the line eastward or westward, or, whatever he said, he does not turn the line until it has reached the 56th degree; he says it follows the strait called Portland Passage up to the 56th degree, then is turned. Now, whichever way it turned, according to his conversation it was after reaching the 56th degree.

SIR ROBERT FINLAY. Yes.

MR. LODGE. He says it follows the strait called Portland Passage up to the 56th degree, and I understood you were talking about the brief space between the head of the channel and the 56th degree.

SIR ROBERT FINLAY. Yes, but the assumption is that while it is following Portland passage it reaches the 56th degree because it follows the strait called Portland up to the 56th degree. Well, that necessarily involves the assumption that the Portland passage itself reaches the 56th degree.

MR. LODGE. Yes, I quite understand that. But I mean the question of where it turns itself after touching the 56th degree.

SIR ROBERT FINLAY. My whole point is that Mr. Stratford Canning is assuming, according to this version of the conversation, that Portland Channel reaches 56 degrees, and that the line reaches the 56th degree with the canal. Then the question is which way it turns, and Mr. Stratford Canning is reported to have said that it merely turned eastward. Well, I submit that that is an impossible direction, that there really must be a mistake.

MR. TURNER. Mr. Attorney, as regards the Canal failing before the line reaches the 56th degree—must not the line still continue north until it reaches the 56th degree?

SIR ROBERT FINLAY. I very respectfully submit not, Sir.

MR. TURNER. The Treaty says that it shall go north until it reaches the 56th degree, and shall ascend to the north along Portland Canal.

SIR ROBERT FINLAY. Yes.

MR. TURNER. Now, Portland Canal, of course, is a mere matter of description. If that fails, it must still ascend to the 56th degree.

SIR ROBERT FINLAY. Yes.

MR. TURNER. Because the Treaty says it must extend north to the 56th degree.

SIR ROBERT FINLAY. Well I submit, Sir, that Portland Canal there can hardly be rejected as a mere matter of description, because it is no description of a point—a description added to a point which is itself designated. There is no intimation given as to the course
172 of this line at this point except that it follows Portland Canal till the 56th degree. Well, that seems to assume absolutely that Portland Canal does reach that point, and I think that that is made very clear if one bears in mind what took place during the negotiations upon this point. I am not going to read them in detail just

now: they have been referred to already, and I am afraid I may have to recur to them again. But Mr. Canning, in his despatches, spoke of the line reaching the 56th degree. He says the line ascends to Portland Canal till it—till the line—he says so in terms, I think—reaches the 56th degree. When the Russians write back, they say it ascends the pass till the pass reaches the 56th degree, so that while the one side were talking about the line going along the channel till the line reached the 56th degree the other side were talking about the line going along the channel till the channel reached the 56th degree, thereby as I submit demonstrating that what they had in view was that by going along the Portland Channel you would in time reach the 56th degree.

MR. TURNER. No doubt the maps of that day show—

SIR ROBERT FINLAY. None of them show it.

MR. TURNER. Do not the maps show that it is obvious that all the negotiators knew that Portland Canal did not reach the 56th degree?

SIR ROBERT FINLAY. Every map before the negotiators indicates that.

MR. TURNER. Indicates that it did not reach that degree?

SIR ROBERT FINLAY. Did not. I agree, Sir, it is a very remarkable thing that with those maps before them they should have used language both in the negotiations and in the Treaty itself which necessarily implies that the Portland Canal did what all the maps before them showed it did not.

MR. TURNER. Is not that persuasive of the proposition that they meant that it should ascend to the north along the Portland Canal as far as that went and then on in the same direction to the 56th degree?

SIR ROBERT FINLAY. With great deference, I dispute that proposition, and that, of course, is rather an important point. "Le long de Portland Channel" cannot mean that after leaving Portland Channel it is to proceed in the same direction. "Le long de Portland Channel" must mean that it is to go along Portland Channel, and when Portland Channel fails, the direction fails also. There is nothing in these words about going along Portland Channel to indicate what you are to do after Portland Channel fails. You have Portland Channel as a guide. You go along by the side of Portland Channel till you get to a certain point, but what happens if, before you get to that point, your guide fails you? The Treaty is absolutely silent upon the point, and I submit that it is absolutely impossible to extract in any way from the words of the Treaty on this head a direction that after Portland Channel has come to an end before the 56th degree of latitude is reached you are still to proceed in the same direction. The words "along the Portland Channel" will not, I submit, according to any legitimate use of language, cover any order of that sort.

MR. AYLESWORTH. Supposing the parties were not *ad idem* in their ideas of what "elle" referred to—suppose the British thought that it meant the line and the Russians thought that it meant the channel—have they not used in the Treaty language which would be susceptible of a different interpretation—whether it reaches any different result or not? Does not "elle" in the Treaty grammatically refer to the last preceding phrase, the last antecedent "la terre ferme"?

SIR ROBERT FINLAY. That is a perfectly possible view of the Treaty and that is a view which had certainly occurred to my mind and very much impressed me.

173 MR. AYLESWORTH. If you translate that phrase as *terra firma*—the solid ground—it seems to give a possible reading (whether it advances the argument at all) to the Treaty which would possibly make it susceptible of the interpretation Senator Turner suggested.

SIR ROBERT FINLAY. Yes.

MR. AYLESWORTH. Carrying the line on until the solid ground attains the latitude of 56 degrees.

SIR ROBERT FINLAY. I quite feel, Sir, that that is a possible reading of the clause. One cannot to a certain extent escape from the influence of the preceding negotiations upon the mind; at least, speaking for myself I find it a little difficult to do that in looking at the Treaty; and, undoubtedly, Mr. Canning in despatch after despatch used the expression that it is to go up the Portland Canal till the line reaches the 56th degree. And then the Russians write back and say that the line is to go along the Portland Canal till it—"la passe"—reaches the 56th degree. There is, I think, a Russian version of the Treaty which has been referred to, a translation of which is given in the documents where the gender of the channel and of the line differ. I cannot put my hand on the passage at the moment. I am told it is p. 7 of the Appendix to the United States' Case.

MR. DICKINSON. Pages 12 and 13 of the United States' Case.

SIR ROBERT FINLAY. Page 7 of the Appendix.

MR. DICKINSON. The French Treaty?

SIR ROBERT FINLAY. No, what I am referring to is a literal translation of Articles III and IV of the Russian text of the Treaty between Great Britain and Russia, 1825, as certified by the Russian Foreign Office.

It is at the bottom of p. 7 of the Appendix to the American Case. Of course, the Treaty was in French, and must be construed in French; but where there is ambiguity one naturally looks, I was going to say regularly or irregularly, for light to any quarter. And this which is set out by the United States is in these terms:—

"The line of limit-separation between the possessions of the High Negotiating Sides upon the shore of solid land and upon the islands of North-West American shall be drawn out in the following manner:—

"Beginning from the very southern part of the island, named *Prince of Wales*, which point finds itself under 54 degrees 40 minutes of north latitude and between 131 and 133 degrees of west longitude (counting from Greenwich meridian), the above-mentioned line stretches itself through to the north lengthwise by the inlet, called *Portland Canal*, up to that point of solid land where she [the line, not the inlet] touches the 56th degree of north latitude."

MR. AYLESWORTH. I am told that the Russian pronoun is feminine, and might be attributable to "land" as well as to "line."

SIR ROBERT FINLAY. I am told that is so, but then the channel is masculine.

MR. LODGE. The inlet is masculine.

SIR ROBERT FINLAY. Yes.

MR. ROOT. Mr. Attorney, do you find any indication anywhere of any discussion on that question as to whether the line should be taken or the pass should be taken?

Sir ROBERT FINLAY. In the diplomatic correspondence recently?

174 Mr. ROOT. In the diplomatic correspondence prior to the Treaty of 1825?

Sir ROBERT FINLAY. Oh, yes; there are a great many passages. Perhaps it might be convenient if I referred to them.

Mr. ROOT. I know there are a great many passages, but was there any discussion of the question?

Sir ROBERT FINLAY. No, oh no.

Mr. ROOT. I know there are a great many passages, but was there pretation which proceeds upon the theory that in substituting a pronoun for a substantive—they considered the two descriptions as substantially identical? Is not it reasonable to suppose that when Mr. Canning spoke of the line reaching the 56th parallel, and the Russian negotiator spoke of the pass reaching the 56th parallel, and then when they made the Treaty they both used the pronoun, without saying to which it referred, and without any discussion as to which it should refer to, they considered the two as substantially identical—they considered them as amounting to the same thing, and reaching the same point, and laying down the same line?

Sir ROBERT FINLAY. That is, I think, a very reasonable view indeed. Undoubtedly—although there is no debate upon the point—Mr. Canning throughout speaks of the line reaching the 56th degree. The Russians, I think, throughout speak of the “*pas*se” reaching the 56th degree. And then, when they come to frame the Treaty they use the pronoun “*elle*,” which may apply to either the one or the other, and if so read would effect a reconciliation. On the other hand, of course one cannot but realize that “*elle*” has an application—and a very possible application—to the immediately preceding words “*la terre ferme*” which occur, and *primâ facie* one would say that the pronoun related to the last substantive. Well, it depends entirely on the structure of the sentence, of course; but at the same time one very naturally looks to the immediately preceding substantive as a guide to the meaning of the pronoun. There is undoubtedly that ambiguity about it.

Mr. ROOT. If you follow the line, or rather follow a prolongation of the line, passing up the Portland Canal, would you not follow also that narrow valley—that low, marshy land at the head of the Portland Canal, and which might be called a pass with reasonable application of the term—until you reach the 56th parallel?

Sir ROBERT FINLAY. No, sir; I should very much demur to that view; for this reason. I submit that “*la passe*” can mean nothing but the channel; that it cannot denote anything after the channel of water has ceased. “*La passe*,” I submit, means that, and means nothing else; and that as soon as the channel of water ceases that guide fails you, and that you cannot get from a direction—that you are to go alongside of the channel of water—any direction as to what you are to do after the channel of water has ceased. That is my submission on this point. Of course, if “*elle*” should be read as referring to “*la terre ferme*,” one is met by this question: the channel is given, “*la passe*” is given as the guide; and we are told “*la dite ligne remontera au nord le long de la passe, dite Portland Channel, jusqu’au point de la terre ferme où ette atteint le 56^{me} degré latitude nord,*” the point of the continent “*la terre ferme*,” where it,

“la dite ligne,” reaches the 56th degree of latitude north. That is a perfectly intelligible and grammatical way of speaking; one may perfectly well say that the continent attains a certain degree of latitude, because you are supposed to be going up from the south; you reach a certain degree of latitude north, and that denotes a certain point of the continent. But then there occurs this question: As you are going along the pass called Portland Channel till you get to the point where *terra firma* reaches the 56th degree of latitude north, what is to happen if your guide, the Portland Channel, 175 fails you before you get to that point? One always recurs to the same difficulty, and I submit that as soon as the channel—“la passe”—ceases, there is no indication given by these words as to the direction in which the line is to go—that that can be sought only by seeing what is the next point which you are going to make for. Now, I am not going, of course, to anticipate the question about the mountains here, but it is curious on this point to look at the maps and see in what an extraordinary way they vary with regard to the relative situation of any mountains and the 56th degree.

The PRESIDENT. Is it your case that there are mountains on the 56th parallel straight up in prolongation of the line?

Sir ROBERT FINLAY. Oh no; I say we must turn to the westward to seek these mountains.

The PRESIDENT. What distance do you say you must go before you get to the mountains there?

Sir ROBERT FINLAY. It goes some way; I cannot give the distance, and if I attempted to answer that I should be plunging into the question of the mountains.

The PRESIDENT. You have answered my point, Mr. Attorney; you say the shortest line to the mountains would not be straight up, that is your point?

Sir ROBERT FINLAY. I do not say the shortest line, because the truth is there are mountains everywhere about that.

The PRESIDENT. I was merely asking whether if you followed out what Mr. Root said, and did continue the line to the 56th parallel, your case was that you would come to mountains or not.

Sir ROBERT FINLAY. You would come to mountains certainly, but not to mountains which answer the Treaty. It is, I think, very important to call attention to the fact that some of the maps show the 56th degree beyond the mountains which are indicated at the head of the Portland Channel. Now, if your Lordship would look at No. 4 in the United States' Atlas—it is in a more convenient form than the No. 2 of the British Case Atlas—it will be seen that while there are mountains to the north of Portland and the head of Portland Channel they are a good way to the south of 56 degrees. You would not get to the 56th degree by making straight for those mountains.

The PRESIDENT. But are you taking those as really representing the mountains?

Sir ROBERT FINLAY. Oh, no.

The PRESIDENT. They are Vancouver's picture of the mountains?

Sir ROBERT FINLAY. Certainly.

The PRESIDENT. They may have been on the 56th or not on the 56th?

Sir ROBERT FINLAY. But I am taking this, and your Lordship will

find that the negotiators throughout had most fully present to their minds the fact that the maps were not to be trusted at all.

The PRESIDENT. And knew that the position of the mountains might vary?

Sir ROBERT FINLAY. Might vary very much.

176 The PRESIDENT. Therefore you can scarcely argue as to what is the latitude of the particular mountains at the head of the Portland Canal from what appears on that map.

Sir ROBERT FINLAY. Oh, no. All that I am arguing is that from the head of the Portland Canal you are to get to the mountains which answer the description of the Treaty.

The PRESIDENT. Yes, agreed.

Sir ROBERT FINLAY. That is my proposition.

The PRESIDENT. All I mean, Mr. Attorney, is that if that map were a true picture—if it happened to be a true picture, the shortest way to the mountains then would be to go straight up the Portland Canal.

Sir ROBERT FINLAY. In the direction of Portland Canal?

The PRESIDENT. Yes, I mean—

Sir ROBERT FINLAY. Only by doing that you would not have got to the 56th degree.

The PRESIDENT. But you would have got to the mountains which probably were meant.

Sir ROBERT FINLAY. Well—

The PRESIDENT. I think you are a little too careful to be textually accurate at every point of this. My view is that we have got to find out what these mountains are, but it does not follow that it is either a straight line or a little to the right or a little to the left that will take you up them.

Sir ROBERT FINLAY. Well, the whole case on the other side is that there are no mountains.

The PRESIDENT. Well, that is a matter on which we shall hear them presently.

Sir ROBERT FINLAY. And the question put is what is the line of mountains, if any.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. We say that there are mountains, and we submit a line.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. On the other side it is said that there are no mountains. Now, what I do point out is, with particular reference to what Senator Turner was good enough to say just now, if you look at this map you do not by following in the direction of Portland Canal get to mountains in the latitude of 56 degrees. In order to get to mountains in the latitude of 56 degrees, you need from the head of Portland Canal to turn away a good deal to the westward.

Mr. TURNER. As I read the Treaty, it does not say that you have to reach any mountains or you may not pass over any mountains, but you must get to the 56th degree according to the command of the Treaty.

177 Now, if this map that you call our attention to were correct here, and there were mountains very close to the head of Portland Canal, would there be any authority to stop the line at the crest of these mountains?—would it not have to go on to the 56th degree?

SIR ROBERT FINLAY. Well, if you are to get to the 56th degree from Portland Canal, the line must be drawn westward, unless you are to go through the mountains, if you continue in that direction.

MR. TURNER. Supposing the mountains were exactly as represented on this map No. 4 of the American Volume of Maps, would you have any authority to stop the line at the crest of these mountains? Would you not have to go on the 56th degree?

SIR ROBERT FINLAY. I beg your pardon. I did not hear what you said.

MR. TURNER. Suppose the mountains were as represented on this map 4 of the American Atlas, and you run your line along north until you get to their crest; would there be any authority under the Treaty of 1825 to stop there—would you not have to go on to the 56th degree?

SIR ROBERT FINLAY. Yes, Sir.

MR. TURNER. Would you not have to go on to the 56th degree?

SIR ROBERT FINLAY. I was pointing out that difficulty, Sir, in answer to what I understood was said by yourself—that if you continue the line in the direction of Portland Channel, according to this map you get through the mountains away beyond them to the 56th degree, and then what is to be done? Then you have not got to your point. Assuming that this map was what was contemplated you have not got to your point.

MR. TURNER. Was not that the direction of the Treaty—that you must get to the 56th degree—that is, without reference to the mountains?

SIR ROBERT FINLAY. The truth is, Sir, I think it would appear that the reference to the maps on this head is chiefly valuable as showing the extraordinary discrepancy of the maps.

THE PRESIDENT. And, in order to be able to reach this point, then, you want to find out what the true map of the mountains is?

SIR ROBERT FINLAY. Yes.

THE PRESIDENT. I quite agree, Mr. Attorney, that these maps show all sorts of mountains.

SIR ROBERT FINLAY. But I think the maps want referring to in order to see how far it is possible to suppose that the negotiators were influenced in their view of what they intended by the delineation on the map. Now, there is another map—the Russian map of 1802.

THE PRESIDENT. No. 6, Mr. Attorney, in the American Atlas.

SIR ROBERT FINLAY. No. 5 in the British Atlas.

THE PRESIDENT. That is right.

SIR ROBERT FINLAY. If that is looked at it will be found that 56 degrees there is again to the north of the line.

THE PRESIDENT. A little.

178 SIR ROBERT FINLAY. Well it is distinctly to the north. I should think it is very much the same as the other. It is difficult to be precisely accurate.

THE PRESIDENT. Yes.

SIR ROBERT FINLAY. The same observation applies there. But then the discrepancy of the maps on this point is illustrated if we turn to Vancouver's large map, which is No. 1 of the British Atlas. That shows mountains about that point. It will be found that latitude 56 runs short of the larger chain of mountains represented opposite the head of Portland Canal; but, then, between the head of Portland

Canal and 56 degrees there is another smaller range of mountains represented.

Mr. ROOT. To what map do you refer now?

Sir ROBERT FINLAY. I am referring to No. 1 of the British Atlas. It is Vancouver's.

The PRESIDENT. Yes, a new range between those and the sea.

Sir ROBERT FINLAY. Yes. The result is very curious, because there is an inward range just at the head of Portland Canal represented there which is short of 56 degrees, and then there is another range which is further north than 56 degrees in the direction of the head of Portland Canal.

The PRESIDENT. We quite follow you, and I see the point entirely of your observation upon the maps. Do you happen to have put on any card the different delineations of mountains in the same way that you have the different delineations—

Sir ROBERT FINLAY. No, my Lord.

The PRESIDENT. Because then it could be shown—you could refer to them all at once.

Sir ROBERT FINLAY. And the map of Faden, 1823, which is No. 10 in the British Atlas, is subject to exactly the same observation. I think that the mountains would be to the north—at all events the big mountains would be to the north; but the map is not quite so accurate as the other, so it is not so easy to follow it out.

Mr. DICKINSON. The way we scale that we make the mountains fetch on 56 degrees on the Faden map.

Sir ROBERT FINLAY. On the Faden map? I should not have thought so. It is not very easy—one could do it; one would want a pair of compasses with a pencil on one leg. I will have that taken out. I should have thought that the latitude 56 degrees did not fall on the mountains at the point opposite the prolongation of the direction of Portland Canal.

Mr. DICKINSON. Very nearly so.

Sir ROBERT FINLAY. The map is not on a very large scale, so that, perhaps, it is difficult. And the tale of discrepancy is completed when one looks at two other maps which were before the date of the Treaty. They are 8 and 9 in the British Atlas, where it will be found that in No. 8 there is nothing represented at the head of Portland Canal except that sort of inner range which appeared in one of Vancouver's charts running close round the head of the canal; the bigger range is not represented at all—No. 8. And in No. 9 there are no mountains opposite the head of Portland Canal at all represented. There are mountains to the west and mountains to the east, but opposite the head of Portland Canal there are none, so that we have

179 on this point the extraordinary fact that the maps before the negotiators fall into three groups: in one group, consisting of two maps, the mountains are well to the south of 56 degrees; in another the large mountains are well to the north of 56 degrees while there is a smaller range of mountains close to the canal; and in the third there are practically for this purpose no mountains at all.

The PRESIDENT. Is it not right to say that both the main ranges are differently placed, and there are ranges between the main range—the apparent main range—and the sea, which appear in some maps and do not appear upon others?

Sir ROBERT FINLAY. Yes, that is exactly right.

The PRESIDENT. That was the condition of the maps; and all unsurveyed; of course, that is known.

SIR ROBERT FINLAY. Yes.

The PRESIDENT. That was the condition of the maps before the negotiators from the point of view of the mountains so far as the neighbourhood of the Portland Canal was concerned.

SIR ROBERT FINLAY. Yes, and, of course, this must always be borne in mind that Vancouver was dealing with the thing as a sailor; he was surveying the sea, and he did not extend his surveys to the mainland at all.

The PRESIDENT. With one qualification—he did show in many cases the appearance of the land from the water which sailors used to do, as you know, in a very beautiful way.

SIR ROBERT FINLAY. And one sees in the margin a view of how the thing looks as you are sailing along it.

The PRESIDENT. An outline.

SIR ROBERT FINLAY. And Vancouver, undoubtedly, in many of the plates in his book does that; but still it is always the land from the sea—the sea is the dominating feature—and he would not survey the orographical characteristics of the country at all.

The PRESIDENT. Certainly not.

SIR ROBERT FINLAY. Now, I think that some of the questions that have been put to me make it all the more necessary that I should do what I intended to do—refer to the negotiations upon this point.

MR. AYLESWORTH. Mr. Attorney, before you leave the geography of the locality, let me call your attention to the condition of things at the head of Portland Canal, in fact, which you will find very distinctly shown on Map 30 of the American Appendix on the left hand, at the top of the page. you will see the cañons at the head of the canal are two in number, so that one going up the canal, following the centre, would apparently have his choice.

SIR ROBERT FINLAY. I am very sorry—

The PRESIDENT. Map 30: you will see the two cañons at the top.

MR. AYLESWORTH. One appears about 30 degrees east of north, and the other about equally west of north.

SIR ROBERT FINLAY. The one marked "Salmon River."

180 MR. AYLESWORTH. And the other marked Bear River.

SIR ROBERT FINLAY. Yes, Sir.

MR. AYLESWORTH. Which of these cañons is one to follow when you leave the water?

SIR ROBERT FINLAY. Of course that brings me to the parting of the ways, and I submit that the Treaty does not indicate you are to follow either. When you have parted with the water you have lost the only guide the Treaty gives you; then you must look for your next point, and get to it somehow. But what has just been pointed out illustrates, as I submit, very pointedly the difficulty of trying to get out of these words any guide after the water ceases. When you have got the channel—Portland Channel—you know where you are.

MR. LODGE. Your proposition is to take the line right across those mountains which surround the river, and keep on the top?

SIR ROBERT FINLAY. Yes.

MR. LODGE. The map shows those rivers are surrounded by mountains, some as high as 5,000 feet, and you would take it over those mountains?

Sir ROBERT FINLAY. You must get somehow or other to the next starting point, whatever may be settled upon as the line of mountains.

Mr. LODGE. The general course and the conformation of the land round the channel has nothing whatever to do with reaching 56 degrees?

Sir ROBERT FINLAY. I respectfully submit, Sir, that the Treaty does not say that you are to follow to the 56th degree unless you reach it in company with the Portland Channel. If the Treaty said you are to get to the 56th degree it would be another matter, but it does not. What it says is that you are to go along Portland Channel until it—which may be either the line or the channel—reaches the 56th degree.

Now, my Lord, I was about to refer to the passages in the negotiations which bear upon this point. The line is first proposed in the Russian Contre-Projet, which is at p. 70 of the British Case Appendix. The words are:—

“Pour compléter la ligne de démarcation et la rendre aussi distincte que possible, les Plénipotentiaires de Russie ont exprimé le désir de lui faire suivre le Portland Canal jusqu'aux montagnes qui bordent la côte.”

That is to say, it is to follow the Portland Canal as far as the mountains which run along the coast. Then, on the same page is Sir Charles Bagot's paraphrase where he says that they propose that it should go to the—

“* * * embouchure du canal de Portland, de là par le milieu de ce canal jusqu'à ce qu'elle touche la terre ferme.” * * *

“*Elle*” there is clearly the line, because he uses the word “*le canal*.” “*Elle*” there must be “*la ligne*”; it is not “*la passe*.”

“* * * de là par le milieu de ce canal jusqu'à ce qu'elle touche la terre ferme, de là jusqu'aux montagnes qui bordent la côte. * * *”

That is to say, you are to go up the middle of the channel till the line touches *terra firma*. From there you are to go to the mountains which fringe the coast. Then in the Russian observations they introduce the expression about the Portland Channel having its origin at the 56th degree. It is at the bottom of p. 71:—

“C'est par ces raisons que les Plénipotentiaires de Russie ont proposé pour limites sur la côte du continent au sud le Portland Channel, dont l'origine dans les terres est par le 56° degré de latitude nord, et, à l'est, la chaîne de montagnes, qui suit à une très petite distance les sinuosités de la côte.”

181 I suppose that “par” designated rather “at”—not necessarily with minute accuracy, but in speaking of the degree of latitude one would say if one intended to say in French it was at that degree “par ce degré.” On that point I leave myself in the hands of the Tribunal. Then in the same document, on p. 72, the same expression is repeated again. It is No. 2, it is the second point:—

“All the territory lying between the English Establishments, on the 54th parallel, and the head of Portland Channel, which lies by the 56th parallel.”

The French is:—

“Tout le territoire situé entre les Etablissements Anglois au 54° parallèle et l'origine du Portland Channel qui est au 56° parallèle.”

Then on the 17th of April there is the despatch so often quoted at p. 76. Count Nesselrode, writing to Count Lieven, speaks of—

“ * * * the Portland Canal, the mouth of which * * * ”

It is at the end of the fourth paragraph on p. 76:—

“ * * * the mouth of which on the ocean lies at the height (‘à la hauteur’) of Prince of Wales Island and the height inland between the 55th and 56th degree of latitude.”

That was right.

The PRESIDENT. I am afraid we must interrupt you, Mr. Attorney. (Adjourned for a short time.)

Sir ROBERT FINLAY. I am told that the Hudson’s Bay Company’s lease has been brought down and handed to the Secretary.

I have only a very few references to add to my account of the negotiations as bearing upon the point to which my attention has been specially directed. I have referred to Count Nesselrode’s despatch of the 17th April, 1824. The next of any importance is the 12th July, 1824, which is in the British Case Appendix, p. 85, where Mr. Canning writes to Sir Charles Bagot proposing a line south to north through Portland Canal till it strikes the mainland in 56.

Mr. WATSON. Will you give me your first reference to Count Nesselrode?

Sir ROBERT FINLAY. The British Case Appendix, p. 85. That is the despatch of the 12th July, 1824, and the draft which Mr. Canning inclosed in that despatch in the French version will be found at p. 87 of the same Appendix, and the material words are:—

“Jusqu’à ce qu’elle touche à la côte de terre ferme située au 56° degré de latitude nord.”

The Russian Counter Draft, which is at p. 94 of the same Appendix, varies the expression in this way:—

“Jusqu’au point où cette passe se termine dans l’intérieur de la terre ferme au 56° degré de latitude nord.”

That of course requires attention because there the Russians vary the expression so as to make it plain that in their view this channel was one which terminated at the 56th degree. And in the Draft sent to Mr. Stratford Canning, which is at p. 101 of the British Case Appendix, the words again are, “till it strikes the coast of the continent on the 56th degree,” and at p. 122 Mr. Stratford Canning’s Contre-Projet has the same words so far as this matter is concerned. Mr. Matusevich, who altered that Draft, changed it in this way, as appears at p. 126 of the British Case Appendix: “Jusqu’à l’endroit où cette passe se termine dans l’intérieur de la terre ferme au 56^{me} degré de latitude nord.” I think that really concludes all the extracts from the negotiations which have any relevance to this matter and I do not know if there is anything further that I can properly add with regard to this particular question.

The PRESIDENT. Except you have not told us formally, at least, what your contention is.

Sir ROBERT FINLAY. My contention is that the true answer to this question is an answer which, perhaps, is not exactly an answer in terms—that from the head of the Portland Canal you must go to the commencement of the line of mountains. That is my submission.

The PRESIDENT. You have to get the head of your canal. find the

mountains at the end of your *lisière*, and join your mountains to the canal.

Mr. LODGE. On the 56th parallel.

The PRESIDENT. Do you say on the 56th parallel?

Sir ROBERT FINLAY. Not necessarily.

Mr. LODGE. The question is, on what point of the 56th parallel?

Sir ROBERT FINLAY. And, if that is to be answered, I say it is the point on the 56th parallel where you find your mountains. I have now completed what I have to say upon these first four questions, which form a group by themselves.

Mr. TURNER. Mr. Attorney-General, before you pass from this point, if we consider the description as terminating at the head of Portland Canal it still must reach the 56th parallel; it must reach that in the northerly direction. Must you not adopt the other alternative that it must find the shortest possible route, because it must reach the 56th parallel?

Sir ROBERT FINLAY. Well, my submission on that point is that the Treaty seems to contemplate that the channel—the pass—reaches the 56th parallel, and it is a very odd thing that the Treaty should have presupposed that, having regard to the maps, but then it does so. Well, if you find—

Mr. TURNER. That being a mistake, must it not reach the 56th parallel on the description of the Treaty?

Sir ROBERT FINLAY. Well, I submit that that is not necessary—that the point to be sought is the commencement of the mountain chain. Having regard to the terms in which the question is put in the Treaty of Arbitration, the Tribunal may think it right to select a point of the mountains which is at the 56th parallel, and to that I have no objection, but I venture to put it to the Tribunal that the terms of the Treaty when carefully looked at do not really seem to support that. But I have no serious objection to offer to a point of the mountains being taken just at the 56th parallel.

Now the 5th, 6th, and 7th questions stand by themselves, and they require separate consideration. The 5th and 6th questions, I think, must be considered together. The 7th question, which relates to the mountains, must be treated by itself. Now I propose to deal with the 5th and 6th questions, and the observations that I shall make with regard to that will be of general application as regards the two. I shall of course proceed to deal with the questions specifically afterwards, and ask the Tribunal to give a certain answer to each, but the first point that seems to demand consideration is the precise meaning of these two questions. I ventured very shortly on the first day of the hearing to indicate the meaning which I attached to those questions, but as I am now approaching the detailed consideration of how they are to be answered, it is extremely important to ascertain definitely what meaning ought to be attached to the questions themselves, and it is all the more important to endeavour to appreciate

183 accurately the meaning of the questions, because I do not think there is in this Treaty anything equivalent to the clause which is to be found in the Treaty relating to the Arbitration at the Hague, which provides that the decision of the Tribunal as to the extent of the jurisdiction confided to it should be a matter which fell within the powers of the Tribunal. Of course, the ordinary rule is that where a particular question is referred to arbitration the arbi-

trator has no jurisdiction to decide what are the limits of the matter referred to. His only jurisdiction is to decide the question, and if he apprehends the question in a sense which is not the true one his award would not be within the limits of the authority confided to him.

Now there is not, so far as I can see, in this Treaty of Arbitration any jurisdiction conferred upon the Tribunal to decide finally as to what is the meaning of any question put to it, or what are the points which are submitted for its decision. It is, of course, necessary that the Tribunal should put a meaning upon every question before it returns the answer, but there is nothing which makes the view of the Tribunal as to the meaning of the questions a final or decisive view. For that reason it is, of course, very important to consider exactly what these questions mean, and they are both in their form at least somewhat involved.

I submit that when they are looked at carefully they are really comparatively simple, but they are long questions, the form is involved, and they require some attention to show exactly what is the point on which the decision of the Tribunal is invited. The fifth question is in these terms:—

“In extending the line of demarcation northwards 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.”

Now, I apprehend that that question means this; that when you are taking the line of demarcation northward along the crest of the mountains, (and the condition as to 10 marine leagues from the ocean is by way of recital and parenthesis,) is the effect of the Convention such that Russia was to have—must have—the United States must have a continuous fringe separating the British possessions from the inlets on the coast? That is the question. Is the Tribunal to say that the Convention of 1825 means that the territory of Great Britain is separated by land from salt water, to put it very shortly? Now, to that I shall invite the Tribunal to give an answer in the negative, and I shall submit that the answer to that question depends really upon the meaning that is to be attached to the word “coast” in Article III and the word “ocean” in Article IV, that that is the governing consideration, and that when the meaning of these expressions is appreciated it will appear that there is no such answer,—no belt of land belonging to Russia between the territory of Great Britain and the heads of the inlets.

Then the sixth question, which must, I think, be treated along with the fifth, as far as general observations, at all events, are concerned, is this: it depends upon a double hypothesis; if the foregoing question should be answered in the negative, that is if the foregoing question is answered in the sense in which I invite, on behalf of Great Britain,

the Tribunal to answer the fifth question; if the fifth question is 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) 184 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?”

Now, if that question is attentively looked at I think it would appear that the first and second branches of it are not really alternatives, because the question put in the first branch is “Should the width of the *lisière* be measured from the mainland coast of the ocean, strictly so called—along a line perpendicular thereto?” Then the second branch is; or was it the intention, where there are deep inlets, that the width of the *lisière* was to be measured from the line of the general direction of the mainland coast or from the line of the territorial waters, or from the heads of the inlets? Well, the first branch of the second proposition is really in substance the same as that which is put under the first proposition. If the answer to the first branch is that the line is to be measured from the mainland coast of the ocean strictly so called, then the (a) under the second branch must be answered in the same way, because it is really the same question; viz., is it to be measured from the line of the general direction of the mainland coast?

And in view of that fact, I submit that these two branches of the sixth question are not really alternative, that the second branch is by way of being a sort of explanation of the first. The first is the general question: Was the width to be measured from the mainland coast of the ocean, strictly so-called? then the “or” does not mean to set out another answer, the “or” is, “or in other words,” and to put the matter in more detail, when you have got deep inlets, are you to take the line from the general direction of the mainland coast or from the line of the territorial waters, or from the heads of the aforesaid inlets? I submit, for the consideration of the Tribunal, that that is what question (b) really means, and the answer that I ask the Tribunal to give is that the line of the mainland coast of the ocean strictly so called, or in the language of the second branch the line of the general direction of the mainland coast is the governing factor. That would come very nearly to the same thing as the second alternative of the second branch (b), the line separating the waters of the ocean from the territorial waters of Russia, although it would not necessarily coincide with it; still, practically, it is very nearly the same thing, and I invite the Tribunal altogether to discard the third alternative in the second branch that the line is to be measured from the heads of the aforesaid inlets.

Mr. TURNER. The line separating the waters of the ocean from the territorial waters of Russia is, according to your contention, part of the mainland coast there?

SIR ROBERT FINLAY. I beg your pardon, Sir, I am very sorry I did not hear.

MR. TURNER. According to the English contention, the line separating the waters of the ocean from the territorial waters of Russia is part of the mainland coast there?

SIR ROBERT FINLAY. I think that they very nearly coincide. I think that (a) and (b) come very nearly to the same thing, but I think that (a) is the more accurate way of putting it. The question of the territorial waters may, I think, be a very important one as a guide to what is the general line of the coast, but I think it is the only way that it can be most usefully invoked. I shall ask the Tribunal to answer the question with reference to the general line of the coast, using the arguments on the subject of territorial waters as a guide to what is to be taken as the general line of the coast.

Having submitted my view of the meaning of these questions, I thought it would be right that I should call the attention of the Tribunal to the view that is submitted in the Argument on behalf of the United States, which, I think, is not substantially at variance with that which I venture to present. At p. 63 of the Argument for the United States will be found the passages which I am going to cite, and also on p. 65. They say:—

185 “The fifth question does not involve any understanding as to the actual location of the line on the ground in the interior, but only its relevancy to the entire coast-line of the bays and inlets. The question can be answered independently that the understanding was that the line should be drawn around all such waters. This can be done without fixing where it shall be located.”

In fact, I do not think the Tribunal has any jurisdiction to draw the line.

THE PRESIDENT. Except in so far as it answers question 7.

SIR ROBERT FINLAY. Exactly.

“The question does not involve the answer to the question as to whether or not the line, in the absence of mountains responding to the condition of the Treaty within 10 marine leagues of the coast shall be drawn the full distance of 10 marine leagues.

“That answer is dependent upon considerations that do not necessarily affect the answer to the fifth question. The fifth question can be fully answered without touching either of these propositions.

“The British Case seems to concede that, if the line is to be drawn, not along the mountains, but parallel to the coast, it shall be drawn 10 marine leagues from the coast. It says:—

“It is to be observed that this Treaty contemplates a shore-line such as admits of another line being drawn parallel to its sinuosities at a distance of 10 marine leagues.”

I submit that that is not the effect of that passage at all. What that passage of the British Case says is this: that the Treaty contemplates a shore line such as makes it possible to draw another parallel, but the meaning that is attributed to the passage in the sentence I have just read is that the British Case seems to concede that the line is to be drawn not along mountains, but parallel to the coast, which shall be drawn 10 marine leagues from the coast. The British Case does not concede that, and I do not concede it, or anything like it. I say that the Treaty is express in saying that it is to be drawn at a distance not greater—not exceeding—10 leagues from the coast.

“It may appear, either from a construction of the Treaty alone or from such construction taken in connection with the subsequent conduct of the parties,

that it was the intent of the Treaty that Russia was to have, at all events, a continuous strip of the coast, and that this was such a clear and dominating feature of the Treaty that all doubtful language is to be regarded as subordinate to it, and to be constructed so as to carry out this intent.

"If such intent shall be demonstrated, it must prevail, and the actual location of the territorial boundary line must be a subordinate consideration."

And then at p. 65, in dealing with the question of coast, they say:—

"The United States claims that the coast is an unbroken coast, and that this is the dominating factor, that the coast, as meant by the Treaty, must first be for by the Treaty, which are perpendicular to or trend across the coast leading around the heads of the bays and inlets, and that all mountains which so trend are to be rejected from consideration. If the coast, or as the Treaty expressed it, 'lisière de côte,' is the controlling feature, then there will be no difficulty as to the meaning of 'sinuosity.' The line must be parallel to the coast that is meant, and must follow the sinuosities of that coast. No mountains and no crest of mountains can divide such coast so as to deprive the United States of any part of it.

"When the meaning of 'coast' shall be determined, the actual location of the line will be a secondary proposition. Just where it will be situated with reference to the heads of the bays and inlets is entirely subordinate to the proposition that it must, at all events, be situated somewhere to the interior of the heads of such bays and inlets."

186 Now, that I think brings out very clearly that in the view of the United States, as in that which I present, the fifth question raises the point of broad principle. Is there to be found in the Treaty, either taken in itself or taken by such light as can legitimately be thrown upon it by the negotiations which preceded it and the surrounding circumstances—is there to be found any governing intent that there was always to be a strip of land between the British Dominions and the head of the inlets?

Now, with regard to the sixth question, the United States put forward their proposition. At p. 105 of their Case they set out the question:—

"The United States, insisting that the fifth question should be answered in the affirmative, as above requested, therefore submits that an answer to the sixth question is unnecessary. But if the Tribunal should decide otherwise and answer the fifth question in the negative, then the United States, without waiving the request made as to the answer and decision of the fifth question, requests the Tribunal to answer and decide that in the event of the summit of such mountains proving to be more than 10 marine leagues from the coast, the width of the *lisière* which was to belong to Russia should *not* be measured from the mainland coast of the ocean strictly so called, along a line perpendicular thereto; but that it was 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 from the heads of such inlets."

Now, having arrived, I hope, at a clear understanding as to what these questions mean, I proceed to invite the consideration of the Tribunal, in the first instance, to the terms of the Treaty, and the view that I am going to present is this, that everything depends upon ascertaining what the term "côte" (coast in Article III and "océan" (ocean) in Article IV) means.

"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 degrees 40 minutes north latitude, and between the 131st and 133rd degree 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 situated parallel to the coast as far as the point of intersection of the 141st degree of 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."

Then Article IV, that refers to the line of demarcation:—

"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, 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."

Now, I submit that the case mentioned in Article III must designate the same line as the boundary of the ocean mentioned in Article IV, and that when you have ascertained what is the coast mentioned in Article III you are to apply to that coast the words of Article IV, which prescribe that the line, in the event there contemplated, shall be parallel to the windings of the coast. The contention on behalf of the United States, as I understand it, is that "*une ligne parallèle aux sinuosités de la côte*" means a line parallel to the inlets of the coast taking in all the inlets. I say that that is not the case at all, that you get the meaning of coast as designated in Article III and as spoken of in Article IV, and there your line is to be parallel to the sinuosities of the coast and if that coast is the general line of coast then it is the sinuosities of the general line of coast, and these only, that you are to have regard to. I say, putting it in another way, that to draw such a line parallel to the sinuosities of the inlets is a thing that is impossible, that it really cannot be done, and that what you have to contemplate is a line of coast parallel to which you can draw a line at a distance not exceeding 10 marine leagues.

Sir L. JETTÉ. Do you not believe, Mr. Attorney, that an inlet is not a sinuosity?

Sir ROBERT FINLAY. Is not a sinuosity of the coast?

Sir L. JETTÉ. No.

Sir ROBERT FINLAY. No.

Sir L. JETTÉ. It is something entirely different.

Sir ROBERT FINLAY. A sinuosity of the coast is a winding of the general line of coast, but the expression sinuosity of coast, I submit, is not applicable to inlets. "*Sinuosités de la côte*" is, I submit, an expression that is not applicable to an inlet, and that never would have been used with regard to it. The negotiators had before them a map which showed them the general nature of this coast, and, however loose the ideas that prevailed as to the interior as to the mountain system, there was no doubt whatever that Vancouver's explorations left little to be desired as regards the sea and the channels and inlets of the sea. Well, they had these inlets before them. Now I do submit for the consideration of the Tribunal that if the negotiators of the Treaty had intended to indicate that the line was to be parallel to

the inlets they certainly would have used another form of words than the "sinuosité de la côte." That is my submission.

Now, at p. 64 of the Argument for the United States, they say at the middle of the page, "The present controversy arises out of conflicting views as to what the parties meant by 'côte,' 'la crête des montagnes,' 'l'océan,' 'lisière,' and 'sinuosités.'" Well, with the expression "la crête des montagnes" I, of course, shall deal when I come to the seventh question, but I quite agree that so far as the fifth and sixth questions are concerned, the controversy does turn upon the meaning to be attributed to the words "côte," "l'océan," "lisière," and "sinuosités." Then at p. 66 of the Argument of the United States they say, near the top of the page, with reference to the two expressions "côte" and "océan:" "The language of the Treaty is: 'Se trouverait à la distance de plus de dix lieues marines de l'océan.' The United States contend that the words 'océan,' as here used is synonymous with 'côte.' Great Britain says in its Case 'It is clear that côte and océan refer to the same thing. Thus the controlling word is 'coast.' When that meaning, as understood by the parties, is fixed, the meaning of 'ocean' by the claims of both parties become coincident with it. Its sinuosities must be conformed to by the line."

Now, I submit that that is not quite an accurate way of putting it. In determining what the meaning of the coast is you must have regard to the fact that while "coast" is the expression used in Article III, in Article IV you find that in addition to the word "côte" you have the word "océan" used for the purpose of designating what must be the same line, and that is a most important factor in determining what is intended by the word "côte." It is not, as the United States Argument on this particular passage seems to put it, that you are first to determine the meaning of "coast" and then make the expression "ocean" conform to that. In determining the meaning of the expression "coast" you must have regard to the fact that in

Article IV "ocean" is used to denote what must be the same
188 line. Now, with regard to the coast, my submission, as the Tribunal is aware, is that it means general trend of the coast.

The classification of the various meanings to be attributed to the word "coast" has been put forward on behalf of the United States. It has been suggested that "coast" is used with a number of different meanings. It may be used in its political sense, in its physical sense, or in its descriptive sense. Now, I will submit to the Tribunal that these distinctions are rather unavailing. The word "coast," whenever it occurs, must be read in connection with the context, and its natural meaning must be given to it. I submit that it would not be a satisfactory way of dealing with a question of this kind to label different senses of the word "coast" as political, physical, and descriptive, and then to determine under which of these divisions it was to fall. One has to find out what is the context, what is the nature of the problem which is being dealt with, and then one will see what is the sense of the word; and the appropriate adjective can afterwards be sought for. Whether it is found or not does not really very much matter. What is essential is to find the meaning of the language.

Mr. AYLESWORTH. You find it used in two or three different senses

in this same Article. On the second line "on the coast of the continent," it is used meaning a strip of land.

SIR ROBERT FINLAY. Yes.

MR. AYLESWORTH. At the end of the IIIrd Article "parallel to the coast" must mean the line of coast.

SIR ROBERT FINLAY. Yes, certainly.

MR. AYLESWORTH. It is used in two different senses within half a dozen lines.

SIR ROBERT FINLAY. The way that it is put, as I understand, against us is summarized very clearly on pp. 31-32 of the Counter-Case for the United States, near the bottom of the page:—

"The word *côte* or coast may be employed in three distinct ways: (1) geographically, to designate the physical coast, the line where water ends and land begins; (2) legally, to designate the political coast, the line adopted in international law as the basis for the extension of municipal jurisdiction over portions of the high seas contiguous to the territory of a nation; and (3) descriptively, as the name of a particular region.

"(1.) The physical coast line of the mainland under discussion, of which *rivage* and shore are synonyms, follows the limits of salt water along all the meanderings of the continental margin, without reference to the adjacent islands."

Well, I very respectfully dispute that proposition. It all depends upon the connection in which the word "coast" is used. If you are speaking of the coast as something to which a parallel line may be drawn, whether to seaward or to landward, I submit that it clearly does not follow the limits of salt water along all the meanderings of the continental margin, including, of course, as is intended in this passage, the inlets. I submit that it means the general line of coast.

"(2.) The political coast-line (since all arms of the sea not exceeding 6 miles, and in some cases more, in width, and all islands are practically treated as portions of the mainland) extends outside the islands and waters between them. In the present instance the political or legal coast-line drawn southward from Cape Spencer would cross to the north-western shore of Chichagof Island, and follow down the western side of that island and of Baranof Island to Cape Ommaney; at this point it would turn northward for a short distance, and then cross Chatham Strait to the western shore of Kuiu Island; thence again turning southward along that shore, and along the outlying islets 180 west of Prince of Wales Island, the line would round Cape Muzon and proceed eastward to Cape Chacon; thence following northward along the eastern shore of Prince of Wales Island to Clarence Strait it would cross the latter at its entrance and proceed south-eastward to the parallel 54 degrees 40 minutes at the point where it enters Portland Canal. Thus the political coast line of South-Eastern Alaska does not touch the mainland between Cape Spencer and 55 degrees of north latitude.

"It should also be noted that there are no 'inland waters' composed of salt water within the physical coast line, but within the political coast line there are a great number of straits, sounds, and inlets, formed by the contour of the continent and the proximity of the islands to it and to one another.

"(3.) The coast, used in a descriptive way, is found in the names, the 'north-west coast,' 'the coast of North-West America,' and 'the coast,' when used as a proper name or as the synonym of such name. It may or may not in this sense include the islands adjacent to the territory so named.

"The word 'ocean,' of which 'mer' and 'sea' are synonyms, is similarly used in three ways:—

"(1.) Physically, to designate the entire body of salt water which surrounds all the continents and islands on the globe;

"(2.) Politically, as the waters beyond the legal coast line; and

"(3.) Descriptively, as a proper name of a particular expanse of the high seas."

Now I venture to submit that nothing is gained from such distinctions and divisions as these. The line of coast which is spoken of

depends upon the purpose for which the word is used; and I submit that it would require a very special context indeed to lead any Tribunal to say that that line of coast meant the ramifications of such inlets as we have upon this western coast of Alaska. It must be a coast parallel to which some line may be drawn.

Now take it that it is seaward. When it was announced in that Ukase that no vessel was to approach within a hundred Italian miles of the coast—supposing that that Ukase had been enforced by Russia; that it had not been so contrary to international law that Russia had to abandon it—would any captain of a merchant vessel who was being stopped by a Russian vessel be heard to say for a moment that he was opposite a deep inlet, and that therefore he was not within 100 miles, that you must go away up the inlet, and that he was entitled to go on and sail further towards the line of coast? It is manifest that as soon as you are dealing with any question which involves having a line parallel to the coast, either seaward or landward, you must take the general line of coast.

Now, looking at the conformation of this coast, what are you to do with the peninsulas? You have got deep inlets, and you have got peninsulas. Well, what is to be done? I mean the United States claim, as I understand it—they certainly do claim—to have the benefit of all the inlets; that you are to measure back from the heads of the inlets; then why is Great Britain not to gain anything by the peninsulas? Take that peninsula which ends in Point Caamano. If you are to draw a line which is to follow religiously at a certain distance round the heads of the inlets, Great Britain may, with very great reason, say, "This is entirely out of the question. You claim the inlets; but if you claim the inlets we claim the peninsulas." You must take a line that corresponds generally to the conformation of the coast. It cannot be a line which follows every point running out into the sea, or every point of the sea running up into the land—it cannot be such a line as that. It must be a line which follows the general trend of the coast.

MR. TURNER. Mr. Attorney-General, why should you claim the peninsulas if a line following the general trend of the coast stops when it comes within 10 marine leagues of the coast? If these inlets are the coast, and when the line comes within 10 marine leagues of the coast under the terms of the Treaty, it stops in its progress towards the ocean, what difference does it make to England how far that headland may extend out? Why should she claim the land in the peninsulas?

MR. AYLESWORTH. Why does the line stop when it comes within 10 leagues of the ocean?

190 SIR ROBERT FINLAY. Yes.

MR. TURNER. The line stops because the Treaty says it shall stop. When it comes within 10 marine leagues of any particular inlet it stops, but there may be a headland projecting out into the ocean 100 miles—that would not affect the question.

SIR ROBERT FINLAY. With great deference, it does not stop when it comes to within 10 marine leagues. The provision of the Treaty is the other way. It is that it is never to be more than 10 marine leagues.

MR. TURNER. If you understand that to mean that in the absence

of mountains it shall be 10 marine leagues—that would not affect the question.

SIR ROBERT FINLAY. No; the provision is that it is not to be more.

MR. TURNER. It is not to be more in the absence of controlling mountains. Do you not understand it is to be 10 marine leagues?

SIR ROBERT FINLAY. That, of course, is the contention put forward by the United States, and it has resulted in the line on which I commented the other day. But I submit that the Treaty cannot be read as saying that the line is never to be nearer salt water than 10 leagues.

THE PRESIDENT. You are entitled to say on those arguments that if you start from the point on a peninsula and go 10 leagues inwards the line must stop there even though there may be some inlets running up the other side; you are entitled to argue that.

SIR ROBERT FINLAY. If the United States claims the inlets. I am taking the argument as it is.

THE PRESIDENT. You claim to start from the coast everywhere; that is your suggestion.

SIR ROBERT FINLAY. To get a general line of the coast you must for this purpose neglect inlets, and you must neglect peninsulas. You must keep the general line. It would be an extraordinary result if you were to look at the inlets alone, and not to look at all at the peninsulas. The question must be, how do you get a line parallel to which you can have a line drawn at any distance?

MR. TURNER. Is it not reasonable to assume that the parallel is a general parallelism as contradistinguished from the parallelism which copies all the convolutions? Now, would it not be ridiculous to follow that general parallelism to draw a simple line out into the middle of the headland, although it came within less than 10 marine leagues of salt water on each side of it, just for the purpose of following the idea that you must copy all the convolutions of the coast?

SIR ROBERT FINLAY. I agree that it is reasonable to take the general line of the coast, but then it is not doing that at all to go to the head of every inlet and say that a line is to be drawn which shall never be nearer salt water than 10 marine leagues. That results in adding about half as much again to the area of the territory to be included in the line. The provision of the Treaty is not that the line is to be 10 marine leagues distant from the coast; the provision of the Treaty is that it is never to be further than 10 marine leagues.

MR. TURNER. Well, that is what I was trying to get at. Supposing there were no mountains at all, I understood you to indicate the other day that the Treaty would fail.

SIR ROBERT FINLAY. If there were no mountains at all?

MR. TURNER. If there were no mountains at all.

191

SIR ROBERT FINLAY. Yes.

MR. TURNER. Now, does not the general expression that the line shall not be drawn at a distance of more than 10 marine leagues from the coast give room for the interpretation that in the absence of mountains it shall be drawn 10 marine leagues from the coast?

SIR ROBERT FINLAY. I very respectfully submit not, Sir, for this reason, that the provision with regard to that line, when it is looked at, is obviously complementary to existing mountains; it is a provision that wherever the mountains prove to be more than 10 marine leagues

from the sea, then a line shall be drawn instead which at no point shall be more than 10 marine leagues from the sea. But I submit that that really lends no colour to the contention that a line is to be taken which is to be distant not less than 10 marine leagues from salt water at every point.

Mr. TURNER. May it not have been in contemplation of the parties if they thought that the mountains were to depart more than 10 marine leagues at particular points that they might wholly depart more than 10 marine leagues? Do you mean to assume in that case that the Treaty should fail?

Sir ROBERT FINLAY. Oh, no, not if the mountains went at any particular point.

Mr. TURNER. I say, if the negotiators assumed that the mountains might depart at particular points more than 10 marine leagues, might they not have thought it possible that they might wholly depart more than 10 marine leagues along the entire line, and in that case are we to contemplate that they intended that this Treaty should fail?

Sir ROBERT FINLAY. They do not provide for that case. All I can submit of course is upon what the negotiators have done, and I respectfully submit that the language of the Treaty is such that it is incapable of application unless the line of mountains is found. I am, of course, aware that it is contended on behalf of the United States that there are no mountains that answer the description of the Treaty, and then it is said you are to take a line which at every point is 10 marine leagues distant from the head of any inlet. Well, I contest very respectfully both of these propositions; I say that the Treaty does not apply if there are no mountains, and I say that in point of fact there are mountains. Secondly, the line I submit is to be drawn parallel to the general trend of the coast not exceeding 10 marine leagues, but it is not to be drawn in such a way that at no point is it to be less than 10 marine leagues from the head of any inlet.

Mr. LODGE. Mr. Attorney, I understand you to say that the Treaty did not contemplate the possibility of there being no mountains anywhere—no mountains anywhere within the description; that all it contemplated was that the mountains might fail at certain points.

Sir ROBERT FINLAY. Yes.

Mr. LODGE. How do you interpret that first word "partout"?

Sir ROBERT FINLAY. In every place where.

Mr. LODGE. Very well, "every place where" may mean—the French word "partout" would signify—"everywhere."

Sir ROBERT FINLAY. "Partout" means "everywhere"—certainly. The effect is very fairly given in the English version:—

"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 192 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."

Now, the French, I submit, entirely bears that out.

Mr. LODGE. It does not seem to me to exclude at all the possibility that there might have been no mountains within 10 marine leagues; it does not seem to me to exclude that.

SIR ROBERT FINLAY. They would have said that.

MR. LODGE. Under those words it is perfectly possible.

SIR ROBERT FINLAY. With deference, no, Sir; I submit not. The words are here. I will just read the French, which absolutely bears out the English.

MR. AYLESWORTH. Would you not put it in this way, translating it literally, that "everywhere where" three things occur—where there are mountains, where those mountains run in a direction parallel to the coast, and where those mountains are further inland than 10 leagues from the coast?

SIR ROBERT FINLAY. Exactly.

MR. AYLESWORTH. It is only where those three things concur that you resort to the 10 leagues.

SIR ROBERT FINLAY. These three things, and every one of these three things, is involved in the sense.

SIR L. JETTÉ. But the Treaty supposes that there are mountains everywhere. In Article IV, paragraph 2, it says, "Partout où la crête des montagnes," so supposing there would be mountains, "où la crête des montagnes qui s'étendent dans une direction parallèle à la côte depuis le 56° degré de latitude nord au point d'intersection du 141° degré de longitude ouest, se pourrait à la distance de plus de 10 lieues marines de l'océan," so you must have a mountain whose summit will be at a distance of more than 10 leagues.

SIR ROBERT FINLAY. Yes.

SIR L. JETTÉ. So that the supposition is that there would be mountains at least.

SIR ROBERT FINLAY. Certainly. "Partout." 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. Then the limit has to be formed in a particular way. That assumes that you have your mountains. It provides for every case where these mountains go more than 10 leagues from the ocean in the way specified by a line running not more than 10 leagues.

MR. LODGE. Of course, you understand I do not mean literally no mountains. I mean no mountains within the description of the Treaty.

SIR ROBERT FINLAY. I perfectly understood, Sir, and my answer was framed on that understanding. Now, in the Argument for the United States a good deal of reference is made to the meaning of the word "coast" in the Ukase of the Emperor of Russia, and in the claims of Great Britain and the United States to share in the coast with Russia. The contention of the United States will be found at p. 66 and the following pages of the Argument. They first deal with the Ukase of 1821, which set up the 100 Italian miles limit.

They set out the first rule which related to the pursuits of commerce, and so on, on islands, posts and gulfs, including the whole of the north-west coast of America, beginning from Behring Straits to 51 degrees of north latitude, and so on. This, in terms, includes the whole of the north-west coast of America from Behring Straits to the 51st degree of northern latitude. Then they set out the second rule which prohibited all foreign vessels approach-

ing within less than 100 Italian miles, and they say "All foreign vessels were by this rule forbidden to land upon any of the coasts described in the first rule." Then the 14th rule they set out also, "The interdiction of trade with the natives of the North-West coast of America in the whole extent from Behring Sea to the 51st degree of north latitude. "Russia thus asserted jurisdiction over every part of the North-West coast down to the 51st degree, and forbade trade with the natives of this coast throughout the whole extent."

"No one would have the hardihood to deny that, by 'côte,' Russia here meant the entire shore line, including that of bays, inlets, and all interior salt waters. It cannot be said that Russia only intended to interdict trade on the mainland coast, or on the interior waters up to a point where the headlands were not more than 6 miles apart, or that she wanted to control the trade with the natives living on the coast bordering the open sea, but not with the natives living far up the Lynn Canal, Taku Inlet, and other like waters. If it be conceded that Russia intended that this Ukase should apply as in terms it is expressed, to 'the whole of the coast,' and 'the natives of the islands and of the north-west coast of America, in the whole extent here above-mentioned,' then we start the inquiry before us with a full understanding of the meaning attached by Russia to the term 'côte' as applied to such waters as those above indicated, when she provoked the controversy that was closed by the Treaty. When Russia made a Treaty in respect of these very rules, and of this very territory, and of these very coasts, it is inferable, unless the contrary shall be shown, that she did not intend to use the word 'côte' in the Treaty in a different sense from that in which she had used it in the Ukase."

Then they proceed in the following pages to develop at considerable length—I do not think it necessary to read them—the argument that the Ukase was intended to apply to the whole coast including the inlets. Well, surely that is very far from the present question. I submit the argument is really all the other way. When a vessel was forbidden to come within 100 Italian miles of the coast, surely that meant the general line of the coast, and the thing would be unworkable if it were read in any other way. That prohibition having been issued of course it follows that no vessel could go up the inlets because it could not get to the inlets without coming within the 100 Italian miles of the general line of the coast, and the vessel was to be confiscated.

Then at pp. 70 and 71 an argument is based upon the claim of Great Britain and the claim of the United States to the North-West coast. Well, there again I submit that that argument is quite irrelevant. Where Great Britain or the United States are asserting that they have a right to trade with the natives on the North-West Coast of America, of course that means the natives situated on that coast generally, including the inlets, but you are using the word "coast" yourself, and when it is used in a connection of that sort no one would dream of supposing that it did not include the right of trading in the inlets. We talk about trading on the West Coast of Africa. In trading on the coast of any country, we mean, of course, trading on the coast generally, and going into the harbours, and going into the creeks or inlets where the natives may be found.

The contention put on behalf of the United States comes to this: That you are to measure your distance from salt water or from tide water. Sometimes it is put in the shape of salt water, and sometimes in the shape of tide water. Well, these two contentions may have a very different effect, and it is necessary just to look at the precise meaning of that contention. Now, if the members of the Tribu-

nal will do me the honour to look at p. 102 of the United States' Case, they will see how it is put.

"The United States asserts that the evidence, herewith submitted to the Tribunal, and reviewed in the foregoing statement, establishes the following facts:—

194 "(b.) That it was the intention of the High Contracting Parties that the width of such *lisière* was to be 10 marine leagues, measured from the heads of all gulfs, bays, inlets, and arms of the sea, that is, from tide-water, unless within that distance from tide-water there was wholly or in part a continuous range of mountains lying parallel to the sinuosities of the coast, and extending from Portland Canal to the 141st meridian of longitude west of Greenwich, in which latter case the summit of such range was to form the boundary."

That is to say, it was to be measured from tide-water.

Then, at p. 103:—

"(l.) That the boundary-line, determined by the Treaty of 1825, began at Cape Muzon, and ran thence in an easterly direction to the entrance to the Portland Canal between Wales and Compton Islands; thence north-easterly along the centre of Portland Canal to a point equidistant from Pearse Island and Ramsden Point; thence northerly along the centre of Portland Canal until the line touched the mainland at the head of Portland Canal; thence upon the same course continued to the 56th parallel of north latitude; thence northwesterly, always 10 marine leagues from tide water, around the head of Lynn Canal; thence westerly, still following the sinuosities of the coast at a distance therefrom of 10 marine leagues, until the line intersected the 141st meridian of longitude west of Greenwich, and thence due north along that meridian to the shore of the Arctic Ocean."

Now there the contention is explained as being that it is to be 10 marine leagues from tide-water. Now, what does tide-water mean? The tide runs up the rivers, and moreover there is a question which has repeatedly formed the subject of judicial determination, both in this country and in America, as to how far in a river the tide goes up? Does the limit of tide-water mean the point to which the horizontal current of the water is reversed when the tide runs up, or does it mean the point up to which the depth of the water is increased by the action of the tide? These two limits are perfectly different things and the better opinion appears to be that the limit of tide-water is not the point at which the direction of the current horizontally is reversed when the tide runs up, but the point up to which the water swells under the influence of the tides, even while retaining its downward flow. I am not going to elaborate the point, but I may just mention that it came under consideration in the Supreme Court of the United States in the case of *Peyroux v. Howard*, in 1833, in 7th Peter's Reports, at p. 343, where it was decided that the limit of tide-water was the point up to which the water rose in depth. The tide was to be held to extend up to that point, and did not stop at the point where the downward flow of the water was reversed when the tide ran up. And the whole subject is most elaborately discussed in Mr. Stuart Moore's book on Fisheries, from p. 98 to 107, where he cites a decision of the present Master of the Rolls, then Mr. Justice Collins, which decision was in the same sense as that which was given by the Supreme Court of the United States.

MR. TURNER. With reference to that last citation, does that appear in your printed Argument?

SIR ROBERT FINLAY. Mr. Stuart Moore's book on Fisheries.

MR. TURNER. Is that to be found in your printed Argument?

SIR ROBERT FINLAY. I have got the book.

Mr. TURNER. I just asked for my own convenience.

Sir ROBERT FINLAY. Yes, I think it does. It is page 26.

Mr. TURNER. I would like to make note of it if it is not there.

Sir ROBERT FINLAY. If you look at the British Argument, p. 26, both these cases are there referred to. This is a point, of
195 course, of the most enormous importance, because if the answer to this question given by the United States is coupled with their contention as to tide-water, it is difficult to say to what point the *lisière* may not be carried back. I do not know how far the tide runs up these rivers at the various points on this coast, and to set up such a canon as that which the United States seeks to set up of taking the limit of tide-water as the point from which you are to measure, is to invite a series of controversies of the most irritating and difficult character.

Mr. AYLESWORTH. It is matter of history that when Wolfe captured Quebec he went up on the tide, and Quebec is several hundred miles from the Gulf of St. Lawrence.

Sir L. JETTÉ. In Quebec it would take half of the province.

Sir ROBERT FINLAY. Yes.

Mr. TURNER. Do you not think the United States' contention might be reasonably construed as meaning tide water within the bays and inlets?

Mr. DICKINSON. Mr. Attorney-General, if you will permit me, it might save you some trouble and the Court also if I say that what you are referring to was not used in the technical sense in which you are insisting upon, and was only meant to apply to the heads of the inlets. We do not claim that the coast line goes up the rivers, and the line which has been projected upon these maps was not measured up from the water extending up the river, but only from the heads of the inlets. That discussion may pass.

Sir ROBERT FINLAY. I am much obliged to my friend Judge Dickinson.

Mr. DICKINSON. I do not think that term will be found in the Argument. I am not quite sure. However that might be, as to the Case, I do not think that the "tide-water" will be found in the United States' Argument. At any rate, it was only intended to be synonymous with the heads of inlets. No further weight was intended to be given to it.

Sir ROBERT FINLAY. I am very much obliged to my friend Judge Dickinson for that interposition, but I am afraid that it really lands us in another difficulty.

The PRESIDENT. No, I think not. It is not pressed now.

Sir ROBERT FINLAY. It is not pressed now, but it really only lands us in another difficulty, because where is the head of the inlet? Take a river like the Thames. Without going to Quebec I take a river close at hand with which I am more familiar. Well, if you go up the Thames, where does river cease and inlet begin? What are the heads of these inlets? Take the head of Lynn Canal on any large map, one has only to look at it to see the enormous difficulty of the question which is presented by the canon which the United States seek to erect. Where is it? Is it where the water becomes brackish? Is it the point to which the tide runs up on the current contrary to that of the flow of the stream downwards? Where is the point which is to be defined, which was intended to be designated as the head of the inlet,

by this expression to which my friend has just alluded? It brings the Tribunal face to face with a question of the utmost difficulty, since they are asked to say that you are to take the heads of the inlets which were intended to be designated by this expression about tide-water or salt water. Now, I would ask the Tribunal to look at any large map.

The PRESIDENT. That is part of 32, is it not?

SIR ROBERT FINLAY. It is part of the contour map.

The PRESIDENT. Which sheet is it?

196 SIR ROBERT FINLAY. Sheet 3, the British Commission map, Section 3. If I may I will hand it up.

The PRESIDENT. Thank you; ours are close handy. Perhaps you can hand yours to Senator Turner, and then we can all look at it.

SIR ROBERT FINLAY. Now, I will not go through all the inlets, but I will take just as an illustration, the Chilcat Inlet. I submit that when that conformation of the Chilcat Inlet is looked at, it is an extremely difficult question to say where does river stop and inlet begin. It is the same question and on a smaller scale which is presented by such a river as the River Thames. Where does the river end and the estuary begin? Where does the estuary end and the sea begin? I am not going into those questions about the limits of the Port of London with which your Lordship is so very familiar, but looking at it in the broadest possible way, I submit it is perfectly impossible to draw the line. The river becomes the estuary, no one can say where, and the estuary becomes sea, no one can exactly say where. One knows, roughly speaking, what the difference is, but it is perfectly impossible to draw the line, and we are now concerned with the selection of a point from which a certain distance is to be measured which is not to exceed 10 marine leagues.

Now, for that reason, I submit that we must altogether discard all such impracticable tests, and look at the general trend of the coast. Now I feel a great deal fortified in this conclusion by what was done both by the Canadian authorities and by the authorities of the United States with reference to various surveys that have been made of this territory in connection with the controversies that have existed as to where the boundary was to be taken. The Tribunal is aware that a controversy arose with reference to the Stikine River, and it led to a survey which Mr. Hunter was instructed to make on behalf of Canada. The instructions for that survey are to be found in the British Case Appendix, at p. 224. These instructions were followed, and the result was communicated to the United States, and the result was accepted as a provisional boundary without prejudice to the rights of either Government as to what the true boundary was to be. Now, if the members of the Tribunal would do me the honour to look at p. 224 of the British Case Appendix, it will be found what the instructions were in this matter, paragraph 7, at the bottom of the page, 224. These are the instructions given by the Surveyor-General, Mr. Dennis, to Mr. Hunter under date the 3rd of March, 1877, paragraphs 6 and 7. I had better read paragraph 5 as well, because it is not intelligible without it:—

“5. You will make it your duty to verify this sketch as to the dotted red line shown.” (That was the dotted red line which Chief Justice Begbie had laid down.) “And generally take such observations as will enable you to lay down, with approximate accuracy, the crossing of the river (should the same

occur within 10 marine leagues of the coast) by a line, in the words of the Treaty, 'following the summit of the mountains parallel to the coast.'

"6. It is assumed that the point on the river where a line would cross connecting the two highest peaks 'of the mountains situate parallel to the coast,' adjoining on either side of the river (if within the distance of 10 marine leagues from the coast, measured and estimated on a course at right angles to the general bearing thereof opposite) would give the crossing of the river by the International Boundary at that point.

"7. The general direction of the coast, embracing said 30 miles on each side of the Stikine, is indicated on the tracing D, and may be taken as north 32 degrees west, or south 32 degrees east (true). The 10 marine leagues should, therefore, be laid off or estimated on a course at right angles thereto, or north 58 degrees east."

There we have the general line of the coast laid down as that which is to be taken, the general trend of the coast and the direction is given. Now, it is perfectly true that he had not to deal, in this part of the case, with any of those deep inlets which a little complicate the question. I do not think there are any within that distance given of the mouth of the Stikine; I do not think there are, but I will just verify that.

197 The PRESIDENT. I think it is 28 that you want, Mr. Attorney; 28 or 29 of the American Atlas has got the Stikine. I forget which it is.

SIR L. JETTÉ. 29.

SIR ROBERT FINLAY. This hardly gives what I want. This is by far the best plan of the minute topography of the Stikine, but what I was upon was the question of the general trend of the coast.

The PRESIDENT. Oh, I thought you wanted to know whether there was any inlet on the Stikine; that is why I mentioned it.

SIR ROBERT FINLAY. I did not mean on the Stikine. What I particularly meant was within the distance which is specified on each side of the mouth of the Stikine.

The PRESIDENT. Oh, I beg your pardon.

SIR ROBERT FINLAY. The other is also very important:—"The general direction of the coast embracing 30 mile on each side of the Stikine." Well, there is on the Stikine itself, there is an inlet at the mouth of the Stikine, according to Map 3 in the Atlas of the United States.

The PRESIDENT. I think, Mr. Attorney, that Sheet 1 of the British Survey gives the best that you want for this purpose, one side of it.

Mr. LODGE. Is that tracing "D," to which he refers, given anywhere?

SIR ROBERT FINLAY. I am afraid that that tracing "D" is not among the documents.

The PRESIDENT. I think it is shown somewhere. However, we will see. I think this Sheet 1 of the survey will give you the information that you want, Mr. Attorney, if you want to look at it, Section 1 of the British Commission. I am not quite sure that I follow your point, so perhaps you will repeat it?

SIR ROBERT FINLAY. What I was looking for was this, to see, in the first place, whether there is an inlet at the mouth of the Stikine River, and in the second place, whether within a distance of 30 miles on each side of the mouth there are inlets.

The PRESIDENT. If you will kindly look at this sheet, you will get the scuth side of the Stikine quite for 30 miles, and there you will be able to say whether you mean it or not.

SIR ROBERT FINLAY. I see that Mr. King has marked off on this map the distance which is specified in that letter, and to the north, it takes you just beyond that inlet opposite the north-east corner of Kupreanoff Island, and to the south, it takes you just beyond a long and narrow inlet opposite the corner of Wrangell Island.

THE PRESIDENT. What is your point, Mr. Attorney, on that?

SIR ROBERT FINLAY. Well, on that I say that, on a coast which presents these two inlets within the limits which are specified, what they take is the general trend of the coast.

THE PRESIDENT. Yes.

SIR ROBERT FINLAY. They neglect, and they necessarily neglect, these two inlets.

198 THE PRESIDENT. Let me look at that mark, will you? I only want to mark my atlas. I will hand it back directly.

SIR ROBERT FINLAY. And your Lordship sees that what has been done there for me is to mark the distance in the words of these directions from Mr. Dennis to Mr. Hunter: "Embracing said 30 miles on each side of the Stikine."

THE PRESIDENT. We follow you, Mr. Attorney, thank you.

SIR ROBERT FINLAY. Now, these directions being given, Mr. Hunter followed these, as appears from his report at pp. 229 and 230. At the bottom of p. 229 he says:—

"A survey was made of the river for 53.99 miles up, which enabled me to mark a point on the left bank thereof, 10 marine leagues from the coast. The angles were taken with a transit, the bearings checked by true azimuths, and the measurements effected by chaining.

"To mark the point 10 marine leagues from the coast a cottonwood tree was cut off 9 feet from the ground, and squared for 3 feet to a size of 14 inches, around which a protective cribbing of logs was built.

"On the west face of this post or stump, fronting the river, was written the following:—

"10 marine leagues (or 182,595 feet) at right angles, or north 58 degrees east astronomical from a line bearing north 32 degrees west astronomical, and passing through a monument on Rothesay Point, mouth of river, north, 32 degrees west astronomical, being the general bearing of the coast line, April 20, 1877."

Then at p. 241 it will be found that this report was sent to the Government of the United States. It is a despatch from Sir E. Thornton to Mr. Evarts, dated the 19th January, 1878. On p. 241 of the British Case Appendix he refers to Mr. Hunter's qualifications and employment, and says:—

"These instructions were carried out, and I have now to transmit herewith a copy of Mr. Hunter's Report, accompanied by a map, showing the points where the boundary line crosses the river.

"Lord Dufferin has directed me to inquire whether the Government of the United States would be disposed to accept the boundary line so ascertained until the exact line can be regularly determined, as such a course would save all expenditure for the present."

And at p. 242 it appears it was accepted as the provisional line, subject to the reservation which I have mentioned, Mr. Evarts writing back saying—

"I have now the honour to inform you that this Government has no objection to the temporary arrangement thus indicated, provided it be thus understood, on the part of both Governments, that it is not to be construed as affecting in any manner the rights under the Treaty to be determined whenever a joint survey shall be made, whether by a formal Commission or by officers detailed for the purpose of establishing a point as recently suggested."

The PRESIDENT. May I interrupt you for one moment, Mr. Attorney? Is not the tracing referred to, and it may be of service in reference to your point, on p. 224—is it not the same as on p. 215, and what is shown in the United States' Atlas on p. 29?

Sir ROBERT FINLAY. What page—215?

The PRESIDENT. 215 gives the larger sketch which I thought was the same as was sent in.

199 Sir ROBERT FINLAY. 215 of what?

The PRESIDENT. Of your Case, the Appendix.

Sir ROBERT FINLAY. Oh, I see.

The PRESIDENT. And that has, as you see, got Begbie's line on it not marked, but if you look at the middle of p. 29 in the United States' Atlas you will find somebody has dotted on to a better chart Chief Justice Begbie's line, and also Mr. Hunter's line—Mr. Hunter himself.

Mr. LODGE. Hunter shows Justice Begbie's line on that map.

The PRESIDENT. It makes me think that was the sketch, or something like it, which was sent.

Sir ROBERT FINLAY. And if your Lordship would look, the line is shown there, showing the general trend at right angles—showing the measurements back which were made.

The PRESIDENT. Yes; the line of general trend is also shown.

Mr. AYLESWORTH. Hunter's base is shown.

The PRESIDENT. I thought, Mr. Attorney, you were not certain that we had got the sketch. I think that is it.

Sir ROBERT FINLAY. I think it is, and as my friend, Mr. Simon, reminds me that is established if you look at p. 224, where this passage occurs in Mr. Dennis's instructions to Mr. Hunter:—

"Having identified Rothesay Point on the coast at the delta of the River Stikine (shown as Point A on tracing D), you will assume it as the point from which to commence the survey of the river, also, for present purposes, as marking the point from which to measure or estimate the distance of the 10 marine leagues from the coast referred to in the Convention.

"2. You will then make a survey of the river for such a distance up as will enable you to mark a point thereon 10 marine leagues from the coast, taking the angles with a box sextant, transit or theodolite; occasionally checking the bearings of your lines by true azimuths, and effecting your transverse measurements, if possible, by chaining.

"Should the circumstances not permit of chain measurements without involving too much time and expense, you will obtain your distances by triangulation or the use of a micrometer.

"3. In surveying the river, you will note all the features on it of consequence, laying down especially the exact position of the Canadian Custom House and other governmental or private establishments or landing.

"4. Your attention is called to Tracing F, above mentioned, understood to have been recently made by His Honour Chief Justice Begbie. This tracing shows a dotted red line crossing the Stikine, about $9\frac{1}{2}$ miles above Tree Point (supposed to be identical with the point B shown on tracing).

The PRESIDENT. It was only because you said you thought we had not got it that I wanted to see whether I had made any mistake upon it.

Sir ROBERT FINLAY. I think I was wrong when I gave that answer.

The PRESIDENT. I think there is an "A" at that very point.

Sir ROBERT FINLAY. More than an "A." "B" is marked also.

The PRESIDENT. On page 215.

200 Sir ROBERT FINLAY. I think it will be found that the real plan, which was referred to in Mr. Hunter's Report which was

sent to the United States' Government, is shown in No. 26 of the British Atlas: "This is the plan referred to in my report dated the 20th April, 1877. Joseph Hunter." And that shows the line north 58-degrees east.

The PRESIDENT. Which is reproduced small as I showed you in the American Atlas? It is the same thing.

Sir ROBERT FINLAY. Chief Justice Begbie's line is shown upon that, and Hunter's line, No. 26 of the British Case, and the Tribunal will observe that the line is marked there, as "line showing the general bearing of the coast;" it is printed upon it. And to that has to be added that, in addition to these inlets to the north and the south to which I have referred, there is an inlet at the mouth of the Stikine itself. If you take Map 29 in the American maps, the one in the centre, at the bottom, it will be seen that there is a sort of inlet there just by Rothesay Point. The line bisects that inlet, and it always must be so. If you are to take the general trend of the coast I defy anyone to pay attention to all these inlets. If you are to take the general trend the line may bisect an inlet or it may not. It depends upon what the relative run of the coast and the run of the inlet is, and there this affords a very good illustration of what happens when you are taking the general line of the coast. They run across that little inlet at the mouth of the Stikine River; they neglect inlets which lie within the specified distance to the north and the south.

Now I do not refer to this merely for the purpose of showing that it was sent to the American Government and not objected to. I do not refer to it merely for that purpose. I refer to it as affording a most excellent illustration of its being the only way in which any surveyor can discharge this task which is imposed upon him under the Treaty. You cannot do it except by neglecting features of this kind. If you take the general line you may cut the inlets or you may not cut them. It all depends upon how the inlets run, and what the general trend of the coast is, and here it is found that the inlet at the mouth of the Stikine River is cut by the line showing the general trend of the coast.

Mr. TURNER. How do you find that line there, Mr. Attorney? I do not see that very clearly.

Sir ROBERT FINLAY. It is in the United States' Atlas, the Counter-Case Atlas, No. 29.

Mr. LODGE. You do not mean that Hunter's line cuts the inlet?

Sir ROBERT FINLAY. No, it is the general line.

Mr. LODGE. It is the general line of the coast cuts the inlet.

Sir ROBERT FINLAY. Oh, clearly. Hunter's line would be parallel to that some distance up—19 miles, I think, from it.

Mr. TURNER. Hunter draws his line parallel to the coast, but he apparently commenced up the head of the inlet.

Sir ROBERT FINLAY. That is the line representing the general trend.

Mr. AYLESWORTH. That line was given to him with his instructions, with instructions to verify it as being the general line of the coast.

Sir ROBERT FINLAY. It was, as I pointed out just now, on the large map which was sent with his report, being the plan referred to in his report; you have printed upon that "line showing the general bearing of the coast." I said I did not refer to that merely for the purpose of

201 making what may be called a point as against the Government to which that report was sent. Not at all. I referred to it as an excellent illustration of the only way in which you can deal with a problem of this kind.

Now, I pass on to another group of instructions. At p. 268 of the British Case Appendix will be found extracted a paragraph from the last published report of the "United States' Coast and Geodetic Survey." The letter inclosing this extract is written on the 5th June, 1891, and the report from which the paragraph is quoted is stated to be the last report of the "United States' Coast and Geodetic Survey," in which the Director writes as follows. I had better read the first sentence:—

"The Governor-General of Canada has lately brought under the notice of Her Majesty's Government the following passages in the last published Report of the United States Coast and Geodetic Survey, in which the Director writes as follows:—

"By recent Congressional enactments a preliminary survey of the frontier line between Alaska and British Columbia, in accordance with plans or projects approved by the Secretary of State, has been placed in charge of this Bureau. Such a preliminary survey, involving the determination of a number of points in geographical position and their complete marking by permanent monuments, will have to be carried from Cape Muzon *through the Portland Canal* to the 56th degree of north latitude, thence north-westwardly, following as nearly as practicable the general trend of the coast, at a distance of *about 35 miles from it*, to the 141st degree of west longitude, and thence due north to the Arctic Ocean, a total distance of about 1,400 miles."

Then he goes on to state that the Dominion Government have asked that the United States' Government may be reminded that the question of boundary at this point was subject of discussion and correspondence, and that an International Commission would be required. I do not at all accept all this paragraph which says that the line is to be drawn at a distance of about 35 miles from it. That all depends. It is not to be more than 35 miles, but what I do call attention to is that this adopts the principle for which I am contending, that of the general trend of the coast. And I say, that you cannot take the general trend of the coast if you are to follow the ramifications of inlets, but that the expression "sinuosities of the coast"—"sinuosités de la côte"—is an expression which was not intended, and could not have been intended to apply to the inlets. It is perfectly applicable to the windings of the general coast. It is inapplicable, as I submit, to the windings of such inlets as you have upon the coast now in question.

MR. LODGE. In those irregularities of the coast, Mr. Attorney, which do you call sinuosities, and which do you call not sinuosities?

SIR ROBERT FINLAY. Well, that is a question, of course, very much of degree. One must have regard to what you are to do. You are to take a line following the sinuosities of the coast parallel to which you could draw another line. It is impossible if you include in sinuosities of the coast a long, deep inlet like the Taku Inlet or Lynn Canal or Berners Bay. It is impossible for you to include such inlets as these under the term "sinuosities of the coast" to get your parallel line, and my submission is—

MR. LODGE. Not theoretically impossible, is it?

SIR ROBERT FINLAY. Well, it is very pointedly put in some passages—in a passage by Mr. Dall, which Mr. Bayard quotes in his despatch of 1885, that the thing becomes in practice absurd. He says:—

"Take your pair of compasses with a pencil at one end of them and proceed to draw a line of that sort; you will find the most intricate convolutions crossing one another, and that the whole thing, in fact, is impossible to carry out."

I do not stop to read that just now, but I shall refer to it by-and-by.

202 The PRESIDENT. We shall have to interrupt you now, Mr. Attorney, but the Senator has anticipated what I was going to put to you. I am very much struck with what you say as to the word "sinuosities" not being applicable to what you call inlets, but I think if we are to understand that you had better, as no doubt you will, in the course of your argument, develop that by reference to the map and give us an idea of what you mean.

SIR ROBERT FINLAY. Certainly.

The PRESIDENT. You follow what I mean? The same line of thought that Senator Lodge mentioned to you; I should really like to know, if we have to apply such a doctrine, how referring at any rate fairly generally to the map, you would apply the principle, what is a sinuosity and what is an inlet?

SIR ROBERT FINLAY. Certainly. I should at the same time say the answer to that is that one difficulty of this reference is that I do not see that any power is given to the Commission to settle what is a sinuosity and what is an inlet.

The PRESIDENT. It is only for the purpose of understanding what the effect of such an argument would be on the map as bearing upon the real construction of the Article.

SIR ROBERT FINLAY. I am much obliged to you.

(Adjourned till Monday next at 11 a. m.)

All the Members of the Tribunal were present.

SIR ROBERT FINLAY. When the Tribunal adjourned on Friday I was dealing with the question of the meaning to be attached to the word "coast," as an indication of that line which was to be the governing factor in determining the strip. I had called attention to the directions given by Mr. Thorn as set out on p. 268 of the Appendix, and I was proceeding to refer to directions given by Mr. Mendenhall, who, I think, succeeded Mr. Thorn in the Surveying Bureau of the United States, at p. 274, and the following pages. Mr. Mendenhall in sending his directions to Mr. Tittman, who was assigned to the charge of the party which was to be engaged in the survey of the Stikine River, under date of the 16th March, 1893, gave him the directions which will be found on this point at p. 274. He says at the top of the page:—

"You will yourself execute the triangulation from your astronomical station (which will also be connected with one or more points of the coast triangulation) to a point on the Stikine River distant not less than 30 nautical miles from the coast of the mainland in a direction at right angles to its general trend."

Then follow some details as to the mode of marking, and then at the end of the paragraph:—

"Should a range of mountains be found to exist, it is of the first importance that its distance from the coast and its general trend should be determined, unless such distance should considerably exceed the specified 30 nautical miles."

In the instructions to Mr. McGrath under date 18th March, 1893, Mr. McGrath being appointed to take charge of the party engaged in the survey of the Taku Inlet, Mr. Mendenhall is even more definite. He begins his instructions by saying to him—I am reading at p. 275:—

"You are hereby assigned to the charge of one of the parties to be engaged on the survey of the Taku Inlet, Alaska, for the purpose of obtaining such information and data as will enable the Commissioners to establish or agree upon a boundary line between South-East Alaska and the British possessions."

204 Then at p. 276 occurs this passage:—

"The chiefs of parties will themselves execute the triangulation from the Taku astronomical station (which will also be connected with one or more points of the coast triangulation) to a point on the inlet or river distant not less than 30 nautical miles from the coast of the mainland in a direction at right angles to its general trend."

Now, I invite the attention of the Tribunal to the fact that in that passage Mr. Mendenhall clearly contemplated that the 30 nautical miles might stop short of the head of the Taku Inlet. He takes the

general line of coast, and tells Mr. McGrath that he is to execute the triangulation from the astronomical station to a point on the inlet or river "distant not less than 30 nautical miles from the coast of the mainland." I submit that it is impossible to have language which would more clearly indicate that in the opinion of the officials who, on behalf of the United States, were charged with the work of this survey, the line from which you were to measure was such a line that your 10 marine leagues might stop short of the heads of the inlets.

Then in his directions to Mr. Dickins, at p. 278, we have similar language. Mr. Dickins was entrusted with the survey of the Unuk River, also in Alaska, a point somewhat south of the Stikine, and at the top of p. 278 he says:—

"You will yourself, with one man, and accompanied by the Canadian party, make a reconnaissance from the mouth of the river to a point not less than 30 nautical miles from the shore of the mainland, in a direction at right angles to its general trend, with a view to determining the most advantageous route for a trigonometrical survey, or whether such a survey is practicable. This is the main object of the expedition, and therefore, by agreement with the Canadian Commissioner, the Canadian party will accompany you and afford you such facilities as they can. They will furnish you with shelter and subsistence, but you will, of course, bear your share of the expenses of the mess.

"You will also afford the chief of the Canadian party every facility for informing himself of the nature and progress of your work."

Then, a little further down:—

"You will make a topographical sketch of the route, and all possible geographical information will be collected, particularly as to the location of mountain peaks and the existence or non-existence of a range of mountains parallel to the coast. Should such a range be found to exist, it is of the first importance that its distance from the coast and its general trend should be determined, unless such distance should considerably exceed the specified 30 nautical miles."

Now, there are these directions. In the United States' Counter-Case they endeavour to extenuate the effect of what Mr. Mendenhall did in this matter by making a quotation of a magazine article which Mr. Mendenhall subsequently wrote. Well, I am not going to read that magazine Article which has been printed in the Appendix to the United States' Counter-Case; p. 269 it begins. It certainly demonstrates that Mr. Mendenhall when he wrote this article in 1896 was not a "Philo-Canadian," and he certainly writes in a tone which renders it impossible to suppose that when, as a surveyor, he gave his directions he was animated by any motives which might lead him in the slightest degree to sacrifice the interests of the United States, because I observe, at the conclusion of the Article, while he pays a very high compliment to Englishmen as individuals he seems to entertain a most unfavourable opinion of their diplomacy.

Now, it is to no purpose that the United States' Counter-Case cites this Article. If it has any bearing at all on the case it emphasizes the point which I am making. The British Case, when it quoted Mr. Mendenhall's directions, was not dealing with his views as an individual, as a citizen of the great country to which he belongs, or as a patriot. It was dealing with Mr. Mendenhall as a surveyor, and showing that Mr. Mendenhall when, as a surveyor, he had to grapple with this problem, felt himself constrained to adopt the view which is put forward on behalf of the British Government. Now, the fact that directions were given in these

terms is very much accentuated when we look at what the survey was which the United States carried on. The survey was made, if you take the Taku region, as will appear from a glance at the United States' Survey Map No. 8. In the survey the region of the Taku is carried back, as would appear from a glance at the map, only to a point 10 marine leagues at the mouth from the Taku Inlet.

The PRESIDENT. What is the length of the Taku Inlet, Mr. Attorney?

Sir ROBERT FINLAY. Well, it winds so much that it is somewhat difficult to say.

The PRESIDENT. But I meant the general length, mid-channel?

Sir ROBERT FINLAY. I think it is a little more than 10 marine leagues.

The PRESIDENT. I see.

Sir ROBERT FINLAY. It is a little more than 35 statute miles. Of course, it something depends upon the way in which you draw the line across the mouth of the Taku Inlet.

It is possible to take more than one line. If the line is drawn across from Bishop Point to Circle Point, I think it will be found that to the head of the inlet, in a direct line, is a little more than 10 marine leagues. I think that the scale at the top shows the nautical miles. The one in the middle gives 10 miles, which are measured off, and then two spaces each of 10, so that the length of that bar in the middle is exactly the 30 nautical miles. By applying that one sees at a moment how far. I think that it is not quite so long as I stated if a direct line is taken across. I think if it is measured from Circle Point it will be found that the 30 nautical miles takes you to a bend on what would appear from this map to be a portion of the river which is below the "T" at the beginning of the name Taku Inlet.

The PRESIDENT. "T" of Taku on the river?

Sir ROBERT FINLAY. Yes, but what I am calling attention to, my Lord, is this, that in this survey they only profess to carry the survey back to a point which is measured on the principle for which we are contending. If the true principle were that which is now advanced on behalf of the United States the survey must have been carried to a point 10 marine leagues from the head of the Taku River. Now the same thing would appear if the Sheet No. 4 of the Survey is looked at which relates to the Stikine. There it will be found that the survey is carried back 10 marine leagues from the mouth of the Le Conte Bay. Sheet No. 4 of the United States' Survey is that which I am referring to. Of course, the observation here is not quite so striking because you have not to deal with any inlet of anything like the depth of Taku Inlet, which is very nearly 10 marine leagues in length measured vertically from the coast, and a great deal longer if you follow the convolutions. But take the survey on the Stikine, and the survey itself shows how far it is carried, and it will be found that the 10 marine leagues at the very outside measured from the mouth of the Le Conte Bay carry you to the point which has been surveyed.

The PRESIDENT. You mean from Surgief Island when you talk of the mouth of the bay?

Sir ROBERT FINLAY. No: Le Conte Bay, my Lord. Your Lordship will see, a little to the north of the mouth of the Stikine is Le Conte Bay.

The PRESIDENT. Oh, I beg your pardon. I see it now.

206 Sir ROBERT FINLAY. You get there—I am taking a line at right angles—you get the distance back that they have gone. Well, if the scale at the top is applied, it will be found that 10 marine leagues from the mouth of the Le Conte Bay—not from the head—takes you back to the very verge of the exploration. And the same thing applies with reference to the sort of inlet which is formed by the Stikine where it goes into the sea.

We must now pass to the Lynn Canal, No. 10. Now, the evidence of this map, No. 10, of the survey is very striking indeed for the contention put forward now is that the United States are entitled to go back 10 marine leagues from the head of the Taiya Inlet. They have done nothing of the kind in this survey. They have not gone back from the head of the Taiya Inlet. They have gone back, I think, something like 10 marine leagues at the very outside by bringing in some outlying points which are marked there, but the nautical miles start from a point which is away down below the mouth of the Taiya Inlet, and in the Chilkat Inlet. I am going to deal with this of course more in detail and submit that that is not the proper point, that you cannot stop there, that you must in all probability go a good bit further down before you take the point from which you are to measure your 10 marine leagues. But what I am emphasizing just now is that no one, when this was being dealt with as a surveying matter, no one thought of giving directions to start from the head of the inlets.

Now, I will ask your Lordship to keep this map for a moment because I am going to call attention to the instructions which were given with regard to the survey of the Lynn Canal. The instructions will be found at p. 276 in the United States' Counter-Case. The first letter is one of the 21st March, 1894, from Mr. Mendenhall to Mr. Pratt. The previous instructions were given the year before, in 1893, those that I have already called attention to. Those that refer to the Lynn Canal are given in the following year, 1894, and he says to Mr. Pratt:—

“As you are already aware from previous instructions and from verbal conference, you will again be assigned to duty in Alaska in connection with the boundary survey.”

“On receipt of these instructions, you will please arrange to proceed by the steamer ‘Hassler,’ which will furnish transportation to and from the field for your party, and outfit; and which will sail from Seattle about the 27th April to Lynn Canal, where you will execute the triangulation and topographical reconnaissance of the Chilkat and Taiya Inlets to the 10 marine league limit.”

Nothing is said in the instructions of this year about the point from which the 10 marine leagues is to be measured. It is left undetermined as far as the instructions go.

“You will also establish an astronomical station on the west side of Chilkat Inlet.”

And then on p. 277, the same letter, Mr. Mendenhall says:—

“It will be borne in mind that the triangulation to the 10 marine league limit and the topographical reconnaissance of the upper portions of the inlets are of the first importance, and if it is found necessary to leave any part of the work unfinished it should be the topography of the lower portions.”

Then, at pp. 278 and 279, there is a letter to Mr. Dickins of the 22nd March, also from Mr. Mendenhall, where he tells him he is to

be again assigned to duty in Alaska in connection with the boundary survey. This refers to the Unuk River, so that I will not read it at this moment.

The PRESIDENT. What you want is at the top of p. 279.

Sir ROBERT FINLAY. I am much obliged to your Lordship.

207 "As the trigonometrical survey of the Chilkat and Taiya Inlets to the 10 marine league limit is of the greatest importance, the topography (of the lower portions at least) being secondary, you will first assist in the triangulation, and for this purpose your full party will probably not be required."

Then, on pp. 280, 281, there is a letter to Mr. Flemer from Mr. Mendenhall, of the United States Coast and Geodetic Survey Department:—

"On receipt of these instructions you will please arrange to proceed to Alaska and make a topographical reconnaissance of the country to the northward and eastward of Taiya Inlet and River to the 10-marine league limit. You will purchase a round trip ticket to Seattle, good for nine months, and proceed to that point in time to complete your arrangements and join the steamer 'Hassler,' which sails for Alaska about the 27th April, and which will furnish transportation for yourself, party, and outfit to Chilkat Inlet. The work will be of the same general character as that executed by you last year, and you will give special attention to the sketching and mapping of the mountain peaks and ranges, if such exist, and locate them as accurately as the means and time at your disposal will permit.

"The party of Assistant Pratt will be engaged in the survey of the Chilkat Inlet and River to the boundary, and his camps may be used by you as a base of operations when practicable."

Now, it will be observed on this point that Mr. Mendenhall, writing in the following year, does not give the directions which he had given in 1893 as to measuring from the general line of the coast. He leaves it entirely vague, but what I call attention to is that on these instructions, where they are conducted, the measurements read a point very far within that which is now claimed on behalf of the United States.

Now, may I just illustrate that point by referring to the index map of the United States Survey Commissioners? It shows what was surveyed by them, and also what was surveyed by the British surveyors. The pencil line which is marked upon this represents, I believe, quite accurately, the line of what is now claimed by the United States, as shown in that map, to which reference has been made more than once. May I hand up to the Tribunal this map, with the line upon it?

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. I have another copy which I can hand up. [Maps handed up.] I have in my mind the observation I was going to make upon it, and can do so without the map. The horizontal shading shows what the United States surveyed; the vertical shading shows what the British Commissioners surveyed; and where it is shaded both ways it shows what is surveyed by both.

Now, taking the British survey, it will be found that it stops very far short of the boundary which is now claimed by the United States. Now, this is a point of very great importance, because the Convention of 1892, under which this work was being done, was a Convention for a survey which should afford materials for delimitation under the Treaty. Let me make that good by citing two sentences from

the Convention of 1892, as it will be found at p. 269 of the British Case Appendix, Article I:—

“The High Contracting Parties agree that a coincident or joint survey (as may be found in practice most convenient) shall be made of the territory adjacent to that part of the boundary line of the Dominion of Canada and the United States of America dividing the Province of British Columbia and the North-West Territory of Canada from the territory of Alaska, from the latitude of 54 degrees 40 minutes north to the point where the said boundary line encounters the 141st degree of longitude westward from the meridian of Greenwich, by Commissions to be appointed severally by the High Contracting Parties, with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing Treaties in regard to it between Great Britain and Russia, and between the United States and Russia.”

208 And at the bottom of the page:—

“The High Contracting Parties agree that, as soon as practicable after the Report or Reports of the Commissions shall have been received, they will proceed to consider and establish the boundary-line in question.”

The report of Messrs. Duffield and King is set out at p. 282 of the Appendix, and they make their report in view of what the Convention had contemplated, a permanent delimitation of the boundary-line. I will only read half a sentence from this report, which occurs near the bottom of p. 282:—

“With a view to the performance of the duty imposed upon the Commissioners under the Convention of ascertaining the facts and data necessary to the permanent delimitation of the boundary-line, and under the option allowed them of making either a coincident or joint survey, Dr. Thomas C. Mendenhall, at the time Commissioner for the United States (since replaced by the undersigned, William Ward Duffield), together with the undersigned British Commissioner, having considered the large extent of unknown territory involved, and the comparatively short time allowed for the survey, determined that it was advisable to make the survey a joint one: that is, to partition among the officers working under them respectively the territory to be surveyed, arranging at the same time that each Commissioner should detail Attachés to accompany the several surveying parties of the other, for the purpose of observing and verifying their work.”

There we find the Convention provides for ascertaining the facts necessary for the delimitation under the Deed of 1825. We find the Powers agree that, as soon as possible after the survey has been made, they will proceed to delimit the property, and we find the surveyors' reports in the Report are of the nature to which I have called attention, as shown by the Report itself and by the maps. Now, did that Report make it possible, or did it not, to delineate the boundary-line as contemplated by the Treaty? The answer is afforded by the Memorandum of the United States themselves. Inclosed in a document of the 9th August, 1898, on p. 299 of the same Appendix, I read only the inclosed Memorandum. It is a Memorandum on the part of the United States Government:—

“Memorandum on the part of the United States' Government, containing its views on the subjects set forth in the Protocol, signed 30th May, 1898, between the Representatives of the United States and Great Britain.

“ III.

“ *The Delimitation and Establishment of the Alaskan Boundary.*

“This topic has already been the subject of conventional arrangement, and the Report of the Joint Commission is now available, and has made it possi-

ble for the two Governments to carry out the stipulation of the last clause of Article I of the Treaty of the 22nd July, 1892, to 'proceed to consider and establish the boundary in question.' The Government of the United States will expect the Joint High Commission to seek to execute this stipulation by an agreement as to the boundary as fixed by the Anglo-Russian Treaty of 1825, and by the American-Russian Treaty of 1867, and, as far as possible, to delineate the same upon proper maps; and further, to provide for the fixing of boundary marks by a Joint Commission to be hereafter appointed. This Government has no reason to anticipate any other than a definite and satisfactory settlement of this important question by the Joint High Commission."

Now, that assumes that materials for settling this boundary were in existence, and they could have been in existence only under the survey which had been carried out to the extent I have pointed out. I respectfully submit that this Memorandum—written three years after this survey was undertaken and carried out—that the terms of the Convention of 1892 itself, and the way in which the work was done, as shown by the Report of Messrs. Duffield and King, demonstrate that at that time there was no idea of putting the boundary so far back as is now claimed on behalf of the United States.

Now, I may observe that the contention as to the general trend of the coast is sometimes doubted on behalf of the United States themselves in drawing their Case. Every now and then the Counsel concerned for the United States are constrained to adopt what I submit is the only possible principle. At the top of p. 68 of the United States' Case there is a passage to one sentence of which I refer. Dealing with the matter of the maps alone of course requires a little more detailed consideration, but I am referring to it for no purpose at present except that of showing the general direction of the coast, ignoring the inlets, as here taken:—

"An examination of these maps further shows that the heads of Portland Canal and the mountain range are approximately 10 marine leagues distant from the shore-line of the continent."

If you take the mountains, the general line, showing the mountains, which is delineated in the charts there referred to—

The PRESIDENT. I do not think they mean the general line there, Mr. Attorney. I think they mean—it is part of their argument—that they follow along with the coast line.

Mr. LODGE. The shore line.

The PRESIDENT. I do not think they mean trend in that general sense.

Sir ROBERT FINLAY. I think it must be so, because the distance is nothing like that if you take the inlets and the mountains.

The PRESIDENT. I am not speaking of how the mountains ran.

Sir ROBERT FINLAY. Oh, I mean as shown on the map.

The PRESIDENT. Oh, very well.

Sir ROBERT FINLAY. What I mean is this, if your Lordship will allow me to refer to any one of the maps which are there specified. Take No. 4 in the United States' Atlas. I refer to it now only for the purpose of making good my observations. It will be found, taking the line of hills which are shown there—

The PRESIDENT. Vancouver 4.

Sir ROBERT FINLAY. Vancouver. This is No. 3 Vancouver.

The PRESIDENT. I am only speaking of this argument. I thought it would not be right to take Vancouver, because Vancouver does not pretend to give the locality of the mountains.

SIR ROBERT FINLAY. I am not basing my argument upon that. I am merely making good my observation that in this passage of the United States' Case they must have meant the general line.

The PRESIDENT. Very well.

SIR ROBERT FINLAY. This particular map is referred to at the top of the page.

The PRESIDENT. You are right; yes it is.

210 SIR ROBERT FINLAY. I am afraid I did not make my meaning quite clear.

The PRESIDENT. Yes you did; I mistook it.

SIR ROBERT FINLAY. "An examination of these maps further shows that the head of Portland Canal and the mountain range are approximately 10 marine leagues distant from the shore line of the continent." There they must mean the general shore line of the continent, because if you take Berners Bay, that runs for about half of the distance of the line of mountains there delineated from the coast. If you take Bradfield Canal it runs in more than that, and the observation must have reference to the general line. It ignores, and properly ignores, on the one hand the peninsula which ends in Cape Caamano, a long and narrow peninsula, and it ignores on the other hand, and properly ignores, such inlets as Berners Bay and the Bradfield Canal, so that I think I have made good my position that here, when he talks of being ten leagues distant from the shore line of the continent, they must mean the general shore line. Then the same point is made in a way which precludes the possibility of doubt as to our interpretation of this passage being the correct one. In the middle of p. 57 of the United States' Case they refer to these maps of Vancouver, one of them being the No. 4 map which we have just been looking at, and they say:—

"An examination of these shows that the mountain chain along the coast and a line ten leagues from the shore practically coincide."

Then again the form of expression is such as to make it impossible, as I submit, to put any other sense upon the passage than that which I have ventured to attribute to it.

Then Mr. Dall again, in his Memorandum on the Alaska Boundary, which is set out in the Appendix of the United States' Counter-Case, beginning at p. 98; has a passage at p. 107 with reference to these mountains:—

"We now come to the 'crest of these mountains situated parallel to the coast.' What could have suggested this expression? We turn to Vancouver's charts for a reply. There we find the area behind the sea level on the mainland covered with the conventional signs, which, in the cartography of those days, 'signified mountainous or broken country.' The area so treated varies in width on different parts of the coast, and is bounded on the interior by a much higher and, for the most part, continuous range of mountains indicated in the conventional manner. This range is separated from the sea by a distance which in some places does not much exceed 5 miles, while in other places, measured at right angles to the axis of the range, it is over 40 miles."

Now, I claim on these passages and documents to have shown that what we contend is the only possible line is that which has been adopted by those representing the United States themselves. There are expressions of less importance which may be found in the statements which have been put forward on behalf of the United States in the Appendix to their Case. I take Mr. Tittman's letter, which is set out in the Appendix to the United States' Case at p. 530, where he

speaks of the mountains being generally parallel to the coast, I take the expressions in Mr. Hodgkin's affidavit also in the United States' Case Appendix at p. 534. It is at the very end of the document at the bottom of the page, and he says:—

“From all the observations which I made while in Alaska, and from all my knowledge of the region, gathered not only from the ascent of the mountains but from other investigations, it is my belief that there is no such continuous chain of mountain within 10 marine leagues of the coast—that is, from the heads of the inlets and bays, and running in a direction parallel to the general direction of the coast between Portland Canal and Lynn Canal—as seems to be contemplated in the language of the Anglo-Russian Convention of 1825.

211 There, again, he speaks of the distance being measured from the head of the inlets and bays, but when it comes to the question of parallel, he says:—

“Running in a direction parallel to the general direction of the coast.”

Then Mr. Baldwin, in his affidavit at p. 537, speaks of the mountains running north, low mountains running north and south generally parallel to the coast. I do not know that I need carry these quotations further.

Now, the same conclusion is reached if one looks at the meaning of the word “coast.” There has been a good deal of verbal criticism upon expressions used at various stages of the negotiations. A great point is made in the United States' Case or Counter-Case, as to the use at one stage of the negotiations of the word “rivage” instead of “côte.” Now, “rivage” is an expression which I apprehend is used with perfect propriety to denote the edge of any water whether it be sea, river, or lake. It is a general term which might be perfectly well used, as I submit to the Court, for the shore of the ocean. “Rive” is, I apprehend, more properly applied to the shore of a river or lake, and it will be recollected that Sir Charles Bagot, in a document which occurs in the British Case Appendix at p. 73, talks of the “rive” of the Portland Canal. He uses of the Portland Canal an expression which is properly applicable and I believe in the ordinary usage of the French language only would be applied to the shores of an inland water such as a river or a lake, but on the use of the expression “rivage” I submit that no such argument can be based as that which is indicated at p. 89 of the arguments for the United States. It is used on one occasion, I think, and in fact the occasion in which it is used is particularly emphasized in dealing with the conversation between Mr. Middleton and Mr. Stratford Canning, in which it is said that Mr. Stratford Canning's explanation to Mr. Middleton of what the meaning of the Treaty really was, and they say that several points are noticeable, one is that he said the line was to go eastward from the head of Portland Canal, and another is that he used the word “rivage” instead of “côte.”

To prove that my memory is not quite accurate on that point, I thought he did make that observation in Mr. Middleton's conversation with Mr. Stratford Canning. However, the detail does not very much matter. I will correct the details presently if I was inaccurate. It is exactly the same observation, only it is not the French word which is used. Mr. Middleton and Mr. Stratford Canning would naturally speak in English when they were conferring upon this matter at St. Petersburg, and the observation occurs at p. 63 of the United States' Case, where they say in addition to the

point about going eastward, a notable feature of Mr. Canning's statement was that the word "shore," in describing the width of the *lisière*, supplants the word "coast" used in the Treaty. It is exactly the same argument which in another place he used with reference to the word "rivage." It is Sir Charles Bagot who uses the word "rivage," on which an argument is based by the United States in the passage in their Argument. At p. 71 of the British Case Appendix Sir Charles Bagot, in his amended proposals, uses, as the Tribunal will observe, the expression "rivage" with the effect of not repeating the expression "côte."

MR. LODGE. Count Lieven also uses it, does he not, Mr. Attorney?

SIR ROBERT FINLAY. It may be so; I have not at the present moment in memory the fact that he does, but I will just verify that. Yes, I think you are right, Sir.

MR. LODGE. Where he sends first a letter and then a memorandum.

SIR ROBERT FINLAY. You are right, Sir. The passage is referred to in p. 88 of the United States' Argument; the references are collected there. I think both the passages which are material to these observations will be found there. I am reading at the bottom of p. 88:—

"As appears from the letter of Count Lieven to Count Nesselrode of 13th July, 1824, Mr. Canning submitted his draft to Count Lieven. Count Lieven understood that the word 'côte' in this draft could not have been used 212 in the unusual and special sense now contended for, because in this letter he says that Mr. Canning makes the line run 'le long de la base des montagnes qui suivent les sinuosités du rivage.'"

MR. LODGE. Yes. That was the passage. I had in mind that he also used the phrase.

SIR ROBERT FINLAY. Then follows the argument which I was about to deal with.

"He thus used the word 'rivage' as equivalent to the word 'côte' as used in this draft, and that fully accords with the understanding of the word 'côte' from the beginning of the controversy down to that time. 'Rivage' means the part of the earth which serves as a limit to any kind of body of water. It is applied indifferently to the border of a sea, or a lake, or a river. The word 'rivage' is translated 'coast' in the rendition of this letter by Great Britain."

Now that is precisely the same argument which the United States seek to base on the use of the word "shore" in Mr. Stratford Canning's conversation with Mr. Middleton. I submit that whether it is applied to the French or the English, the argument entirely breaks down. If "shore" is a word which may be applied in English to the sea as well as to a lake, in fact, I am not sure it is not more properly applicable, more specially applicable, to the sea shore than it is to the shore of the lake, one certainly would not talk of this shore of a river, one might talk of the shore of a lake, particularly if it were a big one.

THE PRESIDENT. Or a tidal one?

SIR ROBERT FINLAY. Or a tidal one. But I do not think one would talk naturally in ordinary English of the shore of any ordinary lake.

THE PRESIDENT. I think, as you say, it rather depends upon the size.

SIR ROBERT FINLAY. Yes.

THE PRESIDENT. The "banks of a lake" is not a very common expression in the case of big lakes, though perhaps we must not call them big in the presence of Mr. Root and Mr. Lodge. As to Winder-

mere, you would probably say the shore of Lake Windermere—not the banks of Lake Windermere.

SIR ROBERT FINLAY. It might be so.

MR. LODGE. We have a railroad which is called the Lake Shore.

SIR ROBERT FINLAY. Of course, where you have lakes on such a scale as they exist in America, one naturally applies to them a nomenclature which one does not apply to smaller bodies of fresh water. I mean, one looks upon these great lakes as really inland seas, and, in fact, they are inland seas, but certainly one would never talk of the shore of a river. The seashore one talks of every day—the shore of the sea, and in certain cases I quite concede it might be applied to the shore of a lake. The French word “rivage” is even more general, because “rivage,” I apprehend, may be applied indifferently—to the earth at the margin, to the portion of the earth, the ground at the margin of a river, the margin of a lake, or at the margin of the sea.

Well, what argument can be based upon the use of such an expression? They are all perfectly applicable to the portion of the earth which borders the sea or the ocean. They are perfectly applicable. If the word used had been one which was inapplicable to the border of the ocean, different considerations would have arisen, but the words are perfectly applicable.

Now take the word “côte” itself. I have dealt with that point about the shore or “rivage” merely for the purpose of dismissing it.

Take the word “côte” itself. Now “côtes” or coasts, of

213 course, may have several meanings. In the Ist Article of this Treaty the word “côtes” is used in the plural “les côtes,” and “les côtes” I find has a definite meaning in French, as used in the plural, to denote the territory which is near the sea. In the Ist Article of this Treaty it is provided that there shall be liberty of navigating the Pacific Ocean, that there shall be no molestation in exercising that right “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.”

There the expression “les côtes” is evidently used in the sense which Littré in his “Dictionnaire de la Langue Française,” attributes to the word as used in the plural under Head 9, speaking of “termes de marine.” He says “Les côtes” denotes “Les contrées voisines de la mer.” I have the dictionary here if it is necessary to refer to it, but I take it this is perfectly familiar learning, and we have exactly the same expression in the English language, because when mention is made of the “coasts of Tyre and Sidon” it did not mean the border between the ground and the sea; it meant the territory. “Coasts” in English has a familiar meaning; “their coasts;” but the expression “Coasts of Tyre and Sidon” denotes a territory, and that is the sense in which the words “les côtes” is used in the Ist Article of the treaty. Then in the IIInd Article, although it is used in the singular, I submit it is evidently employed in the same sense, because there is a provision against landing at any place where there is an establishment by the other Powers, and the word “côte” appears only at the end of the Article in this connection:—

“Réciproquement, les sujets Russes ne pourront aborder, sans permission, à aucun Établissement Britannique sur la côte nord-ouest.”

Now, what is the coast? May I take an illustration from the map of England, which takes one into regions where one does not touch upon controversy at every point? Take the south coast of England, and suppose anyone was asked to delineate the coast there, to say what the coast was there in order that a line parallel to it might be drawn. Take the Bill of Portland. You certainly would have to ignore that. You could not bring in a long and narrow peninsula running out as the Bill of Portland does. You go a little further to the east and you come to the Poole Inlet. There again you certainly would draw the line. As you would have drawn the line across the beginning of the Portland Bill so you would draw the line across the beginning of the Poole Inlet. You certainly would not endeavour to follow it in all the ramifications of salt water which constitute Poole Harbour.

Passing along the coast a little further, you pass by the small inlet of Christchurch, and then you come to Southampton Water. Southampton Water, I submit, would not be taken into account in estimating the general line of coast and certainly not the ramifications of Southampton Water, which take place from the head and from the Eastern Bay. You go along the coast a little further and then you come to Portsmouth Harbour, a deep inlet with a very narrow entrance, and you come next to Langston Harbour, which is an inlet of the same kind, and then to Chichester Harbour. I am referring to this merely by way of illustration, and I ask whether it would be possible, if anyone was asked to delineate what was the line of coast for any such purpose as that with which we are dealing, to take into account either such peninsulas as Portland Bill on the one hand or such inlets as those to which I have referred on the other.

Now, in the negotiations themselves the word "coast" is used in a connection which pointedly contrasts it with the inlets. Take the language which was used with reference to the Portland Channel. There language is employed by the Russian negotiators which pointedly contrasts the coast, that is, the general line of the sea, with the interior of Portland Canal. There are three passages which all concur one with another at pp. 71, 72, and 76 of the British Appendix. The passage at p. 71 is at the bottom of the page, where the negotiators use this expression: "C'est par ces raisons que les Plénipotentiaires de Russie ont proposé pour limites sur la côte du continent au sud le Portland Channel, dont d'origine dans les terres est par le 56° degré de latitude nord."

214 There "coast," I submit, is opposed to the interior of Portland Channel. Then on p. 72 they are enumerating the portions of territory which are left open to the extension of the English Colonies:—

"Toute la partie de la côte située entre l'embouchure du Portland Channel et le 51° degré de latitude nord."

There they speak of the portion of the coast situated between the embouchure of the Portland Canal and the 51st degree. Now they were in this passage, it would be a point for the Russian negotiators to make out that they were giving as much coast as possible. The contention and observation of the United States is that the expression "coast" in this connection goes up to the heads of such inlets as the Portland Channel. Well, if the Russians had had any such view in

their minds they would have said that it left open to the English Colonies the whole of the coast from the head of the channel to the 51st degree of north latitude, but they say they start only from the mouth, and then they go on to say that it leaves open further for the English all the territory lying between the English establishments on the 54th parallel and the head of Portland Channel, which lies in the 56th parallel. Now, the Tribunal will bear in mind that the English establishments about that parallel had not reached the ocean. That was pointed out in express terms in a despatch by the Russians which has already been read; I need not refer to it again. What they say is that, after dealing with the question of the coast which begins at the mouth of the Portland Canal—they say it leaves open, further, all the territory situate between the English establishments which are away from the coast of the ocean and the Portland Channel. The third passage is on p. 76, where Count Nesselrode, in the third paragraph, says this:—

“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 54 degrees 40 minutes of latitude and to make it strike on the continent the Portland Canal. The mouth of which (*‘dont l’embouchure’*) on the ocean lies at the height (*‘à la hauteur’*) of Prince of Wales Island, and the head inland between the 55th and 56th degree of latitude.”

The PRESIDENT. Mr. Attorney-General, I do not think it can be disputed that in these documents, quite apart from others, the word “coast” is used on several occasions in that meaning?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. And in other meanings, too, if I may use the expression? Of course the real difficulty we have got is to say what it means in this particular case.

Sir ROBERT FINLAY. Yes, I quite agree that passages may be found one way and the other, but what I am endeavouring to get at is the general effect for that purpose. It is necessary, even at some trouble, to group together the details in order to get a general view of the effect. Now, a very good illustration of the inaccurate use of the word “côte” is afforded in a despatch of Mr. George Canning’s, because Mr. Canning does speak of the line as reaching to the coast at the head of Portland Canal, and afterwards following this case at p. 87, the passage will be found. I refer to it for the purpose of showing that use of the term, not for the purpose of bringing out that the Russians proceeded at once to correct that use in their Counter-Draft. In the French of the Draft Convention, which Mr. Canning enclosed in his letter to Sir Charles Bagot, of the 12th July, 1821, he describes the course of the line in the IInd Article, in these remarkable words. He says:—

“Cette ligne * * * remontera, au nord, par la passe dite le Portland Channel, jusqu’à ce qu’elle touche à la côte de la terre ferme située au 56° degré de latitude nord.”

215 Then he goes on:—

“De ce point elle suivra cette côte, parallèlement à ses sinuosités, et sous ou dans la base vers la mer des montagnes qui la bordent, jusqu’au 139° degré de longitude ouest du dit méridien.”

Now, if that expression had been allowed to stand, it would have followed that when the line got to the head of the Portland Canal, if it was treated there as reaching “la côte,” instead of going over, giv-

ing to Russia the whole of that sort of peninsula which is enclosed by Portland Channel and the sea to the west, the line would have run down making a strip in the peninsula along the west coast of Portland Channel, because the expression here is that it touches the coast of the mainland of the continent at the head of Portland Channel, and from this point it shall be carried along that coast. One at once sees what might have been the argument on the language of such a Draft as that, and accordingly in the Russian Counter Draft they prevent any question arising as to whether the head of Portland Canal can be considered as coast or not. At p. 94 in their Counter-Draft they use these words:—

“La ligne de la frontière, entre les possessions Britanniques et Russes, remontera au nord par la passe dite le Portland Channel, jusqu'à ce qu'elle touche à la côte de la terre ferme située au 56° degré de latitude nord. De ce point elle suivra cette côte parallèlement à ses sinuosités.”

Now, “cette côte” there must be “la côte nord-ouest de l'Amérique,” because that is the only coast which has been referred to previously by the Article. It begins by referring to “la côte nord-ouest de l'Amérique,” and it is to go up the Portland Channel till this channel terminates in the interior of 56 degrees from that point. It is to follow this coast, the north-west coast of America, to the other point which is there mentioned.

Now, I submit that there again, in the minds of the Russian negotiators, there is an evident contrast between the head of such an inlet as Portland Channel and the coast. Then exactly the same observation arises upon Mr. Canning's last draft and the Russian corrections upon that. Upon p. 122, will be found that Mr. Canning's latest draft of the Treaty proposed to repeal these expressions about its running up.

“Le long de la passe dite *Portland Channel* jusqu'à ce qu'elle touche à la côte de terre ferme au 56^me degré de latitude nord.”

Mr. Matusevich, in dealing with that draft, altered the language to this:—

“* * * jusqu'à l'endroit où cette passe se termine dans l'intérieur de la terre ferme * * *.”

I submit, therefore, on the whole, having regard to the way in which the negotiations proceeded, that it is the general effect of the language used by the negotiators that coast, or “côte,” is used in contradistinction to the shores and the heads of the inlets.

Now, there is another consideration which is of very great force in this connection, and it is this, that the coast was to be something parallel to which you could have a line. I really cannot put that matter more clearly than it is put by Mr. Dall in a passage which is quoted on p. 252 of the British Case Appendix, just at the middle of the page:—

“In short the ‘summit of the mountains’ is wholly impracticable. We may then fall back on the line parallel to the windings of the coast. Let any one with a pair of drawing compasses, having one leg a pencil point, draw this line on United States Coast Survey Map of Alaska (No. 960 of 1884). The result is sufficient to condemn it. Such a line could not be surveyed; it crosses itself in many places, and indulges in myriads of knots and tangles. The line actually drawn as the boundary on that map omits the intricacies and is intended merely as an approximation. It would be subject to almost insuperable difficulties for the surveyor, simplified as it is, and the survey would cost

216 more than the whole territory cost originally. These are the false geographical assumptions on which the language of the Treaty is based, and the difficulties they offer when it is proposed to realise, by survey, the verbal boundary."

The difficulties are insuperable if the reading of the Treaty is taken which the United States contend for. My friend, Mr. Simon, has put upon paper the process which is described by Mr. Dall, and I think if the Tribunal would merely look at these sketches they will see that Mr. Dall did not in the least exaggerate when he said that the result is sufficient to condemn it.

"Such a line could not be surveyed; it crosses itself in many places, and indulges in myriads of knots and tangles"—you simply cannot do it; I have tried it on a humbler scale and without the accuracy which is shown by that sketch which I have handed up, but it really cannot be done if you attempt to go parallel to such inlets. Then, as Mr. Dall says, you must, therefore, discard that and fall back upon a conventional line. I draw a different conclusion altogether. I say you must read the Treaty in a more sensible way, and the difficulty then does not arise. Now, the cogency of this point can be appreciated only when one bears in mind two things: first, that under the Treaty, although the Treaty pre-supposes the existence of mountains, yet it is perfectly possible you may have the mountains receding beyond the 10 marine league distance for a very considerable space. You might have perfectly well 50 or 100 miles where the mountains went back beyond the 10 marine league limit, and during the whole of that space you have to draw under the IVth Article of that Treaty a line parallel to the sinuosities of the coast.

But the second observation to which I direct attention brings out the matter even more clearly, and it is this—that in the course of the negotiations, it was twice contemplated, it was twice proposed that you might discard the mountain boundary altogether, and have only a line parallel to the coast. Now, I just give the references to the passages where that proposal was made. Sir Charles Bagot, at p. 71, British Case Appendix, in the last paragraph of his amended proposal, sketches this project. He had been dealing with running through the channel to the north of Prince of Wales Island, and then he says:—

"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 as far as the 140th degree of longitude (of Greenwich)."

And the Russians returned to that proposal at p. 94, where they speak of the line going to the head of the Portland Canal, and then from this point it would follow this coast parallel to the 139th degree of west longitude.

Now, there you have in Sir Charles Bagot's proposal, and in the Russian proposal, this contemplated, that you might have to find the boundary by drawing throughout the whole extent of the *lisière* a line parallel to the coast. Mr. Dall says that is impossible. I thoroughly agree if "coast" is taken to include the inlets; but it is perfectly possible if you take what I submit is the natural meaning of the word "coast": general line.

Now, for this purpose I desire to call the attention of the Tribunal to the fact that in determining what constitutes a peninsula or an inlet that is to be disregarded, it is all a question of degree. You may have a peninsula which is broad and short. Well, that would naturally form part of the undulation—the sinuosity of the coast. You may have an inlet which is in the nature of a bay, that again

would be part of the sinuosity of the coast, but where you have got a long narrow peninsula, or where you have got a long narrow inlet, I respectfully submit you must reject them reciprocally, and it would be just as reasonable for Great Britain to contend in this case that the line was to be drawn along the points of the peninsulas from point to point, as it is for the United States to contend that the line is to be drawn along the heads of the inlets from inlet to inlet. Both contentions are equally reasonable, or, perhaps, it would be more accurate to say that both contentions are equally unreasonable.

Now, there is another point which illustrates this. I said
217 at the very commencement of this branch of my argument that, in ascertaining the meaning of the word "coast," you must bear in mind the word "ocean" is used in the IVth Article as evidently indicating the same line—the same dividing line; and you must take that into account in determining what meaning you are going to attach to "coast." It is not that you are first to ascertain the meaning of "coast" and then force "ocean" into a sense that will agree with that. That is a process the result of which I might have no reason to complain of here, but I submit that it is not the true way. You must, in ascertaining the meaning of each term, bear in mind that the other is used in the sense synonymous to it; and I put it to the Tribunal whether the term "ocean," which is used in the IVth Article, is not much more applicable to a line which gives the go-by to long and deep inlets than to a line which runs up to the head of every inlet as far as salt water goes.

Now, the history of the proposal I will very briefly indicate, because I am sensible of the attention the Tribunal has paid to these documents, and I feel that it is only necessary for me at this stage of the case to indicate points which earlier in my address it might have been necessary more to elaborate. I will just run over the points of the references. Count Nesselrode describes the mouth of the Portland Canal as being "into the ocean," (British Case Appendix p. 76). Mr. Pelly proposes that the limit should be measured from the sea (British Case Appendix, p. 78). In Mr. Pelly's next communication he proposes that it should be from the coast, from the sea, from the shores, (p. 80). At p. 82 of the British Case Appendix it will be found that Count Lieven, after a conversation with Mr. Canning, referred to the distance from the *côte*; while on his side, Mr. Canning spoke of the sea (p. 86 of the same Appendix), and Mr. Canning's Draft, which will be found on the next page, p. 87, provided that the *lisière* was not to extend in width from the sea—

"* * * depuis la mer vers l'intérieur, au delà de la distance * * *"

And so on. The Russian Counter-Draft on p. 94 provides that the *lisière* shall not have any width on the Continent of more than 10 marine leagues, starting from the shore of the sea:—

"* * * à partir du bord de la mer."

Well, I would ask in passing, that the far effect of a phrase of that kind should be contrasted with the claim of the United States, which carries the line really back about 100 miles from the mouth of the Lynn Canal, and I submit that the "largeur" in that passage which really is explanatory of what ultimately embodied the intention of the negotiators, as ultimately embodied under the Treaty, "largeur" means the measurement across at right angles to any point.

Then in Mr. Canning's last draft at p. 122 of the same Appendix, the measurement is stated to be from the Pacific, a phrase to which I invite attention. Mr. Matusevich, in his alterations shewn at p. 126, puts in "mer," and then finally the Treaty has the expression "océan" and one can hardly doubt that that expression had been inserted after a long discussion. I pass from that head of consideration to the meaning of the expression "côte" and desire to deal with a contention put forward by the United States on this head, which is that our reading of the meaning of the word "côte" is inconsistent with the demand of Russia for a barrier opposite their islands.

Now, in connection with that I submit that it is absolutely necessary to take into account what is the law with regard to territorial waters. Now, I am not going through that law in detail. I may point out that the authorities are all very conveniently collected in the British Counter-Case at pp. 25 to 30. It begins at p. 24 of the British Counter-Case and runs on to p. 31. Now, without going through the authorities, to which for the sake of brevity I venture to refer the Tribunal, there are just two of all the books cited to which I desire to make reference. The first of them is the 309th Section of "Bluntschli's Droit International."

The PRESIDENT. What edition?

SIR ROBERT FINLAY. I am reading from the fifth edition. It is the French translation, by Lardy, where he speaks of what is
218 subject to the sovereignty of the adjoining Power. He first mentions the strip of sea covered by the range of cannon from the coast. Then he speaks of "ports of the sea"; and then, thirdly, of gulfs and roads. Now, the note is very clear upon this point, and it indicates the limits. He says:—"Certain parts of the sea are united so intimately to the continent (to the mainland) that one must to a certain extent at all events, make them part (count them part) of the sovereignty of the adjoining State. They are considered as accessories of *terra firma*. The safety of the State and public order are so much interested in this that one cannot be content in certain gulfs within the zone of sea situated under the fire of cannons from the bank. One would only be able to make exception to the general rule of the liberty of the sea for grave motives, and when the extent of the gulf is a little (somewhat) considerable: thus the Bay of Hudson and the Gulf of Mexico are evidently part of the free sea. No one can contest the sovereignty of England over the arm of the sea which extends between the Isle of Wight and the English coast." I observe that the French translator spells Wight, "Whight."

"It could not be admitted for the sea situated between England and Ireland. The English Admiralty has, however, sometimes sustained the theory of inclosed seas (narrow seas), and has put forward the doctrine under the name of King's Chambers,"

And so on.

Well, I need not read any further. The contrast is between gulfs of great size and gulfs the depth of which is very considerable according to their breadth, and the whole subject is dealt with with his usual clearness by the late Lord Blackburn in a case which relates to Conception Bay, in Newfoundland—a case which is reported in 2, Appeal Cases, at p. 394, the name of the case being *The Direct United States Cable Company, Limited, v. The Anglo-American Telegraph Company, Limited*. There are only one or two passages

of this Judgment to which I desire to call attention. It was not necessary in the case to decide the point on the question of international law, because the point of controversy between the two Companies was whether the waters of the bay could be considered as British territory as between them, and there was a Statute which seemed to make an end of the point. Lord Blackburn refers to the general question, and applied particular legislation to the point immediately before the Privy Council. He says:—

“The question raised in this case, and to which their Lordships confine their judgment, is as to the territorial dominion over a bay of configuration and dimensions such as those of *Conception Bay* as above described.

“The few English common law authorities on this point relate to the question as to where the boundary of counties ends, and the exclusive jurisdiction at common law of the Court of Admiralty begins, which is not precisely the same question as that under consideration; but this much is obvious, that when it is decided that any bay or estuary of any particular dimensions is or may be a part of an English county, and so completely within the realm of *England*, it is decided that a similar bay or estuary is or may be part of the territorial dominions of the country possessing the adjacent shore.”

And then Lord Blackburn passes on to deal with the question of the general law of nations, and says:—

“We find a universal agreement that harbours, estuaries, and bays land-locked belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is ‘bay’ for this purpose.

“It seems generally agreed that where the configuration and dimensions of the bay are such as to show that the nation occupying the adjoining coast also occupies the bay it is part of the territory; and with this idea most of the writers on the subject refer to defensibility from the shore as the test of occupation, some suggesting, therefore, a width of one cannon shot from shore to shore, or three miles; some a cannon shot from each shore, or 6 miles; some an arbitrary distance of 10 miles.”

219 Then he points out that the jurists and textwriters are not agreed upon this point, and he refers to the fact that the United States in particular have claimed territorial jurisdiction over very extensive areas, such as, I think, Delaware Bay, and some other inlets on the coast of the United States. After that review of the law he says he does not think it is necessary to deal with the question of international law, that, as a matter of fact, the British Government had long exercised dominion over this water, and that the Statute seemed to settle the question as between the Parties to this litigation.

The PRESIDENT. I do not know whether you care to look at it, Mr. Attorney, but on this particular point, although no decision was given, of course, on the point in the Behring Sea Arbitration, there is a very interesting Memorandum by Mr. Gram, who was the Norwegian member of the Tribunal. Of course, these fjords in Norway, as you know, run many miles into the country—60 and 100, and more—and you will find, if you care to refer to it, that in the course of the proceedings he read that Memorandum, showing that from a Norwegian point of view—and certain other countries were also mentioned—these fiords were also regarded as territorial waters. It has not very much bearing on this case, but still it rather supports that view of Lord Blackburn’s. I daresay you have seen it?

Sir ROBERT FINLAY. No, I have not seen it, my Lord.

The PRESIDENT. It is in the course of the argument that Mr. Gram read this Memorandum. I will see if I can get it for you.

Sir ROBERT FINLAY. I should be very much obliged. I think it

would be of very great importance. What I am going to submit is that on every principle where you have——

The PRESIDENT. Mr. Foster will remember it very well.

Mr. FOSTER. The statement of Mr. Gram appears in one of the Protocols.

The PRESIDENT. It was in the course of the argument—it was read in the course of the argument.

Mr. FOSTER. Yes.

The PRESIDENT. I will get it for you, Mr. Attorney.

Sir ROBERT FINLAY. I think the Behring Sea proceedings are in the Inner Temple Library.

The PRESIDENT. I will get them for you.

Sir ROBERT FINLAY. What I am going to submit as a general proposition of international law is this, that there is no necessary limit as regards the width of the estuary or inlet which is to be regarded as territorial waters; but where you have got a very deep inlet which is deep out of all proportion to its breadth, that must be regarded as being territorial waters. Now, I do not know that it is necessary for me very much to labour that point. It is extremely well illustrated, of course, by the fiords on the coast of Norway, but we are not contending for any great width, we really are content to take for this purpose, in determining what are territorial waters, the smallest distance. We prefer to err on the safe side. Now, a very good useful guide for this purpose is afforded in the provisions of the North Sea Convention, which is referred to in the British Case at p. 78. The Lord Chief Justice is very well aware that the North Sea Convention, which has formed the subject of consideration on many occasions——

220 The PRESIDENT. Ten miles.

Sir ROBERT FINLAY. It is embodied in the Sea Fisheries Act, 1883, in the Schedule.

The PRESIDENT. That was a contract, of course.

Sir ROBERT FINLAY. That was a contract, and, of course, one can look at these contracts not as binding in any other case, but merely as affording a sort of indication of what two great Powers have thought reasonable in such a matter, and there the provision is that the 3-mile limit within which fishing was not to take place was, as regards bays, a distance of 3 miles, to be measured from a straight line across the bay in the part nearest the entrance—at the first point where the width does not exceed 10 miles. That passage is extracted, and references are given at the bottom of p. 78 of the British Case.

Now, for the purpose of this Arbitration, it is not in the least necessary for Great Britain to contend for 10 miles across, although it would have been, I submit, a very reasonable thing to do. A width across considerably less than that—of 8 or 6 miles—of 6 miles, is quite sufficient.

The PRESIDENT. As a matter of curiosity—do not let me interrupt you—where does the 6 miles come in Lynn Canal, do you know?

Sir ROBERT FINLAY. About Berners Bay.

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. I rather think it is somewhat below that. It certainly is at Berners Bay. I am told I am substantially right—it is below Berners Bay. There, at least, and as I submit,

according to the better opinion, below that the limit of territorial waters would begin. Now, the contention which I am dealing with is the contention put forward by the United States, that there was to be a barrier.

Mr. AYLESWORTH. Do we understand, Mr. Attorney, that Great Britain would be content with a 6-mile limit?

Sir ROBERT FINLAY. Well, I cannot put it in that way, Sir, because I doubt whether, internationally, it would be right to say that. I doubt whether the United States would recognize for one moment that their territorial waters did not extend further down than the point where the channel is of the width of 6 miles.

The PRESIDENT. I have no doubt you will deal with it because this is the very part of the case which is giving me the greatest difficulty, and in which I want all the help you can give me. Perhaps it is diverting you at the present moment.

Sir ROBERT FINLAY. No, I am much obliged to your Lordship.

The PRESIDENT. There are territorial waters much lower down than that—territorial waters between the United States and Great Britain—because Admiralty Island you see—I am looking at the British Map No. 37, which is the biggest—if it is 6 miles opposite Berners Bay, then Admiralty Island runs up to about 2 or 3 miles on either side of it, and therefore you have this curious position, that if ocean from that point of view went up as far as Berners Bay, what was it down between Admiralty Island? It only shows how difficult it is to apply general principles to such a curious geographical locality as this.

221 Sir ROBERT FINLAY. It is; and, of course, what one has to recognize is this. Our contention about territorial waters is not, of course, put forward with the idea that the coast is to be taken at the outside of the line of territorial waters. I do not contend for anything of that kind. What I am contending for is this—that what Russia was to get was to be a *lisière* at the edge of the continent, and that that *lisière*, for the purpose of control and for the purpose of all exercise of dominion, is not in the least degree interrupted by the existence of an inlet which crosses it as long as that inlet is territorial waters; so that it is really for my purpose not necessary to say more than this—that as long as you have got the waters of the inlet which the *lisière* crosses—an inlet which at that part of its extent really forms part of the *lisière*—there is no interruption of the barrier for which Russia was contending. I quite recognize that Russia was to get a belt of land upon the continent. I am not contending that the barrier was to be formed solely of water, but what I do say is that as soon as you get a belt of land on the edge of the continent, that belt, for the purposes of a barrier in every sense in which it was stipulated for by Russia, is no more interfered with by its being crossed by an inlet than it is interfered with when it is crossed by a river. That is my contention.

Now, of course, these inlets, if we are right in our view that the heads of many of these inlets belong to Canada, the lower parts of the waters of these inlets would be subject to a right of passage for the purposes of navigation by Great Britain, because although the waters of an inlet are territorial under the dominion of the Power which owns the adjoining territory yet these waters are subject by the general law of nations to the right of passage. Otherwise, I

apprehend—to make my meaning perfectly clear—it would be an infraction of the general law of nations if any State were to attempt to prevent merchants of other States from passing along within 3 miles of the coast on their voyage from one foreign port to another foreign port. But I apprehend that any State would be perfectly entitled to say, “You shall not come up along a narrow inlet which is part of the territory of our State unless you are on your way to some point to which you have a right to go.”

Take the case of an inlet 90 miles deep, with British territory at the head of it; the lower part of the inlet is unquestionably the territorial waters of Russia or of the United States. Any British vessel would be entitled to say, “We have the right to pass through the waters of the lower part of the inlet because we are going to a port of ours which is situate at the upper end of the inlet.” It would be perfectly different if Great Britain could not say that she had any portion of the territory at the head of the inlet. In that case the right of navigating the inlet would, by the general comity of nations, be dependent upon the right of access to ports of the United States at the head of the inlet. But as long as there is any purpose for which innocent passage may be exercised, I submit that it is perfectly clear from the general law of nations that it might be exercised over territorial waters; but that does not do away with the sovereignty over the territorial waters. No fishing would be allowed there, and the law of the Sovereign State adjoining prevails there for the purpose of keeping order; for all purposes of regulations the law of the adjoining State there prevails; it is under its dominion, only subject to this right of innocent passage.

Now, if that doctrine is applied to the present case, I submit that you have got your barrier—you have got your *lisière*—and that it is no more interfered with by its being crossed by an inlet than it is interfered with by its being crossed by a river.

Now what was the purpose for which Russia wanted this *lisière*? A great deal is made of this doctrine of the barrier theory in the Case and the Argument for the United States, and I desire that I should justly appreciate it before I make any further observations upon it. It will be found in the United States Case at pp. 29 and 30, and again at pp. 51 and 52. I will just refer to enough of these passages to show clearly the way in which it is put.

“The report continues with the following language——”

It is a report of M. de Poletica; I am reading at the bottom of p. 29 of the United States Case:—

“The report continues with the following language, significant of the object to be secured in determining the inland boundary of the Russian pos-
222 sessions. ‘Infixing the longitude, Count de Lambert had mainly in view 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.’ The importance of this statement is increased by the fact that M. de Poletica continued from the time when he thus declared the object desired until the negotiations ended in the Treaties finally celebrated substantially in charge of the Russian side of the controversy, and from the further fact that Count de Lambert’s suggestion was in effect embodied in the signed Treaties. Russia from the first sought to erect

a territorial 'barrier' between her coasts and the inland possessions of Great Britain, and this 'barrier' she secured by the provisions of the Treaty of 1825 with Great Britain."

And then again at pp. 51 and 52. They quote at the bottom of p. 51 a despatch of Count Nesselrode written on the day of the signature of the Treaty with America and say that—

"Count Nesselrode reviewed in a letter to Admiral Mordvinof the progress of the negotiations with both the United States and Great Britain. He stated that Russia sought the interests of the Russian-American Company, and that 'Great Britain, on her part, represents the rights of the Hudson Bay Company.' Having set forth the danger of 'disagreeable consequences' arising from the extension of the settlements of both Companies along the 55th parallel, he continued: 'For this only one expedient presents itself—to establish at some distance from the coast a frontier-line which shall not be infringed by our establishments and trappers, as also by the hunters of the Hudson's Bay Company. The Plenipotentiaries on both sides equally recognized the necessity of this measure; but the width of the coast-line necessary for the safe existence and consolidation of our Colonies, the direction of the frontier, and even its starting point on the continent of America, still form subjects of negotiation, and the British Ambassador has declared that for continuing them he must seek new instructions from his Court.'"

Then comes the comment:—

"This statement shows beyond controversy the purpose of establishing a *lisière* upon the continent. It was, as has been said, to create an unbroken barrier along the entire water-front of the continent. Count Nesselrode further called the attention of his correspondent to the fact 'that, in accordance with contemplated plans, these settlements (*i. e.*, Colonies) after the line of frontier has been fixed, will acquire recognized and undisputed possession of a considerable extensive zone of country.' This statement is in answer to Admiral Mordvinof's assertion that 'seaboard colonies require for their welfare, not only the control of the shore,' but broad lands on the mainland. At the time Count Nesselrode wrote, Russia had taken a decided position as to the *lisière*, from which she did not afterwards recede; and, when he termed this *lisière* 'a considerable extensive zone of country,' he showed that it was his understanding that no inconsiderable area on the continent would be secured if the proposed boundary was accepted by Great Britain, while the expression 'recognized and undisputed possession' indicated his views of the territorial rights which Russia would obtain."

Now, the argument is that Russia was stipulating for a territorial barrier. I say that she gets that territorial barrier, even although it is crossed at points by rivers or by inlets, the waters of which are the territorial waters of Russia. And that the object of Russia in stipulating for this *lisière* or barrier is not in the slightest degree frustrated by its crossing inlets is shown if one looks at the passages where the sort of use that was intended to be made of this strip by Russia is stated. I merely refer to them because they have been already read in the course of dealing with the negotiations generally, and a reference to the pages is sufficient. The references I am going to give are all in the British Case Appendix. At p. 70, the fifth paragraph from the top of the page, the Counter-Draft of the Russian Plenipotentiaries says that:—

223 "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 the same, 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."

At p. 71 they say, in the first paragraph of their observations in the middle of the page, that "the chief object" is to prevent the respective establishments on the North-West Coast from injuring each other and coming into conflict.

Then, on p. 72, paragraph 8 from the top, he says:—

"Sans une *lisière* sur la côte du continent à partir du Portland Channel, les Etablissements Russes des îles du voisinage n'auroient aucun point d'appui; qu'ils seroient à la merci de ceux que des étrangers formeroient sur la terre ferme."

At p. 74 they develop this in their final decision, saying:—

"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."

In the passage before that they say:—

"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."

On p. 77, Count Nesselrode, in writing to Count Lieven, develops this view. He says:—

"If the Prince of Wales Island remains ours, it must be of some utility to us. Now, according to the view of the English Ambassador, it would be only a burden to us, and almost an inconvenience. Indeed, this island and the establishments which would be founded by us would become altogether isolated, deprived of all support, surrounded by the possessions of Great Britain, and at the mercy of the English establishments on the coast. The cost of maintenance and of supervision would be ruinous, the burden of which would not be relieved by any compensation."

That is, if they did not have that *lisière*. At the bottom of p. 72 there is one sentence that I passed over:—

"For ourselves we confine our demands——"

The PRESIDENT. You read it in another connection on Friday.

SIR ROBERT FINLAY. Then if I simply refer to it again it is sufficient. Then at p. 78, at the end of the third paragraph:—

"Elle se réserve uniquement un point d'appui, sans lequel il lui seroit impossible de garder une moitié de ses domaines."

Then on p. 110, and this is the last reference with which I will trouble the Tribunal on this head, Mr. Pelly refers to the object being the principle of preventing collision. I need not really read that passage. I submit that when all that is looked at the crossing of the inlets would not in the slightest degree interfere with this barrier or *lisière*, or by whatever name it may be denoted. What Russia wanted was to secure that her establishments on the islands should not be left without a *point d'appui*, clearly for commercial purposes. She provides that she must have a strip of territory on the edge of the continent for the commercial purposes of these islands, and when she gets that she gets it all the same, although it may be intersected here and there by inlets, or here and there by navigable waters.

224 Now, the right of navigation reserved to Great Britain down the rivers shows, of course, that complete access to the sea was to be obtained by Great Britain wherever there was such a river. I need not run through the passages which illustrate the readiness of Russia to make this Concession, but I would point out that if the right of navigating down the rivers is not inconsistent

with preventing collision between the posts of the two Companies, no more is the retention by Great Britain of the sovereignty of the heads of the inlets with the right of innocent passage down and up the inlets for the purpose of access inconsistent with the purpose which Russia had in view. Of course, in this connection it is important to remember that in the absence of any accurate knowledge of the geography of these regions it was not known exactly what the rivers might be or what their importance might be, and yet the right of passage is conceded down all these rivers.

Then I think there is only one more point which is made by the United States in this connection on which I ought to make an observation; it is the argument which is based upon Sir Charles Bagot's reason against the Russian proposal that it would take away from Great Britain the sovereignty of "ces petites baies" between 56 degrees and 54 degrees 45 minutes. I have already referred to this passage of Sir Charles Bagot for another reason. He fixes 54 degrees 45 minutes as the southern boundary. I referred to it in that connection; I am not dealing now with that at all; I have passed from that altogether; I am going to answer the use which the United States try to make of this passage of Sir Charles Bagot against the British contention. The passage itself is on p. 70 of the British Case Appendix. It occurs at the bottom of the page, and as I have read it more than once in other connections, perhaps at present it is enough if I refer the Tribunal to it. I might just mention the material words. He says:—

"It is to be noted, in answer to the proposals offered by the Russian Plenipotentiaries, that such a dividing line up the Portland Canal, and from that point along the mountains to the 139th degree * * * deprive His Britannic Majesty of the sovereignty over these inlets and small bays, which are to be found between the 56th and 54th 45 minutes degrees of latitude, many of which (as there is every reason to believe) communicate directly with the establishments of the Company of Hudson's Bay * * *."

Now, the comment of the United States upon that passage will be found at p. 46 and p. 68 of their Case. I will read first at p. 46:—

"The notable part in this statement by the British Minister is that he objected to the proposed line, since 'it deprived His Britannic Majesty of sovereignty over all the inlets and small bays [de toutes ces anses et de ces petites baies] lying between latitudes 56 degrees and 54 degrees 45 minutes.' The reason why he confined his objection to the coast between these parallels becomes apparent upon reading the proposal for a boundary offered by him in the same document in which the foregoing quotation appears."

Then the proposal is set out. It is a proposal for a boundary along the channel separating Prince of Wales Island and Duke of York's Island from the islands situated to the north. Then they comment on that, saying:—

"Sir Charles, following that portion of his instructions which directed him to secure at least a line on the mainland as far north as the northernmost part of the Hudson's Bay Company west of the Rocky Mountains, which, according to Mr. Pelly's letter of the 25th September, 1822, was 'the Rocky Mountains portage in 56 degrees north latitude,' proposed a line passing through Sumner Strait and reaching the shore of the continent in the neighbourhood of Wrangell, about latitude 56 degrees 30 minutes."

Then, on p. 68, paragraph 2 on the page, they say:—

"Throughout the negotiations a territorial barrier along the water front on the continent was constantly made prominent by the Imperial Government. In fact, the first series of conferences between Sir Charles Bagot and the Rus-

225 sian Plenipotentiaries was broken off because the latter demanded the mainland opposite Prince of Wales Island, and the former refused to concede it, because to do so would deprive Great Britain of 'sovereignty over all the bays and inlets' of that portion of the coast. The British Government knew the purpose of Russia in demanding a *lisière*. It did not protest against it, but, with full knowledge, and presumptively with the full intention of acceding to Russia's demand, it accepted the line of demarcation which Russia had laid down."

Now, I submit that when the proposal with which Sir Charles Bagot was dealing in the passage in question is referred to, any objection which may be based on this passage falls to the ground at once. What he was commenting upon was the first Russian proposal of Portland Channel. His proposal had been Chatham Strait, up Chatham Strait and Lynn Canal. He does not say that the Russian proposal would deprive Great Britain of the inlets and the small bays from Lynn Canal to 54 degrees 45 minutes as he would have done if he had thought that Great Britain was to have no *anses* at all upon this strip of the coast. The implication is really the other way. His observation is confined to the block which exists between Portland Channel and the sea and the *lisière* proper. "*Lisière*" is used in several senses in the course of these documents. Sometimes it denotes the whole Russian territory, more commonly perhaps the whole Russian territory, beginning at the mouth of the Portland Canal and running away up to Mount Elias. That is one sense in which it is used. But sometimes *lisière* refers to the strip which begins from 56 degrees northward, because owing to the way in which the line is drawn from the head of Portland Channel, it is then that you begin to get the *lisière* in the more proper sense of the term. If you take the line up Portland Channel—a reference to the map will show at once what I mean.

The PRESIDENT. I quite follow that, but what presses me and what I want to hear you upon is first dealing with it as the piece between 56 degrees and 54 degrees 45 minutes. What did he mean by "inlets" there? I follow your point perfectly, Mr. Attorney, that it may well be that Great Britain was still to have access to inlets higher up, but speaking of it as between those two latitudes—56 degrees and 54 degrees 45 minutes—the document would seem to contemplate that there were deep inlets there, because he speaks of them as going up to the Hudson Bay's Company's establishment.

Sir ROBERT FINLAY. The expression is "ces anses et ces petites baies."

The PRESIDENT. It is a little more than that, because they say:—

"* * * many of which (there is every reason to believe) communicate directly with the establishments of the Company of Hudson's Bay."

Sir ROBERT FINLAY. I take it that what he meant by that was by rivers.

The PRESIDENT. Possibly.

Sir ROBERT FINLAY. At least, I think so. The words are:—

"* * * many of which (there is every reason to believe) communicate directly with the establishments of the Company of Hudson's Bay."

I think that that is what he must mean.

The PRESIDENT. Very likely.

Sir ROBERT FINLAY. And that he was not contemplating that an inlet went in so far. In fact, I do not think he could have meant

that, having regard to the fact that he had Vancouver's narrative and chart before him, because Vancouver had explored the 226 coast so exhaustively that, barring rivers, he had exhausted every means of communication. Every inlet Vancouver had explored, and all that Sir Charles Bagot is saying in that passage is that in this block up to 50 degrees from the mouth of Portland Canal in 54 degrees 45 minutes, Great Britain loses all the inlets, whatever they are. He speaks of "ces anses et ces petites baies," and I submit that that answer is really a complete one to any argument; in fact, that the argument really turns against those who seek to use it, by confining his observations to "ces anses et ces petites baies" up to 56 degrees, whereas the proposal he was dealing with had been one which started from Lynn Canal, and the natural inference rather is that he did not contemplate as at all impossible the case of Great Britain having access to the inlets further up.

Now, if I rightly follow the United States' Case on this point, they suggest that what Sir Charles Bagot was referring to when he used these words was the proposal which he himself makes further on in the same despatch. Well, I respectfully submit that that cannot be so. What he is doing is, he is commenting upon the Russian proposal as contrasted with his own. His own had been Chatham Strait to Lynn Canal, which is given to Russia and so on, not Portland Canal, and thence the strip up the coast. It is perfectly true that in this same amended proposal he does go on to suggest a line—in the second paragraph on p. 71.

"* * * running from west to east, through the middle of the channel which divides the Prince of Wales Island and the islands lying to the north of the said islands until it strikes the mainland.

"Thence, extending in the same direction upon the mainland as far as a point 10 marine leagues. * * *"

It is perfectly true that he makes that suggestion. Sumner Strait would be, I think, about 56 degrees 30 minutes. That is not what he is referring to. That is a subsequent proposal which he makes thereafter. But what he is commenting on is the effect of the Russian proposal and what already has been put forward.

Now, I think the last head of the argument on this question with reference to what is the coast—"la côte"—leads me to make some observations with regard to the effect of Article VII. Well, the history of Article VII is a very curious one. It reminds one of the tale in which the combatants exchanged rapiers, for, in the Behring Sea Arbitration, two contentions were put forward on this point. The British contention was that Article VII related to the whole North-West Coast of America, including the Behring Sea; the United States' contention was that Article VII related to the *lisière*, and the *lisière* alone. The passages are referred to, but I need not read them, because, after all, it is very unprofitable—

The PRESIDENT. I was going to suggest it to you. It really is most unprofitable. The strongest arguments for you are to be found in Mr. Carter's speech and arguments on behalf of the United States in the Behring Sea Arbitration, but really at that time we were answering Mr. Carter's argument, which was that the North-West Coast of America did not include Behring Sea and only included the *lisière*. Therefore all we said had reference to that. But surely these personal appeals—

Sir ROBERT FINLAY. I mean it is no use saying—

The PRESIDENT. I do not know who was right.

Sir ROBERT FINLAY. That the United States, in a most forcibly reasoned despatch, say that no one can attribute any meaning to Article VII, except that it refers to the *lisière* and the *lisière* alone.

The PRESIDENT. Only

Sir ROBERT FINLAY. While on the other hand Great Britain has energetically repudiated that construction, and said that Article VII referred to the whole North-West Coast of America, including 227 the Behring Sea. Passing from the discussion which took place there, I may only point out this, that if the American Argument in that case is right it entirely demolishes the whole of their contention here, because if the United States were right in saying that Article VII related only to the *lisière*, then I suggest that Article VII provides for the reciprocal use by the two Powers of any of the inland waters and havens, and so on, on the coast dealt with by Article VII. If that is right it is conclusive to say that Great Britain must upon that *lisière* have certain havens and waters which will answer the description. Really, on that head I have nothing to add to what was said by the United States, but I would desire to make a few general observations as indicating my own view—the view which I now submit of Article VII.

The PRESIDENT. It was no part of our contention there that the North-West Coast did not include the *lisière*.

Sir ROBERT FINLAY. No.

The PRESIDENT. But you cannot use that so much in your favour because our whole point was directed to show that it did include Behring Sea. That was all we cared about.

Sir ROBERT FINLAY. I quite agree, but if I could establish that Article VII only referred to the *lisière* it would take us home the whole way.

The PRESIDENT. Certainly.

Sir ROBERT FINLAY. Because there can be no escaping from the conclusion to which the argument of the United States in the Behring Sea Arbitration pointed—that on the *lisière* Great Britain as well as Russia must have had waters to which that Article could apply. But I think I am entitled to make this observation, that when that argument was put forward by the United States it must have been recognized that that conclusion followed. It is not easy to suppose that when time after time, in despatches by Mr. Blaine, and in the arguments of the United States' counsel, the view was put forward that Article VII related only to the *lisière*, the United States at that time shrunk from the idea that Great Britain might have the heads of inlets upon the *lisière*, because the argument evidently implies it. If that Article which provided for reciprocal rights to use the inland waters applied only to the *lisière*, then it irresistibly follows that Great Britain has portions of these inland waters upon the *lisière*, and without in any way seeking to turn against the United States now the argument which she used then, it is perfectly legitimate to point out that in the Behring Sea Arbitration they used an argument which did involve, and must, to the knowledge of those who used it, have involved the proposition that Great Britain on the *lisière* had the heads of inlets.

Now, I think I must make one or two observations upon the effect

of Article VII, apart from what was said in the Behring Sea Arbitration. In the first place, it is absolutely necessary that one should refer to the Ist and IInd Articles of the Treaty in this connection. The effect of Articles I and II of the Treaty I take to be this: that they were really intended to deal with the pretensions that had been put forward in the Ukase, and also with another matter cognate to those pretensions, but which was not necessarily involved in the rejection of those claims put forward in that Ukase to maritime jurisdiction. Articles I and II, I submit, are dealing with the ocean, and the portion of Articles I and II which has any relation to inlets or territorial waters is to be found, not in the general expression that the subjects of the High Contracting Parties are not to be troubled in any part of the ocean in navigating the same, but in the provision that they are not to be troubled in the exercise of the right of landing on the coasts at points not already occupied in order to exercise trade with the natives, the provision as to not landing on points already occupied being developed and emphasized in Article VII, which provides against any landing taking place on points where establishments had been set up by one Power or by the other.

Now, I submit that this is the real effect of Article I. It 228 deals generally with the ocean; with territorial waters it deals by the power which is given to land on the coast to trade with the natives at points not already occupied. Now, with regard to Article VII—I had better read it:—

“It is also understood that for the space of ten years from the signature of the present Convention the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purpose of fishing and of trading with the natives.”

That is, dealing with the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III. Now, that coast, whatever may be said about it, must have been a portion of the ocean; it must have been on the North-West Coast of America. Then with regard to the portion of the coast with which Article VII deals, I submit that the true view is that that express provision with regard to navigating the inland seas and inlets and so on for ten years would supersede the more general provision of Articles I and II. Articles I and II had given the right not only of navigating the Pacific Ocean, but also of landing at any point not occupied for the purpose of trading with the natives. The more specific provision with regard to the inland waters and inlets which are referred to in Article VII existing only for ten years would seem to negative the idea that with regard to the portion of the coast to which Article VII applied the general provision of Article I as to the right to land for the purpose of trading with the natives would continue to exist at the end of ten years. I believe that some controversy did arise upon this point as between the United States and Russia under the very similar provisions of their Treaty, and I do not think that the United States succeeded in asserting, although at one time it was contended for, that right to exercise the privilege conferred by Article I after the ten years had lapsed upon the portion of the coast to which Article VII applies.

Now, what I have to say with regard to Article VII is this—that, whatever its extent, it most certainly does apply to the *lisière*; it

includes that most certainly; and I submit that, from that point of view, it receives full application on the *lisière*. If, as we contend, Great Britain was to have the heads of the inlets, the case is provided for. During the ten years during which it was to continue to be in play it would have full operation. Then, if it were confined, as the United States once asserted, to the *lisière*, it would have also full operation upon the *lisière*, even if it applied to some other part of the coast, as long as it did apply to the *lisière*.

I do not know that anything would be gained, but I have worked out the whole of the history of this Article VII, and am prepared to deal with it if the Tribunal think it desirable to trace it through the negotiations. But, after all, its bearing on the Case is rather incidental; and unless the Tribunal indicate that they desire that I should treat of it more in detail at the present time, I do not propose to do so. I have to bear in mind that two of my learned friends are to follow me, and that if anything arises on Article VII the very brief indications that I have given on the subject can be worked out afterwards more in detail. But I have all the materials here, and am prepared to do that if the Tribunal desire it.

Mr. AYLESWORTH. There is one point on that Article to which probably one or other of your colleagues will give his attention, Mr. Attorney, and that is the suggestion which occurs at once, whether the inlets to which the privilege of access was by that Article given to the Russians might not be inlets on the coast south of the entrance to Portland Canal—between that and what is now the boundary at parallel 49.

Sir ROBERT FINLAY. Yes. Of course, I may say that there have been three views. I am not going at any great detail into this point, but I should like just to say a word in answer to the very important question to which Mr. Aylesworth has referred. There are three possible views as to the effect of Article VII. The first is that it applied to the whole North-West Coast of America; the second is that it applied to the *lisière* alone; the third is that

229 it applied to the North-West Coast south of 60, and, as I understood it, that would include within the operation of this clause the *lisière* in favour of Great Britain as against Russia and also in favour of Russia as against Great Britain so far as the heads of any inlets were concerned if our view be correct, and in favour of Russia as against Great Britain the portion of the coast from the mouth of the Portland Canal down to latitude—then it would be said probably 51 but now latitude 49—whatever the rights of Great Britain then were upon that *lisière* and no doubt effect may be given to Article VII by saying that it did apply to that part in favour of Russia as against Great Britain. It is extremely difficult, I may say at once upon the papers, to find anywhere any precise indication that the line was to be drawn at 60 degrees. The contention, I suppose, in favour of that view would be this, that beyond 60 degrees the rights of Russia had never been called in question at all and that the Treaty so far as it was fixing a line of delimitation was dealing with the territory of Russia which was in dispute south of 60 degrees, and that the intention of Article VII was to deal with a bit of coast which was in dispute effecting a sort of partition between Russia and Great Britain to give reciprocal rights upon the coast. I think it extremely difficult to say positively that

that is the meaning of Article VII. I do not for a moment deny that it would receive its application in favour of Russia if that were the contention; on the other hand, it certainly includes the *lisière* and it receives its application in favour of Russia at the heads of the inlets. Whatever it includes, it certainly includes the *lisière*.

The PRESIDENT. Mr. Foster has most kindly found that Memorandum of Mr. Gram's, and has lent it me, and it is, of course, at your service, Mr. Attorney.

(Adjourned for a short time.)

SIR ROBERT FINLAY. There was one point upon which I expressed myself in a way that I think might possibly lead to some misconception as to the action of the British Government, that is as to the limit of the territorial waters. The boundary, as drawn at Lynn Canal—we will take that—it is across where the bay is 6 miles wide—and even if that is taken as indicating the general line of the coast, there is another alternative line 30 miles up, which is represented by the dotted line on the map which is before the Tribunal. But the line crossing Lynn Canal at Berners Bay, where it is 6 miles wide, is, as a matter of fact, 30 nautical miles from the entrance to Lynn Canal, the whole of which undoubtedly would be regarded by the United States, and would be treated, as I submit, properly by international law as territorial waters.

I think the point is of some significance, and I ought to make perfectly clear what the position of Great Britain is on the point, and with the permission of the Tribunal, I would refer to the paragraph in the British Case, which occurs at p. 79. The passage begins—I had better read the whole passage, as it is directly in point on this point—

“It is submitted that all such inlets form, for the present purpose, no part of the ocean, that, for the purposes of the Treaty, they stand on the same footing as the rivers which flow into the ocean either directly or through such estuary, and it is only the British contention which gives effect to the scope and to the specific provisions of the Treaty.”

I refer to that passage for the purpose of correcting any impression to which something I said might give rise, that Great Britain confines her claim—as to the beginning of the territorial waters—to the limit of 6 miles across. I did indicate that I thought that was not at all a sound contention, and we do not so limit our contention in the present case. We say that the territorial waters begin at the mouth of the Lynn Canal at the latitude mentioned. Thirty miles from that would coincide with the first limit which is indicated, which happens to be at the point where it is 6 miles across; and even if the very strictest rule that can be conceived possible were applied, and it were taken that the territorial waters did not commence till 6 miles across, then 10 leagues further up would give by the second alternative line—

230 The PRESIDENT. I do not think you said anything contrary to that, Mr. Attorney. It was really in answer to my question as to where the 6 miles was; you have made it quite clear.

SIR ROBERT FINLAY. I referred to the point, and as it is one of very great importance I should be sorry if I used some expression which conveyed an erroneous impression. If anything further were wanted to make it clear it will be found in the passage in Mr. King's

declaration—in an exhibit attached to Mr. King's declaration—at the bottom of p. 309 of the British Appendix. I will read only one sentence:—

“Should it be decided, contrary to the claim of His Majesty's Government, that it is necessary in this case to apply the alternative provision of Article IV of the convention of 1825, and to draw the line across the canal 10 marine leagues from the ocean, then, if the ocean is taken as ceasing at the mouth of Lynn Canal as contended for by Great Britain, the line of demarcation would still cross at much the same place, the mountain line being here, in fact, about 10 marine leagues from that point.”

as indicated in the map. I hope that has cleared up any obscurity which might have been created by anything that I said.

MR. AYLESWORTH. I asked the question, Mr. Attorney, and what led to it, I might say, was the difference between the line where it crosses Lynn Canal as now indicated; it is, perhaps, best shown on the Plates 26 and 27 of the American Atlas. The difference in the place of crossing Lynn Canal—

SIR ROBERT FINLAY. Would you forgive me one moment till I get the map.

The PRESIDENT. American Atlas, 26 and 27.

SIR ROBERT FINLAY. I have got it now, Sir.

MR. AYLESWORTH. Then if you notice in the Map 26, which is plotted as showing the line now contended for by Great Britain, the lowest crossing of the Lynn Canal is about at Berners Bay.

SIR ROBERT FINLAY. Yes.

MR. AYLESWORTH. If you look at the next map, 27, you see the line proposed by the British Commissioners at the meeting of the Joint Commission in 1898, crossing Lynn Canal apparently 10 leagues nearer to the ocean, and the difference between those two lines at that particular place attracted my attention.

SIR ROBERT FINLAY. I think, Sir, that the line indicated on Map No. 27 was drawn with a view that the mountains crossed at that point. Of course, there are two elements to be taken into account. There is the range of mountains as you find them, however near the coast that may be that governs, and we say that the meaning of the Treaty, coupled with the negotiations, is that you are to have a line of mountains near the coast, and as I understand it on Map No. 27 is shown a line which would be indicated if you took the line of mountains crossing there. Then the other line shown a little further up on Map 26 is a line which is 10 marine leagues from the opening of the Lynn Canal, the limits of the territorial waters, and may be also justified by reference to the mountains. Then the third line is a line which is 10 marine leagues from the furthest point up at which it could possibly be supposed that the territorial waters began.

MR. AYLESWORTH. Perhaps that will be discussed in full when you come to the topography of the locality.

231 SIR ROBERT FINLAY. I must of course refer to that.

MR. AYLESWORTH. And to the answer to the seventh question put.

SIR ROBERT FINLAY. Yes; but I thought the point one of so much importance that it was right to refer to these passages by way of showing exactly what the contention of Great Britain was.

Now, with regard to Article VII, which I was discussing when the Tribunal rose. If reference is made to the language of the penulti-

mate Article—I think it may be of some importance as to the effect on Article VII and what it applied to. In the British Case—the Appendix—at p. 115, will be found Mr. Canning's draft of Article III, with which Article V, which is now Article VII in the Treaty, was to be read. And what I call attention to in this draft is this: that in the initial words of Article III there does not occur the expression "Upon the coast of North-West America." The contest that has raged round Article VII in the Treaty was this: Does that Article apply to the coast mentioned in the initial words of Article III, or does it not? Now, in the Treaty as it stands, Article III begins:—

"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."

There you have the coast mentioned—the coast of the continent and islands of America to the north-west; and it has been said that Article VII relates to the whole of that coast—the coast there mentioned. But, then, in this penultimate form of the clause, you had Article V, which is now represented by Article VII in this form:—

"It is, nevertheless, understood that for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, the inland sea, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishery and of commerce with the natives."

Now, in that draft, there had been no coast mentioned in the sense of the general coast—the North-West Coast of America. The Article began:—

"The line which separates the possessions of the two High Contracting Parties upon the continent and the islands of America to the north-west."

That was the form of the expression.

Mr. AYLESWORTH. But there is a coast.

Sir ROBERT FINLAY. At the end.

Mr. AYLESWORTH. There is a coast in Article III, namely the *lisière*—in the body of Article III there is the coast mentioned from the head of Portland Canal to the 140th degree.

Sir ROBERT FINLAY. That is so, Sir, exactly—that is the coast of the *lisière*; it is to go up the Portland Canal. My first point was that the whole of the coast of North-West America seems excluded as the coast that could have been intended to be referred to in Article V in this draft, because there is no coast in the North-West of America generally referred to. Now, what is the "coast" that is mentioned in Article III in this draft. The line is to run up the Portland Channel till it strikes the coast of the Continent in the 56th degree of north latitude. Then it is to be carried along the summit of the mountains parallel to the coast up to the 140th degree. Now, there that clearly is the coast of the *lisière*. The only other mention of the coast in the Article is in the first proviso, the Article of this draft. The first proviso is as to the 10 marine leagues, and 232 it ends thus: "so that the said line of demarcation shall never extend further than 10 leagues from the coast." That, again, is obviously the coast of the *lisière*.

Mr. AYLESWORTH. And in the final proviso of the Article there is a marked contrast between the coast and the borders of the continent.

SIR ROBERT FINLAY. Exactly. I was just going to refer to that last sentence: "No establishment shall in future be formed by British subjects either upon the coast or upon the borders of the continent comprised within the limits of the Russian possessions designated in this Article; and in like manner no such establishments shall be formed by Russian subjects beyond the said limits."

Now, that draft certainly lends very great force to the contention that Article V there was intended to apply to the coast of the *lisière*, for the reason that the North-West Coast generally is not mentioned at all, and that the word "coast" occurs only in the connection which has been just pointed out. Then at p. 122 the same thing is set out in French, and exactly the same observation occurs—exactly the same observation. The initial words of Article III make no mention of "coast" at all. The boundary is to be on the continent, the North-West Coast of America, and then "coast" only occurs in the same way. And then, in Article V, instead of it being the coast, mentioned in Article III the expression is this—it is at the top of p. 123, it is reciprocal liberty of navigating, and so on: "toutes les mers intérieures, les golphes, havres, et criques dans les parties de la côte mentionnées dans l'Article III."

So that it is all the parts of the coast mentioned in Article III. Then Mr. Matusевич altered its tone, and that passage will be found at p. 126, and he leaves again the initial words of Article III as they stood. There is no mention of "coast" there at all; it is—

"La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur le continent et les îles de l'Amérique Nord-Ouest sera tracée ainsi qu'il suit:"

Then follow the descriptive words, and in this Article there is no mention of "côte" in the description of the crest of the mountains running parallel to the coast:—

"La ligne de démarcation suivra la crête des montagnes dans une direction parallèle à la côte."

That is clearly the coast of the *lisière*; it cannot by any possibility be anything else. Then, in this draft, we find that Article VII, as it has now become, provides that, for the space of ten years, vessels of the High Contracting Powers and those belonging to their respective subjects, shall have equal liberty of frequenting without any or any impediment:—

"Toutes les mers intérieures, les golphes, havres, et criques dans les parties de la côte mentionnées dans l'Article III pour exercer la pêche et trafiquer avec les indigènes."

On that the observation occurs very strongly indeed that whatever that draft Article VII must apply to the *lisière* it is the only "côte" mentioned in Article III.

THE PRESIDENT. Yes, but that consideration would exclude your other argument, that it was *lisière* plus Behring Sea—that construction would.

SIR ROBERT FINLAY. I did not argue for that, my Lord. That was the contention that was argued for very forcibly in the other Arbitration; I did not contend for that; all that I am concerned for the application of Article VII to the *lisière*.

THE PRESIDENT. Yes.

233 Sir ROBERT FINLAY. In fact, my Lord, I am disposed to regard with more favour the other contention which was put forward in the Case. I mean if that contention were upheld here, it would, of course, even if it rested upon that argument alone, be the coast contended for by Great Britain; but what I do say is that on that draft—that penultimate draft as put forward by Canning and altered by M. Matusevich—it is extremely difficult to make Article V or Article VII—it was V in Canning's draft, VII in M. Matusevich's—it is extremely difficult to make either of them apply to anything except the coast of the *lisière*.

I propose now to pass from the question of the meaning of the word "coast" for the purpose of considering the cognate question as to mountains. I am dealing more or less with the Questions V, VI, and VII together. V and VI are more intimately connected with each other than with Question VII, and I will at the end of my general observations give my answers specifically; but I now propose to make some observations with regard to the question of mountains, which is more particularly dealt with in Question VII.

Now, the heads under which I propose to range what I have to say on the subject of mountains, before, of course, I proceed to trace the particular line for which we contend, may be stated as follows:—

In the first place, I say that both the Treaty and the negotiations proceed on the basis that there are mountains, although both the Treaty and the negotiations recognise with equal clearness that the precise location of these mountains was undetermined, and that the maps might be wrong.

My second head of observations with regard to mountains is this—that the Treaty and the negotiations show that the mountains in question possessed certain characteristics. The first was that they were situate in a direction, roughly speaking, "parallèlement"—in a parallel direction to the coast; second, that they sloped, or might slope, down to the sea—actually to the margin of the sea; third, that they were not an unbroken chain (the word "chain," which occurs at some periods of the negotiations is ultimately discarded in the circumstances, so that it was not contemplated that the chain should be unbroken); and, fourth, that these mountains were to be so near to the sea that, over and over again in the negotiations, expressions occur showing that the mountains are to be at a very little distance from the sea, and the same conclusion is pointed to by the nature of the *lisière* itself, which is to be a narrow strip.

Now, on the first of these heads I desire to call the attention of the Tribunal to the fact that, both by the Treaty and by the negotiations, the existence of mountains is assumed as a governing principle. In the case of the United States, at p. 102, the position is thus stated:—

"It was the contention of the High Contracting Parties that the width of such *lisière* was to be 10 marine leagues, measured from the heads of all gulfs, bays, inlets, and arms of the sea—that is, from tide-water"—(that I do not comment upon after what my friend said on the last occasion)—"unless within that distance from tide-water there was wholly or in part a continuous range of mountains lying parallel to the sinuosities of the coast and extending from Portland Canal to the 141st meridian of longitude west of Greenwich, in which latter case the summit of such range was to form the boundary."

Now, I submit that there is nothing whatever to support the view that there was to be a continuous range of mountains lying parallel

to the sinuosities of the coast. The mountains referred to in the Treaty are not necessarily to be a continuous range, and this paragraph which presupposes that the Treaty contemplated such a continuous range, really turns round the two propositions altogether. The first thing contemplated in the Treaty was that you were to have your mountains; they supplied your boundary, and then they provide for the particular case of the mountains at any point or points receding more than 10 marine leagues from the coast, and they provide that you are to supply the defect at that point by a line drawn not more than 10 marine leagues from the coast. Now, that is a very different thing indeed from the proposition which is here laid down, that the width of the *lisière* was to be 10 marine leagues, measured from the heads of all gulfs, and so on, unless within that distance there was wholly, or in part, a continuous range of mountains lying parallel to the sinuosities of the coast.

234 What the Treaty does provide for is that you are to take the mountains, you must have mountains, and then, if the mountains at any point recede more than 10 marine leagues from the coast, that you take that correction.

Now, I have already adverted, on the construction of the Treaty, to the passages which show that the Treaty presupposes the existence of such mountains, that you must have them in order to bring the Treaty into play in another connection. I deal somewhat fully with these points, and I do not know that so far as the mere construction of the Treaty is concerned that anything would be gained by recurring to the arguments which I then used. Article III, if it stood by itself clearly relates to mountains, and to mountains alone. Then you have got Article IV in the nature of a mere proviso upon Article III. Article IV really represents III, literally a proviso in the draft which was sent by Mr. Canning just before the negotiations terminated in the Agreement and the Treaty. He had, in Article III, provided for the boundary being by mountains, with a proviso as to the retrocession of the mountains beyond the limits of 10 marine leagues from the sea.

Now, my submission is that, to bring the Treaty into play, you must have mountains which satisfy Article III, and then Article IV is in the nature of a proviso that "at any points where the crest of the mountain" ("*partout où la crête des montagnes*") "shall 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."

That same conclusion is very much fortified by the curious passage in which, after the conclusion of the Treaty, Count Nesselrode expressed his great dissatisfaction that he had not confined himself entirely to the mountains as a boundary. The passage occurs at p. 131 of the despatch of the 20th February, 1825, and it is in a letter to Count Lieven, where Count Nesselrode uses these very remarkable words. He says:—

"The Emperor would have found it more mutually just, more equally advantageous, if the natural frontier formed by the mountains bordering on the coast were adopted by both parties as the invariable line of demarcation. England would have gained thereby wherever that distance was greater; and in view of the want of accuracy of geographical notions which we possess as to these countries, such an arrangement would have offered an entire equality of favourable chances to the two Contracting Parties.

"However, Mr. Stratford Canning, having declared that his instructions did not permit him to entertain the wishes which we had expressed to him on this point, the Emperor, in order to give His Britannic Majesty a last proof of his friendly feelings, authorized us to sign the Act in question."

That is a curious commentary upon the question which is now put forward, that you can apply the Treaty even if mountains do not exist at all. But the same conclusion is very forcibly borne out if one adverts to the whole course of the negotiations which, I submit, entirely sustain the British contention upon this point. Mountains are first proposed by Russia for the sake of distinctness, at p. 70 of the British Appendix:—

"To complete the line of demarcation, and to make it as distinct as possible, the Russian Plenipotentiaries have expressed the wish to make it follow the Portland Canal as far as the mountains which run along the coast."

They proposed it for the sake of distinctness. Then Sir Charles Bagot refers to the mountains as bordering the coast. He suggests on p. 71 the 10 marine leagues line simpliciter on p. 71, in the passage at the end of his amended proposal, where he says that the line was to go to the North-West parallel to the sinuosities of the coast; and always at the distance of 10 marine leagues from the shore.

235 Russia in reply emphasises the propriety of taking a natural division. In the last paragraph but one of p. 71 occurs this sentence:—

"It was also convenient that both parties should determine these limits, taking into consideration the natural divisions, which always form the most distinct and indisputable frontiers.

"For these reasons the Russian Plenipotentiaries have proposed as the limits on the coast of the continent, to the south, the Portland Channel, whose head is about the 56th degree of north latitude, and to the east the chain of mountains which follows at a very small distance the windings of the coast."

And in the same despatch on the following page they treat these mountains as extending from the Portland Canal to latitude 139.

In the paragraph No. 3, of the advantages which are left to Great Britain, they talk of "all the territory situated behind the chain of mountains referred to previously, as far as the point of intersection of the 139th degree of longitude, meridian of Greenwich." And at p. 76 Count Nesselrode writes to Count Lieven, speaking of the boundary as running along the mountains which follow the windings of the coast as far as Mount Elias. It is embodied in that long paragraph which is second in the French version on the page:—

"That on the continent towards the east this frontier could run along the mountains which follow the windings of the coast as far as Mount Elias."

Then Mr. Pelly, the Chairman of the Hudson's Bay Company, quotes the Russian expression, and suggests that you could take the nearest chain of mountains. The passage is at the bottom of p. 78. He quotes the expression used by the Russian negotiators, who at that

time speak of "la chaîne des montagnes qui sont à une très petite distance des sinuosités de la côte," and Mr. Pelly goes on thus:—

"Neither party have any very accurate geographical information with respect to the country in the immediate neighbourhood of the sea, and if the intentions of the Russian Government are fairly to be inferred from the words used in their proposal, the most satisfactory manner of settling this point probably would be by inserting in any Article providing for the boundary on the mainland the nearest chain of mountains, not exceeding a few leagues from the coast."

And at p. 80 Mr. Pelly again 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 then suggesting that the distance ought to be limited."

Then at p. 82 Count Lieven writes to Count Nesselrode and treats the mountains as running all the way, but possibly retreating at points. The translation is at p. 84. He says:—

"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; 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."

In other words, the 10 marine leagues is brought in in the case of the mountains receding beyond that measurement.

Then, at p. 85, Mr. Canning writes to Sir Charles Bagot with the draft Treaty, and says that he proposes a line to the head of Portland Canal—I am reading at the bottom of p. 85:—

"Thence following the sinuosités of the coast along the base of mountains nearest the sea to Mount Elias."

236 Then, at p. 86 he again refers to the possibility that the maps might be inaccurate, and that the mountains might be a great deal further back at some points, and provides for an alternative. He says on the same page:—

"That of the mountains which appear by the map almost to border the coast, turning out to be far removed from it."

Then at p. 87 in the draft the mountains are stated to border the coast. From this point the line will follow the coast parallel to its sinuosités, and under or at the base towards the sea of the mountains which border it—which border the sea, that is—

"Elle suivra cette côte, parallèlement à ses sinuosités et sous ou dans la base vers la mer des montagnes qui la bordent."

"Cette côte" there must refer—

Mr. AYLESWORTH. To the coast of the continent.

Sir ROBERT FINLAY. Coast of the continent.

Mr. AYLESWORTH. The preceding line.

Sir ROBERT FINLAY. Yes, the preceding words:—

"Jusqu'à ce qu'elle touche à la côte de la terre ferme située au 56° degré de latitude nord,"

and the point that I emphasize in this connection is that it is to be under or at the base, towards the sea, of the mountains which border

it, and the 10 marine leagues is to operate, as stated in Article III, in this way:—

“That the said strip of coast on the continent of America, which forms the boundary of the Russian possessions, shall not, in any case, extend more than * * * marine leagues in breadth from the sea towards the interior, at whatever distance the aforesaid mountains may be.”

Then from pp. 89 and 90 it would appear that this matter formed the subject of discussion between Mr. Canning and Count Lieven with reference to the question whether it should be the base of the mountains or the summit that should be taken. Count Lieven, writing to Count Nesselrode on the 13th July, 1824, says that Mr. Canning—as regards the French, I am reading the translation at p. 90:—

“As regards the frontier of the respective possessions to the south of Mount Elias, Mr. Canning makes it run along the base of the mountains which follow the sinuosities of the coast.”

And then he goes on to represent that the summit was the natural boundary; but the whole discussion proceeds on the assumption that there are mountains. In this connection I would call attention to the passage on p. 91, where Count Lieven made a suggestion which is very significant as to the situation of these mountains, on the footing of which they were negotiating. It is the first paragraph of the memorandum at the bottom of p. 91:—

“The draft of the Treaty drawn up by the English Cabinet makes the limit of the Russian and English possessions on the North-West Coast of America, to the south of Mount Elias, run along the base of the mountains which follow the sinuosities of that coast.”

“It is to be observed that, as a general principle, when a chain (‘*chaîne*’) of mountains serves to define any boundary it is always the top (‘*cime*’) of these mountains which forms the line of demarcation. 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 237 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.”

Then in their Counter-Draft the Russians suppress all mention of mountains which they themselves had been the first to propose, and Mr. George Canning directs Mr. Stratford Canning to reinsert them. That appears at pp. 93 and 94 of the British Case Appendix. At p. 94 is the Counter-Draft of the Russians suppressing all mention of boundaries. At pp. 113 and 114, the bottom of p. 113, Mr. Canning deals specifically with this point:—

“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 that the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconveniences against which we wished to guard was that which you know and can thoroughly explain to the Plenipotentiaries, to have existed on the other side of the American continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States, turned out to be quite differently situated, a discovery which has given rise to the most

perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, where we only intended to give and she only intended to ask a strip of sea coast."

The point could not be more clearly put than it is then, where Mr. Canning says the line was intended only as a corrective of the first proposition and then in his Draft at p. 116 we have got the corrective in the shape of a proviso to Article III, and which we now know is introduced to Article IV instead of being a proviso to Article III. Now I submit that this reference to the negotiations only bears out the inference which one would draw from the language of the Treaty. It is that both parties are negotiating and contracting on the faith of the existence of mountains such as are designated in the Treaty with reference to them.

Now, the second head of my observations on this point relates to the characteristics of those mountains which are referred to in the Treaty. The mountains are situate "parallèlement à la côte." Now, one observes the difference between the language of Article III and Article IV in this respect. The mountains which are mentioned in Article III are mountains situate "parallèlement à la côte." When you are dealing with the corrective in Article IV, the line which is to be substituted where the mountains are more than 10 leagues from the ocean it is to be formed by a line parallel to the sinuosities of the coast and never to be distant from it more than 10 marine leagues. Now, of course, where you are dealing with a natural feature like mountains you must take the direction which nature has given, and you speak of them as situate in a direction parallel to the coast. This is the general direction of the mountains. Where you are dealing with a line which is to be drawn artificially you can prescribe that the line is to follow the sinuosities of the coast. The question of course comes up of the coast. That I have dealt with and I am not going is possible to draw a line parallel to it. But in Article III they talk of the mountains as situate in the direction generally parallel to the coast, "situées parallèlement à la côte." In Article IV they deal with how the line is to be drawn as a corrective if the mountains recede further. That is the first indication as to the situation of the mountains. I think that the Case of the United States on this point has fallen into a slight inaccuracy when in the middle of the page they speak of the mountains as situate parallel with the sinuosities of the coast. It is in the middle of p. 103 of the Case of the United States, Head K, in negating the existence of mountains they state it in this way. Their proposition is:—

238 "That there is not at any point within 10 marine leagues of tidewater, between the head of Portland Canal and the 141st degree of longitude west of Greenwich, the whole or any part of a continuous range of mountains parallel with the sinuosities of the coast, and extending from Portland Canal to the said 141st degree of longitude; and therefore the width of the *lisière* above described is not limited by a boundary line along the summit of such range, but solely by the agreed distance of 10 marine leagues from tidewater."

Now, the United States there are arguing that there are no mountains which answer the description in the Treaty, and they state that they cannot find any mountains which run parallel to the sinuosities of the coast. Well, the question is, Can you find mountains which are situated "parallèlement à la côte"? It is perfectly true that you

may not be able to find mountains which run in a line such as you may be directed to draw, following all the sinuosities of the coast. That is one thing. It is another thing altogether whether you can find mountains which answer to the description, situate "parallèlement à la côte," because they are really two different things, and the different form of expression is accounted for by the fact that, in the first case, you are speaking of a natural feature which has its own direction prescribed by nature, and the only question is whether you can find the mountains, generally speaking, running in a direction parallel to the coast. In the second place, you are to draw a line which is to follow, as near as things may, all the sinuosities of the coast, so long as that coast is a coast not presenting sinuosities of such a character as to make it quite impossible that any line parallel to it can be drawn.

Now, the second point that I call attention to—and for this purpose I need not read again the passages which were read in another connection—is that it was contemplated that the mountains must be such as to extend by an insensible slope into the sea itself. Although I do not re-read passages—because one feels that although it has been very necessary, it is irksome both to do and to listen to—I desire most strongly to call the attention of the Tribunal to this fact, that when Mr. George Canning suggested that the line of boundary should be formed by the base of the mountains, the Russians took this point: "If you take the base of the mountains, that may be found at the sea itself, and we should have no territory at all." Now, can any indication be clearer than that afforded by the passage in question, that what the parties were dealing with, what the Russians had in view, was a chain of mountains near to the sea, and the nearest mountains to the sea that you could find. They say, we must have some strip of territory, and if you take the base of the mountains we will have no strip at all; you will get down to the sea itself, and you will leave merely a belt of water, and as a corrective of that he says, give us the summit of the mountains, and then we get our *lisière*. You start from the margin of the sea, you go up to the summit of the mountains, and there you have got your *lisière*. Without repeating myself in the way of citation—the passage to which these comments relate must be in the minds of every member of the Tribunal—I desire most strongly to make this point, that what they contemplated was that range of mountains which might be adjacent to the sea, and running down into the sea by an insensible slope, so that there was no base of the mountains at any distance from the sea.

Now, the third characteristic which I say will be found as material to these mountains is, that they need not be an unbroken chain. Vancouver's charts represented the mountains as extending like a huge caterpillar along the coast—a chain of mountains; well, a symbol obviously conventional. One cannot look at these charts without seeing that these representations of mountains, which were the work of a man whose survey was on the sea, were marks indicating, in a rough way, the effect produced in his mind by looking from the sea, but I submit to the Tribunal that it is impossible to suppose that the negotiators, when they framed their Treaty, intended to stake everything upon there being such a range as that caterpillar, as it has been called, appears to denote. The word "chaîne," although it is used in the course of the negotiations, does not appear in the

239 Treaty. It is not a chain of mountains, it is "mountains which are situate parallel to the coast," therefore it is not necessary to look for a chain of mountains, it is only necessary to find mountains situate in that direction.

The PRESIDENT. The fact that the slope of one mountain might come down to the sea would seem to show that they meant, at all events, that you might have to go from peak to peak, because that particular mountain might go right away into the country, although it sloped into the sea.

Sir ROBERT FINLAY. Exactly.

The PRESIDENT. And the next one, with the valley between them, might represent that caterpillar appearance, and yet there would be a dip down between the two peaks.

Sir ROBERT FINLAY. Exactly, and what I call the attention of the Tribunal to is this: Vancouver had seen these hills from the sea, and the Treaty makers knew that Captain Vancouver had sailed along this coast, that he had not explored it as a geographer would for the purpose of laying out the orography of the district. Now, what Captain Vancouver sailing along the coast would see, and what his charts in that conventional way attempted to delineate, would be the nearest set of mountains which would catch the eye of a person sailing along the coast. How can it be contended that this chain was to be an unbroken chain? In the first place such a thing hardly exists. You always, through all chains of mountains, have rivers forcing their way. Even through the Himalayas, which I suppose afford as good a defined chain of mountains as you could find anywhere, you have got channels of rivers. Well, that is an interruption to the physical continuity, but as long as you can pick out mountains situate, generally speaking, in this direction parallel to the sea I submit that it does not the least matter that there is some want of continuity. You must have rivers from point to point. The Treaty itself contemplated that there would be rivers crossing, and provided for the free navigation of those rivers by the British. They cross the *lisière*, and I submit that just as, these mountains as the boundary, the *lisière* might be traversed by rivers, so also it might be traversed by inlets.

Now the proximity of the mountains to the coast is emphasized over and over again in the negotiations: "montagnes qui bordent la côte" is the phrase of the Russian negotiators. Sir Charles Bagot repeats that phrase. The Russian negotiators talk of the "montagnes de très petite distance." Mr. Pelly has these expressions brought to his attention, and he talks of the mountains being contiguous. He quotes the expression about a "très petite distance," and he refers to the propriety of selecting the nearest mountain not more than a few leagues from the coast. Count Lieven says that what the English wished to guard against was giving a considerable tract of territory to Russia. Mr. Canning, at p. 85 of the British Appendix, tells Sir Charles Bagot to speak of the mountains nearest the sea, and he speaks of the mountains as if they appeared almost to border the coast, and talks about the base of the mountains which border the coast. Then Count Lieven suggests the summit, and that suggestion, I submit, carries you back to the first set of mountains that you can get when you go back from the sea. You would not expect, I apprehend, to find within the limits of 10 marine leagues

from the sea a great chain of mountains forming a big watershed. That cannot have been what was in view, because it is contrary to all probabilities. They cannot have had that in view; they must have had in view a set of mountains running along within that short distance of the sea which could be traced, but which did not form a continuous chain and did not necessarily form a great watershed. Mr. Canning suggested, in his penultimate draft, the summit of the mountains parallel to the coast, and I call attention to the fact that the expression "chaîne," which occurred over and over again in the earlier drafts, had there disappeared. After the Treaty, Count Nesselrode talked of the mountains which border the coast, and Count Lieven, at p. 135, rather complains of the stiffness of Mr. Canning in this matter. That passage, I think, I have not yet referred to; but I think it is just worth reading in this connection.

It is the despatch on p. 134 and 135. It is written on the 8th 240 May, 1825, from Count Lieven to Count Nesselrode. He talks of "the despatch accompanying our ratification of the Convention," and says:—

"Even before the receipt of that document I had made it my duty to remark to the Secretary of State how ungracious the refusal of the English Government to consent to the establishment of the frontier by means of the crest of the mountains which follow the sinuosities of the coast must appear to the Imperial Cabinet, when it was merely a question of the occupation of a few leagues of land, more or less, and when an immense extent of desert country still separates us from the English possessions."

Now, the same result with regard to the situation of the mountains really follows also from the description of the *lisière* which was to be bounded by those mountains. I have read this in another connection already, and I merely pass very lightly over it indicating the use which may be made of these passages in this connection. It is to be a "*lisière sur la terre ferme*," without which the Company would have no means of enabling it to—

"* * * soutenir les Établissements Russes des îles du voisinage n'auroient aucun point d'appui."

And so on. It is to a *lisière*—

"* * * sur la côte du continent à partir du Portland Channel les Établissements Russes des îles du voisinage n'auroient aucun point d'appui."

And the same terms are employed in the final decision of the Russian Plenipotentiaries:—

"* * * *lisière* du continent, à partir du Portland Channel,"—

And at p. 78 of the British Appendix the expression:

"Médiocre espace de terre ferme n'indique au fond que sur le moyen de faire valoir, nous dirons plus, de ne pas perdre les îles environnantes.

"C'est la position dont nous parlions toute à l'heure; nous ne recherchons aucun avantage, nous voulons éviter de graves inconvénients.

"En résumé, M. le Comte, si l'on consulte le droit dans cette négociation, la Russie a celui qu'assurent de l'autre, une exploitation paisible depuis vingt-cinq ans, et qui peut être considérée comme équivalente à une occupation continue.

"Si l'on invoque le principe des convenances mutuelles, la Russie laisse au développement progressif des établissements Anglois, une vaste étendue de côte et de territoire: elle leur assure de libres débouchés: elle pourvoit aux intérêts de leur commerce, et pour compenser tant d'offres dictées par le plus sincère esprit de conciliation, elle se réserve uniquement un point d'appui."

All these considerations, I submit, point irresistibly to the conclusion that the mountains which the Treaty had in view were to be situate on a point which is very near to the line of the coast.

Now, there is one passage in the United States' Case at pp. 67 and 68 which I have just touched upon, but which deserves to have attention called to it in the connection in which I am now speaking. It is the passage at the top of p. 68:—

“An examination of these maps further shows that the head of Portland Canal and the mountain range are approximately 10 marine leagues distant from the shore line of the continent.”

That is speaking of Vancouver's maps.

Well, there are one or two observations I wish to make upon that. In the first place, the maps vary a good deal. There is a great deal of variation in the maps, and that very much confirms what appears from various portions of the despatches, that the negotiators attached

no great importance to the maps, and could not proceed upon

241 any assumption of their accuracy. In the second place, the assertion, I submit, is quite erroneous that these mountains represented in the Map 4 of the American Case Atlas are situate

10 marine leagues from the coast or anything like it. If the Tribunal will look at that Map 4, I think it is perfectly true to say that the head of Portland Canal is approximately 10 marine leagues from the coast which is opposite it from the coast of Behm Canal.

That is perfectly true. But then the distance of the mountains from the coast is not 10 marine leagues, nor anything like it. It is about half the distance. The moment that one looks at the map it will appear that if you take the distance across from the upper part of Portland Canal—to the open canal—you have a distance which is about 30 nautical miles—10 marine leagues. But if you follow up the map the distance is really only about half that. It is not 10 marine leagues. Now, this is an observation of some importance, having regard to the fact which is brought forward by the United States in support, apparently, of their contention that the 10 marine leagues from the coast is to be the governing feature, and that they are to have a strip of land not more than 10 leagues from salt water. It is nothing like 10 marine leagues to the line of mountains from the coast.

The PRESIDENT. Certainly, in a part where there is no dispute about it the lower end of Prince Frederick Sound; that is, before you get up to the Lynn Canal. You know it certainly is nothing like 10 marine leagues there—just about half of it according to the scale.

Sir ROBERT FINLAY. I should have thought hardly half.

The PRESIDENT. Well, about half roughly. I have scaled it out roughly, and it is about half.

Sir ROBERT FINLAY. Just about half; just below Burrough's Bay.

The PRESIDENT. I was only taking one place which was not complicated by any inlet at all.

Sir ROBERT FINLAY. I quite agree, my Lord, but then if you test it along the coast, just below Burrough's Bay, or to the south of Burrough's Bay, it is only about one half. Take the south of Burrough's Bay, take it again to the coast, just to the north of Bradford Canal. It is a little oblique there, but it very soon gets to be not more than half the 10 marine leagues, and just where you come up to near the point of Rothesay Bay it is rather less.

The PRESIDENT. The strip between Point Rothesay and Frederick Sound, which is a strip about 30 miles long, that is the best place to deal with it, because there is no inlet there which complicates it at all.

Sir ROBERT FINLAY. Exactly, and if the inlets are disregarded the same observation applies all along.

The PRESIDENT. Quite so; I was taking a part where there was no inlet to complicate it. It is not necessary to point it out, Mr. Attorney, because you have indicated your Argument, but, of course, between Cape Spencer and Mount St. Elias it is still more marked, if you were to take it as a matter of scaling.

Sir ROBERT FINLAY. It is still more marked; and one further observation I desire to make, which, I submit, is a very cogent one. They say here, "at a certain distance from the coast." Well, from what coast? It certainly is not at any uniform distance, if you bring in the heads of the inlets. They are constrained, they must, as soon as they endeavour to talk about the situation of mountains parallel to the coast, at once throw over those long narrow projecting peninsulas, and those winding narrow inlets. You can take a parallel direction only if you take the direction of the coast in some such sense as that I have suggested.

Now, I submit that a consideration of that Map 4, coupled with this observation in the United States' Case upon it by the light of the considerations to which attention has been called, is sufficient to show that there must be an answer in the negative to the Vth Question. Now, this is a point of so much importance that I ask the Tribunal to look again at the terms of that Treaty, and such an answer is, of course, necessary in order to bring in Question VI at all. It only arises if Question V is negatived.

Now, the answer which the United States should be given to that question would lay down an overriding principle. They ask that this should be answered in the affirmative, and that the Tribunal should say that it was the intention and meaning of the Convention that there should be a continuous fringe separating the British possessions from the inlets upon that coast. Now, I very respectfully submit to the Tribunal that it is perfectly impossible to lay down any such proposition. What the Treaty has laid down is that you are to take a certain boundary.

The PRESIDENT. You must assume, I think, to make your question complete, a continuous fringe bounded by mountains if they are there, and if not, by 10 marine leagues.

Sir ROBERT FINLAY. By a line not exceeding 10 marine leagues.

The PRESIDENT. Yes, exactly; you must assume that.

Sir ROBERT FINLAY. Now this question, as put, is more or less a general question which would lay down a governing and an overriding principle. It could not be answered in the affirmative without invoking the laying down of this proposition: that when you come to lay down your mountains; suppose you find well-marked mountains which answered the description, which run up to a point on an inlet, and then are resumed on the other side—if this question is answered in the affirmative, it would involve the assumption that you are to discard such a line of mountains, because it does not run round the head of the inlet. Now, I respectively put it to the Tribunal, that whatever may be said on other points of the case, to this fifth

question the answer must be in the negative, because what the Treaty has provided is that you are to take a certain way of delineating the boundary of mountains if they exist; failing that, if the mountains are further back than the 10 marine leagues from the coast, you are to take a line not further than that distance. How can it be laid down that it is the intention of the Treaty that the mountains are always to be found beyond the head of the inlet? It is a perfectly possible state of things that you might have a line of mountains, each well marked, interrupted by a river at one point, interrupted by a river at another; but continue your course, and beyond the line of these mountains, the summit of which, if the Treaty is to be taken, you find a comparatively flat country. If you came to a rough country, not characterized by anything that you can call mountains, if this question is answered in the way the United States desire, you are to discard the mountains which you find because they do not satisfy what is contemplated as the overriding principle that the country, whatever it may be—be it mountains or be it land—has to go behind the heads of the inlets.

Now, where is that overriding principle to be found? I submit it is found nowhere; and the more minutely and more carefully we examine the provisions of the Treaty and the negotiations which attended it, the more evident it is that the indications given by the Treaty are to be followed. Whether they cross inlets, it depends upon the nature and the depth of those inlets and the situation of the physical features which, in the first instance, the Treaty directs should be followed. I put it to the Tribunal that the language of

Articles III and IV, taken by themselves, lends no colour to
 243 this contention at all, and that wherever the negotiations are carefully examined and analyzed, it will be found that there is no trace in them of such a governing principle. It is a principle which, if once laid down, almost would supercede further discussion of this very important point, except as to the width of the *lisière* which is dealt with by Article VI, but I submit that this is a question which must be answered in the negative. Now, if Question 5 is answered in the negative, the way is paved for Question 6, which arises in that event. Now, Question 6 is this:—

“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 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?”

That Question 5 is put as raising the general question of principle which overrides everything else, as I have shown very clearly by the last words of Question 6, because the Tribunal will have observed that Question 7 only arises if the 5th Question has been answered in the negative, and then the concluding part of Question 6 which only arises if the 5th Question has been negatived, is whether the distance—the width if the *lisière*—is to be measured from the heads of the inlets. Well, that raises a specific question which arises if the general principle contended for under Question 6 has been negatived.

With regard to Question 6, I ask the Tribunal to hold that the line is to be measured from the mainland coast of the ocean strictly so-called; or, in other words, to adopt the phraseology which is used in the second or explanatory branch of the question, 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 from the line of the general direction of the mainland coast, which, in substance, I think, will be found practically to coincide with the line separating the waters of the ocean from the territorial waters of Russia.

Now, these are the answers which I shall ask the Tribunal to give to Questions 5 and 6.

I now pass to the 7th Question, which is, what is the line of mountains, if any, which is indicated by the Treaty. Now, the contention of the United States is that there are no mountains at all which answer the description. I think that both in the Counter-Case and in the Argument they raise this point in detail, that there are no mountains at p. 106 of the Case, they state their position very shortly:—

“The United States requests the Tribunal to answer and decide that such mountains do not exist within 10 marine leagues from the coast.”

Then, in the Argument, that contention is stated very concisely as the heading of the chapter which is at p. 134:—

“Such mountains as those contemplated in the Treaty do not exist within 10 marine leagues of the ocean.”

I confess that I do not quite understand how that contention can have been put forward with reference to the portion of the territory which lies to the north of Cape Spencer. That territory has been surveyed by the Surveying Department of the United States, and the effect of that survey is very clearly stated in a passage in Mr. Hunter's Report, at p. 227 of the Appendix to the British Case. It is very near the bottom of the page:—

“From latitude 58 degrees 40 minutes north or 150 miles to the north of Stickeen the coast line for 200 miles farther northward has been accurately surveyed by the United States' Coast Survey, and the position of the adjacent mountain range determined and laid down on the charts.

244 “The summit of this range is shown to run parallel to the coast, distant from it 13 to 20 miles.

“The position and altitude of five of the highest peaks were accurately determined.

“Mount Crillon, the most southerly in latitude 58 degrees 40 minutes north, and longitude 136 degrees 58 minutes west, is 15,900 feet above the sea, and distant from the coast line 13 miles.

“Mount St. Elias, the most northerly, in latitude 60 degrees 20 minutes 45 seconds north, longitude 141 degrees 0 minutes 12 seconds west, has an altitude of 19,500 feet above the sea level and distant 20 miles from the coast.

“The latter is by far the highest mountain in the North American continent and nearly one-fourth higher than the loftiest mountain in Europe.”

Now, I do not understand that as regards the physical facts of this region there is any dispute possible. I do not think there is any divergence upon the maps, and Mr. Mendenhall in that magazine article which I referred to earlier this morning, speaks of this range in a passage occurring on p. 272 of the Appendix to the American Counter-Case. The passage is worth reading, for he says this:—

“Seen from a distance or from the deck of a ship at sea, they might easily create the impression of a range or ranges ‘parallel to the winding of the coast.’ As a matter of fact, there is nothing of the kind, but only the most con-

fused and irregular scattering of mountains over the whole territory, at least until the Fairweather range, south of Mount St. Elias, is reached. Of course, it is quite possible to draw a series of lines from mountain summit to mountain summit, which would form a line parallel to the coast, or any other assumed line, but no one can deny that the language of the Treaty implies a range of summits extending 'in a direction parallel to the coast.' As the mountains which actually exist cover the territory down to the water's edge, the logical application of the mountain-summit definition, if it is to be applied at all, is to draw the line from peak to peak along the sea coast, and this our friends on the other side have not hesitated to do."

Well, I see nothing very startling about that, when one refers to the language of the Russian negotiators as to the danger—the base of the mountains might leave them nothing at all, as it might go down to the sea itself. But what I do emphasize in these questions is that Mr. Mendenhall in an article strongly advocates the view of the United States on this point, does not venture to even suggest that the Fairweather range south of Mount St. Elias is not a well-marked line of mountains corresponding in every way with the provisions of the Treaty.

And with regard to that range, I may just say this, that a question may arise as to whether you are to take the highest line of that range, or a somewhat lower range. I submit that when you have regard to the fact that a line of mountains near the sea, the line of mountains as they present themselves to a man navigating the sea is looked at, you ought to take the range which is nearer the sea, even though it cannot be called the dominant range of the region, but for the present purpose, it is enough that I should point out that as regards that part of the frontier, the contention of the United States must break down, that there is no set of mountains which answer the description in the Treaty. Now, as regards the Lynn Canal, I apprehend that it hardly amounts to a dispute that you have got mountains running by the sides of the Lynn Canal. You have got the divide at the top where the present provisional boundary has been fixed. The operation of these mountains must, of course, when you come to draw the line, be qualified by the application of the 10-marine league limit from the line of coast, whatever that may be, but as regards the physical existence of mountains which are very much less than 10 marine leagues from the Lynn Canal, there can be no dispute at all.

The PRESIDENT. It is rather important, Mr. Attorney, that I may just follow you. Is it your case that there is any place a substantial distance where there are no mountains which would correspond with the Treaty? I am taking it, of course, from peak to peak, of course, within the 35 miles.

245 Sir ROBERT FINLAY. No, we say that all along.

The PRESIDENT. All along?

Sir ROBERT FINLAY. We trace all along.

The PRESIDENT. You say that the 10-marine league clause—you do not have to rely upon it in any way.

Sir ROBERT FINLAY. Well, except when you come to the Lynn Canal.

The PRESIDENT. Oh, I was not speaking of that. I was not confusing for a moment your argument about the crossing the Lynn Canal: I follow that entirely. I merely meant that whatever coast is taken there are mountains, you say, everywhere?

Sir ROBERT FINLAY. Yes, certainly I do. Of course your Lordship will appreciate.

The PRESIDENT. Mountains everywhere in accordance with the Treaty.

SIR ROBERT FINLAY. Your Lordship will appreciate the very great importance of bearing in mind the limiting provision if the mountains recede.

The PRESIDENT. I was only asking for information, Mr. Attorney, as to your point. I was not in the least losing sight of that.

SIR ROBERT FINLAY. Your Lordship will forgive me for—

The PRESIDENT. Not at all; you are quite right.

SIR ROBERT FINLAY. For thinking of the importance of the head of the Lynn Canal. I am particularly cautious in guarding myself in regard to that point.

The PRESIDENT. Oh, of course, I was only wanting to know whether there was any area in respect of which you thought, with the information before you, that whatever line of coast be taken there are no mountains? You say it does not arise.

SIR ROBERT FINLAY. That is not the case. I say that is all along. Now, as regards when you get south of the Lynn Canal, no doubt one might speak of a sea of mountains. One constantly does, but it does not in the least follow that you cannot select a set of points running along in the vicinity of the coast which would present the appearance, to a person looking from the sea, of a barrier, a sort of mountain barrier, and which would satisfy the Treaty. My friend Mr. Rowlatt has just been good enough to give me a passage which very much emphasizes the point which I made about the head of the Lynn Canal. It is from an article by the Honourable John W. Foster in the "National Geographic Magazine" for November, 1899.

The PRESIDENT. Is it printed yet?

SIR ROBERT FINLAY. No, it is not printed. I have a copy here.

The PRESIDENT. Will you give us the reference, Mr. Attorney?

SIR ROBERT FINLAY. It is the "National Geographic Magazine" for November, 1899. It contains—

246 Mr. DICKINSON. Mr. Attorney-General, I do not believe that that is in the Record.

SIR ROBERT FINLAY. No, it is not.

Mr. DICKINSON. It is not referred to anywhere.

The PRESIDENT. Does it make any difference, Mr. Dickinson, for this purpose?

Mr. DICKINSON. I do not know what it is. I do not know just what he is going to read.

The PRESIDENT. It is an article by Mr. Foster.

Mr. DICKINSON. Well, just read it, subject to exception. I do not know that we want to make any, but I call attention to the fact that it is not on the Record.

The PRESIDENT. No; I quite follow.

SIR ROBERT FINLAY. It really puts the point to which I have already adverted. He says:—

"This language of the Treaty presupposes that there existed a defined mountain chain, to repeat its terms, 'situated parallel to the coast,' or 'which extend in a direction parallel to the coast,' but the surveys of the region made since the territory of Alaska was ceded to the United States have established the fact that there is no such defined chain or watershed within 10 marine leagues of the sinuosities of the coast except at two points, namely, White and Chilkoot Passes; hence the United States claim that the boundary of the strip is placed 10 marine leagues from the coast at all points except at White and Chilkoot

passes, and that the strip is an unbroken belt of territory on the mainland, following the sinuosities of the coast around the inlets of the sea. On the other hand the British claim is that the line from the 56 degrees runs directly to the coast and follows the mountains nearest to the outer shore line, and crosses not less than ten or twelve arms of the sea or inlets, thus breaking the strip of mainland into as many different sections and transferring all the water of the bays and inlets to the British possessions."

There he admits what is undoubtedly the fact, that at this point, the point of the Chilcoot Passes, you have a very defined watershed.

The PRESIDENT. There is abundance of evidence on the American depositions with reference to that point to the same effect.

Sir ROBERT FINLAY. And I further observe in this passage that it cannot be said that there are not also mountains by the side of the Lynn Canal. I suppose, when he refers to these two passes, he is taking them as a part of these mountains, and further from Mount Fairweather northward the Elias Alps are the most remarkable features of geography in any country, terminating in that most magnificent peak Mount St. Elias.

Now, I was just saying that south of the Lynn Canal you have, no doubt, a very mountainous country. It has been compared to a sea, the waves, I suppose, being represented by the mountains, but I was putting it that it does not in the least follow from that that you cannot take out such a line as satisfies what the negotiators had in view, judging from the language of the Treaty and the despatches which have been referred to in this connection. Now, with regard to the general physical features of the country. I would ask the permission of the Tribunal to call attention to a declaration made by Mr. King, who was the Surveyor, British Case, Appendix, at p. 307. Mr. King states his qualifications. He is the Chief
247 Astronomer of the Department of the Interior of the Dominion of Canada. He was the British Commissioner, under the Treaty of 1892, between Great Britain and the United States, for a joint survey. He says:—

1. "I am the Chief Astronomer of the Department of the Interior, of Canada.

2. "I was the British Commissioner, under the Treaty of 1892, between Great Britain and the United States, which provided for a joint survey being made to ascertain facts and data upon which to determine the boundary between Canada and Alaska.

3. "The result of my work, as such Commissioner, was embodied in a report duly made in pursuance of the said Treaty of 1892, and maps accompanying said report.

4. "I have a considerable personal acquaintance with the topography of the territory which is in dispute between Great Britain and the United States, as the result of my work as such Commissioner, and other personal examinations which I have made of said coast.

5. "With the aid of such knowledge, and in the light of the information derived from the work of said survey, I have drawn the annexed description of the topography of the said territory marked 'A.'

6. "The said description is, to the best of my knowledge, a fair and correct description of the territory purporting to be therein described.

7. "In the document thereto annexed marked 'B,' I have drawn a description of the line claimed by Great Britain, applying the principle upon which Great Britain concludes the line should be drawn to the topography as I know it from personal knowledge, and the result of the survey above mentioned."

Now, I desire first to call attention to the exhibit marked "A," because it gives what is of importance for dealing with that question, a vivid idea of the general features of the country with which we have to deal.

The PRESIDENT. I understand, Mr. Attorney, you are not now on the point of what mountains are to be taken?

Sir ROBERT FINLAY. Not at the moment.

The PRESIDENT. No, I say I mean for the moment, but on the point of there being mountains which would answer the description of the Treaty.

Sir ROBERT FINLAY. Yes, exactly. I shall proceed, of course, presently, to deal with the specific mountains which we say should be taken:—

“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. The 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 length 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.

“They are fronted on the seaward side by wooded hills, rising from the shore to heights varying from a few hundred to 2,000 feet or more. These foot hills slope off into points (such as Point FitzGibbon, at the mouth of Burroughs Bay; Point Warde, at the mouth of Bradfield Inlet, and many others), and are cut by many bays and harbours, which give the coast-line the irregular outline shown on the charts. The mountains, however, keep a much more regular course. Their line of separation from the foot hills is frequently not very well marked—these last, in fact, form in the seaward face, or slope, of the mountains. Along the northern part of the coast the foot hills often vanish almost entirely and the rocky summits rise from the sea. These mountains are separated from the interior ranges by usually well-defined depressions.

248 “A remarkable feature of the inland topography is the vast icefields filling the valleys of the mountains to the rear and overflowing in various directions to the outlet valleys of rivers and inlets.

“One of these icefields lies to the north-west of the head of Portland Channel about 15 miles away; it discharges by glaciers both in valleys leading into the head of Portland Canal, and into the Chickamin and Unuk Rivers, and thence into Behm Canal.

“In like manner, a very extensive icefield lying to the west of Stikine River discharges by the Great Glacier and other glaciers towards the east to the Stikine and to the west by Le Conte Glacier, Baird Glacier (to Thomas Bay), and Dawes Glacier (to Endicott Arm to Holkham Bay).

“To the east of the southern part of Lynn Canal lies another icefield which discharges by the Foster Glacier into Taku Inlet, also further north, by other glaciers, to tributaries of the Taku River, and by the Mendenhall and other glaciers to Lynn Canal and the passage leading thereto. This icefield also discharges by the streams flowing into Berners Bay.

“A large icefield lying to the north and north-east of Glacier Bay discharges into the Takhin River (tributary of the Chilkat), also in part into Alesk River. The greatest flow of this icefield is however into Glacier Bay, by many large glaciers which, though bearing different names at their different outlets to the sea, are properly speaking one and the same. The best known of these outlets is the most easterly (so far as Glacier Bay is concerned), Muir Glacier.

“Muir Glacier also discharges at its south-eastern corner into Endicott River, which finds its way by a very direct course, with a fall of less than 1,000 feet, through the mountains to Lynn Canal.

“The eastern side of the icefield also discharges into Lynn Canal by Davidson Glacier.

“We have in these cases large mountain masses adjacent to the coast, and cut off from the interior mountains by ice-filled valleys.

“The icefields naturally approach nearer the shore, in the northern part of the region under consideration, than in the southern. South of Taku Inlet they are found a considerable distance inland, but the topography between them and the coast suggests irresistibly a glacial origin for the valleys, similar to that which has, at Glacier Bay, cut the long inlet separating Fairweather Range from the mountains to the east of the bay, and has cut out the valley of Endicott River.

"This common glacial action accounts for the general regularity of the conformation of the mainland (and also of the adjacent islands of the archipelago). The mountainous coast region has at one time doubtless been covered with ice, which has, in course of time, forced its way through the mountains to the sea, forming the valleys of the inlets and rivers. These valleys will be seen by the map to be closely perpendicular to the general line of the coast. The ice, in flowing out of these passages, would also flow from either side into the valleys, grooving lateral valleys at right angles to them.

"Thus arise the above referred to elongated mountain masses which lie parallel to the general line of the coast. Such a mountain mass will be found to be separated from the mountains behind it by a depression, in which the streams flowing to the main valleys on either side take their rise.

"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 to the lengths of the continuous lines of mountain summits.

"On the contrary, were it attempted to follow the summits of the mountains in a direction parallel to the shores of inlets, the line would, as soon as it passed inland from the general coast, encounter a succession of ends of comparatively narrow mountain ridges running at right angles to the course of the line, from each of which to the necks it would have to pass by springing over intervening valleys. Conformably to the requirements that the mountain boundary of the coast strip shall follow in a direction, as nearly as may be, parallel to the general line of the coast, the summits of the mountains nearest thereto, and that mountains are to be distinguished from hills by the fact of their peaks rising above the timber line, the mountains along which the boundary should follow

will be selected by, at each point proceeding inland until the nearest summits of such character are reached, passing over the intermediate hills or spurs to seek the ridge of the mountain mass whereby the line may be carried along a well-defined crest. Where the crest is broken by a valley of considerable depth, the general parallelism of the line to the coast will be preserved by carrying it across the break by a straight line.

"It should be remarked that while the preceding remarks apply particularly to the coast from the 56th parallel to Lynn Canal, there is also to the west of Cape Spencer a repetition of the parallelism of the mountains to the coast, in the massive Fairweather Range. These mountains rise almost immediately from the ocean shore to a high and continuous range several thousand feet in height. Beyond, across the Asek River, are the Mount St. Elias Alps, also of great height, but further from the shore. The survey of this range by the Commissions under the Convention of 1892 was imperfect. The accurate investigation of the topography was resumed near Yakutat Bay.

"Between Lynn Canal and Cape Spencer, Icy Strait cuts in nearly perpendicular to the ruling north-north-west direction of the coast, and at right angles to the valley of Glacier Bay, and the general trend of the mountains. There is, therefore, for the short space between Lynn Canal and Glacier Bay an exception to the general rule of mountain ridges paralleling the adjacent coast. To find the mountain ridges parallel to the coast it is necessary to go somewhat further back."

Now, that is a general description of the region which is given by Mr. King. I turn from that to the affidavits which have been filed on behalf of the United States for the purpose of negating the existence of any mountains at all. In p. 529 of the Appendix to the American Case, these declarations will be found to be given. It is at the top of the page. Now, the first point I call attention to in these statements—there is a covering letter from Mr. Tittmann, and then there follow the depositions. The first point I call attention to is that Mr. Tittmann begins by stating what the question was. It is his letter of the 16th April, 1903. At p. 529 of the United States Appendix:—

"In reply to the question of what are the——"

The PRESIDENT. If you are just beginning this, Mr. Attorney, I think we had better break off here.

(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

SIR ROBERT FINLAY. I had yesterday read the first Memorandum by Mr. King annexed to his declaration in which he sets out the general features of this Case. He describes the range of mountains, the wooded hills which run at most parts of the coast between the Rocky Mountains behind them, and the margin of the sea itself. Now, I think it is very well worth observing that that declaration of Mr. King was put forward in the Appendix to the British Case—put forward in the first instance. There has been every opportunity of dealing with it, and I think I am right in saying that there is really no contradiction of the facts as they are alleged by Mr. King. So far from there being contradiction, I think when the depositions that have been put forward on behalf of the United States on this point are looked at, it will appear that there is very material confirmation in some most important parts.

Now, these declarations on behalf of the United States are set out in the Appendix to the Case of the United States, pp. 529 to 538, and in the Counter-Case Appendix, at pp. 262 to 265.

Now, I must invite the attention of the Tribunal to the particular terms in which these depositions are expressed, for I think you will find in the all-important question of contention which is put forward on behalf of the United States, there are no mountains that answer the indications of the Treaty. I was just about, when the Tribunal adjourned yesterday, to call attention to the terms of the question on which these answers of the depositions were invited. It is set out at the beginning of Mr. Tittman's despatch to the Secretary of State, dated 15th April, 1903, at p. 529 of the United States' Appendix. Now, the question is this:—

“Now what are the facts, and especially what is the evidence presented by the joint surveys and explorations of the International Boundary Commission of 1893–1895 in regard to the existence of a mountain range in South-East Alaska corresponding to that contemplated as the line of demarcation by Articles III and IV of the Treaty of 1825?”

Now, I have two observations to make on that question. The first is that they speak of “a mountain range,” which is a phrase which does not occur in the Treaty itself, and the second is that very great vagueness is introduced into the question by throwing upon experts whose answer is requested the construction of the Treaty. The last words are “corresponding to that contemplated as the line of demarcation by Articles III and IV of the Treaty of 1825.” It is a question which only could be admitted in any legal proceedings where experts were being examined, because it is for the Tribunal to construe the Treaty, it is for experts to give evidence of the facts, but that question has in it an element of vagueness which would largely vitiate the result, even if it were more specific than I am going to show the Tri-

bunal it was. Now what Mr. Tittman himself says, in his statement which he says is based on personal observation and the study of the maps, is this. After stating his qualifications and how he was engaged on the American Survey, he says, at the middle of p. 529:—

“I determined the position and altitude of mountain peaks which could be seen from various points on the river, including several peaks about 8 miles distant from the river, and approximately 10 marine leagues from the coast. These peaks were Kate's Needle on the west, and Big Mountain on the east. I paid special attention to identifying and locating the crest of the mountains which would conform to the line of demarcation under the Treaty of 1825 between Russia and Great Britain, but found that within the 10 marine league

limit there is a total absence of that continuity and system which would
251 constitute a mountain range parallel to the coast. In my report to the Superintendent, dated April 17th, 1894, I stated as follows: ‘The group of mountains to the westward of the Stikine, on which Kate's Needle appears to be the highest, overtops the mountains between it and the coast, and the same remark holds good of Big Mountain and Pinnacle to the eastward of the river. Whether the mountains still farther inland are higher than those mentioned, I am unable to say, but it is evident that if this mountain region is to be regarded, in a broad sense, as a range, its crest does not lie oceanward from those peaks.’”

“In 1900 I went in the service of the United States for the purpose of delimiting the provisional boundary between the United States and Canada under the *modus vivendi* of 1899. I went to the head of Lynn Canal, to Chilkoot Pass, and White Pass, up the Chilkat River, following up the Klehini River, we marked the limits of the provisional boundary on the ground. From the examination which I made I reached the conclusion, which was confirmed by a study of the maps of the Commissioners of 1893-95, that there does not exist any defined or continued mountain range or chain running generally parallel to the coast, and situated anywhere oceanward from a line projected from the head of Lynn Canal southward, and drawn to the 56th parallel to a point near the head of Portland Canal, such line being parallel to the sinuosities of the coast line which proceeds around the bays and inlets, and not more than 10 marine leagues therefrom. I also went up Glacier Bay, and state that there is no mountain axis which has a trend across that bay.”

Now, I call attention to the fact that Mr. Tittman introduces a further element of uncertainty into his answer. The question put, I submit, was one not justified by the Treaty as to the existence of a mountain range, but Mr. Tittman, when he comes to give his answer, says there does not exist any defined or continued mountain range generally parallel to the coast. Then he incloses a variety of depositions, and I must call the attention of the Tribunal to the language of those depositions, because, I submit, they afford very cogent confirmation of Mr. King's account in some very important particulars. The first is a deposition of Mr. Ogden. I pass over all the earlier part, and begin to read at the bottom of p. 530, where he says:—

“I felt particularly interested myself as we sailed up Taku Inlet, the appearance of that region striking me as one that was almost impassable. There were great peaks to be seen ahead, sharp and impossible of ascent, and it interested me and excited my curiosity, that I hoped to satisfy in the future, whether I could get around between them. Many of them were very much like the Sugar Loaf of our old atlases.”

Then on p. 531 he says:—

“A careful survey was made of the Taku River by a small triangulation as a base for it, which was a continuation of the scheme of triangulation extending along the coast of Alaska. On this point I determined the contour and height of all the mountains that were visible from the bed of the river. The river valley is about 3 miles wide, and some of these peaks were probably 5 or 6 miles on either side of it.”

Then passing on to the end of the next paragraph, after he has referred to Mr. Welker's work and the work of the Canadian parties and the two officers who ascended the mountains, he says this:—

“Those two officers who ascended the mountains were, unfortunately, restricted in their ascents by the operations of the Canadian parties, as they had no means of making an ascent independently. They both assured me, and I made careful inquiry from them, that, so far as they could judge from the character of the country as they observed it, there is no well-defined range of mountains passing through the region.”

Here another adjective is introduced in answering the question, “There is no well-defined range of mountains” then:—

“Mr. Welker's sketch accompanying his report on the results of his work showed a very decided jumble, and nothing that could be construed into a range.”

252 Then down at the bottom of p. 531 he talks of his work on the Stikine River, where he was joined by Mr. Dickins, and he says this:—

“On establishing a camp some 6 or 8 miles above Point Rothsay, at the mouth of the Stikine, I ascended the river in a canoe to Mr. Tittman's camp up the river. This gave me an opportunity to see a large section of the country back from the shore connected with the region I had been studying, and gave further confirmation of the opinion I had formed as the features were developing, that there was no well-defined range of mountains; that the peaks and hills we had observed immediately on the shores of the inlet were in the nature of detached groups, and might be called foothills, there being much higher mountains behind them. My work on the Stikine ascended the river about 12 miles by the courses of the river, where I joined Mr. McGrath, who worked the section above me until he joined with Mr. Tittman above him. From my observations made in Taku Inlet and on the Stikine River, and in running along the coast, and from all information I gained, I am satisfied that there is not, within 10 marine leagues from the coast, any continuous chain of mountains in the form of a summit range running from the 56th degree of latitude until it intersects in the northern direction with the 141st degree of longitude.”

There we have the expression that there is no “continuous chain of mountains,” and it is to be in the form of “a summit range.” I am not perfectly certain I know what that means; I suppose it means a dominant range.

The PRESIDENT. The highest range, I suppose?

Sir ROBERT FINLAY. The highest range. Well, that is not what the Treaty contemplates at all. Very far from that. What the Treaty contemplated was the tops of mountains which any one could see navigating, as Vancouver did, along the coast. But the question is, is there a well-defined dominant range? The question is, can you or can you not find within a short distance from the coast mountains which will give such a guide as that which the Treaty desiderates?

The PRESIDENT. Of course, it is more for your opponents than for you, Mr. Attorney-General; but one cannot help feeling, on reading these depositions, that these gentlemen thought, because they saw these mountains when they got to the top, there could be no mountains which would correspond to the Treaty—it seems to me.

Sir ROBERT FINLAY. That is, I submit, the fallacy which underlies these depositions. I am not impugning for one moment the good faith of the deponents. The care that they took to guard their answers shows that they really throw no light whatever on the ques-

tion. They certainly do not help the contention of the United States that there are no mountains which answer the Treaty, because I contend that taking the question in the form in which it was put about the chain of mountains they always introduced some qualifying adjective about a "dominant well-defined range," a "defined range," a "continuous range," a "summit range" and expressions of that kind.

Now very much the same observations may be made upon the deposition of Mr. Hodgkins, which is the next at p. 532. He speaks of starting the survey on the steamer "Patterson," and arriving at Port Simpson, the northern port of British Columbia, at about the end of April:—

"Port Simpson is situated at the junction of Portland Canal, Chatham Sound, and Dixon Entrance, and on a moderately clear day the mountains of Alaska are in plain view therefrom."

It is a very odd thing that, if we have mountains with a "plain view therefrom," it is impossible to find mountains to satisfy the Treaty, and one must look to Mr. Hodgkins' affidavit to see exactly what was the standard he set up. Evidently he was coming away disappointed, according to his recollection as embodied in his affidavit, which was not made until the year 1903. At the bottom of p. 533 he says this:—

"With regard to the characteristics of the coast and of that portion of the interior which came under my observation, I can say that my recollection of the shore of the continent northward from Dixon Entrance is that, in general, the land rose abruptly and sometimes precipitously from the water's edge. My recollection is that the Cleveland Peninsula was less abrupt than the remainder of the continent, and that it rather resembled the larger islands in general features. The slopes were generally heavily forested to a height of 1,000 or 1,500 feet, the altitude of the timber line varying considerably in different districts, and generally growing lower with increasing latitude. The continental edge though generally high, varied much in altitude, many summits being above the average, while there were occasional breaks of lower land or cross valleys through which glimpses could be obtained of higher mountains farther back, although the mountains immediately bordering the coast generally served to prevent any extensive inspection of the interior."

Can there be a stronger confirmation of the truth of Mr. King's declaration, which I read yesterday, than this passage, in which Mr. Hodgkins says that his recollection of the shore of the continent northward from Dixon Entrance is that in general the land rose "abruptly, and sometimes precipitously from the water's edge? My recollection is that the Cleveland Peninsula was less abrupt than the remainder of the continent, and that it rather resembled the larger islands in general features. The slopes were generally heavily forested to a height of 1,000 or 1,500 feet, the altitude of the timber line varying considerably in different districts, and generally growing lower with increasing latitude. The continental edge, though generally high, varied much in altitude, many summits being above the average."

Then he says:

"There were occasional breaks of lower land, or cross valleys, through which glimpses could be obtained of higher mountains farther back, although the mountains immediately bordering the coast generally served to prevent any extensive inspection of the interior."

That is the very thing the Treaty contemplated— "mountains bordering the coast."

“On the other hand, after ascending a mountain so as to be above this coastal barrier, an extensive view of many miles in almost any direction was open to observation.”

I call attention to the words there, “coastal barrier,” relating to these mountains of the coast. Then he goes on:—

“The general character of the region between the Taku Inlet and Lynn Canal, which included most of Mr. Ogilvie’s stations, is that of a plateau of ice and snow, from which rise numerous peaks, and which is carved into many short ridges separated by deep valleys, which are frequently occupied by glaciers. The summit elevations show a general tendency to increase with increasing distance from the coast. On the part of the coast near Juneau, the summits are from 2,000 to 3,500 feet in height, while in the vicinity of the head of Taku Inlet the elevations are 4,000 feet or more, with higher mountains visible farther back. The elevations also increase in going north along Lynn Canal.

“For a general description of the country surveyed during the season, I do not know that I can do better than to refer to my report of the 24th February, 1894, to the Superintendent of the Coast and Geodetic Survey as follows:—‘The work of the season covered about 500 square miles of territory enclosed within a nearly equilateral triangle. All of this region was full of mountains, but I could see no indications of a dominating or nearly continuous range anywhere near the coast line. The mountain peaks
254 are from 3,000 to 5,000 feet in height, with a general tendency to greater elevation above the head of Taku Inlet. The whole area is a network of short, steep-sided ridges, generally lying at right angles to the nearest shore, and connected by short saddles nearly as high as the peaks. This formation seems to indicate that these ridges and valleys are the results of local influences of erosion by ice and water. Farther back from the shore, where ice and dry cold are the principal eroding influences, the peaks project sharply from the envelope of snow and ice, which stretches downward on their flanks to form countless glaciers—large and small. Far back in the country to the northward could be seen the peaks of lofty mountains, which lie about 25 miles northward of the mouth of the Taku River. Whether these peaks are part of the backbone of the mountain system of this coast or not I am unable to say; but this, at least, is clear, that from every mountain ascended by Mr. Ogilvie higher mountains could be seen to the northward. Nowhere did we attain the summit elevations of the system——’”

I daresay he did not.

“The summit elevations of the system which have been looked for under the Treaty.”

Then he goes on with these depositions:—

“The operations of Mr. Ogilvie did not extend far in the interior, no one of the mountains which we ascended being more than 6 or 7 miles from the sea, to the best of my recollection. Higher mountains, with many sharp peaks and pinnacles, could be seen farther in the interior than we penetrated, and along the north-eastern horizon they assumed somewhat the appearance of a range, which appearance may, however, have been an illusion caused by perspective among the numerous peaks. From all the observations which I made while in Alaska, and from all my knowledge of the region gathered not only from the ascent of mountains but from other investigations, it is my belief that there is no such continuous chain of mountains within 10 marine leagues of the coast—that is, from the heads of the inlets and bays, and running in a direction parallel to the general direction of the coast between Portland Canal and Lynn Canal, as seems to be contemplated in the language of the Anglo-Russian Convention of 1825.”

That general statement at the end introduces a view of the construction of the Convention of 1825. What that view was he does not say, but I appeal from that general statement that there is no continuous range which answers the description in the Treaty of 1825; I appeal from that general statement at the end to the specific descriptions which occur in the body of this deposition, and I

respectfully put it that there could be no stronger confirmation of Mr. King's view with regard to the existence of this range of mountains.

Then comes Mr. Baldwin's deposition at p. 535, at the beginning of the third paragraph:—

"The first view we got of the mainland, excepting Cleveland Peninsula, was in going through Stikine Strait. As we approached Fort Wrangell we saw the main shore, which, as far as we could see north and south, was very abrupt and very high, the mountains rising from 3,000 to 4,000 feet. At the mouths of all the streams there was a little flat land, the shore line elsewhere rising almost abruptly from the water."

It is the very thing that the Russian negotiators contemplated as possible, and against which they provided by saying that instead of taking the base of the mountains they were to take the summit.

Then he goes on in the next paragraph to speak of his trips up and down the Stikine River, and says he had full opportunities for observing the formation on both sides of the river.

"I could see from repeated points of observation that these irregular peaks continued to extend in a desultory way north and south and back toward the interior, and that at no point between our camp and the coast, or 255 from our camp was there a continuous or homogenous range of mountains extending parallel with the coast, and which stood out from and could be distinguished from the collection of mountain peaks as a continuous mountain range."

Here we have got a new range "homogeneous"; it is not only to be "continuous"; it is to be either "continuous" or "homogenous."

"I left this camp, went to Fort Wrangell, and on the 9th June proceeded from there by the steamer 'Hassler' to Burroughs Bay, by way of Stikine Strait and Behm Canal. Wherever we followed the continental shore, as we did from the junction of Clarence Strait and Behm Canal to Burroughs Bay, the same topography was observed, the mountains rising precipitously from the water's edge."

"From Burroughs Bay I proceeded on board the 'Hassler' to Sitka, by way of Behm Canal, Clarence Strait, Wrangell Strait, Frederick Sound, Chatham Strait, and Peril Strait. When we came out of Wrangell Strait into Frederick Sound we proceeded within sight of the coast. The coast formation along the whole extent of the mainland, from where we came out of Wrangell Strait until we lost sight of it in passing up Frederick Sound, was abrupt, high, and of the same character as I have described as existing near Fort Wrangell. On account of the height of the mountains close to the shore, I could not see far into the interior."

And now we are told that there are no mountains that suit the Treaty—those are the very mountains the Treaty contemplated.

"From Sitka I returned to Fort Wrangell by way of Taku Inlet, going through Peril Strait, Chatham Strait, Lynn Canal, Stephens Passage, and Taku Inlet. At the junction of Stephens Passage and Favourite Channel I could see the main coast. This was of the same character as the main coast heretofore described by me. I do not recall that from this point I could see over the line of the main coast into the interior, my recollection being that we were not far enough away to see beyond the hills, because the steamer was too close under the shore. Passing into Taku Inlet, the mountains continued precipitous, rising high from the shore and continuing so up to the United States' astronomical station, and bordering both sides of the inlet."

Then he goes on to the year 1894, and says, referring to the Lynn Canal:—

"In the whole length of Lynn Canal the same mountain formation exists as I have heretofore described, the mountains rising sheer from the water's edge. I could see almost nothing on account of the height of the mountains

close to the shore. Later in the season, when we reached the head of Chilkoot Pass, we look over into the drainage of the Yukon going north, showing a distinct watershed; until our arrival at this place it was a detached mass of heterogeneous mountains."

Then he speaks of what he did in the year 1892:—

"I remember that when in Frederick Sound, on the 12th May, near its junction with Stephens Passage, the day was clear, which was somewhat unusual in that region. I saw distinctly the high coast line, which was of the same general character as I have described heretofore, and back behind this coast line and above it were numerous mountain peaks, which rose in an irregular way, and were distinctly higher than the mountain formation which was near the coast. One peculiar shaft, about 50 miles distant, several hundred feet above the rest, I estimated in my journal at the time to have been 10,000 feet high.

"My opportunities for seeing the mountain formation along the coast and in the interior, within the territory described by me, were sufficient to enable me to say that there does not exist anywhere within those regions, within 10 marine leagues from the coast, anything like a defined mountain range extending in a general direction north and south parallel with the coast, and that the mountain formation along the coast, with the limits above designated, as far

256 back as could be seen from the interior points which I have described, is a broken irregular mountain system, composed of something like a high plateau with peaks here and there, without anything like the continuity of a mountain range extending north and south, and that the peaks in this system are higher as you recede from the coast; and that there is no such range as that above described and within the territory described, situated to the west of a line drawn from Chilkoot Pass southerly to Iskoot River, said line being drawn parallel to the coast line which bounds the heads of the inlets and interior waters, and not more than 10 marine leagues from the same.

"There is not within any of the territory described by me any defined mountain chain running north and south generally parallel to the coast, which in its trend goes across the Iskoot, Stikine, and Taku Rivers, or either of them, or across Taku Inlet or Lynn Canal, and which, but for being pierced by them or either of them, would constitute what could be (disassociated from the surrounding peaks or mountains) designated as a continuous or individualized mountain chain or range."

Here is a new adjective. He does not find anything that can be called "a continuous or individualized mountain chain or range."

Then there is the deposition of Mr. Flemer, which is at pp. 537, 538. At the top of p. 538 he speaks of his ascending during his work on the Stikine River Mountains:—

"We ascended the Stikine River as far up as the mouth of the Katete, about 20 miles from the coast, and encamped there to explore the northeastern part of the area allotted to us. During this season's work I ascended mountains 3,000 to 5,000 feet in height, located within a 10-miles-wide coastal belt from the Stikine River in the north to Bradfield Canal in the south.

"The highest mountains in this section are considerably inland, apparently 25 to 30 miles from the coast."

And then in the middle of the page:—

"While ascending the prominent mountains in the area allotted me, a good opportunity was offered me to see much of the country inland. The sides of the Chilkoot and Dyea Inlets rise abruptly from the water's edge to a height from 2,000 to 4,000 feet."

And then the last paragraph—

"As far as my observations in the territories described above have taken me, there is no indication of any coastal mountain range, nor are there mountain formations strung out in a direction north and south. On the contrary, the areas generally appear as a heterogeneous jumble of irregular mountain masses, their general heights increasing inland. The country appears, in a general way, as a very roughly eroded plateau, sloping toward the coast, with irregular but bold projections, appearing isolated or in groups, never in continuous range or chain."

Now, it is not enough to show that in these depositions there is nothing which is inconsistent with Mr. King's depositions; that is putting it a great deal too low. There is a great deal of interesting detail which fills up Mr. King's general description, and brings before the mind a much more vivid picture even than that general description has presented.

Now, after seeing Mr. King's declaration in the Counter-Case of the United States, and in the Appendix to that Counter-Case, you will find certain further depositions to which I desire very briefly to invite the attention of the Tribunal. They are to be found beginning at p. 262 of the United States' Counter-Case. The first is the deposition of Mr. Homer P. Ritter, who is a civil and topographical engineer, and was on duty in 1893 in Alaska. He proceeded to Holkham Bay, and joined the Canadian topographical party, and what he says is this:—

"The area of the country covered by the topographic reconnaissance made during this season extends from the entrance of Holkham Bay on the north to Port Houghton on the south. I ascended five or six different mountains with Mr. Brabazon, from which I had a good view into the interior. From these view-points I saw a great mountain system, the culminating peaks of which were beyond the limits of the topography delineated by us. The mountain masses are so distributed that no defined mountain range trending north and south parallel to the coast can be said to exist within the area described by me."

Then Mr. Pratt is also a civil engineer, and saw the coast of Alaska surveyed in 1893. At the top of p. 263 he says:—

"As we approached Fort Wrangell we had a good view of the mountains in the Stikine Valley. High snow-clad peaks, which were many miles inland, were noted over the tops of the near-by mountains. On the 10th day of May I joined the Canadian topographical party under Mr. J. Gibbon, and from that date until the 3rd of September this party furnished me with food and transportation. I accompanied Mr. Gibbon in the ascent of the ten or more mountains on the mainland from which the topography of the area bounded by the Stikine River on the south and east, and on the north by a line at right angles to the coast through Thomas Bay was developed."

Then, in the next paragraph, he says that during the season he ascended the—

" * * * Stikine River as far as the Great Glacier about 25 miles from Point Rothsay in an air line, and climbed a peak on the west side of the river just below this point. From this elevation of 4,800 feet I obtained a good view of the mountains toward the interior, which are much higher than those toward the coast, and many of which do not appear on the Canadian map of the region. From this and the other peaks ascended by me I could readily determine that there is no defined mountain range anywhere * * * within 10 marine leagues from the coast, nor is there any formation of mountains, which can be strung out into a range interrupted or pierced by the Stikine River."

And in the last sentence of his deposition, he says:—

"Along the entire coast from Chilkoot Pass to the Stikine River I have seen only a broken irregular mountain system, with peaks becoming higher as you go from the coast, without anything like the continuity of a mountain range extending north and south parallel to the coast."

Then Mr. Welker makes a deposition. He also was an engineer, and engaged in the survey. At p. 264 he says:—

"During this season I made not less than fifteen ascents of mountain peaks ranging from 2,000 feet to 5,000 feet and over in height. These mountain peaks, ascended, are distributed along the coast from a point near the entrance

to Endicott Arm, to a point near the head of Taku Inlet, and are within 20 miles of the continental shore, the one most remote from the shore being about 5 miles from the mouth of Speel River. Over this entire area the shores are very steep and rocky, and landing places for the canoe and sailboat scarce, especially about the head of Holkham Bay, where in many places rocky cliffs rise almost perpendicularly from the water's edge to a height of 3,000 feet and over. Almost the entire interior of the country is covered with glacier-bearing mountains."

Then at the end of his deposition he says:—

"Although the results of my topographical reconnaissance show spurs of mountain ranges running in almost all directions, the entire country explored by me during the season of 1893 is really covered by one immense connected mountain system, the protruding peaks of which increase in height with the increased distance from the coast. My opportunities for seeing the mountain masses along the stretch of coast, and in the interior within the territory described by me, were ample to permit me to say that nowhere within 10 marine leagues from the coast does there exist within these regions a 258' defined mountain range which extends in a direction north and south parallel with the coast."

Then Mr. Nelson makes a short deposition.

He was engaged:—

"In 1898 in this capacity in making a topographical survey of the area, on the east side of Chilkoot Inlet which surrounds the valley and tributaries of the Katzehim River. In the accomplishment of this survey I ascended the valley of the said river for a distance of about 15 miles. From my points of observation on the summits of the mountains in this region I was enabled to note the character of the topography to a distance of 30 miles from the coast. There exists in this region no definite mountain range lying in a north and south direction parallel with the trend of the coast, but rather a series of snow-capped peaks from 5,000 to 7,000 feet high, which increase in height as you recede from the coast."

I submit it is not necessary at all to the case of the British Government to say that as you go further back from the coast you come to higher mountains, and that it is not in the least necessary that you should find anything in the way of a "continuous" or "homogeneous" range, the existence of which these gentlemen aimed at.

There are two other passages which do not occur in depositions, but which are referred to in the Argument for the United States, to which I ought to make reference. They are to be found at pp. 78 to 80 of the Appendix to the Counter-Case. The first is a Report of General Clay Wood, dated the 15th January, 1877. It is a Report in which he begins by referring to the Stikine River, where that passage occurs as to the English Custom-house officers' tents, and he says:—

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

MR. TURNER. What page are you reading from?

SIR ROBERT FINLAY. Page 78, Sir, of the Appendix to the Counter-Case. And then, at p. 79, occurs the passage which is referred to in this connection:—

"As a matter of fact, there is no well-defined range of mountains extending in direction parallel to the coast.

"A rugged, broken region extends back from salt water a considerable distance, the mountain peaks visible seeming to stand in groups or clusters; a confused mass of hills of varying altitudes from 3,000 to 6,000 feet, the highest being perhaps in the vicinity of the point marked Grand Cañon, in latitude about 57 degrees 20 minutes N."

"It would appear the Russian Government caused a monument to be set up on the Stikine, making a point 10 marine leagues from the coast. Then again all that General Clay Wood said is that there is no well-defined range of mountains in a direction parallel to the coast."

The other report relied upon is one of the 1st October, 1876, made by Captain Jocelyn, to the Assistant Adjutant-General, Department of Columbia. The last paragraph of the despatch is that which is referred to in this connection.

"Attention is respectfully invited to the map herewith inclosed, and to the provisions of the Treaty between the United States and Russia, proclaimed the 20th June, 1867. A line 10 leagues from the ocean, running parallel to the windings of the coast, would cross the Stickeen River nearly at the point indicated. I have personally examined the country near the river from its mouth to the head of steam navigation, and was impressed with the difficulty that would arise in determining a continuous summit of the coast mountains. 259 There is no range or chain, but rather for the entire distance of over 100 miles, and to the right and left as far as the eye can reach, a confused mass of mountain peaks with elevations from 3,000 to 6,000 feet, the highest being perhaps in vicinity of the point marked "Grand Cañon" in latitude about 57 degrees 20 minutes."

I need not repeat upon these despatches the observations which I made upon the depositions, because exactly the same remark applies to what is said in these despatches.

Now, I submit that the evident meaning of the Treaty is that the line was to be drawn through a flat country. By that, of course, I do not mean an absolutely flat country, but through a country in which mountains did not exist, because the case the Treaty is providing for is the mountains receding more than a specified distance from the coast, and then you are to fill up that interval, that sort of horse-shoe form, caused by the recession of the mountains by a line running across whenever they are more than 10 marine leagues from the coast. Well, that contemplates that when the mountains go back, when you do not find mountains within that distance of the coast, you are to draw your line. Your line will be through a country which one may speak of as relatively flat country, but at all events a country which is characterized by the absence of mountains. The effect of the contention put forward by the United States is that if it prevails, you will have the line drawn through the higher mountainous country; the mountains will be ignored as the boundary on the plea that mountains are not to be found, that there are too many of them to find any, and then the result is that this line which was to be drawn where there were no mountains, that is to say where the mountains had receded, is itself to be drawn, through a highly mountainous country, and in many places over summits of very considerable mountains.

Now, I must in this connection refer to that very important despatch of Mr. Bayard's, a portion of which I read to the Tribunal on the subject of the Portland Canal. It is to be found on p. 251 of the Appendix to the British Case, and a great deal of what Mr. Bayard says deserves very close attention in this connection. The earlier part of the despatch I pass over, of course. It relates to the Portland Canal, and near the top of p. 251 it goes on thus:—

"There is, however, ample ground for believing that the erroneous premises upon which the negotiators apparently based their fixation of the inland boundary line along the coast render its true determination and demarcation by monuments, a matter of doubt and difficulty in carrying it into practical effect, and that, in prevision of the embarrassments which may follow delay in the establishment of a positive frontier line, it is the interest and the duty of the two

Governments to reach a good understanding, which shall forthwith remove all chance for future disagreement."

Then he refers to the terms of the Convention of 1825, which I need not read again, and he goes on:—

"There is conclusive internal evidence that the negotiators accepted as a fact and described in words, the picture presented to their eyes by the chart actually spread before them. If we examine Vancouver's charts we find the evident reason for the language employed in the Convention. Vancouver, who to his integrity and zeal as a navigator, joined an excellent hydrographic faculty, seems to have been but a poor topographer, and represented an impossibly regular land formation such as could not well exist, and has not been discovered to exist, anywhere on the world's surface."

I think it is a little hard on Captain Vancouver, whose survey was confined to the water, that he should be spoken of as a poor topographer because he does not delineate accurately what he never professed to have surveyed:

"His charts exhibit, at a moderate distance from the shore, a uniformly serrated and narrow range of mountains, like an enormous caterpillar, extending with a general parallelism to the shore from one end of the region in question to the other, except at scattered points where valleys intervene, which we now know to be the valleys of the Taku, Stikine, and other rivers. 260 The line projected from the mid-channel line of Portland Channel intersects, at about the 56th degree of north latitude, the backbone range in question, and were the features of Vancouver's chart a correct representation of the topography, no more excellent and convenient boundary could be imagined than that following the depicted serrated ridge. It is not singular that, assuming the chart to be correct, both parties should have agreed to accept this remarkably uniform feature as marking the boundary."

Now, I must pause there for a moment to say that that hardly does justice to the shrewdness of the negotiators. So far from assuming the chart to be correct the negotiations along the point under consideration, I think, contemplate the fact that the chart may be very erroneous indeed; and, in fact, the delineation of the chart, as I shall show presently, is so purely conventional that it is almost impossible to suppose that any persons of any experience assumed that that presented any natural features existing as they were supposed to exist:—

"The better knowledge of that region now possessed shows that Vancouver's topography is not correct. There is no such range of hills as indicated on Vancouver's charts, and as assumed by the negotiators of the Convention of 1825. The topography of the region in question has not as yet been accurately charted, but enough is known of its natural features to wholly disprove the conjectural topography of Vancouver.

"Professor William H. Dall, whose researches in Alaska are well known, and whose explorations have so largely contributed to our present knowledge of the geographical and geological character of that country, upon being invited by me to report as to the accuracy of Vancouver's charts, writes as follows:—

"We have no good topographical maps of this part of Alaska, but having been engaged nearly nine years exploring and surveying the territory, I assert, without fear of contradiction, that nothing of the sort (depicted by Vancouver) exists. We have instead what has been aptly called a "sea of mountains," composed of short ranges with endless ramifications, their general trend being parallel with the general curve of North-Western America, but, so far as their local parts are concerned, irregular, broken, and tumultuous to the last degree. In certain places, as from Cape Spencer to Yakutat Bay, we have the nearest approach to such a range; but even here there are broad valleys penetrating an unknown distance, and lateral spurs given off in many directions. These Alps rise conspicuously above their fellows, but to the eastward. Another peculiarity of the topography is that the hills or summits are nearly uniform in height, without dominating crests, and few higher peaks.

"The single continuous range being non-existent, if we attempt to decide on the "summit" of the mountains we are at once plunged into a sea of uncer-

tainty. Shall we take the ridge of hill nearest the beaches? This would give us in many places a mere strip of territory not more than 3 miles wide, meandering in every direction.’”

Now, as regards the mere strip of territory, it is the very thing the Treaty contemplated, as regards its not being more than 3 miles wide at certain places; that may occur; but the region the negotiators actually contemplated, the coast, and the bays and the mountains running down to the edge, and sought to avoid our having anything at all like the line to be traced along the summits.

“‘Shall we take the highest summit of the general mass of coast ranges? Then we must determine the height of many thousands of scattered peaks, after which the question will arise between every pair of equal height, and those nearest to them. Shall we skip this way or that with our zigzag boundary, impossible to survey except at fabulous expense and half a century of labour? These peaks are densely clothed with trees and deep, soft moss, and thorny underbrush, as impenetrable and luxuriant as the savannahs of Panama.

“‘In short, the “summit of the mountains” is wholly impracticable.’”

I submit that what Professor Dall says has shown that it is 261 not impracticable. He said, if you go away into the interior you will have great difficulty in drawing the line. He rejects what the Treaty contemplates, following the coastal barrier, the ridge of the hills, the ridge of the mountains as it ought to be called, nearest the beaches. He rejects that on the ground that it would give a narrow strip to the United States, but that is the very thing that the Treaty contemplated. A simple *lisière*, a mere strip, and the reasons given for their wanting that are explained, why they did not want any great depth of territory.

Then I need not read the next paragraph, because I have already read it in connection with the impossibility of drawing a line parallel to the inlets. He goes on to say that that line is perfectly impracticable as it is if you take the line of the coast as including the recesses of the inlets. Mr. Bayard goes on:—

“The words of Mr. Dall are those of a practical man, conversant with the region and experienced in the class of difficulties in the way of an actual demarcation of the conventional frontier.

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

Now, that line is shown in the British Case Atlas, No. 34. That map is not the map in question, but it shows the line marked, it is a meandering line.

The PRESIDENT. That is what is marked; a line following approximate summits of mountains.

Sir ROBERT FINLAY. Yes, as shown on the United States’ Case Survey Map of Alaska, 1894.

The PRESIDENT. Then the conventional line means a straight line straightening out that. That is what is meant by that.

Sir ROBERT FINLAY. I do not catch your Lordship’s expression.

The PRESIDENT. The words “conventional line” mean a line that may be drawn by straightening that line, so to speak. It is next to the wavy line. The conventional line No. 1.

Sir ROBERT FINLAY. The conventional line is really an arbitrary line.

The PRESIDENT. That is what I mean, an arbitrary line straightening out the other.

SIR ROBERT FINLAY. These are general observations.

The PRESIDENT. I understand.

SIR ROBERT FINLAY. I only refer to this for the purpose of showing what the mountain line parallel to the coast would be—the straight line, the conventional line.

The PRESIDENT. Not the wavy one.

SIR ROBERT FINLAY. Not the wavy one.

262 The PRESIDENT. It cuts across Lynn Canal just about Berner's Bay.

SIR ROBERT FINLAY. No, my Lord, the one I am dealing with crosses Lake Bennett.

The PRESIDENT. No; I thought you meant the inner one.

SIR ROBERT FINLAY. Oh! no. What I was pointing out is not the line following approximately the summits of the mountains, but the one parallel to the coast. That is a mountain line.

The PRESIDENT. I see.

SIR ROBERT FINLAY. What I am referring to is the outer line which is marked.

The PRESIDENT. We see it now, Mr. Attorney, it was only my mistake; we thought, as you were calling attention to the map, you were calling attention to the inner line.

SIR ROBERT FINLAY. I was only calling attention to this map to show what it is Mr. Bayard is commenting upon in the sentence I am reading.

The PRESIDENT. I follow.

SIR ROBERT FINLAY. Mr. Bayard says this:—

“The line traced upon the Coast Survey Map of Alaska, No. 960, of which copies are sent to you herewith, is as evidently conjectural and theoretical as was the mountain summit line traced by Vancouver. It disregards the mountain topography of the country, and traces a line, on paper, about 30 miles distant from the general contour of the coast. The line is a winding one, with no salient landmarks or points of latitude and longitude to determine its position at any point.”

That is rather hard as coming from Mr. Bayard as criticism upon this line shown on the United States' Coast Survey Map, and this is very much the line that they are claiming now.

“If the coast and interior country from Dixon Entrance to Mount St. Elias were already accurately surveyed, its topography charted, and the heights of all its ‘summits’ determined, it would even then be impossible, except by conventional compromise, to locate such a line as the Treaties prescribe. To illustrate this, a case nearer home may be supposed. Examine, for instance, an Ordnance Survey Map of Scotland and attempt to mark out upon it a line which, starting from the intersection of the mid-channel line of the Firth Solway and the 55th parallel shall thence follow the ‘summit of the mountains’ northward as far as the 58th parallel, and which, where such ‘summit’ shall be more than ‘10 marine leagues’ from the Atlantic coast, shall follow the ‘winding’ thereof. If the tracing of such a line on paper, when every material fact of contour and altitude is precisely known, were found to offer difficulty, the obstacles to the delimitation of an actual frontier, with landmarks and monuments, through a wholly unexplored country much more broken than Scotland is, and with a sea-coast scarcely less intricate, could not fail to be many-fold greater.

“As a rule, a theoretical frontier, based on the assumed contour of mountain chains, is more difficult to determine with accuracy than one following known watercourses or bounded by right lines having geodetic termini.

“Rude and inaccessible as is the ‘sea of mountains’ of South-Eastern Alaska, and forbidding as it may appear for ordinary purposes of inland settlement, it should be remembered that it is a mineral-bearing region—the geological continuation of the gold and silver belt of California and Nevada—and

263 may at any time spring into importance not now calculable. It is of evident advantage to both countries to agree upon some boundary-line capable of survey at a reasonable cost, yet so precisely and practically described that, in case of need, any given point thereon may be readily determined in advance of a general survey, and to do this while the whole question of local values is in abeyance.

"You will bring the foregoing considerations to the attention of the Marquess of Salisbury, and invite an early expression of his views touching the expediency of appointing an International Commission at the earliest practicable day to fix upon a conventional boundary-line, which, while in substantial accord with the presumed intent of negotiators of the Anglo-Russian Convention of 1825, shall be fixed and readily determinable in whole or in part under the ordinary conditions of astronomical and topographical surveys."

Then Mr. Phelps transmitted that despatch to Lord Salisbury in a letter of his own, which I really need not refer to. The material passage in this connection is at p. 254. Of course, I do not want to read it; it is really going over the same ground again.

Now, the members of the Tribunal will have observed that in that passage Mr. Bayard makes pointed reference to the fact that the negotiators had Vancouver's chart before them, and reference is made over and over again in the printed arguments on behalf of the United States to that Map No. 4 in the United States' Case which they say helps their contention as to what the Treaty must have intended.

Now, that map is also to be found in the British Atlas No. 2; but what I am about to do is this: I am not going to waste time by going over again the passages in the negotiations which show how thoroughly alive the representatives both of Great Britain and Russia were to the fact that Vancouver's charts or any maps before them might be inaccurate. These passages are in the memory of the Tribunal; but what I am now going to do is to ask the Tribunal to look for itself at Vancouver's map, and to take, as the simplest means of comparison, Sheet No. 4 of the British Atlas, where will be found set side by side portions of the coast as delineated, the same bit of coast as delineated in the British Atlas No. 3 (that is part of Chart No. 12) and British Atlas No. 2 (that is part of Chart 7). This is Sheet 4 of the British Atlas. Now, it will be observed that the top one is a bit of Chart No. 12, which is No. 3 in the British Atlas; the lower one a bit of Chart No. 7, which is Sheet 4 of the British Atlas.

Now these two charts deal in part—they are on the same scale—with exactly the same localities. Prince Frederick Sound will be found in both Cape Fanshaw and the lower part of Stephens Passage from Point Hugh downwards. Now what I ask the members of the Tribunal to do is this, to look at the way in which the mountains are delineated on these two charts which both proceed from Vancouver and are both on the same scale and both represent the same territory.

Now look at the mountains about Port Houghton, on the upper part of these two, taken from Chart No. 12. There you have the mountains running a range of what is depicted conventionally as a range running from near the head of Port Houghton.

The PRESIDENT. What you mean, Mr. Attorney, is that what is on the east of Stephens Passage on Chart No. 12 shows a different range of mountains to what is on the east in Chart No. 7?

Sir ROBERT FINLAY. Absolutely different. The distance is very much greater—the distance from the head of Port Houghton, I should think, at least, is four or five times as much as it is in Chart No. 7.

The PRESIDENT. I do not want to interrupt you, Mr. Attorney, it is the last thing I wish, but you pointed out the same thing on comparing Baker's and Bennett's maps of Vancouver in the early days of the Arbitration on something else.

SIR ROBERT FINLAY. Yes, and in addition to that, an extraordinary discrepancy on this point with regard to what is represented as the main chain in Chart No. 7, there is filled in between the main chain and the coast in Port Houghton a well-marked sea of mountains as it were which are very faintly delineated indeed in Chart No. 12. The same observation applies with equal force to the delineation of the mountains to the south of Prince Frederick Sound, where the mountains on Chart No. 7 are delineated in different forms and in much more bold outline, much more pronounced in every way than those which appear on the chart.

The PRESIDENT. Those I gather are on an island, are they not?

SIR ROBERT FINLAY. I think they are.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. That is merely by the way as illustrating a discrepancy.

The PRESIDENT. It is the same point, well it is rather more important because there it is quite independent of any story that was being told by them; that shows that when they were plotting them they did not have enough information to put them down accurately either the one way or the other.

SIR ROBERT FINLAY. And the reason why I call attention to this point again and illustrate it in this way is, I submit, that it is perfectly impossible to suppose that when the negotiators had under their eyes such conclusive evidence of the fact that these mountains are not put in as representing with any pretence to accuracy what was to be found in nature—when they found such absolute discrepancy between two of Vancouver's maps, all depicting the same region, I submit one cannot attach the importance which is attached in the arguments on behalf of the United States to the delineation of the mountains either on that map, No. 4, nor on the following map, No. 5. No. 5 of the United States' Atlas corresponds to No. 3 in the British Atlas.

Now take No. 5. It is a map to which in the argument of the United States reference is made that shows continuing the range which is shown in No. 4, of the preceding map, a well-marked, defined range running round the head of Taku Inlet and running away round the head of Lynn Canal. I submit that it is putting upon maps of this kind where the compiler was a sailor who had been surveying the sea—it is putting upon them a burden that they will not bear to say that you will attempt to use such maps delineating the mountains in a conventional manner, and in a manner which is inconsistent in different maps. It is impossible to suppose that the negotiators are to have their Treaty construed by as it were attempting to incorporate such maps in the Treaty.

Now, that observation might be pushed further if it were worth while to go through the other maps which may have been before the negotiators, but I am loth to occupy time in doing it, and perhaps it is sufficient that I draw the attention of the Tribunal to these maps?

The PRESIDENT. You showed it us on Faden's; you showed us that

the mountains on the two Fadens were different, when you were addressing us on that point.

Sir ROBERT FINLAY. I went all through them for another purpose; with reference to the Portland Canal, and by way of saving time, I think I might venture to ask the Tribunal if they are not thoroughly satisfied on this point, to look at the maps again for themselves, and to see how great the discrepancy is, and for that reason I say that it would be wrong to ascribe the importance to what is shown on these maps, as a guide to the interpretation of the Treaty on any point which is attached to them in the argument on behalf of the United States.

265 Now, having made these remarks as to the existence of a coast line in general, I would now invite the attention of the Tribunal to the line which Mr. King has laid down as most nearly corresponding with the requirements of the Treaty, and with the material passages in the negotiations. Now, for that purpose we have had prepared those maps which hang at the back of the table, which show the peaks on the line which Mr. King has followed, with the heights opposite.

The PRESIDENT. Are those the little red squares?

Sir ROBERT FINLAY. Those red circles, I think.

The PRESIDENT. I thought they were squares.

Sir ROBERT FINLAY. Your Lordship is quite right; they are squares.

The PRESIDENT. Or, at any rate, they are rectangular.

Sir ROBERT FINLAY. I cannot see them very distinctly at this distance, but they are delineated the whole way up the coast.

The PRESIDENT. Would you like to come across, Mr. Attorney?

Sir ROBERT FINLAY. Oh no, I may ask presently some assistance from one of my friends in pointing out the mountains to which I am going to refer, but the Tribunal will observe that the sheets begin from the right hand and then proceeding to the left you get up away to the north towards Mount Elias. Of course we have not encumbered that map by putting down every mountain occurring in the line. We have put down the mountains which Mr. King selected in the second exhibit to his declaration as showing the direction of his line. Now, what I would ask leave to do is to go shortly through Mr. King's description following it upon the map. It is only by looking at it in detail that the effect of a thing of this kind can be realized, and we have also had prepared a series of sections, a copy of which I have handed in to the Tribunal, showing at each point how the line of the mountains would look from the sea.

The PRESIDENT. We have not seen those yet, Mr. Attorney.

Sir ROBERT FINLAY. I am very sorry, my Lord, I thought you had. We have got three copies here.

The PRESIDENT. But, Mr. Attorney, we have probably most of us done it, and it will be very convenient if you will go through these on the map before you take the sections, or as you take the sections—whichever you like.

Sir ROBERT FINLAY. I hand in one copy of the sections to Judge Dickinson and one to the Tribunal.

The PRESIDENT. Are those taken from given points? That you will explain, I presume.

Sir ROBERT FINLAY. The one I have handed up is taken along straight lines connecting the summits.

The PRESIDENT. But taken where from—the view from the sea or what?

Sir ROBERT FINLAY. From the coast.

266 The PRESIDENT. From the sea?

Sir ROBERT FINLAY. From the sea. There is another set showing the view. It is taken along the ridges which connect these summits. Of course it may be taken either by running straight from one straight line to another, or by following the ridges.

The PRESIDENT. Is that in this first three, Mr. Attorney? Is the second indication on the first three, or is it another set of charts?

Sir ROBERT FINLAY. It is another set. Then there is another collection of documents in the shape of photographs which the Tribunal might like to look at. I do not propose to go through them in detail. There is an enormous number of them, but they give the views of what actually will be seen from a number of points which have been taken along the coast line.

The PRESIDENT. Well, we have got to understand it, Mr. Attorney. What I should like you to do sometime or another is to go through this line along the coast which has been pointed out, and if at any stage you want us to refer either to a profile section or a photograph, of course we will stop to do it.

Sir ROBERT FINLAY. If your Lordship pleases, if my friend Mr. Rowlatt will kindly help me by pointing out the mountains as I go on. I am incapable of doing it from a distance from the map from the fact that I really cannot read the altitudes from this distance. I can see the spots, and see there are photographs there.

Then I invite the attention of the members of the Tribunal to Mr. King's declaration and the exhibit to his declaration at p. 309 (British Case Appendix). The members of the Tribunal, I have no doubt, looked at the contour map which represents the results of the survey of the whole of this region, and Mr. King's work, of course, is based on these contour maps, and if any one sheet of the contour map were taken and looked at, the principle on which it is prepared would be at once obvious. On the contour map each line represents a height of 250 feet, so that after the fourth line brings you to 1,000 feet, and then four more lines take you to 2,000, 3,000, 4,000, 5,000, and so on. It will be found that that works out all round on every part of the map. You get the altitude in thousands and hundreds of feet by reference to these contour lines, and it is on these maps that Mr. King has done this work. Now, I take the description of the line as given in the declaration, so that the members of the Tribunal will be able to follow at once:—

“Beginning on the 56th parallel of latitude on the mountain ridge immediately south of the peak 4070 on Sheet No. 8 of the British Commission under the Convention of 1892, in longitude 131 degrees 42 minutes nearly, the boundary line follows the summit of the mountains lying between certain tributary valleys of Behm Canal and Bradfield Canal, and the hills bordering the coast, crosses the latter canal at a point about 7 miles from Point Warde.”

Mr. AYLESWORTH. Just pausing there for a moment, Mr. Attorney—

Sir ROBERT FINLAY. If you please, Sir.

Mr. AYLESWORTH. Can you tell me whether these mountains which

are numbered in this way stand out higher than any of their neighbours?

SIR ROBERT FINLAY. They are all peaks; they are selected as being peaks; they are higher. There are a good many hills near them along the line, which are nearly as high, and in fact that is very well shown on these sections, but these are selected as rather outstanding points by way of giving a guide to the line, and they are enumerated in the Table which is annexed to this exhibit at p. 310 of the Appendix.

Now, I think it would conduce to clearness if, instead of going on with the general description in the exhibit, I paused and dealt with the peaks which you pass before you get to the line of Bradfield Canal, which I have reached in the description. Now, if I turn to the Table on p. 310—

MR. DICKINSON. Mr. Attorney, will you permit me to interrupt you for a moment? Two or three days ago the President asked if you would indicate your coast line, and I understood you to say you would. If it would be equally convenient, would you indicate the coast line on the map as you go along?

SIR ROBERT FINLAY. I do not think I could do it conveniently at this moment.

MR. DICKINSON. Then I withdraw the request.

THE PRESIDENT. Mr. Dickinson, would you come round to look at it on the map here?

MR. DICKINSON. I have a map here. I simply wanted to know of the Attorney-General how he locates his coast line on the map.

THE PRESIDENT. I think what might be done—I follow Mr. Dickinson's wish; I have gone through the same labour myself, and I dare say I have made some mistakes—but I think, if you mentioned it to Mr. King, he might, after the adjournment, put a red mark underneath the peak on Mr. Dickinson's copy corresponding to that. You see what I mean?

MR. DICKINSON. Well, I have the line drawn corresponding to this, but what I wanted was an indication of what Great Britain calls the coast-line.

SIR ROBERT FINLAY. That is rather another point. I endeavoured to state clearly the principle on which it should be drawn. Of course, the line so drawn might vary in matters of detail. You are to cut off long and narrow peninsulas, and you are to cut off long and narrow inlets; that is the principle. If my friend desires it, I will certainly endeavour to have it put upon paper.

THE PRESIDENT. I doubt whether it can be. What I gather, Mr. Dickinson, is that the Attorney-General says his argument is that the line which joins the points which Mr. King has marked out will be parallel to what he calls the general line of the coast. That is what I understand him to say.

MR. DICKINSON. I meant for him to indicate in this connection, though I withdraw the request now if it is inconvenient to him to say how he places that coast line.

THE PRESIDENT. Does not the map show?

MR. DICKINSON. No, there is no map which has been put forward yet which indicates what Great Britain puts forward as the coast line parallel to which the mountains run.

SIR ROBERT FINLAY. I quite recognize the reasonableness of what my friend desires; I do not think it will be convenient to do it.

Mr. DICKINSON. As I say, I will withdraw the request at the present time.

268 Sir ROBERT FINLAY. But I will endeavour to meet my friend's wish at a later stage.

Now, we had got to the point where it crosses the Lynn Canal—that is, the Bradfield Canal—that is a point about 7 miles from Point Warde. Now before you get to that there are three peaks. The first has an elevation of 4,070 feet; that is the starting-point. The next has an elevation of 3,800 feet, and the third an elevation of 3,700 feet, all of which are shown on the plan which has been pointed out. Then the description goes on: "Thence" (after crossing Bradfield Canal) "it follows the mountains parallel to Blake Channel and Eastern Passage to the Stikine River, crossing the latter 6 miles from Point Rothesay." Now there are six peaks which are in that interval; they are 3,400 feet, 4,334 feet, 3,590 feet, 4,500 feet, and 4,750 feet.

The PRESIDENT. That is not exactly ascertained.

Sir ROBERT FINLAY. No. Then 3,780 feet and 3,830 feet. Then you come to the line of the Stikine River, and then the description goes on:—

"Thence along the mountain ridge lying to the south-west of the valley of Popoff Glacier, and of the southerly tributary valleys of Le Conte Glacier; thence it crosses Le Conte Bay, near its head, to the mountains lying to the south-west of the icefield which feeds Le Conte and Patterson Glaciers; following these mountains and crossing Patterson Glacier, near the mouth of its main branch, it proceeds along the summit of the mountains in a north-westerly direction to Thomas Bay, the northern arm of which it crosses about $2\frac{1}{2}$ miles north of its south-westerly point of entrance."

Thomas Bay is at the bottom of the second sheet. Now there are in that last space seven peaks, the first, to the north of Le Conte Bay, is 3,600 feet, then 5,355 feet; then 5,860 feet, then 5,268 feet, 4,725 feet, 4,812 feet, and 4,881 feet—just at the bottom of the second sheet. Then the line continues:—

"Thence it follows the mountains parallel to the northerly shore of Frederick Sound to the summit east of Farragut Bay; thence it proceeds north-westerly along the mountains to the east of the valley formed by Farragut Bay and the long and narrow southerly arm of Port Houghton.

"Crossing Port Houghton about $1\frac{1}{2}$ miles above this arm."

Now, between Thomas Bay and Port Houghton there are four peaks marked 4,050 feet, 4,072 feet, 4,500 feet to 4,750 feet, and 4,052 feet. Here the line crosses Port Houghton, "crossing Port Houghton about $1\frac{1}{2}$ miles above this arm"—that is, above the southerly arm, the long, narrow southerly arm of Port Houghton—"the line proceeds along the mountains parallel to the northerly arm of Frederick Sound, crosses Windham Bay about 4 miles from its mouth." Between Port Houghton and Windham Bay there are five peaks which are delineated, the heights being 4,275 feet, 3,500 feet to 3,750 feet, 3,210 feet, 3,250 feet to 3,500 feet, and 3,750 feet to 4,000 feet. We have now got to Windham Bay; "it crosses Windham Bay about 4 miles from its mouth, thence continuing parallel to Stephen's Passage (the name given to the northerly continuation of Frederick Sound from this point), it crosses Holkham Bay to the mountains lying between Stephen's Passage on the west, and, on

the east, the northern arm of Holkham Bay, and the southern arm of Port Snettisham and the valley connecting these arms."

Now, between Windham Bay and Holkham Bay there are two peaks indicated, the highest being 4,290 feet and 3,110 feet. Then you cross Holkham Bay, and between Holkham Bay and Port Snettisham you have one peak of the height of 3,100 feet. Crossing Port Snettisham it continues along the mountains, and there is one peak 3,748 feet.

Then you have Limestone Inlet, and to the north of Limestone Inlet, between that and Taku Inlet, you have three peaks, one of which is 3,588 feet high. Then we pass down, I think, to the next sheet, or the continuation, to find the second of these three 269 peaks, 3,575 feet high, and the third, 3,000 feet to 3,050 feet; and at this point the line crosses Taku Inlet. Then we go on to Sheet 13, the third of these sheets, Taku Inlet:—

"It crosses Taku Inlet about 2 miles above Bishop Point, and proceeds along the summits overlooking Gastineau Channel. Thence it passes along the summits parallel to the shores of Favourite Channel and Lynn Canal, at an average distance therefrom of about 6 miles until the recession of the shores of Lynn Canal, at Berners Bay, is reached, where the line, still following the mountains in the same general direction, approaches, at the peak marked 5,210 on Sheet No. 13 of the British Commission, to within 2 miles of the shore."

Now, in that bit there are a great number of peaks indicated. I think there are sixteen in all. The first to the north of Taku Inlet is 3,441 feet, the second 3,300 feet; then 4,175 feet; then 3,630 feet; then 4,250 feet to 4,500 feet; then 4,071 feet; then 3,500 feet to 3,750 feet; then 4,322 feet; then 4,750 feet, 5,635 feet, 6,010 feet, 5,124 feet, 5,500 to 5,750 feet, 5,799 feet, 5,790 feet, 5,986 feet, 5,210 feet. Now, here the line crosses Lynn Canal, and I pause for one moment to make this observation. If instead of crossing the Lynn Canal, as I submit you must in obedience to the Regulations laid down by the Treaty, that wherever the mountains recede more than 10 marine leagues from the coast you are to take a line drawn at not more than that distance—if instead of crossing the Lynn Canal you went round the Canal—you would find similar peaks all the way round, and I think it might conduce to clearness if we had delineated upon the map, but in another colour so as to show it is not part of our line, the similar summits which will be found if instead of crossing over Lynn Canal one attempted to follow the mountains round the head of Lynn Canal.

The PRESIDENT. Of course I am not in the least expressing an opinion—I need scarcely say that; it is only that I may not be misunderstood, but as the Tribunal will want the information for consideration I must ask Mr. King to kindly indicate in another colour, blue, the mountains that run round the Lynn Canal and Taku Inlet, and in all these others which he has crossed.

Sir ROBERT FINLAY. Certainly.

The PRESIDENT. We shall want to have it for the purpose of understanding the two cases.

Sir ROBERT FINLAY. I should desire that that should be done, and Mr. King will do it; and I desire at once to make it clear that taking the particular point that we have now reached, Lynn Canal, we cross Lynn Canal in obedience to the corrective condition that, where the

mountains recede more than 10 marine leagues from the coast there, you are not to follow the mountains.

The PRESIDENT. I follow you.

Sir ROBERT FINLAY. You have, in short, to put it briefly there, that sort of horse-shoe formation which the Treaty seems to contemplate as possible. You might have that horse-shoe formation, that what was inclosed by the horse-shoe, all round. Here you have got it that what is inclosed by the horse-shoe, partly land and partly territorial waters. I say exactly the same considerations apply and as soon as you find the mountains are carrying more than the specified distance you must draw a line which does not exceed the distance for the purpose of fitting up the bit.

The PRESIDENT. Of course, whatever may be the result this information will be of the greatest use to the Tribunal, and I am quite sure that both sides will want to make it as useful to us as possible.

Therefore, might I ask if you know at present that if this
270 line of Mr. King's was plotted upon the American Survey, whether it is right or wrong, whether the line is right or wrong, whether it would make any difference, and, if not, I think I should like to have it plotted on the American Survey? I have no doubt Mr. King can do it?

Sir ROBERT FINLAY. I cannot answer the question at the moment.

The PRESIDENT. That is why I ventured to give you notice, in order that we may have it before us.

Sir ROBERT FINLAY. I am much obliged to your Lordship.

The PRESIDENT. Because that refers to the question we have to answer in Question 7. Whatever our opinions may be, I would like to know whether, upon the surveys, there is any difference between the two surveys on these important points with regard to peaks, and perhaps Mr. King would not mind, in the course of the next few days, putting down on the American Survey the same information as is put down upon his survey. I do not mean every detail of it, but the square red marks, if he can. Whether it can be done or not, do it as far as it can be done.

Sir ROBERT FINLAY. Certainly. Now, we have got to the Lynn Canal, just below, p. 309:—

“From this peak the line crosses the Lynn Canal to the peak marked 3,452 on Sheet No. 14 of the British Commission. Thence it proceeds along the mountains which lie to the south of Endicott River, and in a general direction of parallelism to the coast, to the mountain marked 4,140 on Sheet No. 14, on the eastern shore of Glacier Bay, immediately to the north of the low-lying flats which border the southern shores of the bay.”

It has now got to the eastern shore, and between Lynn Canal and Glacier Bay there are five peaks. Their heights are as follows: 3,452 feet, 4,050 feet, 4,760 feet, 4,200 feet, 4,140 feet. The Tribunal will observe that the course of the Endicott River, which was described in Mr. King's first affidavit, is almost at right angles to Lynn Canal. It comes out of the lake up near the glacier; it runs down with a nearly straight course to Lynn Canal, and then what we go along is the set of mountains which are to the south of Endicott River:—

“Thence it proceeds along the mountains which lie to the south of Endicott River, and in a general direction of parallelism to the coast, to the mountains marked 4,140 on the eastern shore of Glacier Bay.

“Then the line from this peak crosses Glacier Bay about 14 miles north

of the line joining its points of entrance, Point Gustavus and Point Carolus, which points are about $3\frac{1}{4}$ miles apart. The line on the west side of Glacier Bay follows the mountains which lie to the south-east of the south-western arm of Glacier Bay to the vicinity of Brady Glacier, across which it passes in a westerly direction to the summit marked 4,275 on Sheet 15."

There are three intervening peaks after crossing Glacier Bay—3,030 feet, 3,700 feet, and 3,650 feet; and 4,275 is the point which is indicated in this sentence as the ridge.

"From here, north-westerly it follows the high summits of the Fairweather Range to Mount Fairweather."

Now, these summits are Mount La Perouse, which is 10,758 feet high; Mount Dagelet, which is 9,550 feet high; Mount Crillon, which is 12,750 feet high; Mount Lituya, which is 11,745 feet high; and Mount Fairweather, which is 15,287 feet high.

"And thence"—that is from Mount Fairweather—"continues in the same general direction to Alsek River, which it crosses about 12 miles from the ocean."

271 There is one intervening peak 5,350 feet high. Then you cross Alsek River.

"Thence it continues along the mountains parallel to the ocean coast, at an average distance therefrom of 10 miles, till it reaches Yakutat Glacier. From this point, still following the mountains, it takes a course somewhat more inland, until Mount Unana is reached."

Now, between Alsek River and Mount Unana there is a series of peaks which are all marked there—3,700 feet, 3,415 feet, 3,500 feet, 4,050 feet, 4,500 feet, 3,500 feet, 4,130 feet, 3,510 feet, 3,330 feet, 5,600 feet, and then Mount Unana 6,500 feet to 6,750 feet.

"From this mountain" (Mount Unana) "it crosses the southern arm of Disenchantment Bay, then follows in a northerly direction the mountains lying between this arm and Yakutat Bay. It crosses Disenchantment Bay, the northerly prolongation of the latter, about 6 miles north of where Yakutat Bay first narrows to 6 miles in width."

Between the southern arm of Disenchantment Bay, and then crossing Disenchantment Bay, which is referred to, there are three peaks—Mount Tebenkoff, 4,280 feet; Mount Hendrickson, 4,550 feet; and a peak, the longitude and latitude of which are given from 4,000 to 4,250 feet.

"It crosses Disenchantment Bay, the northerly prolongation of the latter, about 6 miles north of where Yakutat River first narrows to 6 miles in width. Thence it continues in a north-westerly direction along the mountains to the north of Malaspina Glacier to the peak marked 11,565 on sheet No. 24, whence in a westerly course in a distance of about half a mile on a spur of the last-named peak it reaches the 141st meridian."

From Disenchantment Bay to that point you have got peaks eight in number—5,525, 6,350, 6,220, 5,550, 5,750, 5,600, 8,350, 5,600, 5,960. Then you have the summit of a mountain ridge north-west of Agassiz Glacier, and you have a peak 11,565 feet high about half a mile east of the 141st meridian. Now, the description goes on:—

"All distances in the above are in marine miles. Should it be decided, contrary to the claim of His Majesty's Government, that it is necessary in this case to apply the alternative provision of Article IV of the Convention of 1825, and to draw the line across the canal 10 marine leagues from the ocean, then, if the ocean is taken as ceasing at the mouth of Lynn Canal as contended for by Great Britain, the line of demarcation would still cross at much the same place, the mountain line being here in fact about 10 marine leagues from that point."

The PRESIDENT. What page is that?

Sir ROBERT FINLAY. At the bottom of p. 309:—

“If, however, the contention referred to is not accepted, but the coast is regarded as ceasing at Berners Bay, where the width of the canal diminishes to 6 miles, then the line will follow, from the peak 3,210 on the east side of Lynn Canal, the mountains rising from its eastern shore, until the 10-league limit is reached, which will be about $1\frac{3}{4}$ miles north of Point Seduction. On the west shore the line will pass southward along the mountains, rising from the edge of the canal until the peak 3,452 is reached. Similarly, should the alternative of Article IV be applied at Glacier Bay the line would proceed along the mountains on either shore, from the mountains 4,140 and 3,030 of the previous description, to the place where it would cross the bay, distant about 9 miles westerly from the front of Muir Glacier, and 8 miles northerly from the mouth of the south-western arm of Glacier Bay.”

Now, I do not for a moment mean to lay it down that no variation is possible in Mr. King's line; it may be varied in matters of detail. But what I do submit is that, taking it broadly—in broad outline—it does show such a set of mountains as are contemplated by the Treaty in proximity to the sea, which satisfies the language of the Treaty, and that with the necessary corrective of going back from the line of the hills to the 10 marine league limit, where the hills

recede and form a deep recess as they do at Lynn Canal, you get a result which is entirely in harmony with the language of the Treaty and with the intention of the negotiators as there expressed. Now, of course, the starting point of this line is at 56 degrees, its northern extremity is away up close to Mount Elias—at Mount Elias. Now, following that line along the course which I have just described, it is material to see what appearance is presented by sections as they are taken, and for that purpose I will ask the Tribunal to be good enough to look at these sections.

Mr. AYLESWORTH. One word, Mr. Attorney, before you take that up. I do not know whether it would be of any importance, but I have assumed in listening to you that between the peaks which you have identified and the water there are not anywhere higher peaks. Can you tell me if that is the fact?

Sir ROBERT FINLAY. I think that is so. There are not, as far as I know, between those peaks and the water higher peaks.

The PRESIDENT. I looked at the chart, as far as I could, to follow it and subject to the criticism which is very properly administered to this, in crossing the Stikine at a particular place. I think that Mr. King did take the highest peak next to the water and that the peaks where they are shown between the water and his peak are lower as Mr. Aylesworth points out.

Sir ROBERT FINLAY. I think that is so.

The PRESIDENT. I think that is so.

Sir ROBERT FINLAY. There may be an occasion, I am not aware of it; I think that what your Lordship has said is accurate, but I am not aware of it, what I desire now is—

The PRESIDENT. Of course, I speak with reservation with reference to certain particular points that are very much criticized by the United States, as for instance, where it crosses the Stikine Gorge, they do point out that there is a peak on the other side which, from the coast, has, what I may call, a more prominent appearance than the other one.

Sir ROBERT FINLAY. I am going to take presently the United

States' criticism, as I desire to meet what can be said about this line at once, and I will take the criticism later on.

The PRESIDENT. Then you were going to the profile surveys.

Sir ROBERT FINLAY. The profile surveys, yes.

The PRESIDENT. Are you beginning at the top, Mr. Attorney, or at the bottom; it is the same direction.

Sir ROBERT FINLAY. Then begin at the bottom, and they go through right to left.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. Take the first sheet, No. 56. There you have delineated the first peak, 4,070.

The PRESIDENT. Those peaks that you read off—they are all enumerated at these peaks?

Sir ROBERT FINLAY. They are all enumerated.

The PRESIDENT. I followed them; they are all exactly and correctly enumerated as you read them out.

273 Sir ROBERT FINLAY. And this shows, I believe, exactly according to the natural proportions what would be yielded by a section carried down on the line of these peaks.

The PRESIDENT. Would you kindly tell me for the purposes of reference?—you spoke of some number on a sheet; I do not know what that referred to. You said No. 56 a moment ago.

Sir ROBERT FINLAY. The sheets of the contour survey.

The PRESIDENT. Do not interrupt your argument.

Sir ROBERT FINLAY. I only wish to make the thing clear, because it is troublesome afterwards if there is any difficulty about the references. On p. 310 and the following pages of this Appendix is the table of heights, and in the left-hand margin there are Sheets Nos. 8, 9, 10, 11, 12, and so on; those are the sheets of the contour maps.

The PRESIDENT. You happened to say "55" or some such number. You meant "5," I think, and I follow you now. Sheet 5, I think, was it not?

Sir ROBERT FINLAY. I do not think there is any Sheet 5 mentioned here.

The PRESIDENT. I know what you are referring to, Mr. Attorney; I beg your pardon for interrupting. You are referring to the numbers on the index map of the British.

Sir ROBERT FINLAY. I said "56," my lord; that was 56 degrees of north latitude.

Mr. TURNER. Mr. Attorney, how do you get the contour between the peaks as depicted on this tracing?

Sir ROBERT FINLAY. This is taken—

Mr. TURNER. How do you get the contour between the peaks?

Sir ROBERT FINLAY. This is taken from the contour maps. The contour maps indicate at every point.

Mr. TURNER. The elevations between the peaks?

Sir ROBERT FINLAY. The elevations between the peaks. That is, I am told, how it was taken. And I should say that in taking these sections we have preserved the same proportions as exist in nature. Of course, in guide books one constantly sees outlines of this kind which are a good deal exaggerated for the purpose of bringing home to the eye more clearly the running of the mountains which are delineated, but we have thought it better to preserve the proportion. Horizontal and vertical are on the same scale.

The PRESIDENT. That is unusually unfavourable to you, because the common thing is to make the vertical scale very much more pronounced than the other.

SIR ROBERT FINLAY. Yes. One understands perfectly why it is done. It appeals to the eye more, and for the purpose for
274 which those things are done it is very useful. But for this purpose we thought it better to preserve the same scale as in nature, leaving it to the Tribunal to appreciate the effect. Now, if you apply it in that way, this is what you get. From 4,070 to 3,800 you get a very respectable elevation; then on to 3,700 till you get to Bradfield Canal; then, on the other side of Bradfield Canal, it goes down pretty sheer to Bradfield Canal; on the other side it rises by a more gentle slope to 3,400, and then you have a varying elevation on to 4,334, 3,590, till you dip down into the valley. I think that is a valley; I do not think it is an inlet at all. Then you get to the point which is 4,500, to 4,750, and so on, along an undulating line which dips lower than any point of the hills hitherto, with the exception of that valley of 3,280. Now, one of these illustrates my point just as much as another. You have not got mere isolated peaks with an absence of height between them; you have got these points which have been selected which are not less than 3,000 feet—no point which is less than 3,000 has been taken—as indicating the direction of that line, and between them you have got the very respectable heights which are indicated on this line.

MR. AYLESWORTH. I understand, Mr. Attorney, that this profile is drawn to scale horizontally, so that we can estimate at once the distance between each adjoining peak.

SIR ROBERT FINLAY. Exactly. Then, on the second line, you have the two peaks before you get to the Stikine Valley, before which the hills rather sink down. There is a sort of rise just before you fall down immediately into the valley, but on the northern side of the Stikine Valley it rises much more sharply up to a peak of 4,483. Then you run on to a high peak of 5,700, from which there is a long slope down to Le Conte Bay. The scale is $2\frac{1}{2}$ miles to the inch. From 5,700 it slopes down Le Conte Bay; then between Le Conte Bay and Thomas Bay you have got a series of peaks—3,600, 5,300 (I drop the odd figures), 5,800, 5,200, 4,700, and you have Patterson Glacier, which is 4,812 and 4,881, with a peak between them which we have not marked, but which is nearly as high as those two. Then the peak 4,881 runs down with tolerable rapidity to the level of Thomas Bay. And then you start on the third line, 4,050, 4,072; then there is a deep depression, a deep valley, which must be crossed; 4,500, 4,000, then Port Houghton, then the ground rises from that to 4,200, 3,500, 3,200, 3,200, 3,700, and then it drops to Windham Bay, and then following the set line, 4,200, it rises to that height with considerable rapidity from Windham Bay, 3,100, and then there is the comparatively large opening of Holkham Bay, then the hills to the north of Holkham are not so pronounced. The line indicated, I suppose, by about—

The PRESIDENT. Well, they are running up to about 2,000 feet, which is pretty fair.

SIR ROBERT FINLAY. I was just trying to make sure I was right. They are running up to about 2,000 feet, and then they go on to 3,500, and then drop to Snettisham Bay. From that they rise to

3,700, drop to Limestone Inlet, then rise sharply to 3,500, drop considerably, and then rise again to 3,400, then to over 3,000 feet, when they drop on Taku Inlet. The drop into Taku Inlet and the rise from the other side are both well marked. Then you have a series of peaks, 3,400, 3,300, 3,100, 3,600, and 4,000. Then you go on at the bottom of the second sheet in the same way, with 4,000 and 3,500, to the Mendenhall Glacier, from which it rises 4,300, 4,700, 5,600, dropping to the Harper Glacier, and rising again to 6,000, 5,100, 5,500. That is just by the Eagle Glacier, and then you have a succession of glaciers with peaks intervening—5,700, 5,700, 5,900, 5,200, and a sharp fall down to Berner's Bay. Then there is Lynn Canal with the peaks delineated on the other side, 3,400, 4,000, 4,700, 4,700, 4,100, and then Glacier Bay, 3,000, on the other side, side of Glacier Bay, 3,700, 3,600, Glacier 4,200—

THE PRESIDENT. Do not trouble to read the figures, Mr. Attorney; we follow you perfectly.

275 SIR ROBERT FINLAY. Really one line is almost enough to show the effect of this thing drawn to scale.

Now, the other set of documents that I mentioned to the Tribunal was the book of photographs. I am not going through them, but I think it may be desirable that the Tribunal should have a copy, and my friends on the other side, if they have not got it already.

MR. DICKINSON. We have a copy.

SIR ROBERT FINLAY. You have got them?

MR. DICKINSON. We have them.

SIR ROBERT FINLAY. I do not know whether the copy before the Tribunal has got the printed description at the bottom?

THE PRESIDENT. No, it has not.

SIR ROBERT FINLAY. It is merely a matter of reference.

THE PRESIDENT. I should like it written on; it might be done for me. Do not go through them all, Mr. Attorney.

SIR ROBERT FINLAY. Oh no.

THE PRESIDENT. But if you took some of the cases it would be useful. There is one on the second sheet, 26 K; where is that? Now have you got anything which does give the place? (Book with description handed to the President). That is just what we want. Why cannot it be done on ours, Mr. Attorney?

SIR ROBERT FINLAY. I was in hopes that it had been done.

THE PRESIDENT. No, it has not. That is the trouble. May we have it done?

SIR ROBERT FINLAY. Certainly. It is a mere matter of reference to the Appendix to the Counter Case.

THE PRESIDENT. It may be, but it adds enormously to the trouble to have to do it.

SIR ROBERT FINLAY. Certainly, it is a very great convenience to have the reference.

THE PRESIDENT. What sheet are you looking at?

SIR ROBERT FINLAY. I hope a copy has been handed up to the Tribunal with the description on.

THE PRESIDENT. Yes, it has now. What sheet are you looking at?

SIR ROBERT FINLAY. I will take any of them. The principle is simply this: without going into any detail at all I may say what is done. Each view is taken from a particular peak which is indicated upon the photograph; then you have the bearing on which the view

was taken, and then the photograph represents what you see from that point upon that bearing. That is the whole matter, and it is really quite unnecessary to spend time in turning over the leaves of this photograph book unless any member of the Tribunal desires it.

276 The PRESIDENT. If those who assist you will kindly have this information put below ours it will enable us to follow it ourselves.

Sir ROBERT FINLAY. Certainly, my Lord.

The PRESIDENT. Who will do this? Mr. King?

Sir ROBERT FINLAY. Well, it will be done under Mr. King's direction.

The PRESIDENT. Would you mind looking at it for one minute? If you will turn to p. 17—I only take that for all of them—the second entry is "Station from which taken," you see?

Sir ROBERT FINLAY. Yes, my Lord.

The PRESIDENT. Well, if the gentleman in going through them will kindly just write underneath that whereabouts it is it will save us a world of trouble.

Sir ROBERT FINLAY. I think it is numbered on the map.

The PRESIDENT. On which map?

Sir ROBERT FINLAY. Take this number—the particular case your Lordship has suggested: "Station from which taken, 64."

The PRESIDENT. "Station from which taken, 67."

Sir ROBERT FINLAY. 67?

The PRESIDENT. Where is that now? Where shall we find that?

Sir ROBERT FINLAY. I will show it in one moment. It is north of the Stikine.

The PRESIDENT. Is it on that chart? Is "67" put on that chart?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. That will answer my purpose. No, do not trouble, Mr. Attorney. If we shall find these numbers on that chart you need not trouble any more, thank you.

Sir ROBERT FINLAY. In that particular station, if your Lordship will kindly look at that chart just to verify what I have said, 67 will be found on the island called Medkoff Island.

The PRESIDENT. Mr. Rowlatt pointed it out, Mr. Attorney, thank you.

Sir ROBERT FINLAY. Which is just west of the Stikine, and very little by north. The criticism on the line will be found in the Appendix to the Argument of the United States. I need not read the first page or two; I am not going to pass it over; it relates to the commencement of the line or to the language of the Treaty; I will return to that and deal with it by itself. But on p. 5, about the fourth paragraph, they begin to criticise the line in detail:—

"There are other mountains in the immediate vicinity and on the 56th parallel to the east of the point where the British line crosses it which
277 answer the requirements of the Treaty equally as well as that selected in the British Case for the point of departure on the parallel.

"The point of departure of the British line is not on the summit of the mountains. It crosses the parallel on a saddle half a mile south of peak '4,070.'"

Peak "4,070" is station No. 36.

"There are higher places on the 56th parallel east of this, as, for instance, the mountain mass which lies between the Leduc River and Burroughs Bay

and those between the Chickamin River and the head of Portland Channel, which are as much parts of mountains parallel to the general or mainland coast as are the formations selected by Great Britain. The contention, however, of the United States is that none of the mountains within 10 marine leagues of the coast answer the requirements of the Treaty."

The point that "it crosses parallel on a saddle half a mile south of peak 4,070" does not seem to be criticized with very great stringency, and, as regards the general observation that "there are higher places on the 56th parallel east of this"—which are there specified—I submit that that does not really meet the point at all. What we have to find is rather some mountains which are near the sea within the contemplation of the framers of the Treaty.

"From this point of departure the line runs half a mile to peak '4,070.' From this peak it runs $3\frac{1}{4}$ miles to another peak, '3,800,' thence for 5 miles to a peak, '3,700,' and thence in 4 miles it strikes the shore of Bradfield Canal, which is 500 feet deep."

The criticism on that is this:—

"In this entire distance the line skips from mountain peak to mountain peak, and there is no definite backbone or crest running from its beginning until it strikes Bradfield Canal."

I ask the Tribunal to appreciate that criticism by the light of the sections which I have just been showing. It is not a case of isolated peaks, where you skip from the head of one peak to another. It is a case of marked points—

The PRESIDENT. You say that they have disregarded the contour when they make that observation?

Sir ROBERT FINLAY. Yes.

Mr. TURNER. Do these intervening elevations between the points indicate a continuation of the mountains towards each other, the peaks of which are taken, or do they indicate the heights of other lower peaks which may be between or upon one side or the other, to the eastward or to the westward?

Sir ROBERT FINLAY. They indicate the heights all along. For instance, if you test that by a particular case—

Mr. TURNER. But is it intended that the foot-hill of one mountain reaches to the next, or is this intervening space made up of other and different mountain peaks?

Sir ROBERT FINLAY. The elevation is always preserved at the point.

Mr. TURNER. The elevation may be 5 miles east or 5 miles west of the line drawn between these peaks, may it not?

278 Sir ROBERT FINLAY. The elevation shown is, as I understand, a continuous elevation in the same vertical section.

Mr. TURNER. That is what I want to get at—whether that is intended to represent a continuous elevation.

Sir ROBERT FINLAY. It is on the same vertical section.

Mr. TURNER. Running on the line drawn from one peak to another?

Sir ROBERT FINLAY. Mr. King tells me that what is shown here is the height of the vertical section taken on different peaks.

The PRESIDENT. If the heading is true it is a profile along a straight line. If we look at the contour maps, which are said to be 250 feet each line, it would look as though there were, as Mr. Turner says, hills running down to the foot of one and rising to the next peak. It may be wrong, but that is what it looks like.

Sir ROBERT FINLAY. May I start from the elevation of 4,070? The next point you reach is an elevation of 3,800 feet. If you connect those two points and follow it on the contour line I think it will be found that you get exactly what represents it on the section. What you find this. Take just round Station No. 36. You get a deep line which marks an elevation of 3,000 feet. Then you drop down by two stages 250 feet. Then you ascend again to the 3,000 limit, again represented by that sort of jagged peninsula which is shown on the contour. Then you cross that 3,000 limit which rises in the centre somewhat higher; then you drop on the other side of that again, and rise up to the 3,800 limit. Now that is exactly reproduced. I was wrong in the answer which I gave with regard to these elevations. The line round 36 represents 3,000; then you proceed to drop down, and the height of the next line represents, not, as I said, another 3,000 with an intervening valley, but 2,000; it is a drop. And then from that you drop down into the valley which is represented by the depression in the centre of that section. I do not know whether Senator Turner follows?

Mr. TURNER. I do not follow.

Sir ROBERT FINLAY. It is very difficult to follow without pointing out the particular lines on the contour map.

Mr. TURNER. I have not the map with the particular section referred to.

The PRESIDENT. I have; that is 36; that is the one.

Sir ROBERT FINLAY. If Senator Turner would kindly look at the particular points from the station marked 36 to the hill which is marked 3,800, I think he will see what I mean.

The PRESIDENT. What is the next station you go to after 36?

Sir ROBERT FINLAY. 3,800.

The PRESIDENT. No, but the number of the station?

Sir ROBERT FINLAY. There is no number.

The PRESIDENT. It does not go to a station, does it?

279 Sir ROBERT FINLAY. No.

The PRESIDENT. What Senator Turner wants to know is this, if you will tell him. Would you trace that line between the two peaks on that chart? Then I think he will follow you.

Sir ROBERT FINLAY. What I have done is to draw a straight line from 36, the starting point, to the peak marked 3,800. Well, if you follow that straight line you will find that in the middle there is a depression just between the line indicating the height of 2,000, which runs round on both sides. The line sinks from the 4,000 down to the 2,000 level, and then drops to that sharpish valley which is between the two elevations of 2,000 feet, one to the north and the other to the south; then it rises again to 3,000, so that if that is followed on the contour map I think that this section exactly represents what the lines there would indicate.

The PRESIDENT. You see, Mr. Attorney, between the 4,070 and the 3,800 there are obviously intermediate peaks, as your cross-section shows. I am looking at your section; do you follow me?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. They are not numbered, but there, between the 4,070 and the 3,800, which are about 5 miles, according to your statement, there are three intermediate peaks. What Senator Turner

wants to know is whether that is all in the same vertical plane, or is it the projection of a contour which is in several vertical planes?

SIR ROBERT FINLAY. No; this is taken on a straight line.

The PRESIDENT. Very well; that is in one vertical plane. Now, if you had happened to have taken the usual course of exaggerating your vertical scale, we will say ten times, as is often done, then those little hills and peaks which Senator Turner is asking you about would have been shown. That is the difficulty of following you.

SIR ROBERT FINLAY. Yes.

The PRESIDENT. What you say is that you have got 4,070, do you not?

SIR ROBERT FINLAY. Yes.

The PRESIDENT. And 3,800. You go up and down, but that is all on one vertical plane, one straight line?

SIR ROBERT FINLAY. Yes, exactly; a straight line between the two points, and if one follows it on the contour map, taking the centre of 4070, the peak, then you drop down from the 4,000 line to the 3,000 line; then you drop further down to the 2,000 line, and then in the bight of the contour line, which marks the 2,000 height, you have got that deepish valley which is indicated by that sort of nick in the centre, and the space between the 4,070 and the 3,800; if Senator Turner would do me the favour of looking at the alternative set of sections which have been handed up, he would see that that is what would be represented on the contour line.

The PRESIDENT. I have just pointed out that to Senator Turner.

SIR ROBERT FINLAY. Now the criticism goes on, about one-third from the bottom of p. 5 of the Appendix to the United States' Argument:—

280

"The line crosses Bradfield Canal from a mountain peak on the south to a mountain peak on the north. There is nothing to indicate that this peak on the north is any part of a mountain formation which embraces this peak on the south. There are numerous mountains in the vicinity. No topographer can give a good reason why peak '3,400' was selected on the north side of Bradfield Canal as a better summit than any one of three which are in the immediate vicinity. All are between 3,000 and 3,400 feet high. Peak '3,400' is one end of a mountain mass which trends in a general direction for 8 or 9 miles northerly, never descends below 2,750 feet, and whose axis goes through five different peaks to peak '4,600.'

"This mountain mass trends north-easterly 2 miles to peak '6,200,' a total distance of about 11 miles, where the surveyed area ceases. The British line, instead of following this indicated ridge from mountain '3,400' up to mountain '6,200,' actually leaves that ridge to the east and goes westward. Why, when an elongated mass did look something like a portion of a ridge, did the British line merely take one end of that ridge, and then leave it, and refuse to follow it further?"

Now, as regards the first part of the criticism in that paragraph, they say, "Why take peak 3,400 when there are other mountains in the vicinity?" Well, you must take one of them. I mean the fact that there are so many mountains is no reason why one should remain suspended for ever because one cannot make up one's mind which is the most attractive of the number. One must make a selection, and I submit that this peak 3,400 does best answer the requirements of the Treaty, and the fact that there are other mountains which might have been taken more to the eastward which are as high or higher is no reason whatever for not taking 3,400, which is situate towards the line of the sea.

The PRESIDENT. If the criticism shows that there is approximately

the same height, and a *fortiori* a higher one, between that and the sea, it would be a very strong criticism against you?

SIR ROBERT FINLAY. Yes; but it does not show that.

THE PRESIDENT. But if it is merely to say that there are other peaks, say to the eastward, it may be a reason for altering, but it does not say that it ought to be.

SIR ROBERT FINLAY. All they say in a general way is that there are numerous mountains in the vicinity.

THE PRESIDENT. Yes.

SIR ROBERT FINLAY. I agree that there are numerous mountains in the vicinity, and the reason I take the one rather than another is that it is opposite; proceeding almost due north, and parallel to the general direction of the coast, you find that peak on your line.

Now, as regards the second part of the criticism, which relates to the way in which you go after getting to peak 3,400, what they say is that—

“Peak ‘3,400’ is one end of a mountain mass which trends in a general direction for 8 or 9 miles northerly, never descends below 2,750 feet, and whose axis goes through five different peaks to peak ‘4,600.’ This mountain mass trends north-easterly 2 miles to peak ‘6,200.’”

And then they say we ought to have followed that instead of leaving the ridge to the east and going westward. The reason we go to the westward is that the sea is to the westward, and that the line of the mountains must be the mountains which are in the direction of the sea.

THE PRESIDENT. May I ask, Mr. Attorney, whether there is another set of maps already done like those behind us, or not?

281 SIR ROBERT FINLAY. I am afraid not. These have been hung up; they were hung all yesterday in the corridor, so that they were visible, but I do not think there is a second set.

THE PRESIDENT. We can have these taken down afterwards, but if there had been a second set we could have had them in our room.

SIR ROBERT FINLAY. A second set can be prepared.

THE PRESIDENT. Oh no; I do not want you to do that.

(Adjourned for a short time.)

SIR ROBERT FINLAY. Senator Turner put several questions with regard to the line at the first bit of the section. May I, by way of illustrating the answers I gave, hand in this diagram which my friend Mr. Simon has been good enough to draw, which shows the two side by side. I think if Senator Turner would look at it he would see that the depression exactly corresponds to the dip in the valley in the line indicating the 2,000 limit. They are on the same scale; they are drawn one below the other; and I think, taking the parallel lines which are drawn from one to the other, it would appear that the dip on the section exactly corresponds with the dip indicated on the contour line between the line in the bight of the line indicated by the 2,000 limit.

I was reading the criticism in the Argument of the United States on this line, and I was upon the passage where they say that peak 3,400 is the end of a mountain mass which runs 8 or 9 miles northerly, and whose axis goes through five different peaks to peak 4,600, and then runs north-easterly 2 miles to peak 6,200; and they ask why we do not follow that line?

Well, if the members of the Tribunal would do me the honour to look at the contour map, one will see in a moment. There, the line from 4,300 up to 4,600 would take you, it is true, due north, but then, from 4,600 to 6,200 runs away north-easterly, absolutely at right angles to the direction of the coast—takes you away into the interior. If you take Bradfield Canal, there is the peak which we make for, which is marked 3,400. Well, they say that that is the end of a mountain mass, which runs for 8 or 9 miles northerly through five different peaks to peak 4,600.

The PRESIDENT. Where is the 4,600, Mr. Attorney, in the contour map?

Sir ROBERT FINLAY. It is a little north of 56 degrees 20 minutes.

The PRESIDENT. Is it above Bradfield Canal or below it?

Sir ROBERT FINLAY. About 56 degrees 20 minutes.

The PRESIDENT. Is it south of Bradfield Canal or north of it?

Sir ROBERT FINLAY. Oh, north of it. We are starting from the north of Bradfield Canal from the peak 3,400.

The PRESIDENT. I see now. You say it goes away to the north.

Sir ROBERT FINLAY. It goes pretty well due north to 4,600 but then they say that that ridge that they have got as a fact will run away from 4,600 to 6,200, which is on the edge of what is left blank in the map.

The PRESIDENT. At that particular point—I do not know, of course, whether or not the other may not be very defined. If you look you will see the second words Stikine River.

282

Sir ROBERT FINLAY. Yes, my Lord.

The PRESIDENT. The second letter in "Stikine River."

Sir ROBERT FINLAY. Yes.

The PRESIDENT. On the bend it would rather look as though that which runs up towards that S—the left of that S of Stikine was more defined than the one you have taken.

Sir ROBERT FINLAY. Yes, up there. But, then, what I was dealing with was the point below. If your Lordship would kindly look at the passage, it will make it perfectly clear. May I just read this?

The PRESIDENT. Read the passage again.

Sir ROBERT FINLAY. Peak 3,400. That is the peak just to the north of the Bradfield Canal.

The PRESIDENT. Yes, I have it.

Sir ROBERT FINLAY. "Is one which trends in a general direction for 8 or 10 miles northerly, never descends below 2,750 feet, and whose axis goes through five different peaks to peak 4,600." If your Lordship sees that point, 4,600—

The PRESIDENT. Where is it?

Sir ROBERT FINLAY. From Bradfield Canal to the Stikine—it is almost exactly one-third of the way.

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. In a direction very nearly north-north $\frac{1}{2}$ west, I should say, from peaks 4,300 to 3,400.

The PRESIDENT. Yes, I see it.

Sir ROBERT FINLAY. Then they go on:—"This mountain mass trends north-easterly 2 miles to peak 6,200." That is just on the edge of what is left in white blank on the same map.

The PRESIDENT. Yes.

Sir ROBERT FINLAY. "To peak 6,200, a total distance of about 11

miles where the surveyed area ceases. The British line, instead of following this indicated ridge from mountain 3,400 up to mountain 6,200, actually leaves that ridge to the east and goes westward. Why, when an elongated mass did look something like a portion of a ridge, did the British line merely take one end of that ridge and then leave it, and refuse to follow on farther?"

Well, if we had followed that ridge we should be actually going away from the sea—absolutely. The portion of the ridge from 4,600 to 6,200, instead of being anything like parallel to the coast, is actually at right angles to it. It is going away into the unsurveyed region in the interior. So that I submit that Mr. King was amply justified in the course which he took in following the guide which the Treaty gives him, namely, the sea. Then they go on:—

"Continuing from peak '3400,' which has been shown to be on the slope of an elongated mountain mass, the line runs 4 miles to peak '4334'—that is Station No. 45—then $3\frac{1}{2}$ miles to peak '3590'—that is towards the coast, north-west—and in $2\frac{1}{2}$ miles more it descends into a small inlet which it crosses, and then in $3\frac{1}{2}$ miles it rises to peak '4500 to 4750.'"

There is no number on the map for that particular peak; it is just to the north—one point west of No. 46.

"Thence, in 7 miles, it runs to peak '3780,' which is away up to the north-north-west.

"Between this point and a peak distant 4 miles, marked '3830,' it drops about 3,000 feet into a deep ravine, and then ascends again to peak '3830.'"

Well, that is a ravine through which the stream-river runs down into the eastern passage—the northern portion of Lake Channel. Of course, you must sometimes cross the valley of a stream if you are attempting to follow any mountain line.

"Between the peaks '3400' and '3830,' that is from the peak just north of the Bradfield Canal up to this last point, 3830—

"The mountain mass rises eastwardly to higher summits, and the line, instead of attempting to reach these higher summits, takes lower summits between the peaks described."

Now, I submit that that is the fallacy which runs through a great deal of the contention of the other side—that you are not to take the line of mountains which is near the sea, but you are to try to get the highest dominant range. There is nothing in the Treaty or in the negotiations indicating any intention of the kind:—

"From peak '3830' it runs to a point on the north side of the Stikine River, crossing that river less than 6 miles north-east of Point Rothesay to peak '4483.' (It may be well here to note that, including the British line under discussion, four different places have been contended for as the proper ones where the line of demarcation crossing the Stikine River should be drawn, and all of them were based on the theory that they were following the crest of mountains parallel to the coast.)

"1. Chief Justice Begbie's line was eastwardly of the present line, and midway the line of 1878.

"2. The line drawn by Mr. Hunter under the instruction of the Surveyor-General of Canada, which is the line of 1878, shown on the map, is to the eastward of the present line 14 miles.

"3. The line drawn on the map presented to the Joint High Commission in 1898 is drawn to the westward of the present British line.

"4. The line now proposed by Great Britain."

Now I quite recognise that one of the points that I have to deal with is the line proposed by Mr. Hunter in his report, which arose out of the case of Martin. Mr. Hunter's survey undoubtedly indi-

cates that his view of the line of mountains was a line which lies 19 miles, I think, from the coast—a considerable bit further off than the present line which Mr. King indicates. Well, Mr. Hunter takes certain peaks which he finds in that neighbourhood, and he says that in his judgment that must be regarded as the line of the mountains. But when the passage in Mr. Hunter's report is looked at, it would appear that he had not worked the thing out from the one end to the other, as Mr. King has done.

What Mr. Hunter says is: I find, at this point, what I think is the line of mountains, and it is supposed to originate some way or other near the head of the Portland Canal.

I will just read the passage—the instructions will be found at p. 224 of the British Case Appendix, and the report of Mr. Hunter will be found at p. 226 and the following pages—the instructions were on p. 224:—

"1. Having identified Rothesay Point on the coast of the delta of the River Stikine (shown as Point A on Tracing D), you will assume it as the
284 point from which to commence the survey of the river, also, for present purposes, as marking the point from which to measure or estimate the distance of the 10 marine leagues from the coast referred to in the Convention.

"2. You will then make a survey of the river for such a distance up as will enable you to mark a point thereon 10 marine leagues from the coast, taking the angles with a box sextant transit or theodolite, occasionally checking the bearings of your lines by true azimuths, and effecting your traverse measurements, if possible, by chaining.

"Should the circumstances not permit of chain measurements without involving too much time and expense, you will obtain your distances by triangulation or the use of a micrometer.

"3. In surveying the river, you will note all the features on it of consequence, laying down especially the exact position of the Canadian Custom House and other Governmental or private establishments or landing.

"4. Your attention is called to tracing F, above mentioned, understood to have been recently made by his Honour Chief Justice Begbie. This tracing shows a dotted red line crossing the Stikine, about $9\frac{1}{2}$ miles above Tree Point (supposed to be identical with the point B shown on tracing), believed to have been laid down by the Chief Justice to mark the intersection of the Stikine Valley by a line connecting the nearest peaks on either side of the coast range of mountains.

"5. You will make it your duty to verify this sketch as to the dotted red line shown, and generally take such observations as will enable you to lay down with approximate accuracy the crossing of the river (should the same occur within 10 marine leagues of the coast) by a line, in the words of the Treaty, 'following the summit of the mountains parallel to the coast.'

Then I do not think I need read the other paragraphs, which have been read in another connection already. He was dealing with that one bit, the controversy having arisen on the River Stikine.

Then on p. 226 will be found his report upon these instructions, and he says on p. 227:—

"Another range is supposed to originate somewhere in the neighbourhood of Portland Channel, in latitude 55 degrees north, and running apparently about parallel to the coast. Its axis crosses the Stikine River $24\frac{1}{2}$ miles from its mouth, Mount Whipple, the highest peak on the river, lies on this axis. It will be more particularly referred to hereafter."

Then he deals with what is north of the Stikine, and at p. 229 he deals more particularly with that ridge to which he had referred in general terms in the passage which I have just read:—

"From the junction of the Iskoot with the Stikine, looking nearly due south, down the valley of the latter can be seen, distant 12 miles, a range of high, snowy, summits, stretching across the bearing of the river. These mountains

appear rounded, massive, and higher than any yet met with, and seem to form a barrier across the valley, which here opens out into a wide basin, inclosed on the east and west sides by high mountains and receiving the Kwah-teetah, a considerable stream, from the eastward."

That is marked as the Kwah-teetah River on this contour map.

"This basin lies near the general axis of the range which has been before referred to as the mountains parallel to the coast.

"The line marked on the river as the boundary between the dominion and the territory of the Alaska crosses the lower end of the basin above described, and will be more particularly noticed below."

Then I do not think I need read anything more except the 5th paragraph where he says:—

"I have verified this sketch, and represented on the plan by a blue broken, dotted line the approximate position of the red dotted line on the sketch of the Chief Justice.

"The crossing of the river (which occurs within 10 marine leagues of 285 the coast) by a line in the words of the Treaty 'following the summit of the mountains parallel to the coast' is shown on the plan by a red, broken, dotted line.

"6. This line crosses the centre of the Stikine at a point in latitude 56 degrees 38 minutes 17 seconds north, and longitude 131 degrees 58 minutes 14 seconds west.

"Ten miles south 73 degrees 45 minutes east from this crossing is situated Mount Whipple, the highest summit visible from the vicinity of the river."

And so on.

"The line thus established along the general summit of the mountains parallel to the coast is marked on each side of the river by a post 18 inches by 14 inches and 9 feet long."

And so on. Now it will have been observed that what he was directed to do was to take—in the words of his instructions—a line connecting the two highest peaks of the mountains situate parallel to the coast adjoining on either side of the river. He does find a line of mountains which cross the river at that point, as my Lord has observed, upon the contour map; but then the criticism I make on this report of Mr. Hunter's, ably as it has been carried out, is this—he was dealing with one particular point, and with one only; he was endeavouring to find the boundary upon the Stikine, and the only passage in which he referred to the effect of that proposed line elsewhere is on p. 227, where he supposes that a range is supposed to originate somewhere in the neighbourhood of Portland Channel.

Well, the whole of that range—if the line proposed by Mr. Hunter were to be taken, it would be found that in order to follow it down to the Portland Channel you would get to a region which is really in great part unsurveyed altogether. You would get crossing what remains absolutely in point—crossing over these great icefields where really at present no one knows what the physical features are; so that, I submit that Mr. Hunter was making a purely local survey with a view to fixing this provisional boundary upon the River Stikine. He had not the materials before him necessary for determining the line of mountains generally; and without in the slightest degree disparaging Mr. Hunter's capacity, it is fair observation that he had not got the materials before him which these contour maps and the survey under the Commission of 1892 have since supplied. I therefore submit to the Tribunal that Mr. Hunter's line cannot be accepted, because although it happens, according to his report, to

provide a very good line of mountains at that point, it does not fit in with the general scheme—it has not been taken out over the whole line, and it does not correspond with those indications of the Treaty to which I yesterday called the attention of the Tribunal.

Now I go on with the criticism in the United States' Argument of this line of the Stikine:—

“It is 3 miles to the next peak, marked ‘5,700’——”

The PRESIDENT. It is just north-west of Station 64.

Sir ROBERT FINLAY. Exactly, my Lord.

“It is 3 miles to the next peak marked ‘5,700,’ and then 4 miles to Le Conte Bay, here less than 1 mile wide. In another mile the line reaches peak ‘3,600’—just to the north of Le Conte Bay.

“From this peak it is 2½ miles to peak ‘5,355,’ and as much more to peak ‘5,860.’”

That is only a very little to the west. A straight line really drawn from 3,600.

The PRESIDENT. We have; we have got it before us, Mr. Attorney.

286 Sir ROBERT FINLAY:—

“which the line reaches after crossing the ice-filled valley about 3,000 feet below these peaks. About half a mile to the eastward from peak 5,860 lies another peak, 6,300 feet, and on the same mountain mass. This is entirely ignored.”

Well, that is further to the east; and one really, in selecting a line of this kind, is not to remain for ever hesitating between two mountains. One must take one or the other, and one takes naturally and properly the mountain nearest to the sea.

“From peak ‘5,860’ it is 2 miles to peak ‘5,268’—”

That is north-west—

“But the line descends between these peaks to a slope of a glacier coming from the east, which it crosses.”

Of course it must cross that glacier, which is a glacier running down towards the sea, and from which a stream takes its origin. It goes right down to the sea; it crosses the glacier just as it crosses the valley of a river. It crosses it at a level of nearly 3,000 feet above the sea.

“The distance from ‘5,268’ to ‘4,725.’”

The PRESIDENT. Due north of it.

Sir ROBERT FINLAY. North-north-east “is a mile and a half. Most of this distance is across an intervening glacier sloping down from the higher summits marked ‘6,980’ and ‘7,180,’ about 5 miles to the eastward. These are so much higher than the peaks selected for the British line that it is difficult to understand how it is possible for anybody to conceive that such a line does follow, as the Treaty requires, the crest of the mountains.”

There, again, is the idea that you are to have the highest mountains which the region can supply:—

“From peak ‘4,725’ the line changes its course at an angle of about 106 degrees, and runs to peak ‘4,812,’ distant 4 miles.”

The PRESIDENT. Station 71.

Sir ROBERT FINLAY. Station 71.

“Crossing the slope of Patterson Glacier 3,000 feet or so below these peaks. From peak ‘4,812’ the line runs to ‘4,881,’ after crossing a deep ravine 3,000 feet below the latter peak, and less than 2 miles from it.

“This peak forms the western summit of a mountain mass represented on the British Commission maps, as running east from this peak for about 9 miles in the general direction of Devil’s Thumb, which is over 9,000 feet high.”

This peak 4,881 is what is marked as Station ‘73 upon the map. Well, “Devil’s Thumb” is a long way off to the east. And they say that if this runs east from this peak “for about 9 miles in the general direction of Devil’s Thumb, which is over 9,000 feet high, and the peak 2 miles south-east from Devil’s Thumb, over 7,000 feet high. This mountain mass can be traced on the British Commission’s maps from peak ‘4,881’ to peak ‘5,050,’ distant $1\frac{1}{2}$ miles; thence $5\frac{1}{2}$ miles to peak ‘5,500’; thence $2\frac{1}{2}$ miles to peak ‘6,600.’”

That is all perfectly true, but I really do not see the bearing of it on the question of this line, because that is going away instead of following the coast, absolutely at right angles to it.

“At peak ‘4,881’ the British line cuts across the end of this mountain mass running east and west, and in contravention of the terms of the Treaty, because, according to the Treaty, the line must follow the crest of the mountains. Here this line cuts the mountain transversely. From peak ‘4,881’ the line runs towards peak ‘4,050.’”

287 The PRESIDENT. That is Station 78—the other side of Thomas Bay.

SIR ROBERT FINLAY. Station 78—“crossing Thomas Bay $2\frac{1}{2}$ miles from the first-named point, where the width of Thomas Bay is $1\frac{1}{4}$ miles.

“Peak ‘4,050’ is near the southern end of a mountain mass which trends in a north-westerly direction for 17 miles paralleling the glacier which joins the Dawes and Baird Glacier. This mountain mass is further defined as follows:—

“From peak ‘4,050’ 4 miles to peak ‘4,500.’”

That is north-east almost exactly from the first-named peak.

“Thence 2 miles to peak ‘5,533.’”

The PRESIDENT. We follow it all, Mr. Attorney. We quite see your criticism on those which you have touched; if there is any very salient point—

SIR ROBERT FINLAY. In fact, I am not at all sure that I have not done. I am not desirous of shirking any part of this criticism; but my observations upon the rest will be very much what they have been upon the portion which I have read. I will endeavour to pick out the most salient points as I go on without wading through all the details.

MR. TURNER. There is one question I would like to ask you, Sir Robert. If the heights of the mountains do not go any bigger, and you are to get as close to the sea as possible why do you not go to the very water’s edge, and take the crest of the very smallest mountains bordering the waters?

SIR ROBERT FINLAY. Of course there must be hills which answer the description of mountains, and they are the hills that we have endeavoured to take.

MR. TURNER. I understand you to say that there were no mountains higher than these between them and the sea. I understand there are still mountains between them and the sea.

Sir ROBERT FINLAY. I agree, Sir.

Mr. TURNER. Why do not you go for the very nearest thing that can be called a mountain?

Sir ROBERT FINLAY. There may be an occasional case of something higher, but I do not think, generally speaking, Sir, what you have said represents with perfect accuracy the British position.

Mr. ROOT. What weight, Sir Robert, do you give to the word "summit," in the Treaty—the summit of the mountains? What is your view of the force and effect of that word?

Sir ROBERT FINLAY. Well, what I submit is that that does not mean one summit. It does not mean that you are to get a chain which is one continuous summit, which you are to take as the limit. I take "summit"—"la crête" I think it is the word in the Treaty—as denoting the top of each mountain which you find in the line. You are not necessarily confined to a long ridge with one "crête" running from end to end approximately at the same elevation or if undulating, continuous.

Mr. ROOT. As it were in the plural. "Summits" of the mountains.

288 Sir ROBERT FINLAY. The summits—"la crête des montagnes." The real contrast, of course, is between the summit and the base owing to the proposition that Mr. Canning had made that it should run along the base of the mountains, and the Russians pointed out that that might leave them nothing at all, because the mountains might slope down actually into the sea, so that if you took the base you would be in the water.

The PRESIDENT. I think there are places to which Senator Turner's observations would apply. Do not put that map away—just look at Port Houghton, the one you were next to come upon when we broke in upon you. Do you see Port Houghton? It is 2,600, which is certainly a mountain very close to the sea. You have taken 4,275, which is due east of it about 4 miles or 5 miles.

Sir ROBERT FINLAY. Yes.

The PRESIDENT. I do not suppose there is any real *a priori* reason why people marking it out should not have gone to the 2,600.

Sir ROBERT FINLAY. Well, conceivably, but it all comes to be a question of degree.

The PRESIDENT. Of course it does.

Sir ROBERT FINLAY. The hill which is over 4,000 is pretty near the line of the sea, and the observation I make upon that is that the hill 2,600 is situate in a sort of peninsula; it is on a point of the land jutting out between Houghton Bay and Hobart Bay.

The PRESIDENT. I see. Very well.

Sir ROBERT FINLAY. Whereas we cut across in what I submit is the natural fashion, over the neck of this peninsula and then proceed northward.

Then there are various criticisms. I really shall not go through them all. I have sampled the criticisms upon this line. I am quite prepared to go on in the same way, but I am sensible that it is running into detail so as to make it somewhat irksome to follow; but, I submit, although you may have these criticisms at some particular points, I do not for one moment dispute that at some particular points you might suggest that it would be better to follow another

line round it to below a particular succession of summits, making a stop instead of some individual point rather than the line which Mr. King has taken. We do not insist that that line is absolutely infallible and not to be varied at all, but what we do say is that it shows more nearly than any other line can what the Treaty contemplated.

Then we get up to Lynn Canal. The criticism upon the line—I will not follow the description in detail, which really is very largely repeating what Mr. King has said, but the criticism they make is at p. 9 of the Appendix to the United States' Argument:—

“What is especially noticeable and objectionable in this line from Berners Bay to Glacier Bay is (1) Whereas the line up to this point has been running north-west, or as Mr. King said, the ruling north-north-west, it makes at the head of Berners Bay almost a right angle, and runs west by south, a complete change from the north-westerly direction so far followed. Why is this complete change made? There is no chain of mountains here, no crest of the mountains running to the one side of Lynn Canal and reaching up on the other side of Lynn Canal to invite a line to be drawn from one side to the other. There is no indication of any chain of mountains from the head of

Berners Bay to Glacier Bay. Then why should the British have directly
280 changed the direction of the line and drawn it south by west across Lynn Canal; unless, indeed, it was so as to give to the British the head of Lynn Canal?”

The reason is simply this—

The PRESIDENT. That is a mistake. It is west by south, not south by west.

SIR ROBERT FINLAY. West by south. The reason is simply this, that the general line of coast must be taken down near about the mouth of Lynn Canal, and the direction of the mountains—the mountains as the guide—the indication of the mountains as a guide is controlled by the other indication that, if they recede more than 10 marine leagues from the line of the coast, you are then to substitute the line. The fact that there is water above this point, as well as land, does not alter the principle in the slightest degree. If you had had this happening upon the land where there was no inlet at all—if the line of mountains that you found corresponded to the Treaty receded more than that distance from the line of the coast—you must then leave the mountains and draw your line at the specified distance. I submit exactly the same thing happens where you have got a long inlet which runs into this recess on the line of the mountains. If you followed that alone—I do not for one moment dispute that there are mountains running up around Lynn Canal—in fact one comment that I made upon the claim put forward by the United States was that they actually ignore those mountains which are only about 10 miles distant—the watershed of which is only about 10 miles distant from the extreme head of Taiya Inlet and carried their line back to another watershed so as to cut Lake Bennett in two, giving half to the United States and the other half to Canada.

I made that comment upon it, but I submit that though that is perfectly true you must be governed by the corrective which the Treaty itself suggests. And at this point you are 10 marine leagues from the line of coast, and must cross the channel by that line. My friend, Judge Dickinson, this morning asked that we should hand in a map showing our general line of coast. We will do that to-morrow morning. I think it will be perfectly fair that Judge

Dickinson should, at the same time, hand in a map showing his idea of the general line of the coast and then the Tribunal will be in a position to compare them. I am perfectly ready to meet my friend in that matter; if he hands in his map I will hand in mine.

MR. DICKINSON. We do not base our contention on a general line of coast. We say that the line of coast contemplated by the Treaty was all the coast of the mainland. So that our theory does not depend upon any general line of coast, and I shall argue it on that basis.

SIR ROBERT FINLAY. Yes, but at the same time I think we ought to have a clear indication of what the line taken on the map is. If Judge Dickinson says that the line parallel to which their boundary is drawn is simply a line running from the head of one inlet to another, I will take that as his contention.

MR. DICKINSON. We will show how our line can be drawn, but as for putting forward any general line of coast and making that a part of the theory of our Case, why, we have never done that, and we do not mean to adopt it.

THE PRESIDENT. I do not think the Attorney-General asked that. What he said was that if he was going to show his general line of coast for what it was worth, you should show yours. It really does not say much.

MR. DICKINSON. We have no general line of coast; we are not basing anything on a general line of coast.

290 THE PRESIDENT. No, I did not say you were basing anything on it at all.

SIR ROBERT FINLAY. Well, the 10 marine leagues must be measured from some point.

MR. DICKINSON. I will show you from what coast we propose to measure the leagues, if that is what you mean, but as to putting forward any general line of coast as a part of our Case, that is something entirely foreign to our contention. I am perfectly willing to show how we propose to draw the line, and to what coast it is parallel.

SIR ROBERT FINLAY. That, of course, appears from the maps which have been put in, but, of course, that line must be parallel to something.

MR. DICKINSON. We will show you what that something is with pleasure.

SIR ROBERT FINLAY. I should feel very much obliged if in due time we are shown that.

MR. DICKINSON. But we do not say that that something is any general line of coast.

SIR ROBERT FINLAY. If my friend would hand in to-morrow morning, when we hand in our map, a map marking that something parallel to which the United States' boundary is drawn, I shall be very much obliged to him.

MR. DICKINSON. Certainly.

SIR ROBERT FINLAY. NOW I pass on—p. 9, Appendix to United States' Argument—to the second criticism upon the line from Berner's Bay to Glacier Bay.

"Between Lynn Canal and Glacier Bay there are mountain masses which have a certain parallelism to Lynn Canal, running north and south; the British line, instead of running along these mountain masses north and south, cuts them transversely, directly contrary to the words of the Treaty, which

says 'the line was to follow the crest of the mountains.' From the shore of Glacier Bay, 2½ miles west of peak 4,140 the line follows the sea across Glacier Bay for about 9 miles."

The PRESIDENT. All this is perfectly good criticism if they are right in saying it is to run round what I may call the general coast; it is criticism directed not so much to your detail as to your principle.

SIR ROBERT FINLAY. No. I think that will really relieve me from the task of inflicting more detail on the Tribunal.

Now, I propose to say a few words with reference to the commencement of this line. The line of boundary was to run up Portland Canal, and then it will be recollected how the Treaty speaks of its subsequent course to go by the mountains which are situate in a direction parallel to the coast. Of course, the framers of the Treaty were dealing with maps which to their knowledge in the delineation of the mountains were most probably inaccurate—which showed the mountains in a conventional fashion. They say that you are to take the mountains situate parallel to the coast. Well, what I submit is this: that when you ascertain what mountains best answer that description that you must from the head of Portland Canal and get in the nearest direction from the point of starting to the point at which the mountains parallel to the coast begin. Just as you have from the southernmost point of Prince of Wales Island to get to the entrance of Portland Canal by drawing a straight line across, there being no other indication whatever except the line of starting and the line of termination, so when you have to get from the head of Portland Canal to the commencement of this line, you must draw a straight line to the point. The point of commencement of the

291 *lisière* has been shown near the coast of the sea, and on the map which has been put in a line has been drawn directly in the shortest way from the one point to the other, which, I submit, is a sound principle. Of course, if it is thought desirable that there should be any mountains taken as a guide, it will be found that it is very easy indeed to take mountains which afford a very respectable guide as between these two points. If the Tribunal thinks that there ought to be what one may call stepping stones at this point of the passage, the mountains and their general direction afford a guide, but the language of the question put is, the Tribunal will remember, how do you get from the head of Portland Canal to the 56th degree of latitude?

The PRESIDENT. What I should like to hear you upon, Mr. Attorney, is this—I followed the whole of your argument down to the point, or from the point, where you started on the mountains, but I should like to know what your argument is upon the three alternatives under Question 4: one, your red line—you want Map 37 before you, probably—from the head of Portland Canal to the point from which you started your argument as to the *lisière* on the 56th parallel; two, from what is called the continuation of Portland Canal on the 56th parallel to that same point; or the third alternative, the 56th parallel to some points upon the mountains which are shown between the point you started from and the head of Portland Canal. I should like to know what your view is upon either of these three?

SIR ROBERT FINLAY. My submission is that the first is the correct way of dealing with it.

The PRESIDENT. Even though it cut an inlet?

Sir ROBERT FINLAY. Even though it cut an inlet.

The PRESIDENT. And if the 56th parallel cut an inlet, would you say the Treaty gives you that too?

Sir ROBERT FINLAY. I should make the same submission.

The PRESIDENT. This is quite different from the *lisière* argument; it has nothing to do with the *lisière* argument; it is a separate thing by itself.

Sir ROBERT FINLAY. Oh, perfectly.

The PRESIDENT. What is to happen if the line between the head of Portland Canal and that point you have been speaking of cuts an inlet? It may be of some importance with regard to fixing that point, because the United States, of course, complain that you cut Bell Island you know, and cut across Burrough's Bay. I want to hear you upon that.

Sir ROBERT FINLAY. Certainly, my Lord.

The PRESIDENT. When you like; please do not let me divert you, but I thought that was the part of the case you were coming to.

Sir ROBERT FINLAY. This is the only point I was to deal with; this was the point I was coming to. Of course, your Lordship will see that we cut Burrough's Bay. I say that that is no objection whatever. From the head of Portland Canal you have got to get your line of mountains. By way of dealing with that point, would the Tribunal allow me to start from this point? Suppose that Article III of the Treaty had stood alone giving only the mountains as a guide; well, suppose the mountains had been a good way to the eastward of the head of Portland Canal, as Mr. Middleton understood Mr. Stratford Canning at that interview. He said that from the head of Portland Canal you would proceed in an eastward direction to find the mountains.

292 Mr. AYLESWORTH. Eastward on the latitude of 56. "Turn eastward on the latitude" is his expression.

Sir ROBERT FINLAY. That is the expression said to be used at the interview.

Mr. AYLESWORTH. That is in his letter to Mr. Adams, I think.

Sir ROBERT FINLAY. Well, with regard to that, of course we shall have no particular objection to turn westward on the latitude of 56. That is a matter really of detail, but the point of my observation—perhaps I had better just refer to the passage to which Mr. Aylesworth has been good enough to draw my attention.

Mr. AYLESWORTH. Page 224, Appendix to United States' Case.

Sir ROBERT FINLAY. At p. 224 he says:—

"It follows the strait called Portland Passage up to the 56th degree, then turns eastward upon that latitude until it touches the highest ridge of the chain of mountains lying contiguous to and nearly parallel with the coast. It follows that ridge up to the 60th degree."

Now, that extremely well illustrates the point that I was desiring to make. According to that version which Mr. Middleton gives of Mr. Stratford Canning's observation, you get to the 56th latitude, and then you turn eastward till you find your mountains. I say you turn eastward till you find your mountains. It is exactly the same principle, and even without any light thrown upon it by that conversation one would say that by taking Article III by itself you must from the head of Portland Canal get to your mountains by your—

east or west—if you found the first chain was east you would go to them, if you find a chain which answers the description to the west, then you go to them.

The PRESIDENT. I understand you it does not signify materially in your view whether you travel on the latitude 56 or not so long as you go in a direct line.

Sir ROBERT FINLAY. Not at all; the more direct way is drawing a line as represented, but that really is a matter of detail, and we are perfectly content to take the latitude 56 as the guiding ridge; we then turn in the direction of the mountains—Mr. Middleton said that you turn eastward to get the mountains; as a matter of fact the mountains are situate near the sea, and it follows you must turn westward. But the principle is exactly the same, and it makes in matter of reason, I submit, not the slightest difference.

The PRESIDENT. He says you get to mountains lying contiguous to the coast.

Sir ROBERT FINLAY. Yes; I strongly suspect that what must have been said was “westerly” and not “easterly,” but that, of course, is mere matter of conjecture. It is very difficult to suppose that Mr. Stratford Canning could speak of turning easterly along latitude 56 in order to get to mountains contiguous to the coast, because you are going away from the coast. But after all, that is a mere matter of conjecture, and I am using this passage only by way of illustrating my argument, and submitting that you must turn at latest when you get to the parallel of 60 in the direction of mountains, whatever you determine the mountains to be. I do not know that there is very much more to be added upon this point. If one looks into the physical geography of the country between the head of Portland Canal and the point where this range starts, one will find that there are mountains which will afford a guide, but I really do not desire to labour that point at all. I stand upon the broad principle
293 that you are to get to mountains which answer the description of the Treaty, and from the head of Portland Canal you must get to those mountains be it westerly or be it easterly—we say it is westerly, but whatever it is, by the straight line drawn as shown here, or by latitude 56, does not alter the matter in my mind in the slightest degree, it is a matter of detail with which I should not desire to occupy time arguing.

Now, a great deal of reliance appears to be placed in the argument on behalf of the United States on the testimony of the subsequent maps as to where this boundary is. Well, I shall ask the Tribunal to turn over these maps, not necessarily examine every one of them in detail, because the criticism that I am going to present upon them is of a general nature. These maps have no authority whatever as laying down the boundary under the Treaty. The mapmakers have copied from one another obviously, slavishly copied from their predecessors; and there will be found in these maps, moreover, a very great discrepancy as to the existence of mountain chains. Of course I do not trouble about the maps on the question of mountain chains existing; that is a question of physical geography which has been settled so far as the survey extended by the survey, the results of which are represented in the contour maps; but what I am pointing out is this, that although the Treaty provides that the boundary is to be sought in the first instance in the mountains parallel to the

sea, you will find that map after map represents the chain of mountains nearer the sea than this boundary which it lays down, yet it ignores altogether the provisions of the Treaty and proceeds to lay down this conventional boundary which appears in one map after another.

Now, the first map subsequent to the Treaty to which I refer is the Colonial Office map of 1831. It is No. 13 in the British Atlas. I ought to have referred to the Russian map of 1826. It is No. 11 in the Atlas of the United States, and it is really a very remarkable line—that is, from the point of view to which I was calling attention. If the Tribunal will look at this line they will see a well-marked line of mountains indicated, running parallel to the coast up for a considerable way to the north of Portland Canal—running in a north-westerly direction. Well, that line of mountains is ignored altogether, and the line as drawn standing a good way farther back from the coast, which is carried away up to Mount Elias at approximately the same distance from the coast.

The PRESIDENT. Mr. Attorney, I only speak for myself, and I am not at all sure that all the members of the Tribunal would agree with me, but, of course, there is one view of this boundary as put down which would make it perfectly right, and that is that the mountains had not been surveyed to one point which I shall mention in a moment. The mountains had not been surveyed. They did not know whether there were mountains there or not. If the mountains were not there they were entitled to go out to the 35 miles, therefore it is put down by the geographers as the possible extreme boundary, and is copied one after another. That would not at all militate in your case if mountains are found and to that extent—speaking solely for myself—I do not think these subsequent maps hurt you. But upon the question of whether the strip of mainland was intended—are they not important in favour of the United States in the same way that you use the Portland Channel maps in your favour?

Sir ROBERT FINLAY. But the Portland Channel maps I used as showing what the reputation was, as to what the names of these particular inlets were.

The PRESIDENT. Yes, I know.

Sir ROBERT FINLAY. The vital point, of course, with regard to the Portland Canal was the maps which were before the negotiators; what it was called then and by Vancouver—the subsequent maps I referred to.

The PRESIDENT. I have not made my meaning clear to you. I only meant to ask you how you dealt with that question of these various maps, which you have summarized from the point of view of the strip being a strip on the mainland, as distinguished from a strip only partially upon the mainland.

Sir ROBERT FINLAY. A strip going round the inlet.

The PRESIDENT. A strip going round the inlet. I did not want to put it that way; a strip going round the inlet is putting it the worse way against you.

Sir ROBERT FINLAY. Oh, yes.

The PRESIDENT. But it seemed to establish some sort of reputation—if it is admissible, I do not say it is—that the strip went round the inlets.

SIR ROBERT FINLAY. Then, of course, it always comes back to the question, What is the authority for it?

The PRESIDENT. Yes, I agree.

SIR ROBERT FINLAY. And one really could not have a better map for raising the question of principle than this first map, which I turn to, this map of 1826, because there they delineated a line of mountains—a well-marked range of mountains.

The PRESIDENT. Yes, quite true.

SIR ROBERT FINLAY. Between the line and the coast.

The PRESIDENT. Yes.

SIR ROBERT FINLAY. And yet absolutely in the teeth of the Treaty. If their delimitation of the mountains is correct, they ignore them, and proceed to draw the line further back.

MR. AYLESWORTH. There appears to be a gap in their coast range between about Taku Inlet, or a little below it, and Glacier Bay. There are no mountains about the inlet.

SIR ROBERT FINLAY. There are none.

The PRESIDENT. And in some of the maps they put a note that if there are mountains to be found the boundary is to run along them, and therefore it was not inconsistent, not on all, but on some of the maps.

SIR ROBERT FINLAY. The maps are really all to be read subject to that; they are all to be read subject to the Treaty, and subject to the existence of the physical features which the Treaty desiderates, and all these maps really come, I submit, to no more than this, that there is a strip of territory there, and they put down the boundary in that rough way. I submit that that boundary, as laid down in so many of the maps, one following the other, as excluding the territory of Great Britain from the head of the inlets, counts for nothing at all in an inquiry of this kind. We are now face to face with the Treaty, and what its true meaning is, and the question has to be answered, which these map-makers had not the materials for answering, and never attempted to answer. And I think, when one is dealing with maps, the observations made by Mr. Bayard may very well be borne in mind, that they laid down lines which are evidently purely theoretical.

Well, the next map that I turn to is the Colonial Office map of 1831, which is No. 13 in the British Case Atlas. There we have got this line reproduced. The mountains are not shown except in a more disconnected way. There are indications of mountains
295 all along the coast from near the Portland Canal northward up to Prince Frederick's Sound. There there is an indication of mountains in the direction of Port Houghton (Roughton it is called here) and Windham Bay, and then round the Taku Inlet there is a sort of fringe. There is an indication of mountains on the Lynn Canal, although not at the head, and then you have got the first well-defined range from Cape Spencer running up towards the mountains by Mount Fairweather, and so on to Mount St. Elias. Well, then, you have got the mountains laid down broadly in the same way back from the coast.

Then Bouchette's Map of 1831, which is the next map in the British Atlas, represents an even cruder strip. All that you have got there is a yellow colour carried down in the direction which does not even attempt to follow any of the windings of the coast, and a mere bend carried down the coast.

The PRESIDENT. And the upper part a great deal more than 35 miles back.

SIR ROBERT FINLAY. Oh! a great deal more.

The PRESIDENT. And obviously it is only pictorial.

SIR ROBERT FINLAY. Then, in the United States' Case Atlas No. 12, the *Arrowsmith* revised in 1833, we have again got the bend which winds round to Mount Fairweather, but what I call particular attention to as showing the entire want of authority of such maps is that here they indicate along the whole line of coast a well-defined range of mountains. Well, if that range of mountains existed, according to the Treaty, you would need to look there for your boundary.

The PRESIDENT. You must take that with this note, Mr. Attorney.

SIR ROBERT FINLAY. With the note?

The PRESIDENT. The note on the map itself. You must take that with his note. He says so.

SIR ROBERT FINLAY. Yes, certainly.

The PRESIDENT. Wherever the mountains are there, that is to be the boundary.

SIR ROBERT FINLAY. Yes; that expresses what I submit is really implied, in all these maps they are a mere indication that there was a belt of territory there, and they do not carry it any further. Then No. 13, the next map in the United States' Atlas—*Brué's*.

Here we have got a different state of things altogether, because *M. Brué* lays down along the greater part of this belt a range of mountains coinciding with the boundary, starting very nearly from the head of Portland Canal and running north-west. That range of mountains is continuous except where you get near Mount Fairweather, where there is a sort of bay formed. There, again, you have got a range of mountains put in by the maker of the map to correspond with the boundary. Mr. *Tanner's* map of 1839, which is the next map in the Atlas, again represents a boundary with no mountains whatever except Mount St. Elias and Mount Fairweather. The Russian map of 1844, which is No. 22 in the United States' Case Atlas, is very like the first one that we looked at. It represents no mountains at all, it traces the dotted line running at that distance from the shore. *Greenhow's* map of 1844, No. 15 of the United States' Case Atlas, has got inside this line which it indicates the indications of the mountains, and then the line is drawn approximately as in the other maps that have been referred to. Not exactly the same, because I observe that it is represented as turning in between Lynn Canal and Taku Inlet.

I have been supplied with a very curious observation in a work of Mr. *Greenhow's*, the work in connection with which this map was published. It is the "*Greenhow's History of Oregon and California*," with, I suppose, this map at the beginning of it. It is published in 1845, the second edition, and what he says in a note "F" at p. 437 on questions of boundaries is this:—

"These discrepancies should not excite surprise, for maps and books of geography, which are most frequently consulted in relation to boundaries, are, or rather have been, the very worst authorities on such subjects; as they are ordinarily made by persons wholly unacquainted with political affairs."

That is what Mr. *Greenhow* himself says. Then in the United States' Case Atlas, No. 16, a map published at Paris, in 1844, by *Duflot*. *De Mofras* again shows approximately this line with an

imaginary range of mountains running along, at all events, some part of the line which is indicated, and indications of another range of mountains between it and the sea.

There is a map in 1847, No. 17 of the United States' Case Atlas, which has no mountains at all except Mount St. Elias and Mount Fairweather, and shows a belt possibility of the nature to which reference has already been made, and so on. Then the United States' Case Atlas, No. 17, and of the British Case Atlas, the map showing Simpson's travels. There there is a very general indication of a line of the same nature. A map published in 1857, which was produced before the House of Commons Committee—No. 21 in the British Atlas—which has a yellow belt of the same kind; and it is very noticeable that this does show, very distinctly, mountains running in the direction generally parallel to the coast, between the line which they indicate and the sea; and then, above, they show Mount Fairweather, a portion of the Alps, and Mount St. Elias.

There is the Spanish map—No. 18 of the United States' Case Atlas, which again shows that line, with mountains by the sea, and so on; but I really think that, unless it is desired, it is not necessary that I should follow this throughout all the subsequent maps. I merely mention that I have gone through them all. I merely mention the maps to which I desire this general observation that I have made to apply. Of course, as soon as you have got the question of the frontier pending, the authority of the maps becomes absolutely nil unless it is shown that they represent something in the nature of an agreement between the Powers who were concerned. Without turning over these maps and occupying time by looking at them, I just mention the maps to which reference may be made in this connection.

There is that Spanish map, No. 18 of the United States' Case Atlas. There is No. 19 of the United States' Case Atlas map of 1857, which is the map by the Commissioner of the Crown Lands of Toronto, shows a straight range, but goes within it, except at Elias. There is the Russian map of 1861, No. 20 of the United States' Case Atlas, which has no mountains except a very pronounced Mount Fairweather and Elias. There is Berghau's map of 1863, No. 21, the next map in the United States' Case Atlas, which shows mountains from Portland Canal to the Stikine, apparently more than 10 miles off. It follows the range from Fairweather to Elias. Then there is the map No. 36 of the United States' Counter-Case Atlas, a small scale Arrowsmith, which shows a few scattered mountains. There is the United States' Survey Map of 1867, which is No. 24 of the United States' Case Atlas, and perhaps this map deserves more than a mere passing notice, because it is the survey map made in 1867 when the United States took over the territory.

THE PRESIDENT. What number?

SIR ROBERT FINLAY. No. 24. It is compiled for the Department of State—24 of the United States' Case Atlas; and here this is really a very remarkable map from the point of view that I have more than once suggested—there is an extremely well-defined range of mountains shown near the coast but that is entirely ignored, and a line is carried in the same way as in the other maps, at a certain distance from the sea altogether. Then there is No. 37 of the United States' Counter-Case Atlas—Imray's map, of London, published in London

in 1869, which runs behind the mountains that are nearest the sea. There is the Admiralty map of 1867, No. 38 of the United States' Counter Case Atlas, which appears to neglect a very clear range indeed between Mount Fairweather and Elias. There is the Canadian Dominion Lands Map of 1878, which is No. 39 in the United States' Case Atlas, which shows a good many mountains but appears to neglect Mount Fairweather. There is the tracings by Mr. Dennis, of the United States' Survey of 1869, prepared to 1878. It is No. 27 of the British Case Atlas, it appears to run behind the mountains nearest the sea. There is in 1880 the Canadian Railway Map, No. 40 of the United States' Case Atlas, which puts the boundary upon a chain of mountains which coincides exactly with the boundary—

MR. AYLESWORTH. It is a Canadian Pacific Railway Company map, not a Canadian Government map.

SIR ROBERT FINLAY. Exactly. Then there is Petroff's Map of 1880, to which I need not further refer. There are the two maps of 1882 and 1883. There are the United States and Canadian rough railway maps of these years. Then there is in 1884 the British Columbia Map No. 31 of the British Case. In 1887 we have Stanford's Map, and then in 1887 there is a Canadian map which shows the frontier very much as Canada desires, but I really think I may stop at that point, because the parties were now clearly at issue. The controversy had arisen as early as 1872 in a very different way, and it is no use going through subsequent maps as affording the slightest indication of what is the true result of that.

Now, I think that really concludes what I have to say upon the subject of the line of mountains and of the *lisière*, except in so far as the subsequent action with regard to the *lisière* is concerned. I dealt with subsequent action so far as Portland Canal is concerned, and I now in the same way, following the same order, deal with subsequent action so far as it relates to the *lisière*. Before I go into any details with regard to that, I would ask the permission of the Tribunal just to recall the general principle which must be applied on this point. The provision of the Treaty is very express in defining the extent to which the action of the parties may be looked to. It is at the end of the IIIrd Article of the Treaty of Arbitration, at p. 3 of the Appendix of the British Case:—

“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.”

Now, the only purpose for which acts of possession can be looked at is in so far as these acts may be regarded as evidencing the understanding of both parties as to what the meaning of the Treaty is. The acts must be preliminary; that means, of course, in view of the Treaty or subsequent thereto. That would include any action by Russia or England before the Treaty was concluded, and any action by Russia or America on the one side and England on the other side after the Treaty was concluded, but it must be action which is relevant to show what both parties understood the Treaty to mean. And

if it appears that one side or the other was expressing a strong view as to how the boundary should run, any action by the other side which is inconsistent with that view cannot be appealed to as showing that both sides regarded the Treaty as having the meaning to which that action might be supposed to point, unless you have something in the nature of acquiescence. Furthermore, it must never be forgotten that until a very recent period this was an extremely remote and little known territory. It cannot be more forcibly put than it is by Mr. Dall in the Appendix to the Counter-Case of the United States, at p. 99, where he says this:—

“It is also necessary to remember that at that period, and for many years later, the region in question was regarded by all the civilised world as a horrid wilderness, peopled by bloodthirsty savages, in itself valueless, and of 298 importance only through its relation to the *amour propre* of the nations concerned, and the daring voyages of a few adventurous fur traders. Considered as a territory, a few miles more or less, in one direction or the other, would have been regarded as of absolutely no importance by either nation. Such a view persisted long afterwards in relation to the far more attractive Oregon Territory, and is still widely prevalent in regard to South-Eastern Alaska.”

Well, that view is perfectly accurate until a very recent date—indeed until well on in the nineties. I think it will be hardly disputed that this territory was very little known, and that what occurred there was not a matter which would attract the attention of a European Power, or even of the Canadian Government.

The subsequent action which we have to deal with falls under several heads. In the first place we have got the action which took place while Russia had this territory from 1825 down to 1867, and then we have got the action since 1867, when the United States acquired the territory, and all that was done during the course of the long controversy that has gone on as to what the boundary is.

As regards what took place before the United States acquired the territory, the materials are extremely meagre. Such as they are, I will go through them, but to that period there applies with full force the observation that it is really not possible to attach very much importance to what takes place in a region so little known unless it is very specially brought home to the knowledge of the Governments concerned. With regard to what took place after the United States acquired that territory there is more, but the testimony as to acts of possession only accumulates at a comparatively recent period, and I should desire to make a general observation which was very pointedly made by Lord Salisbury, in a despatch written in answer to one by Mr. Choate, which will be found in the United States' Counter-Case Appendix. It is a despatch which begins on p. 132. It is dated the 14th October, 1899, and is written by Lord Salisbury to Mr. Choate, who was then in charge of the American Embassy. The passage that I refer to begins at p. 135. What Lord Salisbury says is this:—

“Shortly after, in the informal discussion of the boundary question between Dr. Dawson on the part of Her Majesty's Government and Dr. Dall on the part of the United States' Government, during the sittings of the Joint High Commission of 1888, the former made it distinctly clear that Her Majesty's Government claimed that the boundary should, in accordance with the terms of the Treaty, be drawn along the summits of the coast range, crossing all narrow waters which were of such width as to be within territorial jurisdiction.”

That is in 1888. I will make it good when I come to deal with this period. Then Lord Salisbury goes on:—

“When the Conference between the British Delegates and the late Mr. Secretary Blaine was held in February, 1892, the views of Her Majesty’s Government as to the boundary were fully stated, and it was proposed on the part of the British representatives ‘that a reference to some impartial authority be made by Great Britain and the United States for the purpose of ascertaining and deciding finally the true boundary, regard being had to the Treaties relating to the subject and likewise to the Case which may be presented by either Government, and to the testimony which may be adduced as to the physical features of that country,’ etc.”

Then some details follow which I need not read. Then the paragraph at the bottom of p. 135:—

“It is clear from this that the whole question of the interpretation was, by common consent, left over for discussion, after the completion of the survey in the light of the facts which it disclosed, and it might fairly be argued from the express terms of the Convention that both Governments had estopped themselves from contending that the boundary should run otherwise than in accordance with the ‘spirit and intent’ of the existing Treaties in regard to it between Great Britain and Russia, and between the United States and Russia.

299 “It is evident, in any case, that, at any rate, in 1892, neither Government claimed to have any rights in the disputed territory arising out of possession, occupation, or political control. Nor does it appear that any such claims were preferred on the part of the United States until the meeting of the Joint High Commission.”

Then he refers to the meeting of the Joint High Commissions, and says, at the bottom of that page:—

“When, therefore, the Joint High Commission met in August, 1898, to discuss the question, it was clearly understood on both sides that the line was to be determined ‘in accordance with the spirit and intent’ of the Treaty, without restriction, the rights of both parties having been fully and distinctly reserved whenever any question of the interpretation or application of the Treaty was discussed, and the fact of such reservation expressly recognised on both sides.

“It has already been fully explained why no question as to the interpretation of the Treaty was raised by either party until 1885.”

Well, it did arise, as a matter of fact, a good deal earlier. It arose in 1882:—

“And that on the first occasion when the discussion of the matter was approached, Her Majesty’s Government gave distinct notice that they entirely disavowed the correctness of the line shown on the maps to which the United States’ Government appealed.

“In view of these facts, Her Majesty’s Government are fairly entitled to claim that, as a settlement of the question cannot be reached diplomatically, the interpretation of the Treaty and its application to the facts ascertained by the Survey should be submitted unreservedly to an impartial tribunal, without any such restrictions as were contained in the Venezuelan Treaty, and in proposing to allow, as provided by that instrument, continuous adverse possession for fifty years, if such can be proved, to override Treaty right, they have made a distinct concession to the United States.

“They do not, of course, admit that there has been any such adverse possession, by way either of exercise of jurisdiction or of political control, and if the United States’ citizens have settled recently at the head of Lynn Canal, they have done so in the full knowledge, as given in the documents inclosed in President Cleveland’s Message to Congress of the 2nd March, 1889, that they were settling in disputed territory, and Her Majesty’s Government were unable to see any reason why such settlement should receive further or greater recognition and protection than the United States’ Government considered should be accorded to British subjects who had settled in the area in dispute between this country and Venezuela.”

Now, I submit that that despatch lays down the true principle. The United States elaborate a narrative of a series of acts done by them at the head of Lynn Canal. The greater of these acts were done when the countries were at issue on the question whether or not the heads of the inlets were to go to the Russians, and so to the United States under this Treaty. I submit that for this purpose these acts are of no value whatever. The question under this Treaty is not as to a title acquired by occupation, a title acquired by prescription; the question is what the Convention between the parties means, and these acts can only be looked at for the purpose of ascertaining that, and if these acts took place when the parties were at issue as to the meaning of what the Treaty is, I submit that that is the purpose—and the only purpose—to which the Treaty confines the attention of the Tribunal. In this respect these acts are of no value at all.

Having made these general observations, I proceed to deal a little more in detail with the two periods into which the acts subsequent to the Treaty fall. The first is the period of Russian action from 1825 down to 1867. Now, the first point to be borne in mind is that when that Treaty was made in 1825, Russia had no port or station at all upon the *lisière*—absolutely none. She had the port of Sitka, and the state of things at that time was that the Indians on the coast came to Sitka for the purpose of treating there with the Russians. In 1823 we find a report which is set out at p. 264 of the Appendix to the United States' Case, which deals with two points, one of them the question of a settlement being made by the Hudson's Bay Company on Observatory Inlet, and the other the proposed intention of the Hudson's Bay Company to establish a settlement upon the Stikine River. It is at p. 264 of the Appendix to the Case of the United States. It is a despatch, dated the 6th May, 1832, being a report of the Governor of the Board of Directors of the Russian-American Company. He says, dealing with the first of the two points I have mentioned:—

“I do not deem it superfluous to communicate to the Board of Directors the information collected by me with regard to the new Settlement of the Hudson's Bay Company in Observatory Inlet, and of its operations in our neighbourhood.

“The above-mentioned Company has taken a firm footing in the above-cited bay, in the locality named Naas; the establishment is in a good defensive position, and the stores are filled with the necessary merchandise.”

Then he goes into some detail as to what the Hudson's Bay Company had been doing:—

“The Company's vessel put in last spring at Kaigany (Puerto Cordova) for the purpose of trading with the natives, where there were already two American ships. The Company's vessel, having goods of better quality than the Americans, paid with the same number of blankets as these latter (*i. e.*, one blanket per river beaver), and greatly injured the trade of its competitors, and, according to their own words, the Hudson's Bay Company will surely soon crowd them out of the competition.”

Then he goes on to deal with the other point:—

“Mr. Simpson (chief of the establishment on naval affairs), inspecting the straits situated to the north, had the intention of establishing a settlement last year in the Stikine Territory (at the southern mouth of Prince Frederick Sound), up the river falling into this bay at such a distance from the sea as to infringe upon the last Convention concluded between Russia and Great Britain with regard to our frontiers. Although Mr. Simpson's sudden death temporarily

put a stop to this intention, it is probable that it will not be for long, and in a year or two the English will occupy a post there also undoubtedly in prejudice of our commercial relations with the Kolosh."

Perhaps it would be worth noticing that he informs them where the Stikine Territory is—at the southern mouth of Prince Frederick Sound. Perhaps it is not quite accurate information that he gives. That is in 1832, and it marks the progress which the Hudson's Bay Company were making, and the light in which it was regarded by the Russian Company. In 1834 on the 28th April the Governor writes another report, in which he calls attention to the competition of the Hudson's Bay Company, and the necessity of the Russian Companies being enabled to cope with that competition. He also mentions the intention of sending a schooner, when built, up to trade in Chilkat, and winds up by stating that, until further instructions, he proposes to hinder the British by force from sailing up the Stikine. The despatch begins at p. 265 and runs on to p. 267. He begins by referring to having got the supply of merchandise for which he had asked on the chartered vessel "Carnarvon," and says that he was "enabled to enter into direct communication with the Kolosh of the neighbouring straits." That word "Kolosh" is a word used to denote the Indians without being very definitely associated with any tribes. It is used of the Indians about the Stikine. I think it is sometimes used of the Indians up the Lynn Canal, but I do not think it has any very definite connection with any particular locality.

Then at p. 266 he refers to the war which was "waged between the inhabitants of Stachin with the Sitka and Chilkat Kukhuntans," on account of which "it was not easy to gain the confidence of the people." Then he goes on to say that, "having found out that the British Hudson's Bay Company intended to settle there likewise by invitation (according to Convention, the British have a right
301 to settle at a distance of 30 Italian miles from the sea on the River Stachin, and to navigate freely on the river), I decided not to lose time, and immediately ordered the sending out of the brig 'Chichagoff,' under command of Lieutenant Zarembo, after her return from an expedition in quest of islands, to Stachin, with the provision that the brig should remain there to winter, and that the construction of a redoubt should be proceeded with, after obtaining permission from the natives."

Then he says:—

"The unfinished buildings were left in the care of the toëns, and as a proof of their friendship to us one toën and the son of another, the chief toën, arrived here on board the 'Chichagoff.'

"These guests were received by me in the best manner possible, and will be taken to their homes on board the brig 'Chichagoff,' which will sail under command of Lieutenant Zarembo, to the Straits and to Stachin, in May, for the purpose of completing the buildings, trading, and awaiting to be relieved by schooner 'Chilkat,' now in construction, and which I intend to send, under command of Second-Lieutenant Kuznetsoff, to trade in Chilkat, and thence to Stachin, where she will have to winter for the greater safety of the new redoubt."

Then the last paragraph relates to the navigation of the Stachin, and he says this:—

"The greatest trouble I have now is the Hudson Bay Company, which is allowed by the Convention to navigate freely on rivers falling into the sea in our possessions, for it is the region neighbouring upon the rivers which furnishes us with beavers and not the coast, and I beg of you that should any other Conven-

tion be signed (the term of the old ones having expired) you should solicit that free navigation on the rivers should at least be limited by the condition that free navigation to the British from the interior to the sea should not be forbidden, while free navigation from the sea up the river should be prohibited."

It seems an extraordinary idea that they should be allowed to come down but should not be allowed to go back. It would put a stop to it altogether, because if no vessels were to get up the supply in time would become exhausted, and one does not understand how such a proposal could be seriously made. He goes on thus:—

"Of course it would be best not to allow any navigation whatever, though I think that it will not be possible to manage it. However, this circumstance will depend upon diplomatic transactions, and until further instructions I will hinder the British by force from sailing up the Stachin River."

Now, that is the state of things, on these three points, which is depicted in this despatch of the 28th April, 1834. In the same year there is a fort built, which is called Fort Dionysius. It is a fort higher up than that on the Wrangell Island, exactly opposite the mouth of the Stikine, and it was obviously erected with a view to carrying out the Governor's amiable intentions with regard to the navigation of the British. The construction of that fort is mentioned in the letter which I have just read, and he speaks of it as "the redoubt." In the same year, 1834, we find that the Taku River is discovered by the Russians. It throws a curious light upon the point how little known the coast was to those who might have been said to be most concerned. That appears in the Appendix to the Case of the United States at p. 273. It is in a Report of the 30th March, 1835, from the Governor of the Russian-American Company. He says this:—

"As it is of the greatest importance to gain time I recommend that you should sail at the first opportunity to the Dionysius redoubt with as much speed as you are able; to land there the Stachin toën Sheksh" (that is a Stikine chief), "deliver the cargo for the redoubt and direct your course to the River Taku which you discovered last year. Trade there with the natives for river heavers and otters, paying them in merchandise at lower rates than in Stachin or Sitka."

302 Then he goes on on p. 274:—

"It is desirable that you should be able to find the Chilkat Kolosh in their summer places before they leave for hunting expeditions in the interior; consequently, finding that it is useless to stay longer at Taku, sail for Chilkat, and, according to the promise given you last year, trade furs with them, remaining as long as you deem necessary at the gathering places. On your return trip stop at such settlements where you might find furs, also at Hootznoo and return to Novo-Archangelsk, endeavouring to reach it in June. I beg of you to declare to the Chilkat and Hootznoo elders, according to the conversation I had in your presence with toën Sheksh, that, although he begged me that I should order you to take him to Chilkat and Hootznoo for interviews with the toëns there I refused his request, as I did not know if it would be agreeable to those toëns on account of the well-known quarrel between them and the Stachins."

The PRESIDENT. Mr. Attorney, we must interrupt you, I am afraid, there. I presume you will conclude to-morrow?

Sir ROBERT FINLAY. Yes.

The PRESIDENT. Mr. Watson, you will be ready to go on to-morrow, will you?

Mr. WATSON. Yes, my Lord.

(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

Sir ROBERT FINLAY. I have here the map with the coast outline according to the view which we take and the general trend indicated upon it. We have here indicated the line.

The PRESIDENT. Thank you, Mr. Attorney.

Sir ROBERT FINLAY. And your Lordship will see that the principle upon which we have proceeded is following broadly the outline of the coast, but neglecting all such sharp points and peninsulas and deep inlets.

Mr. DICKINSON. We have here a map indicating the line of the coast with the 10 marine league line, and I have furnished the Attorney-General with a copy. This I will pass up to the Tribunal.

The PRESIDENT. Your line, Mr. Attorney, is the general line of the coast.

Sir ROBERT FINLAY. Yes. Mr. King has also, in consequence of what was intimated yesterday by the Tribunal, marked upon the American Survey Maps the various peaks which are indicated on the British Survey Maps by the red squares.

The PRESIDENT. Thank you.

Sir ROBERT FINLAY. I thought what your Lordship desired was that we should show it on the American Survey.

The PRESIDENT. Quite right, but I did want the corresponding.

Sir ROBERT FINLAY. That will be done. Mr. King has not had time to do that.

The PRESIDENT. I quite follow that, Mr. Attorney. May I also mention—

Sir ROBERT FINLAY. I have got here the sheets of the American Survey, corresponding to those of the English Survey, which are hanging up behind the Tribunal.

The PRESIDENT. Thank you; will you give them to Mr. Robertson?

Sir ROBERT FINLAY. And your Lordship will see all the summits south of Mount Fairweather exist there exactly as in the British Survey with one exception, a little to the north of Bradfield Inlet.

304 The PRESIDENT. Bradfield?

Sir ROBERT FINLAY. A little to the north of Bradfield Inlet. When you get further north—north of Mount Fairweather—there is a considerable deficiency in the number of peaks shown on the American Survey. I think there are about 21.

The PRESIDENT. Do you mean that the American Survey is not so complete north of Mount Fairweather as the British?

Sir ROBERT FINLAY. Yes, they are not complete, and of course north of Fairweather there comes into question the heights of the

summits which you are to take. The highest summits are undoubtedly further back than those we have taken, but we have at that part of the line proceeded on the principle which we submit is the correct one, of taking the mountains nearest the sea.

Mr. TURNER. Have you computed the area left in the *lisière*, by that line?

Sir ROBERT FINLAY. I beg your pardon.

Mr. TURNER. Have you computed the area left in the *lisière* by that line?

Sir ROBERT FINLAY. No, I have not.

The PRESIDENT. That is not their line; that is the line of the coast—the general line of the coast.

Mr. TURNER. Oh, I see.

Sir ROBERT FINLAY. If that line indicated the boundary of the *lisière*, we should not have left the United States very much territory.

Mr. TURNER. That is what struck me.

Sir ROBERT FINLAY. We should have shorn them very close indeed. That would have exactly carried out what one of the Russian negotiators feared would actually happen. The line would run along the edge of the water.

Mr. TURNER. Let me ask you, have you computed the area within that line?

Sir ROBERT FINLAY. No. I thought your information referred to the map.

Mr. TURNER. I wanted the information.

Sir ROBERT FINLAY. No, I have not done that.

The PRESIDENT. Mr. Attorney, Mr. Root would like another copy of these maps on which the two margins have been drawn. They are very convenient maps, like the one you have just handed in.

Sir ROBERT FINLAY. Yes, certainly.

The PRESIDENT. And might I just mention we shall want a clean copy of the British and American surveys? I dare say I have
305 got a spare copy, but if not we must have one, if you please, for the purpose of making any marks upon it that we want to make.

Sir ROBERT FINLAY. What your Lordship indicated was the British Contour Maps or both?

The PRESIDENT. Both, please.

Mr. ROOT. This sheet on which these lines were drawn seems a very convenient one for reference to follow argument.

Sir ROBERT FINLAY. Yes.

Mr. ROOT. Avoiding the necessity of going into the big atlas. If we could have one of those without the lines laid down it would be very convenient.

Sir ROBERT FINLAY. Yes. We will have a copy prepared for each member of the Tribunal.

Mr. ROOT. Personally, I do not care about the lines being laid down at all, but merely the sheet.

Sir ROBERT FINLAY. Merely a copy of the map.

Mr. DICKINSON. We have some copies here we can hand up.

Mr. ROOT. Thank you.

Sir ROBERT FINLAY. I was dealing yesterday with the acts that took place there during the period of Russian occupation of the *lisière*, and had called attention briefly to what had happened down to

about the year 1834, when the affair of the "Dryad" occurred. Now, at that time the state of things was this: that Fort Dionysius, which is at Fort Wrangel, was just being built. The Taku River had just been discovered, and an expedition to Chilcat had been merely projected. That is the state of things which is revealed when the affair of the "Dryad" occurred. It is not in the least necessary for me to go into any details as to the affair of the "Dryad." The Tribunal is aware of its general nature—that a British vessel proceeding up the Stikine for the purpose of founding a settlement within the British limits was stopped by the Russian authorities—stopped under an allegation that there had been some failure on the side of the British to observe Article II of the Treaty.

That contention was abandoned and we find that Count Nesselrode wrote the despatch—the despatch which has already been referred to some days ago—to Count Kankreen, which is the despatch of the 9th December, 1838, advising him to enter into negotiations. It is at p. 308 of the Appendix to the United States' Case. It advised him to enter into negotiations with the Hudson's Bay Company with regard to the amount of the indemnification claimed by the Company; and then on the 20th December the next year—1839—the Directors of the Russian-American Company report to Count Kankreen in the United States' Case, suggesting that there should be a lease for twenty years to the Hudson Bay Company of the exclusive right of trading on the coast of the continent between 54 degrees 40 minutes and the estuary of Cross Strait for a rent in furs. In the meantime, the project of the British to establish a settlement upon the Stikine, for the purpose of which the "Dryad" had been proceeding up the river, seems somewhat to have stimulated Russian activity, while the negotiations with regard to redress for what had been done were still pending.

We find that in 1837 there was a Russian survey of the Stikine up to the proposed British Settlements. That is referred to in the United States' Case Appendix at p. 303, and also at p. 514, No. 28.

306 There is a list of documents which shows what had been done.

In 1838 an order had been given for the survey of Taku Bay by the Russians. The United States' Case alleges, at p. 80, that the bay had been surveyed; but all that appears in the passage which is referred to is that an order had been given for such a survey. The passage in question is in the Appendix of the United States' Case, at p. 302, and more particularly at the top of p. 303; and in the same year—1838—there had been a survey of the mouth of the Chilcat River by Lindenbergh, a Russian official.

That appears from the United States' Case Appendix, p. 312, at the foot. And from Document No. 45, which is referred to on p. 515 of the same Appendix, I find in the case for the United States, at p. 75, an allegation that an annual expedition had been sent up the Lynn Canal, but I have been unable to discover any proof of that assertion, and I am not aware on what documents the United States rely in support of that statement, which appears at p. 75 of their Case.

Well, these instances show that the activity of the Russians in this region had to a certain extent been stimulated by the incident of which the stoppage of the "Dryad" forms a part. And it is to be noted that in February of 1835 the ten years under Article VII of the

Treaty expired. Now, as I have said, the stoppage of the "Dryad" formed the subject of active representations by the British Government, and the Russian Government, feeling that the stoppage could not be justified, recommended, through Count Nesselrode, that the Russian-American Company should endeavour to come to terms with the Hudson's Bay Company, who were the complainants, and at whose instance the British Government had taken the matter up. That resulted in the lease of 1839. Now, that lease makes it necessary that I should very shortly call the attention of the Tribunal to what the position of the Hudson's Bay Company was.

The Hudson's Bay Company had a Charter granted in the year 1670. The copy that I have got of it here is contained in a book by Mr. Martin, published in the year 1849, being an account of the Hudson's Bay territories and Vancouver Island, with an exposition of the chartered rights, conduct, and policy of the Honourable Hudson's Bay Corporation. The Charter of 1670 is set out in the Appendix immediately following on p. 150, and another copy of the Charter will be found in the Appendix to the report of the Select Committee of the House of Commons, which sat, I think, in 1857 upon the Hudson's Bay Company. The Charter set out at p. 408, and the following pages of the Appendix to that Report.

Now, I do not know that anything would be gained by my going in any detail through this Charter. It is a Charter which granted the Company the exclusive right of trading in Rupert's Land. Well, Rupert's Land was a term which was used then, and has been used since, to designate a territory which, I suppose, roughly speaking, may be said to coincide with the basin of drainage into Hudson's Bay. I do not know whether I am geographically accurate, but it is the territory in the vicinity of Hudson's Bay, and to a considerable extent coincides with the watershed which discharges into Hudson's Bay. Rights were given to the Company in the soil. There are words in the Charter which were relied upon by the Company as vesting the property of the soil of Rupert's Land only.

I believe a considerable discussion afterwards took place as to the effect of these words, and something in the nature of a compromise was arrived at upon the subject, and there is conferred upon the Hudson's Bay Company, in the territory to which that Charter applies, power of government and of administering justice, both civil and criminal. The Charter shows that the Company is a commercial company for the purpose of trading in furs and so on, but, as was not uncommon with commercial companies, some extensive powers, to which I have just referred, were conferred upon the Corporation within the limits to which that Charter applied.

In the year 1818 the Convention of Washington made arrangements for entire equality of trade as between the United States of America and Great Britain west of the Rocky Mountains, and three years after that there took place the amalgamation of the North Western Company, also a British Company, with the Hudson's Bay Company. They had been prosecuting their trade in the north-west—further to the west than the territory to which the Charter of 1670 applied in the sense of conferring rights of proprietorship and jurisdiction upon the Hudson's Bay Company. Both of these companies had been trading in the region away to the west of Rupert's Land. They had been in keen competition, and they

thought they consulted the interests of both by amalgamating, and that amalgamation took place in the year 1821. The Hudson's Bay Company obtained from the Crown two licences of exclusive trading. Both of them were granted under the powers of the Act, the first of the second of Geo. IV, cap. 66, private Act, Roman numeral.

The first of these licences will be found on p. 425 of the Appendix to the Report of the Select Committee, and it purports to confer upon the Hudson's Bay Company the exclusive right of trading with the Indians. In terms it is conferred upon the Hudson's Bay Company and the nominees of the North-Western Company, with whom the Hudson's Bay Company for business purposes had effected practically an amalgamation, and the country to which it applies is to the north and west of the territory situated to the north and west of the United States, not forming part of His Majesty's provinces in America. Some years later—a good many years later—in 1838, the Hudson's Bay Company had entirely bought out the North-Western Company, and when that operation had been effected a new licence was granted under the same powers which will be found—the material parts of the licence are set out in the British Case Appendix at p. 60.

This licence was granted under the first and second George IV, and it will be found also in the Appendix to the Report of the Committee at p. 414. I think it will be found that the passage at p. 160 of the British Case Appendix contains what is material in this Charter. It contains, I think, all the really operating parts, and it contains this provision, that the Company were to undertake to insure that as far as their authority over their servants went the execution of process and the arrest of criminals should be properly carried out. That was the extent of their undertakings. These offences were to be triable in Canada by virtue of the Statute to which I have just referred, and there was a provision in this licence which saved all rights of any foreigners to trade in that district. It was the grant of an exclusive right to trade, but it contained a provision, a very natural one to insert, that it did not purport to affect the rights of any foreign Power to trade in that region.

Now, I think that those are all the provisions which are really material to refer to, and I submit that it results from examination of the position of the Hudson's Bay Company, that it was not a company which in this territory—I am not speaking now of Rupert's Land, where they had the special powers—it was not a company which in this territory in any sense represented the British Government. It represented this Government so far as any individual merchant, who was establishing a post for trading in a foreign and savage country, would.

THE PRESIDENT. That is perfectly true, Mr. Attorney. I follow you quite from the legal point of view, but is there any evidence of any other occupation by anybody on the part of Great Britain except by the Hudson's Bay Company?

SIR ROBERT FINLAY. No, as far as I know none, and, in fact, the terms of the licences to which I have been referring seem rather to negative the probability of anything of the kind, because it is not a region to which at that period people would go merely for pleasure; they would go only for business, and the exclusive right of trade was conferred upon the Hudson's Bay Company.

Now, so far as the taking of this lease is concerned, I submit that

the lease leaves the question in relation to action affecting the territory where it was before. I have called attention to the fact that on one point the terms of the lease are most material as showing that a line drawn from Cape Spencer to Mount Fairweather must, in view of those who arranged that lease, have absolutely bisected the *lisière*, whereas the line at present claimed by the United States goes further to the interior of Mount Fairweather; but that is not the point that I am now upon, and as the lease has been again mentioned, I merely remind the Tribunal of that fact.

308 That the British Government would know of the Hudson's Bay Company taking that lease cannot, I think, be doubted, because they had been pressing the claim of the Hudson's Bay Company for compensation for loss sustained by the "Dryad," and the British Government dropped the claim, the Hudson's Bay Company being satisfied. One cannot doubt that the British Government were notified that a settlement had been effected, and that, at all events in general terms, it had been effected by taking the lease of the Russian territory. I protested on another occasion against that being pressed, to the extent of informing the British Government that knowledge of the details of the lease, while at the same time I submitted that on the terms of the lease there is nothing that really could affect the extent of the British claim in this region; but I quite concede that the overwhelming probability is that the British Government knew of the broad fact of a lease having been taken, but that does not seem to carry the matter any further—it leaves the question of territory very much as it was.

Now, with regard to the action of the Hudson's Bay Company under that lease it went on until 1867. I do not know that any posts were put up on this territory; I do not think there were, but there was a great deal of trading with Indians, and they bought furs and the other articles which they had been in the habit of getting from the Indians.

Now, the lease expired in the year 1867, on the 31st May, and in that year the territory of Alaska was acquired by the United States from Russia. It is No. 24 in the Atlas to the Case of the United States. It is a map compiled for the department of the United States Survey Office by Mr. Peirce in 1867, and I call attention to this map of this date in passing for the purpose of pointing out that the width of the *lisière* claimed is a good deal less than that which the United States now claim by the line which is before the Tribunal. That is notably the case at Mount Fairweather, and from Mount Fairweather on to Mount St. Elias. The line actually touches Mount Fairweather as one would expect from the terms of that lease to the Hudson's Bay Company. I mention that only because there is a statement in the United States' Case or Counter-Case, I forget which, to the effect that the United States have consistently and throughout always claimed the same amount of territory. The answer to that is supplied by comparing this map of 1867 with the map as shown at the present day.

Now, the history of the administration of Alaska by the United States falls into three periods. There is first the period of military administration from 1867 to 1877; there is secondly a period during which the administration was kept up by the vessels of the navy and the revenue vessels which lasted until 1884, and in the year 1884 there

was an Act passed for the establishment of civil government in Alaska. Now, I am not going in detail through the various acts of occupation and possession which are alleged by the United States. I think that during all the earlier part of the period it will be found that these acts are comparatively slight so far as any portion of the territory that is material to the present controversy is concerned. There are visits to the Indians up at Chilcat. There is the exercise of intervention in the way of helping appeasing disputes between races of Indians, and there are a certain number, not very many, but a certain number of acts of that sort during the earlier period. The acts of any importance occur really at a much later date, and with regard to the administration of Alaska generally it is rather important to look at the account which is given of the nature of the government. There is the reports of the governors which are enumerated in the Appendix to the British Counter-Case, beginning at p. 19. In 1885 Governor Swineford refers to the fact that—

“The fact that for seventeen years Alaska was without any civil government or authority of law whatever, and that in that time twenty-five or more measures of relief were presented in Congress, not one of which ever reached a vote in either House, is convincing proof of the necessity asserted for having accorded to her the usual Territorial representation in the law-making branch of the General Government.”

Then turning over to p. 23 and the top of p. 24 there will be found the extract from the report of the secretary of Governor Swineford again in the year 1888. He says this:—

“Aside from the partial administration of justice by the United States' District Court and the four United States Commissioners acting principally
309 as Justice of the Peace, the civil government of Alaska is little, if any, better than a burlesque, both in form and substance. There is no legislature, and practically no local laws applicable to the wants and urgent necessities of a territory so isolated; and, aside from the preparation of an annual report 'of his official acts and doings, and of the condition of said district, with reference to its resources, industries, population, and the administration of the civil government thereof'; there is really no duty enjoined upon the Governor, the performance of which is possible, no power he can exercise, no authority he can assert.”

I need not multiply citations from these reports. They relate to the state of things in Alaska generally, in the whole territory of Alaska, and if that is a just picture of the state of administration, it may be conceived how in the more outlying parts there was very little control of any sort or kind.

Now, when you come down to 1880, 1882, 1883, 1884, 1885, you find that there are certain acts of a more definite character. There is the establishment of a trading station in 1880 at Hays; there is the establishment of a post office; the establishment of a cannery and the setting up of a mining register. These acts are alleged in the United States' Case to have occurred in the years between 1880 and 1885. They are acts which are not in themselves of any great importance and cannot be compared with that class of act on which the United States appear particularly to rely, namely, the establishment of the towns of Dyea and Skagway after the year 1896.

In 1896 there began the great rush to Klondyke, and as the Lynn Canal was the most convenient means of access to Klondyke, there grew up these towns of Dyea and Skagway, which arose out of the traffic to and fro of those going to Klondyke from the coast, and of

persons coming back down from Klondyke to the sea. Now I do not for one moment say that if the inquiry the Tribunal are engaged upon was one as to whether title was acquired by taking possession of an unoccupied country, that these acts would not be of very great significance, but what I do point out is this, that in order to make these acts, the establishment of Dyea and Skagway, of importance to this inquiry it is essential that the United States should show that these acts took place under such circumstances as to evince an admission of title by Great Britain. Now if it were the case, as is asserted on behalf of the United States in the despatch by Mr. Choate, to which I shall have to refer presently, if it were the case that until 1898 the United States had no notice whatever of the claim to the heads of the inlets, these acts at the head of Lynn Canal might be of great importance. The passage to which I refer is in the Appendix to the Counter-Case of the United States, at p. 131, where Mr. Choate in his despatch of the 9th August, 1899, to Lord Salisbury after referring to the history of the district, says this:—

“It appears clearly that not until after the Joint High Commission was created—30th May, 1898—did either Great Britain or Canada ever advance the claim to any portion of territory lying adjacent to the inlets of the ocean, nor to the waters thereof; nor have they objected to the occupation of the same by the Government of the United States or its citizens, and at no time has any part of the territory so lately put in dispute been held or occupied by Canadian or British authorities.”

Now, I submit that, when the history of the diplomatic relations between the two countries as affecting this question is gone into—it is not necessary to do it in great detail, it is only necessary to look at the effect of the documents—when that is gone into, it will be found that the statement that Great Britain or Canada did not advance a claim to the territory lying adjacent to the inlets of the ocean or to the waters thereof—that that claim was not advanced till the 30th May, 1898, is a complete mistake; that, on the contrary, the whole question of the frontier was continuously under discussion from 1872 onwards, and that in 1888, ten years before the date quoted by Mr. Choate in the passage in 1888, the United States had the clearest and most unequivocal notice that Canada claimed the heads of the inlets as belonging to her. Now, if that statement is established, as I trust to establish it, I submit that it really deprives of their significance the acts which have taken place at the head of the Lynn Canal, so far as the United States are concerned; by reason of the provision of the Treaty which I

310 referred to yesterday, that those acts are to be looked at only in so far as they show the original and effective understanding of the parties as to what the Treaty did. You cannot from such acts, whatever effect they might have, if there was any question of Treaty right, you cannot from such acts infer the views of the parties as to the meaning of the Treaty, unless you show that the acts are done under such circumstances as to evince a common consent as to the territory belonging to the Power that does the act.

Now, the controversy began almost the very year after the incorporation of British Columbia with Canada. That took place in 1871, and in March, 1872, there was an address by the Legislative Assembly of British Columbia to the Lieutenant-Governor, urging that the Dominion Government should take action as to the boundary

line. That despatch will be found in the *British Case Appendix* at p. 162. This address was in due course forwarded to the Secretary of State for the Dominion for the consideration of the Governor-General, and the Privy Council of the Dominion reported recommending that the matter should be brought to the attention of Her Majesty's Government at home, in Great Britain. The request for the determination of the boundary was forwarded to Lord Kimberley, who was then Colonial Secretary, by Lord Dufferin, and Lord Kimberley had instructions given to the British Minister at Washington, Sir Edward Thornton, to inquire whether the United States would appoint a Commission for the purpose of defining the boundary line between Alaska and British Columbia. That document is at p. 164 of the *British Case Appendix*. On 18th November Sir Edward Thornton writes to Lord Granville stating:—

“In compliance with the instructions contained in your Lordship's despatch, No. 379 of the 30th ultimo, I inquired of Mr. Fish, on the 14th instant, whether the United States' Government would be willing to agree to an appointment of a Commission for the purpose of defining the boundary line between Alaska and British Columbia. Mr. Fish replied that he was perfectly satisfied of the expediency of such a measure, but he feared that Congress might not be willing to grant the necessary funds. He said that when Congress voted a sum much smaller than was asked for the opening expenses of the North-West Boundary Commission, the Act of Congress contained a condition that, as a matter of economy, the engineers who might be necessary should be selected from amongst those in the active service of the United States' Army. The War Department had then found great difficulty in detaching a sufficient number of engineers even for that Commission, and it might be impossible to detach additional officers for another Commission of the same nature, although he feared that Congress would be alarmed at the expense of engaging civil engineers outside of the army and might insist upon the same conditions.

“But when I saw Mr. Fish again on the 16th instant, he told me that he had talked over the matter with the President, who was so impressed with the advantage of having the boundary line laid down at once, that he had expressed himself as disposed to recommend to Congress in his next message at its opening, that he should be authorized to appoint a Commission and the necessary assistance for that purpose on the part of the United States.”

That inquiry related to the whole line, because the Lieutenant-Governor of British Columbia had pointed out that the initial point of the line was itself debatable. These proceedings resulted in a message from President Grant to Congress on the 2nd December, 1872, which is important. What he says is this:—

“Experience of the difficulties attending the determination of our admitted line of boundary, after the occupation of the territory, and its settlement by those owing allegiance to the respective Governments, points to the importance of establishing by natural objects, or other monuments, the actual line between the territory acquired by purchase from Russia and the adjoining possessions of Her Britannic Majesty. The region is now so sparsely occupied that no conflicting interests of individuals, or of jurisdiction, are likely to interfere to the delay or embarrassment of the actual location of the line. If deferred until population shall enter, and occupy the territory, some trivial contest of
311 neighbours may again array the two Governments in antagonism. I therefore recommend the appointment of a Commission to act jointly with one that may be appointed on behalf of Great Britain to determine the line between our territory of Alaska and the coterminous possessions of Great Britain.”

There he refers to the present sparse occupation of the territory, and recommends the appointment of a Commission to act with Great Britain to determine the line. A Bill was introduced into Congress to provide for the determination of the line, and Canada agreed to

pay a proportion of the expense, and on the side of the United States General Humphreys made a report to the Secretary of War of the United States as to the cost of carrying out the recommendation. The report is in the United States' Counter-Case Appendix at p. 51. He refers at p. 51 to the rugged character of the country, and says that it would be impossible to run the line continuously in the ordinary way, and then at p. 52 he makes this suggestion:—

“In view of the great cost of marking the line to the extent practicable, it might be found sufficient, for present requirements, to establish only those points on it necessary to determine the limits of territory upon the lands accessible to settlers, and upon the navigable waters and rivers.”

Then he makes suggestions as to what rivers should be taken, the Staken, Taku, Chilcat, and Alsekh rivers, and then the Yukon river and its junction with the Porcupine. In February, 1873, Sir Edward Thornton reports to Lord Granville that Mr. Fish estimated that the survey would cost 1,500,000 dollars, and would take ten years; and he throws out a suggestion as to fixing particular points. That passage is at p. 168 of the British Case Appendix. What Sir Edward Thornton is doing on this occasion is to report the views of the United States' Government, and he says:—

“On the 12th instant, Mr. Fish informed me, in the presence of Admiral Provost, that he had since received from the Engineer Department a detailed report of the estimated expense of the survey on the part of the United States, and of the time which it would occupy. That Department, it seems, states that the cost would be about a million and a half of dollars for the United States alone, and that the survey could not be completed in less than nine years in the field and one more year in the office. But the Department had expressed an opinion that, under the present circumstances of the two countries, it would be quite sufficient to decide upon some particular points, and the principal of these they suggested should be the head of the Portland Canal, the points where the boundary line crosses the Rivers Shoot”—Scoot, I think that should be, as the Scoot is a tributary to the Stakeen—“Stakeen, Taku, Iselcat, and Chelkaht, Mount St. Elias, and the points where the 141st degree of west longitude crosses the Rivers Yuken and Porcupine. The determination of these points alone would, in the opinion of the Engineer Department, occupy three years in the field, besides one in the office, and would involve an outlay by the United States of about 500,000 dollars.”

That was the suggestion that the United States' Survey Department communicated to Sir Edward Thornton and Sir Edward Thornton communicated to Lord Granville.

Then we find in the documents reference made to the recent discovery of gold in Stikine as an additional reason for having the line determined, and on the 9th November, 1873, Captain D. R. Caméron reported to the Canadian Secretary of State of Canada. This document is in the British Case Appendix, pp. 173 and 174, acknowledging his instructions, and asking whether his estimate was to be—

“For so much of the international boundary as affects the Province of British Columbia, or, in accordance with what the inclosure you have sent to me appears to indicate, has been contemplated by the Government of the United States, to estimate for a temporarily efficient marking of the line from the southernmost point of Prince of Wales Island to the Arctic Ocean.”

And asking for the detailed report on which the proposition of the United States was founded. That will be General Humphreys' report to which I have just called attention.

312 In 1874, next year, the Legislative Assembly of British Columbia again memorialised the Lieutenant-Governor in

view particularly of the recent discovery of gold mines with a view to having a limit definitely fixed, and early in the same year there is a report by Surveyor-General Dennis, which is at p. 177 of the Appendix of the British Case, where he refers to materials which were before him. On p. 178, at the bottom of p. 177, he says this:—

“The undersigned is of opinion that it is unnecessary at present (and it may be for all time) to incur the expense of determining and marking any portion of the boundary under consideration other than at certain of the points mentioned in the extract alluded to in the despatch from Sir Edward Thornton to the Earl of Granville, dated the 15th February, 1873.”

That is the despatch I have just referred to:—

“1. The head of the Portland Canal, or the intersection of the same by the 56th parallel of north latitude.

“2. The crossing of the following rivers on the Pacific Coast by the said boundary, that is to say: the Rivers ‘Shoot,’ ‘Stakeen,’ ‘Taku,’ ‘Isilcat,’ and ‘Chilkaht.’

“3. The points where the 141st meridian west of Greenwich crosses the Rivers Yukon and Porcupine.”

I do not think I need read further.

Now, it will be observed that Surveyor-General Dennis adopts the suggestion which the United States’ Department had made for fixing the boundary only at these specified points, and almost at the same time there is a report from Major Cameron, dated the 18th February, 1875, which is set out in this same Appendix of the British Case, beginning at p. 179. He refers in terms, which I need not really go through again, to the extreme difficulty of laying down the line. It will be observed that there are certain gaps in this report which has been taken from the Canadian Sessional Papers; they do not appear to have reproduced the whole report, but we have got the original report here, and there is a passage in it near the end to which I would desire to call attention.

The PRESIDENT. That is not printed.

Sir ROBERT FINLAY. It is not printed.

The PRESIDENT. Would you kindly read it, Mr. Attorney?

Sir ROBERT FINLAY. I have sent for the original report. It will be here directly. This is a typed copy. Mr. King has gone for it. Towards the close of his despatch occurs this passage:—

“It is understood that when Sir Charles Bagot was engaged in negotiating with the Russian Government on this subject, he was instructed ‘to admit’ as the line of demarcation a line following the sinuosities of the coast along the mountains nearest to the sea as far as Mount St. Elias.

“Sir Charles Bagot’s negotiations having failed, Sir Stratford Canning renewed and finished them, but it does not appear that the description ‘la crête des montagnes situées parallèlement à la côte’ received any further definition or that it was accepted by the two Contracting Parties as referring to the mountains nearest the coast.

“5. In the event of the summit of the mountains extending in a direction parallel to the coast being found to be more than 10 marine leagues from it, Article IV stipulates that the line shall then ‘be parallel to the windings of the coast,’ but never more than 10 marine leagues from it.

“Do the words ‘winding of the coast’ imply that the line is to be parallel to the ocean low or high water mark following indentations in bays and long tortuous inlets?

“Some of the mountains of this region have been alluded to as being washed by the sea. Is it to be understood that the strip between the highest
313 peak of such a mountain and the ocean at its base is the limit to which the United States coast belt is to be confined?

“The division of masses of mountain into separate individuals is arbitrary.

When, then, peaks of various altitudes are near to one another, how is it to be determined whether they are all parts of one and the same mountain?

“What limit distinguishes mountains from hills?”

“The course of the Treaty line will inevitably depend upon the agreement that may be arrived at with reference to these questions?”

I think the Tribunal will agree with me that Major Cameron in that report showed very great prescience, because the questions I have just read out touch really upon the vital points to which so much attention has been devoted in the course of the present discussion.

In 1875 a conventional line on the Stikine was agreed on at a point called Bucks between the United States and the English Customs authorities. It appears that that was only a local arrangement without any sanction of the central authority. That will be found set out in a Minute of the Canadian Privy Council at p. 197 of the British Case Appendix.

“The Committee of Council have had under consideration the letters addressed to the Honourable the Minister of Public Works by Mr. Justice Gray and Mr. W. Hamley, Custom House Officer at Victoria, with enclosures therewith, and recommend that copies of the letters and plan be transmitted by your Excellency to Sir Edward Thornton.

“The Committee observe that reference is made in the letter of Mr. Justice Gray to a conventional boundary said to have been agreed to and acted upon near Sitka”—

It is a very vague way to refer to a territory to say “near Sitka.”

“As the Government of Canada have never received any communication of a Conventional boundary having been agreed upon, it may be assumed that the local authorities, for mutual convenience, had adopted a line, but it does not appear that any official communication was ever made to the Government of Canada on the subject.”

Then in November, 1876, there emerges the case of Peter Martin, which went on for several years, and on which some reliance, I see, is placed on behalf of the United States. Now, I do not know that it is in the least necessary for me to follow in detail the case of Peter Martin through all his vicissitudes. Peter Martin had been convicted at a court held in British territory somewhere up the Stikine, in that region, and had been sentenced to imprisonment. There could not be found a prison in the territory, and it was necessary to take him down to the prison at Victoria. The only way there was down the Stikine, and in the course of the voyage they landed one day for lunch on the bank of the river, and Peter Martin got a gun and violently assaulted a warder, and then he was tried for this fresh crime and sentenced to another term of imprisonment. The case was taken up by the United States' Government, who said that the assault had been committed upon United States' territory, and it formed a subject of very prolonged correspondence. It was reported upon, as appears from the documents in the Appendix, by the Law Officers here, and the opinion was expressed as set out—there was a despatch expressing that opinion that wherever the assault had been committed, Peter Martin had undoubtedly been carried down to undergo his imprisonment through waters which were territorial waters of the United States on the Stikine, and a question which was regarded as of very grave general importance in British Columbia arose as to what the rights of navigation in the Stikine were under the Treaty of 1825, and under the subsequent Treaty of Washington of 1871. The question was whether these rights were general or whether they

were confined to navigation for purely commercial purposes, and whether they would extend to taking a criminal down. Well, the opinion seems to have been entertained here that these rights were cut down by the Treaty of Washington, and it was recommended that Peter Martin should be surrendered to the United States' Authorities, because anyhow the contention could not be justified. No power is entitled to take a criminal through the territory of another Power, retaining him afterwards in custody. The Power through whose territory a man has been taken is entitled to say that that man shall be set at liberty:—

“You have no right to take him in custody and to pass through our territory.”

Well, Peter Martin was given up. Nothing was said about it. In British Columbia they appeared to have objected to its being put upon that ground, because that might imperil the position they were disposed to assert with regard to the navigation of the river. No reason was given, but Peter Martin was undoubtedly given up.

Now, that is the outline of the case of Peter Martin, and, subject to any indication I might receive from the Tribunal, I do not know that it is necessary to pursue it further in detail. A great deal of discussion arose as to the importance of the case in itself, as having initiated, and very much accentuated, this discussion as to the boundary of the Stikine, and it led to the survey and Report of Mr. Hunter. The case was put at the trial in a way to which exception was taken by the United States. The judge would appear to have told the jury it did not very much matter whether the assault was committed within British territory or not, as the boundary was undetermined, and that you could not have a failure of justice merely because the precise point of the boundary had not been ascertained. Well, I think there was a great deal of common sense—if I may say so—in that way of handling the case; but the objection was taken—and I think, from a legal point of view, most properly taken—to that way of settling the proposition of law; but in the end, although Peter Martin was given up, there was no admission as to the boundary. I submit that what happened does not amount to any admission which could be used against the British Government as to the limitations at that point.

But what this case did lead to was Mr. Hunter's survey. Now, I have got all the despatches here, and am prepared to give the references if desired, but I apprehend the Tribunal really do not desire it. They are all collected conveniently in the British Case Appendix, beginning at p. 185 onwards, and may be consulted as far as is necessary.

But what this case did lead to was the survey and report by Mr. Hunter, which was made in June, 1877, and is set out in the British Case Appendix at p. 226. Now, I have already commented upon that report. I have submitted that although Mr. Hunter was no doubt a very qualified person, he was instructed to make a strictly local survey, that he did not and could not make the investigation necessary for tracing the mountains designated by the Treaty, and that he naturally enough took the peaks to which his attention was specifically directed, and he seems to have assumed from that that he had found there a line of mountains.

Of course, when the whole thing is now looked at as the Tribunal

has looked at it to-day, I invite them to say that Mr. Hunter was wrong in taking a line of mountains so far up, that it does not answer the Treaty, that you must come a great deal nearer to the sea, and that the provisional-limitation which was then arrived at is not one to which any great importance can be attached in this inquiry. The conclusion was carefully guarded. At p. 242 of the Appendix to the British Case there will be found a despatch of the 20th February, 1878, from Mr. Evarts to Sir Edward Thornton, in which it is stated that the line is accepted only provisionally, and without prejudice to any rights:—

“This Government” (that is, the United States Government) “has no objection to the temporary arrangement thus indicated, provided it be thus understood, on the part of both Governments, that it is not to be construed as affecting in any manner the rights under the Treaty to be determined whenever a joint survey shall be made, whether by a formal Commission or by officers detailed for the purpose of establishing a point as recently suggested.”

315 The Canadian Privy Council agreed to this, as appears from the Minute of the 28th February on the same thing, and that is the conclusion, and the only conclusion, which at that time was reached upon this point.

Now, that takes us down to the year 1878.

Mr. AYLESWORTH. Of course, Mr. Attorney-General, you are not overlooking the fact that Mr. Hunter's report was forwarded to the United States' Government.

Sir ROBERT FINLAY. Oh, certainly, Sir.

Mr. AYLESWORTH. And that in this report he very distinctly states the basis upon which he proceeded to be the general trend of the Coast.

Sir ROBERT FINLAY. I should perhaps apologize for not having mentioned that point again on account of its great general importance. I referred to it when I was dealing with the question of the general trend of the coast, and I do most strongly rely upon that coupled with the many other directions of a similar kind to which I call attention. I have to apologize if in my desire not unnecessarily to occupy time at this stage I pass over any matters which are important in themselves.

The PRESIDENT. You did refer to it, Mr. Attorney, and I think you also pointed out that the instructions, or rather the action of the American surveyors, was, you suggest, in accordance with the same view that they were only surveying at the distance that you have described. You pointed it out on the last occasion.

Sir ROBERT FINLAY. Of course in referring in this general way to Mr. Hunter's survey and to the communication of the result of it and to the report itself to the United States, I desired to recall in that compendious way to the attention of the Tribunal all that appears from looking at those documents by the light of the points which I also have the honour to make to the Tribunal to which these documents are applicable.

Mr. AYLESWORTH. I merely mention it because it was, I think, the earliest instance that I recollect of either Government intimating to the other its view about the construction of the Treaty.

Sir ROBERT FINLAY. It is a very important point, and I rely upon it most strongly. Now, from 1878, when these incidents are closed,

we pass on to April, 1884, when there is a very important despatch of that date from Mr. Dall, of the United States' Geodetic Survey, to Mr. Dawson, of the Geological Survey in Canada. He says this—I am reading at p. 248 of the Appendix to the British Case:—

“The matter of the boundary should be stirred up. The language of the Treaty of 1825 is so indefinite, that were the region included for any cause to become suddenly of evident value, or if any serious international question were to arise regarding jurisdiction, there would be no means of settling it by the Treaty. There being no natural boundary and the continuous range of mountains parallel to the coast shown on Vancouver's charts, like a long caterpillar, having no existence as such, the United States would undoubtedly wish to fall back on the 'line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom' of the Treaty. It would, of course, be impracticable to trace any such winding line over that 'sea of mountains.'

“I should think that the bottom of the nearest valley parallel to the coast might perhaps be traced and its stream form a natural boundary; even then it would be difficult to determine the line between one valley and the next. Before the question has attained any importance, it should be referred to a committee of geographers, a survey should be made, and a new Treaty should be made stating determinable boundaries. Perhaps at some time 316 you may be able to set the ball in motion on your side, and it would be only a matter of time when it would follow here.”

There Mr. Dall takes up the position that it is impossible under the Treaty, or very nearly impossible under the Treaty, to trace the line of boundary, and suggests a new and conventional line.

Then, on the 20th November, 1885, later in the same year, there follows that despatch of Mr. Bayard to Mr. Phelps, to which I have made repeated reference, and of which all the material parts have been read already. My point at present is that Mr. Bayard there takes up the same position that Mr. Bayard indicated in the letter I have just been reading. He says in effect that the Treaty line is impossible, and he quotes Mr. Dall in support of that position. He says you cannot ascertain the Treaty line; that is the result of Mr. Bayard's despatch of the 20th November, and it suggests that there should be an arrangement, making in effect a new Treaty, and Mr. Phelps writes to Lord Salisbury in the same sense, and Mr. Phelps' letter is acknowledged by Lord Salisbury—a mere acknowledgment. The proposal for a Commission which Mr. Phelps had made was communicated to Canada and appears to have been approved in principle, and on p. 92 of the United States' Counter-Case Appendix there is a reference to a Presidential message to Congress which seems to have been sent suggesting the preliminary survey. The Message itself we have not got so far as I am aware. The Message itself is not among the documents printed in the Case, but I have got the Message here, and will presently refer to it. The reference to it is in a letter from Sir Lionel West to Mr. Bayard, dated the 3rd April, 1886, which is at the top of p. 92 of the United States' Counter-Case Appendix, where this is said:—

“With reference to the memorandum which I had the honour to hand to you on the 19th ultimo, expressing the general agreement of the Dominion Government to a preliminary survey of the Alaska boundary, such as was suggested in the President's message to Congress, I have now the honour to inform you that Her Majesty's Government agree in principle to this preliminary investigation of the boundary, but that such agreement must not be understood necessarily to imply the appointment of a *Joint Commission*.”

I am told it was a mistake when I said we had this message; we had not got it. It is a subsequent Message we have got in a separate form,

It is nowhere set out in the documents, and for my present purposes it is quite enough that we have got that document showing what this Message was.

Then on p. 93, the next page of the American Counter-Case Appendix there will be found a Memorandum left with Mr. Bayard on this subject. Mr. Bayard writes to Mr. Phelps saying:—

“With reference to previous correspondence on the subject of the Alaska boundary question, I transmit to you herewith, for the files of your Legation, a copy of a Memorandum in reference to the matter, which was left at this Department on the 19th ultimo by Sir Lionel West.

(Signed) T. F. BAYARD.”

“*Alaska Boundary.*”

“Mr. Phelps’s proposal was for the appointment of a Joint Commission. “The Dominion Government, however, while expressing its general agreement to a preliminary survey, has not expressed its assent to such a Commission. They consider that a preliminary survey, such as was suggested in the President’s message to Congress, is preferable to a formally-constituted Joint Commission, which would involve a large expenditure of public money, and lead, perhaps, to interminable discussions.

“We are of opinion that the survey which they are prepared to agree to would enable the two Governments to establish a satisfactory basis for the delimitation of the frontier and demonstrate whether the conditions of the Convention of 1825 are applicable to the now more or less known features of the country.”

317 Then in 1887, that is next year, Lord Salisbury writes to Sir Lionel West the despatch of the 20th August, 1887, which is on p. 256 of the British Case, calling attention to Lieutenant Schwatka’s expedition and he says:—

“It will also be seen, on referring to pp. 20 and 47 of the Report, that Lieutenant Schwatka has indicated two points, viz., Perrier’s Pass, and 140 degrees west longitude, which he has determined as defining the international boundary.

“Her Majesty’s Government, as you are aware, have agreed in principle to take part in a preliminary investigation of the Alaska Boundary Question, but they are not prepared to admit that the points referred to by Lieutenant Schwatka in any way fix where the line should be drawn.

“Her Majesty’s Government have no desire at the present moment to raise any discussion in regard to the question of the boundary between Alaska and British Columbia; but in order that it may not be prejudiced hereafter by absence of remark on their part on the points alluded to above, I request that you will in a friendly manner call Mr. Bayard’s attention to the observations contained in this despatch.”

Then there follows next year that most important correspondence between Mr. Dawson and Sir Charles Tupper and Mr. Dall and Mr. Bayard, which is reproduced in the Message of the President which we have got here, and which is of very great importance.

Now, there are just two of those despatches to which I desire to recall the attention of the Tribunal. The dates of these documents and the interviews relating to them are as follows: On the 3rd January, 1888, Mr. Dall writes to Mr. Moore, the Assistant Secretary of State at Washington, setting forth that in his opinion the Treaty boundary is impossible. That is the effect of it. The document is set out at p. 258 of the British Case Appendix, and the way he puts it is this:—

“It has seemed to me that the necessities of the case, either with or without a Treaty, would be well met by a plan embodying the following ideas, it being perfectly well known that the boundary specified in the existing Treaty

was formulated on a mistaken assumption as to facts, and is impossible to determine by survey."

Well, I submit that when there is a more complete knowledge of the facts Mr. Dall then possessed, it is found there is no impossibility at all about it.

Then on 7th February, 1888, Mr. Dawson writes to Sir Charles Tupper a despatch which appears on p. 259 of the British Case Appendix, which sets out the British contention as clearly as can be, and inasmuch as the whole efficacy of the acts of possession relied on by the United States, as I submit, depends upon whether or not their assertion is correct that they had not notice until 1898 of the British claim to the heads of the inlets, I must ask permission to read one or two passages from this document.

The PRESIDENT. In the year 1888?

Sir ROBERT FINLAY. Yes. On p. 260 of the Appendix he says this:—

"It was, no doubt, in consequence of the distinctly conventional mode of representation of the mountains on Vancouver's charts, and the necessary inference that they did not accurately represent the facts, that the limiting clause was inserted in the Convention.

"Such a line as that, which it is believed was intended, is by no means impossible of survey, nor should it even be very difficult to define, as the summits of the mountains are, as a matter of fact, found to be everywhere visible from the coast, and are probably at an average distance of considerably less than 5 miles from it.

"In respect to the important question as to what is intended by the expression *la côte*, Major-General D. R. Cameron's views, as expressed in a report on this point, may be substantially adopted, as follows:—

Then this is a statement of Major-General Cameron. It is not marked as a quotation, but I think it is a quotation, and it should be so marked. It begins after "as follows" in the middle of p. 260, and runs down to "regulate its breadth" on p. 261:—

"In the second clause of the IVth Article provision is made for the case of the mountains being found at more than 10 marine leagues inland, and it is there laid down that the measurements shall be made, not from inlets, but from the ocean. The Convention stipulates:—

"Que partout où la crête des montagnes, qui s'étendent dans une direction parallèle à la côte . . . se trouverait à la distance de plus de 10 lieues marines de l'océan . . . la limite . . . sera formée par une ligne parallèle à la côte, et qui se pourra jamais en être éloignée que de 10 lieues marines."

"The word ocean is wholly inapplicable to inlets; consequently the line, whether marked by mountains or only by a survey line, has to be drawn without reference to inlets. Had it not been so clearly provided against by express stipulation in the second clause of the IVth Article of the Convention and by the accepted principles of international law, it might, in the case of the absence of mountains, be argued that the *lisière* should be measured from the sea-water's edge, wherever—in inlet or elsewhere—it outlined the continent, and that this being the coast-line where no mountains exist within 10 leagues *nearest to the coast*. But as said above, inlets, in either alternative, the occurrence or non-occurrence of mountains within 10 leagues, are not part of the coast-line determining the boundary. None of the inlets between Portland Channel and the meridian of 141 degrees west longitude are 6 miles in width, excepting, perhaps, a short part of Lynn Canal, consequently, with that possible exception, the width of territory—on the coast assigned, under the Convention, to Russia—may not be measured from any point within the mouths of the inlets. All the waters within the mouths of the inlets are as much territorial waters, according to an universally admitted international law, as those of a fresh-water lake or stream would be under analogous circumstances. As far as non-mountainous country may extend, but within 10 marine leagues of the ocean, the inlets are in fact included by the Convention within 'la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie.' On the other hand, so much of these inlets as happen to be in mountainous territory or beyond 10 marine leagues from the ocean, together with the dry land about them, is assigned to

Great Britain as much as are rivers and lakes in the same regions. Nothing short of an express stipulation to the contrary effect would, it is conceived, serve to maintain the proposition that inland waters in the 'lisière de côte' assigned to Russia were not part and parcel of that *lisière*. But if they were really part and parcel of the *lisière* itself, their mere existence cannot possibly be a reasonable foundation for arguing that they involve an increase of the breadth of the *lisière* of which they are component parts. The limits of the *lisière* are by the Convention expressly dependent on the relative positions of the ocean line and neighbouring mountain line. The only reference to inlets in the Convention (Article VII) is in a form almost directly declaratory of assent to the doctrine of territorial authority over them. If the sovereignty over inlets does not pass in accordance with the doctrine that they are part and parcel of the surrounding territory, there was no occasion for the reciprocal concession made in the VIIIth Article for right to navigate these inlets. Regarded from this point of view, rivers and inlets are identical. As reasonable, then, would it be to hold that under the Convention the breadth of the *lisière* assigned to Russia is determined by the head-waters of its rivers, as that the head-waters of its creeks and inlets regulate its breadth.

Now, I submit that it is impossible to put more clearly the British contention, and impossible to put it more forcibly. Then
 319 there took place certain conferences between Mr. Dall and Dr. Dawson in the same month of February, 1888. On the 11th February, Dr. Dawson wrote to Sir Charles Tupper, reporting the result of those conferences. The document is to be found at p. 261. He proposes certain conventional lines. Reference has been made before to this despatch, and I do not think it is necessary that I should read it again, because what I am upon is showing how clearly it was brought home to the United States in 1888 what the contention of the British Government as to the inlets now is. Then, on the 13th February Mr. Dall writes to Mr. Bayard, giving his report of the result. That document will be found in the United States Counter-Case Appendix at p. 94. I had better begin to read about the middle of p. 95. He writes:—

“To arrive at a state of affairs by which the above mutual concessions should be most easily managed (and waiving temporarily a construction of the Treaty by which General Cameron and others for Great Britain have contended that the heads of the inlets are already British territory) Dr. Dawson is of the opinion that the best way is to so arrange a conventional boundary line as to include some concessions by the United States on the coast, and, if a *quid pro quo* is thought necessary, he suggested a cession by Great Britain to the United States of part of the interior, as, for instance, the triangular region in British Territory south and west from the Upper Yukon, and between it and the present Alaskan boundary. From this I felt compelled to dissent,” and so on. “Differences have been alluded to, raised by General Cameron in a construction of the details of the Alaska Treaty which relate to the boundary. These relate not to those expressions in the Treaty which have hitherto been considered as obscure, but to its most precise and explicit wording. As, for instance, it would be claimed from his point of view that the name *Portland Channel* in the Treaty does not mean Portland Channel, but an entirely distinct series of waters, which construction would add to Canada an area somewhat larger than the State of Delaware. He would also regard the line parallel to the windings (“sinuosités”) of the coast as a line which should disregard the windings of the coast, and, instead of following the crest (*‘crête’*) of the mountains should skip across the arms of the sea when they are less than 6 miles wide.”

And then, we having these fundamental differences in the construction of the Treaty, Dr. Dawson suggested two alternative methods of obtaining a boundary line, and I need not go into them.

Then at the bottom of p. 96 he says:—

“But in regard to the Chilkoot Portage, where there is no navigable river, and which is now the most important inland route, Dr. Dawson seemed to feel

that any plan not involving the possession of territory through to the sea by Great Britain would be unacceptable; while I felt equally confident that such a cession is undesirable for the United States, and would not be likely to be considered seriously by them."

Now, there is a note in that, p. 96, which shows that the views of General Cameron, as contained in a copy of the letter to Sir C. Tupper, had been furnished by Dr. Dawson to Mr. Dall, and here is the Message from the President of the United States relating to this correspondence. Here are the documents: at p. 2 of the Message will be found the inclosures from Mr. Dall to Dr. Moore, Mr. Dawson to Sir C. Tupper, same to same, Mr. Dall to Mr. Dawson. These are the documents I am referring to.

The PRESIDENT. I do not think, Mr. Attorney, for what it is worth, that anybody can dispute that after 1888 Mr. Dall, at any rate, knew, and other people also, what the claim was.

Sir ROBERT FINLAY. And here is the Message, and here is the map.

The PRESIDENT. So I gather.

320 Sir ROBERT FINLAY. It is Map No. 17, Dawson's Canadian map No. 87 showing conventional lines proposed by Canada. It is No. 16; it is headed "Dawson's Canadian map No. 87, showing conventional lines proposed by Canada," and there is shown first a line approximately following the summits of mountains parallel to the coast, running up near the coast, crossing the Taku Inlet, and crossing the Lynn Canal and Glacier Bay; then there is conventional line No. 1, crossing the head of the Taku Inlet and the head of the Lynn Canal; and then there is the line approximately as shown in the United States' Coast Survey Map of Alaska No. 84. I hand in this Message to the Tribunal.

[Volume handed in.]

The PRESIDENT. I should like to look at it, Mr. Attorney.

Sir ROBERT FINLAY. Well, I claim to have demolished the assertion that it was not until 1898 that the United States had notice of the claim to the head of the inlets by Great Britain. In the same year of 1888 there is a letter from Mr. Burgess to Sir J. Macdonald, dated June 19, at p. 264 of the British Case Appendix. It relates to a rumour of an impending Charter by Alaskan authorities to construct a trail from Lynn Canal over the White Pass. This is said in that letter to be in violation of the well-based contention that the heads of the inlets are British. Sir J. Macdonald's report on the above is sent to the British Foreign Office with a Memorandum from General Cameron. The reference for that is pp. 264, 265, of the British Case Appendix, and on the same page will be found a note from Lord Salisbury to Sir Lionel West, dated 31st August, 1888, calling attention to that point. He says:—

"I have to request that you will inform Mr. Bayard that this report has reached Her Majesty's Government, and that it is presumed to be unfounded, as the territory in question is part of Her Majesty's Dominions."

Then, on the 15th September, Mr. Bayard writes to Sir Lionel West a despatch, which is on p. 266 of the British Case Appendix, where he says that—

"The rumour to which you refer is, as stated by you, certainly vague and indefinite, and has not come to the notice of this Department, which is wholly without information in regard to the granting of such a Charter as you mention, or to the locality of the territory to which it is said to apply."

Now, there again we have attention at once called to the disputed boundary. On the 19th December, 1888, Mr. Dall writes to Mr. Bayard a despatch which is set out on p. 97 of the Appendix to the Counter-Case of the United States. That letter enclosed a Memorandum on the Alaska boundary by Mr. Dall—a very long Memorandum indeed—and a supplementary Memorandum on the views of General Cameron, as I submit in a letter of Dr. Dawson to Sir Charles Tupper, to which I have already referred. I do not think I need go through those documents; they are of a controversial nature, but they supply further evidence, if that were wanted, of the full knowledge which the United States had at that time of the British claim. On the 22nd December, 1890, there is a Presidential Message to Congress; that is the document which I have just been dealing with, and which I have handed to your Lordship.

On the 22nd December, 1890, there was a memorandum left with the United States' Secretary of State, by the British Minister, with reference to subjects proposed to be dealt with which were pending between the two powers. That is in the Appendix to the Counter-Case of the United States on p. 115. The heading is with reference to a Joint Commission. No. 7 is "Arrangements for delimitation of boundary between Alaska and Canada." On the 5th June, 1891, there is a letter to Mr. Blaine which I have already read, which calls attention to the last Report of the United States' Coast and Geodetic Survey by Mr. Thorn, who was Mr. Mendenhall's predecessor, 321 and he reminds the United States that the boundary is the subject of difference of opinion.

Then, on 22nd July, 1892, we have the Convention for the delimitation of the Alaska boundary by coincident or Joint Survey. It is to be "for the ascertainment of the facts and data necessary for a permanent delimitation." I have already read that document and called attention to its important provisions. Then on that follow the instruction as to taking the general line of the coast, to which I have already referred in another connection. The report itself follows on the 31st December, 1895, signed by Mr. Duffield and by Mr. King, and I venture again to remind the Tribunal of the fact that that survey does not carry back the survey so far as the territory which is included in the line showing what the United States now claim. Then we pass on from the Convention of 1892, and what was done under it, to the proposals, in 1898, for the appointment of Commissioners. The first despatch was the 23rd February, 1898, to which I refer, p. 291 of the British Case Appendix.

The PRESIDENT. Mr. Choate admits that there was knowledge in 1898, you see, Mr. Attorney.

Sir ROBERT FINLAY. Yes.

The PRESIDENT. We follow your point about the earlier—

Sir ROBERT FINLAY. Yes; I think I may abridge this. Then there are proposals as to a provisional line on the 18th April, 1898, and then we come to the correspondence between Lord Salisbury and Mr. Choate in 1899. The despatches to which I am going to call attention—I am not going to read them—in that correspondence are more particularly the despatch to Mr. Choate on the 13th May, 1898, then to a letter from Lord Salisbury to Mr. Choate on the 17th May, 1899, two letters from Mr. Choate to Lord Salisbury of the 19th May and the 9th August in the same year of 1899; and, finally, Lord

Salisbury's despatch of the 14th October addressed to Mr. Tower, who was in charge of the British Embassy at Washington. These are all to be found in the United States' Counter-Case Appendix, beginning at p. 124.

Lord Salisbury proposes, on the 17th May, 1899, as a compromise, that an arrangement should be made that "if Dyea and Skagway are found as the result of the Award of the Arbitrators, to be within the territory of Great Britain, both places will be and remain in the occupation and within the territory of the United States. If Pyramid Harbour is found to be within the territory of the United States, it will be and remain within the territory and under the jurisdiction of Great Britain." Mr. Choate writes back saying that the claim of the United States to Dyea and Skagway "was based upon the obvious and impregnable ground that those settlements has been built and established under the authority and within the jurisdiction of the United States."

Then, in a despatch of the 9th August, he further makes the statement which I have already quoted, that he had no notice till 1898 of the claim to the head of the inlets. Lord Salisbury replies, in his despatch of October—this is at p. 137, and it is the last quotation that I am going to make—and he says:—

"They (Her Majesty's Government) do not, of course, admit that there has been any such adverse possession by way either of exercise of jurisdiction or of political control, and if the United States' citizens have settled recently at the head of the Lynn Canal, they have done so in the full knowledge, as given in the documents inclosed in President Cleveland's Message to Congress of the 2nd March, 1889, that they were settling in disputed territory, and Her Majesty's Government are unable to see any reason why such settlement should receive further or greater recognition and protection than the United States' Government considered should be accorded to British subjects who had settled in the area in dispute between this country and Venezuela."

322 I respectfully submit that the answer made by Lord Salisbury in that passage is conclusive and deprives of all weight for the purposes of the present discussion by far the greater of the acts which are relied upon by the United States.

Now, I have completed the survey of the matters which the Tribunal has to determine, and I will ask leave to be permitted very briefly to recapitulate the result of the submissions I have been making to the Tribunal.

Mr. AYLESWORTH. One word before you leave this subject, Mr. Attorney. I would like to ask your view of the question, whether or not there is any rule of international law which would be analogous, if I may so describe it, to the Statute of Limitations as applied between individuals. Suppose one nation is in occupation for a long period of years of a territory which belongs to another—does there ever come a period when a Statute of Limitation would apply as distinguished from mere acquiescence or from what may be deduced from the absence of objection on the part of the nation whose territory was occupied?

The PRESIDENT. Estoppel.

Sir ROBERT FINLAY. Of course, there is no positive rule to that effect, but, in the absence of a Treaty, no doubt acts of that kind—of long enjoyment—would be regarded as being of very great importance. They have been referred to repeatedly in the case of boundary

disputes. I think they were notably referred to in the case of the Venezuela Arbitration also.

And in the Behring Sea Arbitration. Of course, there is no positive law as to the length of time which constitutes such possession, unless it be established by the terms of the Treaty for arbitration as in some cases has been done. I should not dispute for a moment that long possession would be an element which any arbitrator would most properly take into account in determining a dispute which was open as between two Powers as to the ownership of a territory, but what I do submit is that all such considerations have been excluded—and advisedly and properly excluded—by the terms of the Treaty of Arbitration in the present case.

Here what the Tribunal has to do is to interpret the Treaty and to answer any questions in accordance with the construction of the Treaty, and these Acts are to be looked at—as is specified at the end of the IIIrd Article—for one purpose, and for one purpose only:—

“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 the said Treaties, so far as the same tends to show the original and effective understandings of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of the said Treaties.”

Now, I submit as a proposition of international law that possession—and even long possession—as between nations, would not of itself confer a title: I mean if a territory is admittedly the territory of A, however long B had been in possession, A would be entitled to turn him out and to assert jurisdiction. I am speaking of two nations as A and B. But if there was a dispute as to whose the territory was, then long possession would be a most material element in endeavouring to determine which of the parties to the dispute was in the right; and it is from that point of view—and from that point of view only—that I submit possession ever can be looked at. There is not really in international law anything which corresponds to the Statute of Limitations. What you have in international law is that if the right to the territory is in dispute, then long possession is a matter to which the Tribunal which is to determine that dispute may very properly have regard. But any considerations of that kind are really excluded by the terms of the Article to which I have referred. Here the questions are to be answered strictly according to the Convention contained in the Treaty of 1825. A series of questions are propounded, and the only purpose for which you can have regard to the acts done is for the purpose of ascertaining “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

323 the said Treaties.” For that one purpose can they be looked at, so that if I may formulate my answer to the question Mr. Aylesworth has been good enough to put to me, I would say, first, that there is no Statute of Limitation between nations which bars a right otherwise good. Secondly, in the absence of special stipulations where it is a question of disputed territory you may very properly have regard to the fact of long possession, but, thirdly, in the present case, all such considerations are put out of view by the very language of the Treaty. You can look at these acts only so far as they tend to show the effective understanding of the Parties with regard to it.

That being so, I submit that the moment it is established that a dispute had been pending since 1872, and that as early as 1888 the precise contention of Great Britain with regard to the heads of the inlets was brought to the notice of the United States—as soon as those two facts are established the value of the acts of possession, which occupy such a very large space in the Argument of the United States, disappears for the purpose of this Arbitration.

The PRESIDENT. Perhaps it might be convenient, and I just mention it at present. I think you have put it quite correctly, Mr. Attorney; but Lord Hannen, in the Behring Sea Arbitration, expressed a clear opinion, in the course of the Arbitration, that prescription, properly so-called, found no place as between nations.

Sir ROBERT FINLAY. No.

The PRESIDENT. But he did point out that estoppel and acquiescence might, of course, be important features.

Sir ROBERT FINLAY. Yes.

The PRESIDENT. And then, further, I think it appears in the course of the argument that he thought prescription had no application where the question was the construction of a bargain or contract between two parties. I only mention that because I believe you have stated the law—if I may say so with respect—in concurrence with Lord Hannen's view and the view there laid down.

Sir ROBERT FINLAY. Now, to summarize the contentions on behalf of the British Government. I take first our contention with regard to the Portland Channel. Now, I submit that we have established that the Portland Channel is the channel contended for by the British Government, on the following grounds:—

We have shown that the narrative of Vancouver is clear and precise, that as to the channel that he designated as the Portland Channel there is no room whatever for doubt. Further, I submit that that narrative must have been in view of the negotiators when they were arranging this Treaty, that in the first place there is an overwhelming probability that the great authority on a question to which particular attention had been called by the Ukase of the Russian Government was not overlooked, and that that is clinched by a series of references which are to be found in the documents showing what was passing as between the negotiators that can be accounted for only on the assumption that that narrative had been read and was well understood by them. I will not go through those references again; I refer to them. This view, I submit, is further confirmed by the charts. Vancouver's charts—so far from detracting from the clearness of the indications of his narrative on this point—I submit, when they are looked at, confirm them, and the other maps then existing, which may have been then before the negotiators, would, I submit, taken as a whole, have led them to the same conclusion as to the nomenclature of these two channels. The question is one simply of identity of the inlet designated by the Negotiators. It is not a question of whether it is a navigable inlet or one that is of such a character that ships would seek to traverse it, and all reference to the doctrine of thalweg, I submit, is absolutely irrelevant for the purposes of the present case.

Further, in this connection, I claim to have established that

324 there is no foundation for the governing contention of the United States on this point that the factor—and the determining factor—is the latitude 54 degrees 40 minutes north. I submit

that whether you look at the language of the Treaty or at the language used by the negotiators before that Treaty was arranged, it is perfectly clear that 54 degrees 40 minutes was not the governing factor; that what they preferred to take as the governing factor was a line drawn from one point to another, these two points being the southern end of Prince of Wales Island and the entrance to Portland Channel. I claim that it is demonstrated that 54 degrees 40 minutes could not have been in the view of the negotiators by the fact that in Vancouver's narrative that latitude indicates a point below Observatory Inlet, altogether to the south of Point Maskelyne and on the mainland, so that the latitude 54 degrees 40 minutes, as it appears in Vancouver's narrative, and according to his charts, would involve the assumption that the negotiators were making, not for the mouth of Portland Channel from the southern point of Prince of Wales Island, but for a point on the mainland to the south of Point Maskelyne, which forms the eastern boundary of Observatory Inlet.

The United States' Treaty on this point, instead of affording a guide, affords a contrast. That adopted in terms the latitude 54 degrees 40 minutes. With the Treaty before them and under their eyes, in despatches, in one case written on the very day on which that Treaty was signed, a different designation is adopted for the purposes of the British Treaty, and for very good reasons, because Russia was settling with Great Britain, the adjoining Power, the limits for territorial purposes. She was not arranging, as she was with the United States, which had in view trade and settlements for trade purposes. If any latitude could be regarded as governing these negotiations it was not 55 degrees 40 minutes, but 55 degrees latitude north—the latitude mentioned in the Ukase of 1799 to which reference has so often been made. And that latitude 55 degrees was departed from for one purpose, and for one purpose only—to give the southern extremity and the whole of the southern extremity of Prince of Wales Island to Russia.

The same conclusion with regard to the Portland Channel is reached, I submit, if you look at the subsequent action. The Island of Tongass is situate immediately to the north of what we say is the entrance to the Portland Channel. We find in 1835 the Russian-American Company speaking of Tongass as being on the frontier of our Straits. A fort was erected there in 1867.

General Thomas reports to the United States in 1869 that that fort at Tongass is on the boundary; and the Education Department in 1898 referred to Tongass as being at the extreme south-east of Alaska. The lease of 1839, when rightly read, I submit, contains not a word that is inconsistent with this view. And as regards the store-houses which were put up by the United States in 1898, I submit that the ceremonial which attended the erection of those store-houses is inconsistent with the idea that there had been a previous possession. It is the same ceremonial as would attend taking possession for the first time. It was at a date when the controversy had been going on between the two countries for many years, and I submit that to the erection of these store-houses no weight whatever can be attached.

As regards the evidence of the subsequent maps on this point, it is, of course, of very inferior value to the considerations to which I have

been referring, but whatever be the worth of maps on such a point I can claim that the balance of testimony is in favour of the British Case.

On the other parts of the Case, those which relate to Questions 5 to 7, I claim to have established that the coast referred to in Article III is the general trend of the coast, and that is shown by the instructions to General Hunter and his report communicated to the United States' Government, that it is shown by the instructions that were given for the subsequent survey under the Convention of 1892 by the United States' authorities as well as by the Canadian authorities, and by the broad fact that the survey which was made by the United States and by Great Britain and by Canada and Great Britain at that time does not extend the distance inland which is required if you take 10 marine leagues from the heads of the inlets.

I submit that, if the negotiations are looked at, it will be found that "coast" is contrasted with Portland Channel, instead of being regarded as running up either shore of that channel, and that
325 you must take the general trend, for this simple reason, that in the course of the negotiations it was contemplated that instead of having mountains as a boundary, you might have throughout the whole extent of the *lisière* a boundary to be designated by a line drawn at 10 marine leagues distance and parallel to the coast. Of course you do not want mathematical accuracy in a parallel, but you want to have such a line of coast as in the ordinary understanding of people will enable you to draw a line in the same direction, and that is absolutely and physically impossible if the line of coast is to include long and narrow peninsulas and long and deep inlets. I claim that that conclusion is corroborated by the use of the word "ocean" in Article IV, which evidently denotes the same line. That term, I submit, would not have been applied if they had been contemplating the heads of the inlets. For these reasons I ask the Tribunal, in answering question 6 to say that the distance is to be measured, wherever the question arises, from the general line of the coast, and not from the heads of the inlets.

I submit that the barrier for which Russia was stipulating was a barrier which is not interrupted by the crossing of the *lisière* by such inlets, even though the heads of them belong to Great Britain, that by the doctrine of territorial waters Russia acquires complete control over the lower part of such inlets, that there is no interruption of continuity of territory under the sovereignty of Russia, that all that Russia wanted was a *point d'appui* for her settlements on the islands, and that the concession of the free navigation of rivers by Great Britain down to the sea through the *lisière* shows that there was nothing inconsistent with the Russian view in the admission of access by Great Britain to the sea.

On the question of mountains which has to be dealt with under the seventh head of the instructions to the Tribunal, it is contended on the other side that there are no such mountains. I submit that it has been established by an examination of the Treaty and the negotiations that such mountains form the basis of the Treaty, that the negotiators throughout regarded the existence of such mountains as lying at the very root of what they were about to do.

I submit that the mountains are not necessarily to be a chain at all, that you satisfy the Treaty if you find that you can take an ele-

vated line with a higher point at varying distances along the coast and connected as shown in those sections which I have handed in to the Tribunal. I submit that the negotiations show most clearly that these mountains were to be near the sea—so near the sea that the Russian negotiators apprehended that the base of the mountains might coincide with the very edge of the water. Further, that there is not one word, either in the negotiations or in the Treaty, to indicate that you were to find out the dominant or the highest ridge. You are to find out mountains answering to the description near the sea, and all that was stipulated for by the Russians was “une simple *lisière* du continent.” I respectfully submit that the line which has been suggested by Mr. King satisfies all these conditions, whether it is looked at by the light of the contour map, tested in every particular by the contours which the maps indicate in very great detail, or whether it is examined by the light of the sections which have been drafted. Of course, by the light of the contours you bring the matter more out in relief.

With regard to the fifth question, which is as to whether it was the intention of the Treaty and the negotiators that there should be Russian territory interposed between British territory and the heads of the inlets, I submit to the Tribunal that that question must be answered in the negative. Wherever the line may fall it is to be drawn according to the instructions of the Treaty, but there is, neither in the Treaty itself nor in the correspondence which preceded it, nor in the interviews, any trace of such a governing principle as that Great Britain is to be cut off by a bit of land from the heads of the inlets. That question, I submit, must be answered in the negative, and the answer to that question is, of course, of very special importance as affecting the Lynn Canal. I need not recapitulate the grounds which have shown the great importance of that point to Canada, but I do submit that when a line of mountains is followed up to the south of the Lynn Canal, as soon as you arrive at a point which is 10 marine leagues from the general line of the coast, that

326 Article IV of the Treaty provides, be carried across at that point. Reliance is placed on the maps of Vancouver, particularly Nos. 4 and 5 of the United States' Atlas, which were before the negotiators. I submit that when these maps are compared it will be found that they vary in the most extraordinary way, and that it is impossible to suppose that the negotiators pinned their faith to these maps in such a way as would justify the Tribunal in, as it were, incorporating them in the Treaty.

Reliance is placed on the part of the United States on the subsequent maps, which show a boundary drawn inland—not so far inland as the present boundary claim, but still drawn inland. I submit that these maps are, on such a point as this, of no authority—that they are all subject to the condition expressed in the letterpress upon some of the maps, that the requirements of the Treaty must be ascertained and carried out. They are evidently copied the one from the other, and the worth of a map on such a point as the indication of a boundary must depend upon the question whether the person engaged in preparing the map had the means of ascertaining the true result to be got from the Treaty and the investigation of the country in question.

The line shown, claimed on behalf of the United States, is, I submit, destroyed on several grounds. One ground alone would, I submit, be fatal to it, and that is the lease of 1839 to the Hudson's Bay Company, on which, for another reason and in another part of the Case, the United States does rely. That lease, as I submit, establishes that a line from Cape Spencer to Cape Fairweather completely bisected the *lisière*; but, according to the present contention of the United States, it would do nothing of the kind.

With regard to subsequent action not affecting the *lisière*, I submit that the course of the negotiations as to the disputed boundary, the full knowledge which the United States possessed from 1872 onwards, that the boundary was in dispute, the full knowledge that they possessed from 1888 onwards as to the details of the British claim to the heads of the inlets, displaces any inference that might be drawn from their acts, that those acts cannot affect the construction of the Treaty, and cannot be taken to show the "original and effective understanding" of both parties to the Treaty of 1825 in the only way legitimate under the provisions of the Treaty of Arbitration.

I have now arrived at the end of the task which I have had to discharge in opening this Case. It has taken a great many days. I can only hope that my apology will be the great mass of materials with which I have had to deal. I am most deeply sensible of the importance of this Case. I know how the eyes of the people of the Dominion of Canada are fixed upon the proceedings of this Tribunal. I realize what vast interests may be affected by its decision. I trust that the Case of Canada will not suffer from any imperfection in the way in which it has been presented, and I leave that Case with confidence in the hands of the Tribunal.

The PRESIDENT. Mr. Attorney, no apology of any kind was necessary for the length of time you have occupied. We all desire to thank you for the very able, lucid, and interesting argument that you have been good enough to address to us, and we all feel that the careful and impartial examination which you have made of all these documents has been, and will be, not only of the greatest service to us, but will materially abridge and assist the labours of those who follow you.

Sir ROBERT FINLAY. I am extremely obliged to your Lordship.

The PRESIDENT. We will hear you when we return, Mr. Watson.

(Adjourned for a short time.)

327 Mr. WATSON. With the permission of the Tribunal. In the year 1867 Russia asserted that she was the owner of a large portion of the North-Western coast on America, and she defined her boundary line as beginning at 54 degrees 40 minutes running up Portland Channel to the 56th parallel, and thence by a line around the heads of all the bays and inlets to the 141st meridian, and she said that her title to this portion of property was proved in different ways—First, that she had discovered it first in 1741. Second, that she had been in the occupation of it, not that she sat down upon, or built houses over it, but in the occupation of it for purposes for which it was fit to be occupied, ever since the year, at least, of 1790. And then she showed—and here she had the indisputable evidence that in 1799 the Emperor Paul of Russia had asserted the exclusive ownership in Russia of all this North-Western coast running from Behring

Strait down to the 55th degree—and that from that time down until 1867, when Russia offered to sell, not a single nation of this earth ever objected to that claim of title; and not only that, but that the acts of England and of Canada, who owned the territory bordering on the *lisière* of Russia, had by the most unequivocal acts assented to and agreed to where the line of delimitation should be run upon the ground whenever the Governments as between themselves set to work to mark out and define that boundary.

And then, if the Tribunal please, she not only showed us that, but she showed us that in 1825, after lengthy negotiations, Great Britain asserted that Russia was the sole sovereign and the sole owner of this entire North-Western coast down at least to the 56th parallel, beginning on the islands at the 54th parallel, running up to the 56th, and at least from the 56th parallel up around the heads of the bays and inlets—that Russia was the sole owner of the same. Well, now, under the circumstances, Russia offering to sell to the United States this property, the United States made a contract with her to buy it; and in that contract, which was signed on the 30th March, 1867, Russia asserted that she was then in possession of the property, and that she had been in possession of that property, as I have already said, for a period of pretty nearly 100 years, and she agreed that she would convey to the United States, fully and unincumbered by any reservations, privileges, franchises, grants, or possessions by any companies, whether corporate or incorporate, Russian or any other, or by any parties except merely private individual property owners, the whole of this property. In other words—to use the nomenclature of the English law—she agreed to give us a fee simple title, without any incumbrances of any kind.

Now, it was true—and Russia so said to us—that this line of demarcation as between her possessions and the possessions of Great Britain, had never been defined upon the ground by marks and boundaries.

It never had been surveyed. The stones or posts to indicate the different stations of the line had never been driven or erected there. But she also said that as to that Eastern line there could be no question about where it was to be delimited on the ground, because she and England both had agreed that it should run around the heads of all the bays and inlets from the 56th parallel up to the 141st meridian. Well, a contract to purchase was signed, and, under our Constitution, that contract had to be referred to the Senate, because without the ratification and approval of the Senate the Contract was not binding; and so to the Senate the contract of purchase went.

And now I ask the Tribunal to notice the caution and care which the United States exercised in completing this contract to purchase. Mr. Charles Sumner, who was then the Senator from Massachusetts, was requested by the Executive Department to make a thorough investigation of the facts connected with this title, and to report on them to the Senate. And he did so—and in the most elaborate argument and statement of facts, which is referred to in our Case, he presented the salient facts not only of the topography of the country, but of the title of Russia to this property.

Not only did Mr. Sumner do that, but other members of the Senate went into the question of the examination of the title. And now consider just for a moment, so far as this Eastern boundary line is con-

cerned, what the evidence was that Russia had to offer and that we had to investigate, as to where the line should run as between the Russian and the British possessions. Should it run, as England now claims, across the heads of the bays and inlets, dividing the inlets in two, or should it run around the heads of the bays and inlets, giving to Russia a continuous fringe or strip of territory as between the parallel and the meridian and the sea?

Well, in the first place, we took up the Treaty, and we read the words of the Treaty. And then we remembered that, in addition to the Treaty, there is no more pregnant rule in reference to the construction and determination of boundaries than to find out what the parties to the Treaty or contract had done in carrying it out. If you once determine how the parties to the contract have completed it, how they have carried it out, there is no more suggestive and no more conclusive mode of determining the meaning which the parties had in the making of the Treaty itself. And so these gentlemen of the Senate went to the maps to determine what it was that Russia claimed under this Treaty of 1825, and what it was that England had agreed that Russia was entitled to receive.

Now, what did they find? I turn in the first place to Map No. 11 of the American Atlas, and I ask the attention of the Tribunal to the line as found upon that map. I could read that Russian, but I will not, and I merely say that the boundary as found there defines the limits between the British and the Russian possessions, and I ask the attention of the Tribunal to the fact that beginning at the head of Portland Inlet, and running around until it comes to Mount St. Elias at the 141st meridian, is a plainly defined, well-marked boundary line, and the significance of that boundary line lies in two things:

First, it goes around the heads of all the bays and inlets—that is sure.

Second, it goes around the heads of the bays and inlets irrespective of the mountains. Now why?

Because under the construction of the Treaty which Russia had, she said that that is exactly where the boundary-line went, mountains or no mountains, as the future might determine. And that was an official map issued by Russia in 1826. Now, notwithstanding the critical manner in which this map is regarded by our friends on the other side, may I not press upon the Court, and am I not entitled to press upon this Tribunal the fact that this boundary-line indicates Russia's construction of this Treaty, and the fact that she regarded it as establishing that her line ran around the heads of all the bays and inlets as between her possessions and the possessions of Great Britain. And it is entirely immaterial as to how far this boundary-line is from the coast, and it is entirely immaterial as to whether this boundary-line is exactly located where it should be as to marine leagues. The cogency of this boundary-line is that it runs round the heads of all the bays and inlets, and appeals directly to the Tribunal when they come to answer Question 5.

Well, that is the first evidence that we found; and we found that that was on the official map of Russia; that it had been asserted and re-asserted by Russia from 1826 down to 1867; and the Tribunal will notice that this map was made when the recollection of these negotiations and of this Treaty was fresh in the minds of the parties.

And then that map was followed by a map issued by Arrowsmith in 1833—Map No. 12 of the United States' Atlas—in which he said that it was a map exhibiting all the new discoveries in the interior parts of North America, inscribed by permission to the Honourable Governor and Company of Adventurers trading in the Hudson's Bay, in testimony of their liberal communications—and so forth—to their obedient servants; and that was the Arrowsmith Map—and going to that map, and comparing it with the Russian Map, we found that the line of demarcation, as running from the 56th parallel up to the 141st meridian, ran outside of and included all the bays and inlets just exactly as the Russian Map had.

And also, if the Tribunal will notice, it significantly indicated where the boundary-line was to be, irrespective of the question as to whether in the future the particular chain of mountains to which the Treaty referred did, as a fact, exist in that neighbourhood within 10 marine leagues of the sea or did not. And right on the face of that map Mr. Arrowsmith printed practically the IVth Article of the Treaty between Great Britain and Russia; and he indicated where, so far as he was concerned, and those for whom he drew that map, this Eastern boundary between the possessions of Russia and Great Britain from the head of the 56th parallel to the 141st meridian would run. And then among a wealth of maps which
329 showed the same thing, we come to a Canadian map—No. 17 of the United States' Atlas—and it was said to be compiled from the latest and most approved historical observations and authorities and recent surveys by Bouchette, who was the Deputy-Surveyor-General of Lower Canada; and the map is dated 1853. And here again—the same as in the Arrowsmith Map of 1833—we find that this Eastern line of boundary ran outside of and included all the bays and inlets.

And, turning then to another map—No. 35—which is called the House of Commons Map, we come to a most significant bit of evidence in reference to the location of this Eastern line, and that was a map prepared for the Hudson's Bay Company, and published by the authority of the House of Commons, in which this Eastern boundary line again ran outside of, and around, all the bays and inlets between the 56th parallel and the 141st meridian.

From these different maps Mr. Sumner had prepared a map for the Senate; and if the Tribunal will turn to map No. 24 of the United States Atlas, they will find the Sumner Map presented by Mr. Sumner to the Senate, and afterwards published by the authority of the United States in 1867; and there again you find this eastern boundary line drawn around the heads of the bays and inlets, the same as in the Russian map and the same as in the English map. It is entirely immaterial, if the Tribunal please, what the exact location of that boundary line, so far as this matter is concerned, except on the question of, "Was it intended to run around the heads of the bays or inlets?"—not necessarily the distance that it might run from the heads of the bays and inlets, but, "Was it a boundary line intended to run around the heads of the bays and inlets?" giving to Russia the continuous fringe, and excluding Great Britain from the access to these bays and inlets, except by the rivers that might flow through the *lisière* into the Pacific Ocean.

Now, with this evidence before them the Senate confirmed this contract to purchase. I do not go into all the details of all the other maps, because the events in this case subsequent to 1826 do not fall within my province, and I am merely giving this slight outline in order to approach, as I think, in an intelligent manner, and with the proper atmosphere around the case, the discussion of the questions submitted to you. Well, the Senate confirmed, as I say, this contract to purchase, and that confirmation was made on the 28th May, 1867. Now notice, if the Tribunal please, what that contract to purchase included.

It included this provision, that the United States were not to pay one dollar of the purchase money until some eight months after the confirmation by the Senate of the Treaty; and so you see that this Treaty, being confirmed in May, 1867, the money was not payable until the next January. And then, on the 20th June, 1867, the President of the United States issued his proclamation reciting this Treaty, and proclaiming it to be a law of the United States.

Well, if England and Canada, our neighbours across the border, did not know of this purchase of ours prior to June, 1867—which is quite a violent presumption—but if they did not know of it until then, they certainly knew of it in June, 1867, and they knew that we were buying under Russia's assertion of undoubted ownership in accordance with the lines on the Russian and the English maps, and that we were not bound under the Treaty to pay a cent of the consideration until eight months after its confirmation.

Now if ever, I submit, then, if ever, in all good faith Canada and England were bound to speak. If it was true that we were buying territory belonging to England, believing that Russia was the owner of the same, then was the time when England and Canada should have said "We claim the heads of these bays and inlets." Not one word from either Canada or England. Not an objection—not an intimation that there was any mistake with reference to the Russian ownership of this property. England did not then say:—"Oh! the maps that have been issued by Mr. Arrowsmith, and that were published by the authority of the House of Commons, do not bind us as a nation, and there is something wrong in reference to that Eastern boundary line, and it should not run around the heads of the bays and inlets."

330 Canada did not then say to us that their Deputy-Surveyor, who got out these maps for Canada, and ran this boundary line around the heads of the bays and inlets, had no authority to bind Canada; but they both stood by and allowed us to purchase without a single intimation on their part that these maps were wrong, or that there was any doubt whatever that Russia, as she claimed, had been the owner for nearly 100 years of that strip of territory, including the heads of all these bays and inlets. The United States took possession of this property in October, 1867, in all the formal ways that one Sovereign nation takes possession of newly acquired property. And it was a public, open, undoubted assertion of title; and mind you, with the ships of the navy that went to take possession riding up to the head of Lynn Canal as part of the territory which the United States acquired under this Treaty. But even then we heard no objection. Canada said nothing; England said nothing; the Hudson's Bay Company,

with her men still within that *lisière*, and at least several of them at the head of Lynn Canal, they said nothing about any dispute here or any doubt whatever that Russia owned the entire *lisière* running from this 56th parallel up to the 141st meridian, including all the bays and inlets.

Well, again, there was a place of repentance for Canada or for Great Britain. We took possession in October; we did not pay a cent of the consideration money until January. Surely if either of these nations thought that there was any doubt about our title—if they thought it was doubtful as to whether we had the right to go and occupy the head of Lynn Canal and run a part of our Navy up there and assert our sovereignty over it, and do it publicly and openly so that the world knew it—surely then was the time that something ought to have been said to us with reference to the claims of either Canada or Great Britain. But again not a word—not one intimation from either of these nations as to any doubt or difficulty about this Russian title so far as this Eastern boundary line was concerned. After 1867 the United States entered into possession, and she has remained in possession of all this property ever since. I do not go into the details of what happened after 1867. I say it is not within my province, nor within the division of labour among us. But I do call the Tribunal's attention to the general outline of the facts—that, beginning in 1867 and running down through all the years, the United States asserted and exercised exclusive jurisdiction over all this property—never had any doubt that she owned all the inlets, never had any hesitation in the Settlements that ran around the heads of the bays and inlets; and that this continued, at least without and intimation whatever from either Canada or Great Britain until 1888—we say until 1898. It is true that perhaps the civil government or the naval government or the military government in this neighbourhood by the United States was not as perfect as it might have been, and it is also true that there was trouble with reference to the natives. But judging the occupation and the control by the United States of this territory by the way in which, for example, this great nation of Great Britain controlled, in the first place, her occupations in Africa and Australia, and other points, at least the United States asserted her sovereignty equally well, and gradually year by year she began to and enforced the laws, not only as to her own subjects who went in and settled within this *lisière*, but also as to the Indian tribes that she compelled one after the other to submit to her.

There is not any question that long before 1888, wherever there was the mouth of a river—wherever there were these inlets there is not any question that emigration coming from the United States made different settlements along the inlets and at the heads of the rivers; and without stopping to go into the detail in reference to them, I want to call the Tribunal's attention to the fact that in 1900, when our census was taken with reference to Alaska, we had 20,000 citizens residing within this *lisière*, principally along these inlets, half of which are now claimed by Great Britain.

And now comes an event which, by a person who was cynically minded, and wanted to unfairly criticise, might be taken advantage of. There was an enormous gold discovery in the Yukon in 1896;

then was what was called the great Klondike strike, and abundant streams of wealth poured forth. Now the natural inlet to and outlet from this gold region of the Yukon was up and down the Lynn Canal to the Pacific Ocean. And no sooner had this strike been made known, and had immigration tended towards the Klondike, and had the importance to Canada of an outlet by the Lynn Canal become apparent, than the question was raised, we say for the first time, in 1898, in any official way of Canada's rights to the heads of any of these inlets. I do not mean that there were not discussions by individuals, but it was the first time in any official way, that England claimed, and Canada claimed, that they were the owners of the upper end of Lynn Canal, and were entitled by reason of that matter to navigate those waters to the Pacific Ocean. It is not correct to say that there was any active criticism on the part of the United States with reference to this claim Great Britain and of Canada; but what we did after this claim was made was this, we went back to our evidences of title to see whether there was any question about what we had acquired from Russia, and as to what our rights were in reference to those inlets.

And we took up the Treaty again, and we took up the maps, and we took up the correspondence; and we went into it honestly, desiring to determine what was right; and the end of the investigation was, that we became as assured as we were before that, undoubtedly, wherever that line might be ultimately placed, as to the exact location as between the Russian and the British possessions—undoubtedly it had to run around the heads of all the bays and inlets, and give all those bays and inlets to Russia and to the United States. And I do not stop here to go into the minutiae of evidence to show what the acquiescence of Great Britain in this position was, except to refer the Tribunal to one thing in connection with this boundary line—and that, to me, is one of the most significant events that happened after 1867, to determine where this eastern boundary should run as between the Russian and the British possessions.

I refer in the first place to the British Appendix, p. 168, a despatch from Sir Edward Thornton to the Earl of Granville, dated the 15th February, 1873.

There had been a discussion between Mr. Fish, who was then the Secretary of State, and Earl Granville, with reference to the delimitation of this boundary-line on the land, and actually marking it by boundaries, by stones or other monuments, so that there could be no doubt about it. And in this letter—beginning about the middle of the page—he writes to Earl Granville:—

“But the Department had expressed an opinion that, under the present circumstances of the two countries, it would be quite sufficient to decide upon some particular points, and the principal of these they suggested should be the head of the Portland Canal, the points where the boundary-line crosses the Rivers Shoot, Stakeen, Taku, Iselcat (that is a mistake about Iselcat) and Chelkaht, Mount St. Elias, and the points where the 141st degree of west longitude crosses the Rivers Yukon and Porcupine.”

That was the suggestion that was made by Secretary Fish to Sir Edward Thornton, and was communicated to the British Foreign Secretary.

Now, if you will turn to pp. 177 and 178 of the same book, you will find the report of Mr. Dennis, the Surveyor-General of Canada, in

reference to this suggestion, and I would read from p. 177 as follows, right down at the bottom of the page:—

“The undersigned is of opinion that it is unnecessary at present (and it may be for all time) to incur the expense of determining and marking any portion of the boundary under consideration other than at certain of the points mentioned in the extract alluded to in the despatch from Sir Edward Thornton to the Earl of Granville, dated the 15th February, 1873, that is to say:—(1) The head of the Portland Canal, or to the intersection of the same by the 56th parallel of north latitude. (2) The crossing of the following rivers on the Pacific coast by the said boundary, that is to say: the Rivers ‘Shot,’ ‘Stakeen,’ ‘Taku,’ ‘Iselcat’ and ‘Chilkaht.’”

Will the Tribunal look for just one moment at where these different rivers are along which the Surveyor-General agreed that this boundary-line should run and where marks were to be set up?

332 Here are the rivers that run into this Chilkat Inlet here—up here—up around the head of Lynn Canal—across which this boundary was to run. Here was the other river that ran into the Taku Inlet; here was the other river down there that was beyond and at the head of Burrough’s Bay, and every one of those rivers, every one of those points, which the Surveyor-General agreed that it was the advisable thing to mark would carry the boundary around the heads of all the bays and inlets; and the line could not have been drawn otherwise, and that was in 1873 and 1874, after we had been in possession of this property for some seven years and after the discussion between Secretary Fish and Sir Edward Thornton, with reference to marking; now, mind, not merely marking for conventional purposes—not that but absolutely—and instead of running the entire line from the 56th parallel to the 141st meridian the proposition was, we will mark it at just certain points. We will not run the entire line—it would cost two or three million dollars to do it. It is through an inhospitable country—but we will mark certain well-known features and we will define it by monuments at those places—and here they are around the heads of the bays and inlets. Certainly additional light came to Great Britain and Canada after 1873 in reference to their ownership of some parts of these bays and inlets and especially with reference to their ownership of any part of Lynn Canal.

Mr. AYLESWORTH. Mr. Watson, could you tell me whether the word Iselcat is a mistake or not?

Mr. WATSON. I understand, Sir, that is a mistake.

Mr. AYLESWORTH. Is there any river which it does represent?

Mr. WATSON. I understand not.

The PRESIDENT. Unless it was Chilkoot by mistake; it might be that.

Mr. WATSON. Yes, Sir; they may have supposed that it was a corruption of the name Chilkoot.

The PRESIDENT. There is no name Chilkat; for the purpose of your point one river is enough.

Mr. WATSON. Yes, Sir. I am perfectly willing to assume, if you will agree with me with reference to the effect of that, that there was no Iselcat. Well, now at least you will all go with me thus far up, until this time there was not any question about the fact that we owned all the inlets. No one of the Tribunal could doubt about that; no one of the Tribunal could doubt that England thought so; Canada thought so; Russia certainly thought so; and we paid our

money on the faith of it in January, 1868. Well, it is true, now, that we are all influenced more or less by the temporary and financial interests which surround us and sometimes that appeal to ourselves individually, and it is not much wonder that Canada thought that if this Treaty could be construed so as to give her the head of Lynn Canal, that here was a fair opportunity to get something which would be of inestimable advantage to her. And therefore in 1898—the claim was first made by Lord Herschell before the Joint High Commissioners—Canada alleged that she was entitled to the upper end of the Lynn Canal, and of these other inlets, and that the line between Russia and Great Britain did not run around the heads of the bays and inlets. It is not exactly correct to apply here the proposition that some kind of communications corrupt some kind of manners, but it is true that from this time on the flood-gates were opened, until, as the Attorney-General, who opened this case, said, now there is not a point on this line that is not in dispute—not a single point. We bought, supposing the line was undoubted. Canada and England evidently thought so. The Klondike strike started the ingenuity of very able men, and no one bows more than I do to the ingenuity and the skill of the gentlemen who have dissected this Treaty, and so placed this eastern line along near the sea until it is in entire disregard, as I think I can show you in a little while, of the express provisions of the Treaty. Human passions were then aroused on both sides of the boundary. The people in Canada thought—a great many of them, no doubt, honestly thought—that the United States, her large neighbour, was trying to take something she was not entitled to, and a good many people on our side thought that it was most outrageous that after we had paid our money on the faith of Russia owning all this property, and Canada having stood by and allowed us to purchase, that this claim should now be made simply because there has been a strike of gold in the Klondike.

Mr. AYLESWORTH. Mr. Watson, pardon my interrupting—it does not affect your argument at all—but do not overlook the fact that Canada as a country had no interest whatever in the Pacific Ocean before 1871. Their territory did not extend to the Pacific Ocean until 1871.

Mr. WATSON. No, Sir, except the right that Canada would have under the Treaty of 1825 to navigate the rivers that flowed through the *lisière* to the Pacific Ocean; but am I not right, Sir, in saying that your Honour's suggestion is directly in the line of what I say, Canada never did have or own any of this?

Mr. AYLESWORTH. What I meant was that Canada as a country did not extend to the sea until 1871.

Mr. WATSON. Yes, Sir, I admit that she did not, and she never thought that she did extend to the sea until after this discussion arose.

Now, under these circumstances this Treaty of 1903 was made, and I think it speaks volumes of praise for the intelligence—yes, I may say, the humanity and certainly the saneness of the Administrations of the United States, of Great Britain and Canada also, that to this Tribunal there were presented certain salient questions for you to answer which will define and determine this dispute as between us.

I have not made this recital and made these comments to raise the

question here of equitable estoppel as against Great Britain and Canada, because I agree that is not submitted to you under this Treaty; but I have stated these facts because they constitute a part, and a very important part, of the atmosphere of this Case, and if, as I shall attempt to persuade you, the effective understanding of Great Britain and Russia was shown by the acts that they did, then, if I am correct in the statement that I have made, that the United States purchased, with the knowledge of Great Britain and Canada, and claimed in her purchase, as Great Britain and Canada knew, this eastern line around the heads of the bays and inlets, then I am entitled—I am fairly entitled—to the result that it showed in an unmistakable way the effective understanding which Great Britain and Canada had, down at least until 1867, as to where this eastern boundary-line should run, and it is persuasive strongly of the result of the answer that this Court should give to the fifth proposition as to whether it was intended that the original and effective understanding of the Treaty was to run this line around the heads of the bays and inlets. And may I not go just one step further, and am I not fairly entitled in asking this? It not only bears upon the effective understanding which relates back and sheds a light upon the original meaning with which this Treaty was made, but am I not entitled to say that we enter upon the discussion of this Case with this proposition plain?—England and Canada did stand by and allow us to purchase; they did, so far as we were concerned, show that the effective understanding that they had of this eastern line was the same that Russia had; and is it not a logical and a fair result to insist upon that neither Great Britain nor Canada can now claim in contravention of that line unless they show in a plain and unmistakable manner that right on the face of the title we bought was notice, fair notice, of a disputed boundary between these nations?—right on the face of the title was a fair notice that this eastern boundary as between
 334 Russia and England was in dispute, and that England claimed they were running around the heads of the bays and inlets.

The Treaty of 1903, to which I now come, defines the limits of your jurisdiction and regulates your powers, and to some extent controls the admission of evidence and the manner in which you shall answer and determine the questions submitted to you. And now let me see if I can from out this Treaty select rule first. How are you to answer these questions? Is there any rule given? Well, the questions are in reference to the construction of the Treaty of 1825. Now, how are you to answer those? Does the Treaty give any indication of what you shall do, and what you shall take into consideration in the answer?

In the first place, just read what the Treaty says in reference to that. In the preface to the Treaty, on the first page (I read from the manuscript copy that I have), it asserts that the two Powers are “equally desirous for a friendly and final adjustment of the differences which exist between them in reference to the true meaning and application of certain clauses of the Convention.” You will notice there that the phrase is “the true meaning and application of certain clauses of the Convention.” And then if you will go to Article III, you will find that the Treaty says, after the citation from the British-Russian Treaty of 1825:—

"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."

Do you notice the curious manner in which that proposition is stated? It is the "original and effective understanding," and I go back to the preface and I find out that the words there are "the true meaning and application of" the Treaty. What does the "effective understanding" mean? Why, it is perfectly obvious—the effect which the Parties understanding the Treaty gave to it—the manner in which they carried it out—that is the "effective understanding." It is nothing but the statement of the judge, who said, "If you will tell me what the parties have done under a contract, I will tell you what it means," and so if you get the effective understanding, that is the effect which the Parties gave to the Treaty themselves in defining and carrying it out, then beyond all question you have a conclusive answer to the question as to what the original intentions of the Parties were when the Treaty was drawn. Here is this eastern boundary-line in dispute between the United States and Great Britain. Now, if we could prove to the satisfaction of each member of this Tribunal that both Russia and Great Britain asserted that the boundary-line ran around the head of all the bays and inlets—put that in evidence that for over forty years after the Treaty was made, acted upon, allowed us to buy on the faith of it—if we could prove that to the satisfaction of the Tribunal, and show them that even after we bought it Canada, who was principally interested, merely wanted to indicate the boundaries around the heads of the inlets—if we could prove that, is there a question in the mind of any one that we did show such an "effective understanding" that would answer beyond all peradventure the question what the Treaty originally meant? It throws a volume of light, and construes and determines the meaning of the Treaty. Not in the sense that it contradicts the Treaty. I do not put it in that light; I put it in the light that if, after you have gone through this whole case, there is a doubt in your mind as to where the boundary line should be drawn as between Great Britain and the United States—if that is so, then if you find that both countries had this effective understanding by which they delimited the line, you surely should answer in accordance with that effective understanding that the original meaning was undoubtedly what the parties effectually showed it to be by defining and carrying out the Treaty.

And, now, what other provisions are there in this Treaty to which

I desire to call your attention? I do call your attention to 335 Article IV—to the first paragraph in it. Not that I want to comment upon it, but it is a very significant one. Article IV says that—

"Referring to Articles III, IV, and V of the said Treaty of 1825, the said Tribunal shall answer"—and you not only "shall answer," but you "shall decide"—"the following questions."

Your Honour will notice they put the word "decide" there, after the word "answer"; so that the answer that will be given will be

the answer that decides definitely and accurately the questions that are put to you.

What provisions did this Treaty give in reference to the evidence that you may consider?—and here I want to call attention to what struck me as a most curious presentation of the view of Great Britain. In the Argument they seem to think that the sole evidence that could be considered here at all was the evidence which was immediately preliminary to and immediately subsequent to the execution of this Treaty, and that Article III, when it made that provision, barred out all other evidence. That cannot be the construction of the Treaty, and certainly is not the construction of it. Let me read it to you. I read now from Article II; it is the fifth paragraph in that Article:—

“Each party may present to the Tribunal all pertinent evidence, documentary, historical, geographical, or topographical, including maps and charts in its possession or control and applicable to the rightful decisions of the questions submitted, and if it appears to the Tribunal that there is evidence pertinent to the case in the possession of either party, and which has not been produced, the Tribunal may, in its discretion, order the production of the same by the party having control thereof.”

Now, you will notice that either side may produce “all pertinent evidence,” that is, all evidence that bears upon and is legitimately applicable to the questions that you have to decide—all of it, not merely part of it, not merely the preliminary, not merely what happened afterwards—all of it. You certainly are entitled, as the old phrase is with reference to the will, you certainly are entitled to all the facts and circumstances, and you want to sit down in the seats of Mr. George Canning and Count Nesselrode in 1824 and 1825, if you can, and surround yourselves just with the atmosphere that they had, and just with the facts and the knowledge and the maps that they had, and then see if there is a single question that is submitted to you now, that admits of a reasonable doubt when you do that. The latter end of Article III is that “the Tribunal shall also take into consideration,” and I call your attention to the marked feature of that; it is not permissible; it is not that you “may” do it, as was given in the preceding part of Article II, but the provision is that you “shall” do it:—

“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 the 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.”

You notice just there it is made your duty to take into consideration any action, either of the Governments or their representatives, which was either preliminary or subsequent to the conclusion of the said Treaties. I do not stop to discuss, because it is to me immaterial how far that is a departure from the old rule of evidence, that you are not entitled to introduce oral evidence to vary a written contract. It is a pertinent provision in this Treaty that you shall do it; you shall read the Treaty, they say, in the light of those things that were preliminary and the things that were subsequent, and whenever our friends try to escape from those negotiations or from the subsequent acts, they are trying to escape from the very things that this Treaty

said that you should take into consideration in answering these questions.

And now the Tribunal will notice in the first place either
 336 party may put in all pertinent evidence, and in the second
 place that you should take into account not only the preliminary but the subsequent acts of the Governments or of the parties who represented them.

May I not just here say that it is perfectly obvious that if this Case was a trial in court and the dispute there was, as it is here, as to the application of this Treaty to the ground, and the claim that there is a latent ambiguity was made by Great Britain, then the familiar rule with reference to evidence to be received in order to aid the Tribunal in arriving at the correct determination of the meaning of the Treaty would be in the following language by Mr. Greenleaf, and that is that you would take into consideration the surrounding circumstances, the situation of the parties, the relations to each other, and to the subject matter of the agreement and the object and purpose of both Parties in entering into the agreement as avowed at the time it is prepared and executed. Such evidence furnishes light by which the Court is enabled to discover the true meaning of the terms of the contract as the Parties used it. That is from Greenleaf's evidence, section 286 and note. And I only stop to comment on such a familiar rule by saying that the object of the Parties, of both Parties in entering into the agreement thus stated, is most important to be ascertained and determined in order to enable you to arrive at a correct result.

This Treaty submits to you for decision only seven questions. You do not have to run any line. You do not have to draw any boundary. You do not have to determine any question how much territory the United States gets in her *lisière*. You have to do nothing but to answer the questions submitted which have been read to you, and which I will not re-read. It is merely to you annoyance to repeat these things so often, but it is the answer to these specific questions to which the Treaty confines you, and so certain is that, and, therefore, so outside any consideration of the construction of this Treaty is a large mass of the evidence that has been discussed, that the Treaty itself provides in Article VI that—

“When the High Contracting Parties shall have received the decision of the Tribunal upon the questions submitted, as provided in the foregoing Articles, which decision shall be final and binding upon all Parties, they will at once appoint, each on its own behalf, one or more scientific experts, who shall, with all convenient speed, proceed together to lay down the boundary line in conformity with such decision.”

In other words, the Question 5 which is submitted to you is virtually—shall this Eastern line run around the heads of these bays and inlets? If it shall, where exactly it is to be defined—where the boundary is to be put—exactly where it will be—is not a question for your determination. It is a question for the experts on both sides in the future. The simple question submitted to you by Question 5 is: Does it run around the heads of the bays and islets?

The PRESIDENT. I entirely agree with you on all the questions in that view, except Question 7, but I think Question 7 does throw upon us the duty of fixing certain points. I quite agree with you that we have not got to draw the line, and I quite agree with your commentary as to our duty under Questions—we will call it 5 and 6, but

under Question 7, I am afraid it is put upon us as to what are the mountains, and to that extent, of course, I suppose we have got to fix the points.

Mr. WATSON. Your Lordship will pardon me when I say that I intend to try to persuade you that you do not have that duty to perform on that question.

The PRESIDENT. Oh, very well. I am much obliged to you. I follow you now, thank you.

Mr. WATSON. In other words, that the line of mountains which are referred to in the Treaty is a certain well-known defined line.

337 The PRESIDENT. You misunderstood me. I beg your pardon.

I quite follow that; but, assuming that we have got to answer Question 7, we should have to find certain mountains which would be used by the experts afterwards—

Mr. WATSON. I beg your Lordship's pardon. Question 7 is, do these mountains described in Article III—

The PRESIDENT. Exist?

Mr. WATSON. Are they in that neighbourhood?

The PRESIDENT. Yes. It is what, if any, I agree.

Mr. WATSON. Yes. If those mountains are there, of course you will answer that question.

The PRESIDENT. Yes.

Mr. WATSON. But that mountain chain is not there. I think I can persuade your Lordship hereafter that neither the Treaty nor your duties, nor the obvious circumstances of the case, would require you to wander among 600 mountains which line the coast from Portland Canal up to Lynn Inlet.

The PRESIDENT. I quite understood that, Mr. Watson; you misunderstood me.

Mr. WATSON. I beg your Lordship's pardon.

The PRESIDENT. Only because you said we should not have to define in finding any part of the answer to Question 7: we might have to find certain points.

Mr. WATSON. I beg your Lordship's pardon, I was speaking more especially in reference to Question 5, and I think your criticism is perfectly correct.

The PRESIDENT. I follow you entirely, Mr. Watson.

Mr. WATSON. I shall try to persuade you that as a fact the question of the selection of mountains is one that you will not have to determine, and I sincerely trust for your own ease that it is not.

Now what rules will you apply in the determination of the questions which are submitted to you by the Treaty? I do not stop to run over the familiar rules. Of course, you will take all the words in the four corners of the Treaty, and you will give to each word its fair meaning, and from them all, in the light of the negotiations and of the preceding and the subsequent acts, you will arrive at a result. But let me just for one moment—because I apply them subsequently in the line of my Argument—call your attention, merely in the way of refreshing you, to some rules that I think are quite pertinent, and one of these rules is, as I understand it to be, a well settled and cardinal rule, and especially well settled for the purposes of this Case, where we are bound to take into consideration negotiations that if the negotiators have given to a word or phrase a certain definite fixed meaning and you find afterwards that they put that word or phrase into the Treaty itself, then you will give to that word or phrase the meaning

that the negotiators gave to it unless the context of the Treaty plainly shows that it was used in some other sense. And that is true also of the words that are used in the Treaty itself, that if you find in the opening paragraphs of the Treaty words used with a certain definite meaning and you find them afterwards used in other portions
 338 of the Treaty, you give to them the same meaning that they were given in the first and second paragraphs, unless the context indicates to the contrary, and the burden of proof in both these cases is on the party who asserts that the word was subsequently used in a different sense from what it was in the first instance.

And then there is one rule that I do think our friends on the other side have entirely overlooked and disregarded, and that is, you are not at liberty to reject a single word in this Treaty or a single phrase. You remember that it was the negotiators who put each of these words in, and the word that you throw out, or the phrase our friends throw out, are the words and the phrases of the negotiators just as much as the words they keep in, and therefore if in the construction of the Treaty you find that our friends on the other side, in order to get to a certain result, have to disregard phrases and words used in this Treaty, you will have no hesitation in saying that a result so reached is wrong.

And so another rule. You always construe the agreement or the Treaty so as to carry out the joint intent of the parties, and you do not allow any incidental circumstance to defeat and render void the action of the parties in making the Treaty, and especially in a Treaty of this kind between great sovereign nations, the negotiations for which ran over three years. And then if you do find in the reading of this Treaty any differences between the different sections of the Treaty—the different Articles of it—you are to construe it so as to reconcile them.

Now, begging your pardon for a reference to rules that are so familiar that it might seem an affectation for me to recite them, and I confess to you that I did it more to carry them along myself than I did it for any instruction to your Lordship or to the other members of the Tribunal, let me come to the question of the evidence in this case. And now, without going into very much detail, because I will rely upon the Court, if I spare their time, not to allow me to be belaboured for not going into details, without going into the details, let me see if I cannot outline the situation for this Court. Now first, what was the trouble in 1821—what was the trouble?

Secondly, how did Great Britain and Russia try to solve the trouble? What was it they tried to do?

Third: What was it, in solving the trouble, that Great Britain wanted to gain? What was it that Russia wanted to gain?

And, fourth: There you get your conclusion at once—the purpose for which this Treaty was drawn, the respective objects which the two Parties to it had, and you throw a flood of light on this Treaty and, when once thrown there, you never can escape certain conclusions, and one of them is undoubtedly that this Eastern line of demarcation runs around the heads of these bays and inlets.

I turn now to the Ukase of 1799 issued by Russia, being a grant to the Russian-American Company, and, your Honours—that is such a familiar phrase with me; you will pardon me for using it.

The PRESIDENT. It is a very proper phrase, Mr. Watson.

Mr. WATSON. I think it is very appropriate, Sir. That Ukase will

be found on p. 23 of the United States' Appendix, and I noticed that it was considered significant to say that on the original was written, in His Imperial Majesty's own hand, "Be it thus," which calls attention to its importance. That Ukase says:—

"By the grace of a merciful God, we, Paul the First, Emperor and Autocrat of All the Russias, &c., to the Russian-American Company under our highest protection. The benefits and advantages resulting to our Empire from the hunting and trading carried on by our loyal subjects in the north-eastern seas."

They were looking that way, towards the east. And it proceeds:—

"And along the coasts of America have attracted our imperial attention and consideration; therefore, having taken under our immediate protection a company organised for the above-named purpose of carrying on hunting and trading, we allow it to assume the appellation of 'Russian-American Company, operating under our highest protection,' and for the purpose of aiding the Company in its enterprises we allow the commanders of our land and sea forces to employ said forces in the Company's aid if occasion requires it, while for further relief and assistance of said Company, and having examined their rules and regulations we hereby declare it to be our highest Imperial will to grant to this Company for a period of twenty years the following privileges."

You will notice that this is emphasized twice, that it is a question of hunting and trading that is particularly called to the attention of the Czar. It continues:—

"By the right of discovery in past times by Russian navigators of the north-eastern part of America, beginning from the 55th degree of north latitude and of the chain of islands extending from Kamchatka to the north to America, and southward to Japan, and by right of possession of the same by Russia, we most graciously permit the Company to have the use of all hunting-grounds and establishments now existing on the North-Eastern Coast of America, from the above-mentioned 55th degree to Behring Strait, and also on the Aleutian, Kurile, and other islands situated in the north-eastern ocean."

Your Honours will notice that here is an avowal by Russia that by right of discovery, and also by right of possession of the same which she then had, all this North-Western Coast Behring Sea to the 55th degree, she grants to the Russian-American Company the use of all hunting grounds and establishments now existing on the North-Eastern Coast of America. That is the North-Western Coast we are now talking about. That is, she graciously permits the Company to have the use of all the hunting grounds, not parts, not merely those on the mainland, coast, or the general trend of the coast, but of all the hunting grounds now existing on the North-Eastern Coast of America. Not a part of that coast, not on a line drawn following the general trend of the coast and running across waters. It is that Russia owns by discovery, she owns by possession the whole of this North-Eastern Coast of America, and she grants to the Russian-American Company the use of all the hunting grounds and establishments now existing there. Could there be any broader or better defined assertion by Russia of her ownership of all this North-Eastern Coast running down to this 55th latitude, this 55th parallel, than this assertion that she makes here? And do you not see that Russia, in making this, asserts that it is all this North-Eastern Coast of America, it is not a part of it: it is not a part to be defined by artificial lines to get at the main trend or the main coast, it is all of it, it is the whole coast, and it is not only the whole coast, but it is the whole coast that is connected with the hunting grounds, and it is the hunting grounds in addition to the waters that the right over is given to the Russian-American Company. I will show you in a minute where those hunting grounds were, up around especially the hunting grounds

where the Indians lived, up around the Lynn Canal, up around Taku Inlet, up around the Portland Canal.

Second, to make new discoveries, not only north of the 55th degree of north latitude, but further to the south. It is astonishing how at that time all these great nations permitted all these different Companies to annex whatever territory they could conquer, and occupy.

It goes on:—

“To use and profit by everything which has been or shall be discovered in those localities, on the surface, and in the interior of the earth, without competition from others.”

Do you notice how broad that is, what an undoubted assertion it is of exclusive ownership when it says that this Russian-American Company shall take the use and profit of everything in those localities on the surface or in the interior, without competition from others? “Without competition.” And Russia grants that because she is the Sovereign and has the entire ownership and has the right to do so.

340 Then 4th it says:—

“We most graciously permit this Company to establish settlements in future times, wherever they are wanted, according to its best knowledge and belief, and fortify them to insure the safety of the inhabitants, and to send ships to those shores with goods and hunters, without any obstacles on the part of the Government.”

Please run down now, because the intervening paragraphs about shooting animals and so forth are hardly pertinent here, to the 10th:—

“The exclusive right is most graciously granted to the Company for a period of twenty years to use and enjoy in the above-described extent of country and islands, all profits and advantages derived from hunting, trade, industries, and discovery of new lands, prohibiting the enjoyment of these profits and advantages not only to those who would wish to sail to those countries on their own account, but to all former hunters and trappers who have been engaged in this trade and have their vessels and furs at those places, and other companies which may have been formed will not be allowed to continue their business unless they unite with the present Company with their free consent.”

There, again, the thing that is granted is the exclusive right of all the profits and all the advantages derived from the hunting and the trade and the industry of this entire North-Western Coast, from Behring Sea down to the 55th parallel of latitude, and not only that, but the prohibition again, to all other parties, that under no circumstances are they to be allowed to participate in this without the consent of the Russian-American Company. And you will also please notice that there Russia is asserting in the most unqualified terms her sovereignty, her exclusive ownership, and she is granting to the Russian-American Company, not the property itself, not the land, not the coast. She is granting the hunting privileges, the trading privileges, the profits and advantages along that entire coast, and that only for the period of twenty years. Paragraph 11 says:—

“Under our highest protection, the Russian-American Company will have full control over all the above-mentioned localities, and exercise judicial powers in minor cases. The Company will also be permitted to use all local facilities for fortifications in the defence of the country under their control against foreign attacks. Only partners of the Company shall be employed in the administration of the new possessions in charge of the Company.”

Now, that Ukase was certainly known to the Hudson's Bay Company. It was certainly known in a general way to the nations of the earth, and to Great Britain. I do not mean by that to say that that was officially communicated through the Foreign Office to Great Britain. I do not think it was. There is no evidence of it, and, on the contrary, Baron de Poletica in one of his letters to Count Nesselrode, said that it was not communicated, but still the fact is, that it was made public, and it is not denied, and Mr. Canning did not deny it in all his controversies with reference to this matter; it is not denied that Russia did, in 1799, make this claim to the exclusive ownership of this entire North-Western Coast, and she granted to one of her own companies—the Russian-American Company—the exclusive right to the hunting and to the trade, and to all the profits—which, of course, would include the fishing—along these coasts. And I contrast again the proposition, and show that she—Russia—is unquestionably here speaking of the entire coast, wherever the land meets the water. She does not talk about the main coast—of the general trend of the interior coast, the exterior coast, or the political coast. She is talking of the coast—of the entire coast, as it runs around the sinuosities, the inlets, and the bays, and down from the Behring Sea to the 55th parallel.

Well, the Russian-American Company started in under that Ukase to carry on business in that neighbourhood, and at the risk of a little anticipation of what I shall say hereafter, I want to call the attention of the Tribunal to what it was that the Russian-American Company did in reference to this coast. You see here [indicating map] all along these islands—there is the Prince of Wales Island, there is the Baranoff Island. Now, let me take that as an illustration.

The Russian-American Company did undoubtedly, as I will show you hereafter, have a number of posts up above the Alaskan Peninsula, and they had a post down here on the main coast at Yakutat Bay, that was established in 1802, but I am not particular about that at present, but what I am particular about at present is this: there was their establishment Archangel, that existed at the time that this Treaty was made. Now pardon me just for one second, I say that that did exist, and I think it did, there may be some little controversy as to whether that was not established afterwards, but if it was, it was immediately after this Ukase of 1799 was issued. That being their establishment on this island, the Indians lived there—I call them Indians—more properly natives—around the heads of Lynn Canal, round the heads of Taku Inlet, down by the Stikine River, and along down by the Portland Canal. And you find that the names are the Chilkats—the Chilkoots—but they lived all along down here between these parallels. What was this Company established for? This country was most valuable simply because of the fur animals which inhabited it, and which the natives and which the Russian-American Company hunted, and also of the fish.

And what kind of fur animals did they have? Why they had all kinds. They had the water animals, those that lived up the Lynn Canal and the Taku Inlet, then, in addition to that, they had such animals as the silver fox, and they had the bear, and they had the different animals that lived on the land, and then the Russian-American Company not only thus exploited, as I will show you presently Count

Nesselrode said, this entire coast here, these entire inlets for the purpose of hunting these fur animals, and fishing, and hunting also the silver fox and those other animals that inhabited the land, but they also traded with the natives for the pelts of these animals, and a very large part of the business that was done by the Russian-American Company undoubtedly was the trade with the natives who lived up around these canals and inlets. They did not live along what is called the main coast, the general trend of the coast, they lived up the different inlets and up the Stikine River and all along there; and the animals that were hunted did not haunt the main coast, or the general trend of the coast, they were up here in the inlets, and the hunting grounds that surrounded these inlets. Now, that is what was valuable to the Russian-American Company, the exclusive right of hunting those animals up those inlets and waters and bays, also on the other islands and in the inland seas, and also the exclusive right to trade with the natives in reference to the pelts collected from all these different fur animals. And now I have to confess that, perhaps, somewhat at variance with our well-known rule at home, never to infringe upon any other person's property, some American citizens took it into their heads themselves to trade up round here, and, to the immense annoyance of the Russian-American Company, they actually did so. That was at that time a tremendously profitable business. These furs were taken, and went to China, and were the foundation of one of the immense fortunes at home—not all at home now. But that is what was valuable to the Russian-American Company, the exclusive right to trade for these furs and the exclusive right to fish in these waters, and when the American subjects interfered with that right you find the Russian Ambassador at Washington calling the attention of our Secretary of State to this fact, and insisting that Russia was the exclusive owner there, and that the United States must prevent this invasion of the Russian-American Company's rights.

He did that in 1810 and in 1812, and I do not know why, but certain it was that that invasion was not stopped, and so it went on until Count Nesselrode, as I shall hereafter read to you from one of his letters, said it had become intolerable. And I am now free to admit that Great Britain was not involved in these acts of piracy. Great Britain, so far as we know, never went near that North-Western Coast prior to 1821. She never sent a ship there to trade, and so far as the proof in this case is, she never took a pelt from that whole North-Western Coast prior to 1821. The Hudson's Bay Company and the Hudson's Bay Company traders never came 342 within 150 miles of that coast, as I will prove to you presently—never within 150 miles. It was the exclusive and the sole right of the Russian-American Company. And all these complaints on the part of Russia not being responded to by the United States, and these infringements upon the rights of the Russian-American Company, and also upon Russia's right of sovereignty being continued, Russia then issued her Ukase on September 4th, 1821.

And now, I call your attention to the provisions of that Ukase. It is a very unfortunate time in the afternoon to have to read a long document.

The PRESIDENT. Would you like to have it read for you, Mr. Watson?

Mr. WATSON. Oh no, Sir; I thank your Lordship. I will not trouble; I can read it.

The PRESIDENT. Don't you trouble. If you wish to have anything read for you, you can have it done at any time.

Mr. WATSON. I am very much obliged to you indeed. That Ukase provides, in p. 25 of the American Appendix:—

“Whereas in an Edict of His Imperial Majesty issued to the directing Senate on the 4th day of September, and signed by His Majesty's own hand, it is thus expressed:—

“Observing, from reports submitted to us, that the trade of our subjects on the Aleutian Islands and on the North-West Coast of America, appertaining to Russia, is subject, because of secret and illicit traffic, to oppression and impediments; and finding that the principal cause of these difficulties is the want of rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the whole of the Eastern Coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific regulations, which are hereto attached.’”

And I call your attention to the fact that here again it is the North-Western Coast of America appertaining to Russia, it is the whole of that North-Western Coast from Behring Sea down to the 55th parallel of the coast, and the Ukase is as to the secret and illicit traffic—it says this secret and illicit traffic oppresses and impedes the Russian-American Company, and then notice how quaintly Russia expresses the situation that the principal cause of these difficulties is the want of rules establishing the boundaries for navigation along those coasts. That she was the exclusive owner she did not doubt, that she had the right to make those rules she did not doubt, and the trouble with her was, she said, that she had not established those rules for the boundaries of navigation along those coasts. I call your attention now to the fact that so far no complaint is made of an approach upon these coasts from the interior, the Hudson Bay Company never came near it. I think I am borne out by all the testimony in this case that the nearest post of the Hudson Bay Company was 150 miles from there, and that the Hudson Bay Company or traders never came down to this coast from the 56th parallel up around the Lynn Canal, about which we are now particularly talking, it was solely the approaches that were made from America here along the Pacific Ocean, and along these inlets and bays.

Lynn Canal and these other bodies of water were not sufficiently protected, and it is against that that this Ukase was especially issued, but do you not see that here again in 1821 in the most unmistakable and forcible way Russia is re-asserting, as if there could not be a question about it, her exclusive ownership over all those coasts?

Now, the rules that she established to prevent this interference with this trade—I will read from the bottom of p. 25 of the United States' Appendix—are as follows:—

“The pursuits of commerce, whaling, and fishery, and of all other industry on all islands, posts, and gulfs, including the whole of the North-West Coast of America, beginning from Behring Straits to the 51st degree of northern latitude, also from the Aleutian Islands to the Eastern Coast of Siberia, as well as along the Kurile Islands from Behring Straits to the south cape of the Island of Urup, viz., to 45 degrees 50 minutes north latitude, is exclusively granted to Russian subjects.”

And you will notice that it is the pursuit of commerce, the whaling fishery and all other industries, whatever the industries be, whether commerce, whether fishing, on the inlets, or the islands or in the gulfs mentioned, particularly these inland waters which run up these canals and inlets, including the whole of the North-West Coast from Behring Sea down to the 51st degree of north latitude that is exclusively granted to Russian-American subjects. Again, a most pronounced assertion by Russia of her undoubted ownership of these entire North-Western coasts.

Second: It is therefore

“ * * * prohibited to all foreign vessels, not only to land on the coasts and islands belonging to Russia, as stated above, but, also to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo.”

Article IV reads:—

“ Foreign merchant-ships which, for reasons stated in the foregoing rule, touch at any of the above-mentioned coasts, are obliged to choose a place where Russians are settled, and to act as hereafter stated.”

And Article XIV:—

“ It is likewise interdicted to foreign ships to carry on any traffic or barter with the natives of the islands, and of the North-West Coast of America in the whole extent here above mentioned.”

Now, it is the whole extent, the whole of the North-West Coast, from Behring Sea down to the 55th degree of latitude, to which the rights of the Russian-American Company have been carried. It is to that whole extent of coast that the Russian-American Company was given the exclusive right, and all other persons were prohibited—absolutely prohibited—from carrying on any traffic or barter with the natives of the islands and of the North-West Coast of America. Does anyone for a moment imagine that when Russia issued that Ukase she merely intended to warn people from trading on the main line of the coast? Did she not include that entire north-west coast? Did she not assert her title to it? Did she not say, and is not that the meaning of that Ukase that you cannot cut up Lynn Canal, the Taku Inlet, or any of these indentations in the shore. It is all prohibited to you, and the exclusive right and all the profits and advantages, both for fishing and for trading and for hunting up all these inlets, and through all these waters, and along that entire coast, is given to the Russian-American Company.

And here now, in this Ukase of 1799, and again in this Ukase of 1821, Russia, in the most forcible manner, asserts her ownership of this entire north-west coast; and she uses the word “ coast.” I submit, beyond all peradventure, she uses that word “ coast” to include all the bays and inlets, all the indentations of the shores—no matter whether they may be inlets 80 miles long or bays 1 mile long; she includes them all, and she says that she is the owner of all that coast down to the 55th parallel, and the exclusive right along all that coast she granted to the Russian-American Company for trading and hunting. And here you have, right in the forefront of this dispute, the designation by Russia in the most unmistakable way what she meant by the word “ coast”—the entire coast wherever the land touches the water, including these inlets

and bays; and you have a direct negative of the possibility that Russia there was talking about the main coast, or the general trend of the coast, or the coast of the general ocean, and an affirmation that she did include its arms, its bays, and inlets.

Now, let me turn for just one moment to particular reasons which Russia gave for issuing that Ukase, and I turn first to Baron de Nicolay to Lord Londonderry, p. 96 of the United States Appendix—I read from the top of the page:—

“On the point of renewing the privilege of the Russian-American Company, and submitting to a revision the rules concerning its commercial operations, the Imperial Government was obliged to devote special attention to the complaints to which the undertaking of smugglers and foreign adventurers on the North-West Coast of the America belonging to Russia have more than once given rise. It has been recognised that those undertakings have not only as an object a fraudulent trade in furs and other articles exclusively reserved to the Russian-American Company, but that they appear even often to betray a hostile tendency, inasmuch as vagabonds come and furnish arms and ammunition to the natives in the Russian possessions of America, and excite them, to a certain extent, to resistance and rebellion against the authorities which are established there. It was then essential to oppose severe measures to those proceedings, and to guarantee the Company against the considerable losses which resulted from them, and it is with this view that the regulation herewith has just been published.”

Please notice that here we are talking about the whole North-West Coast of America, and we are talking not only with reference to the interference with the trade in furs, but you will notice that Baron de Nicolay is talking also about the interference and the attack upon the sovereignty of Russia as the owner of that north-west coast, because he says: “These vagabonds often betray a hostile tendency,” by giving to the natives the means of rebellion as against the sovereignty of Russia. And I turn again to Baron de Poletica’s letter to Mr. Adams. On p. 35 there is one other letter that I want to refer to if I can just turn my eye to it. But I now refer to the letter of Count Nesselrode to Count Lieven at p. 99:—

“On the point of renewing the privilege of the Russian-American Company, and submitting to a revision the rules concerning its commercial operations, the Government was obliged to devote especial attention to the complaints to which the undertakings of smugglers and foreign adventurers on the North-West Coasts of America belonging to Russia have more than once given rise. It has been recognised that the undertakings have not only as an object a fraudulent trade in furs and other articles exclusively reserved to the Russian-American Company, but that they appear even often to betray a hostile tendency; inasmuch as vagabonds come and furnish arms and ammunition to the natives in our possessions of America, and that they excite them to a certain extent to resistance and rebellion against the authorities which are established there.”

And then Count Nesselrode goes on to observe in a very suggestive manner, that probably the best way would have been to absolutely prohibit anybody coming there and exploiting that neighbourhood. But as a matter of fact they put the reason for the issuing of the Ukase upon two grounds—that it interfered with the profits of the Russian-American Company, and undoubtedly that was the chief reason. But undoubtedly it was also an interference—those vagabonds had interfered with the sovereignty of Russia as the owner of all this property.

Now, you will notice that the mode in which Russia tried to get rid of these vagabonds was prohibiting the approach within 100 miles of

any vessels at all, giving some minor provisions in reference to vessels that might be driven under stress of weather, and she claimed that she had the right under the circumstances to do so, and I
345 believe she cited as a reason for it the provision of France and England, under the Treaty of Utrecht, where a very large boundary was effected, as well as the Treaty between Spain and Great Britain, where Great Britain admitted 10 marine leagues to be a lawful boundary to keep off the coasts of Spain in South America.

The PRESIDENT. We must interrupt you, Mr. Watson, there.
(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

SIR ROBERT FINLAY. We have here the original report of Colonel Cameron. I cited the passage which was omitted from the Canadian Sessional Copy which had been extracted in the Appendix. I have got here the original report.

MR. WATSON. The Tribunal will have noticed yesterday that the Ukase of the 4th September, 1821, carried the limit of the territory of Russia from the 55th degree of latitude down to the 51st degree of latitude on the North American Coast, thereby adding to Russia's claim 4 degrees in the neighbourhood, and you will also remember that to guard the exclusive rights of the Russian-American Company in the trading and hunting along that whole coast, and also to guard her own sovereignty as the owner of the coast, Russia claimed the right to prohibit all other nations and all subjects of other nations from approaching within 100 miles of the coast.

When that Ukase was made known, as I have already narrated, to England, she objected to it mainly and chiefly on the ground of the claim to the 100 miles jurisdiction at sea, and asserted that the great ocean itself was navigable, and all nations had the right to go to it for the purpose of navigation and fishing, and America, at the same time, objected on that ground as well as on the ground of the additional territorial claim down to the 51st degree of latitude on the coast, and Great Britain, as the discussion proceeded, added her objections to this claim down to the 51st degree of latitude on the coast; but while it is true that in an informal manner some discussion was raised in reference to the Russian sovereignty, even down to the 55th degree of latitude, yet still the negotiations are a proof of the fact that the Russian claim to the sovereignty down to the 55th degree of latitude of these North-Western Coasts, was never seriously disputed, especially by England.

And your Honours now have the first of my suggestions yesterday, of what the trouble was in 1821 which the Parties were to settle, and the trouble was this claim of Russia to this extraordinary jurisdiction of 100 miles at sea, and this additional claim of Russia to 4 degrees of latitude on the North-Western Coast, and objection to this was made by England, and I say also was made by America.

Now, how did the Parties proceed, which was my second proposition, to settle the trouble and the dispute that thus arose? They did that by negotiation, and in order that the Tribunal may be as far as possible back now to 1822, 1823, and 1824, and as it were talking with Mr. George Canning in London and in correspondence with Count Nesselrode in St. Petersburg, let me call your attention as briefly as I may to what the situation was as to the respective claims of Great

Britain and of Russia to the North-Western Coast, and see if I cannot satisfy the Tribunal that at the time when the discussions were going on, the Russian claim to this North-Western Coast down to the 55th degree of latitude was practically admitted by England, and was overwhelmingly proven in Russia's favour, except as to the extent and width of the territory inland to which she was entitled, and that England never put in a claim except in the most *pro forma* way, which was practically afterwards retracted, to any portion of this North-Western Coast down to the 55th degree of latitude; if that is so, if there was practically an admission of Russia's ownership of this North-Western Coast down to the 55th degree of latitude—the Tribunal will notice we are discussing to-day only the boundaries down on the mainland to the 56th degree—and if it is true that Russia then was admitted to be the Sovereign of this whole North-Western Coast down to the 55th degree, and she yielded a part of it to start the boundary-line on the mainland at the 56th degree, I apprehend that the proof must be overwhelming that will induce the

347 Tribunal to believe that Russia not only gave up her claim to the 100 miles at sea, and not only gave up her claim to the 4 degrees of additional latitude, but the proof would have to be positively overwhelming to induce any person to believe that she also gave up the heads of the bays and inlets where her trade and her fishing and her hunting was done, and agreed to a line which would cut them in two, giving to England the heads of the bays and inlets, and only to herself just the mouths of the same, and that, in addition, Russia agreed to cut in two her hunting ground, the exclusive right to which had been given to the Russian-American Company.

Now, let me see if I can briefly refer to the proof which sustains, I think, this proposition; first, that Russia was the owner, the admitted and exclusive owner, of this North-Western Coast down to at least this 55th parallel. Russia claimed that her titles—and this was re-asserted in the letters of M. de Poletica and Count Nesselrode—she claimed that her title was perfected in three different ways: First, that she had discovered North-Western America; next, that after the discovery she had claimed it in a public formal way of which all nations of the earth had notice, and in which they all acquiesced; and, thirdly, that she had followed that up with such an occupation of this North-Western Coast as was consistent with the purposes for which it was useful. Now, it is certainly true that as early as 1741—and the Russians claimed as early as 1648 and possibly in 1728—that Russia discovered this North-Western Coast, but coming down to 1741—Captain Behring and Captain Cherikoff certainly in July, 1741, discovered this North-Western Coast, Cherikoff on the 15th July, 1741, in latitude 55 degrees 21 minutes north, and you notice how close he was down to the first Russian claim, and Behring on 16th July, 1741, at Mount St. Elias.

It is not profitable to go into the detail of the discussion which arose in reference to an alleged earlier discovery by a Spanish navigator. Mr. Sumner, you will find, in his argument to the Senate, treated of that, and alleged that subsequent investigations had proved that that was apocryphal, that there had never been any such discovery; but however that may be, as between England and Russia, undoubtedly Russia did claim discovery, and the first dis-

covery in 1741, and England never claimed any right to this North-Western Coast by discovery.

Now, secondly, I have already read to the Tribunal—and I do not stop to read it over again—the Ukase of 1799 of the Emperor Paul, by which he asserted that Russia, by the right of discovery in past times, and also by continued possession, was the Sovereign owner of this entire North-Western Coast down to the 55th degree of latitude, and it is true that neither Mr. Canning—neither Mr. George Canning nor Mr. Stratford Canning—nor Sir Charles Bagot have denied it. It is true that this claim of sovereignty by Russia in this Ukase and the assertion of her right to grant the exclusive right of trading and the hunting and the fishing along this coast was never denied by England, or by any other nation.

The Tribunal will find that, notwithstanding early in these negotiations it was agreed that the boundary line should be settled on what was termed reasons of mutual convenience to each party, yet all along during the correspondence Count Nesselrode comes back again and again to the proposition that while that is true, that while we are settling this on the ground of mutual convenience, yet it is also true that England never objected but acquiesced in Russia's claim of exclusive sovereignty down to this 55th parallel, and that was asserted down even to the last long letter that Count Nesselrode wrote to Count Lieven. So far, then, as the discovery, and so far as the formal claim, not denied, would give title, Russia stood as the sole owner of this territory, and I pause for one moment to call attention that she did this in a formal exclusive way, just as formal and exclusive as any man to-day who owned in fee simple a farm in England or America could claim that he was the exclusive and the sole owner of the same.

Russia claimed that she was the exclusive and sole owner of the entire North-Western Coast, not merely of a part of it, not of the main coast, not of the general trend of the coast, but of the entire coast wherever the land and the water met, running around in the bays and inlets all the way down from Behring Strait to the 55th latitude; she claimed to be the exclusive owner, and she claimed that

348 England had acquiesced in that ownership, and that was true in so far at least as England had never denied that claim which Russia up until after this trouble arose in 1821, and then, as I have already stated, the denial was formal. So positive was Russia in this claim of her exclusive ownership, that she granted all the profits, all the advantages derived from the hunting and the trading and the industries of that entire North-Western Coast to the Russian-American Company, and then in the broadest exercise of sovereignty she said that this grant was to be exclusive, and that no other Company and no other individual was to interfere in the slightest way with this trading and hunting and fishing. So that there was not any question at all when the negotiation opened as to what Russia's claim was—that it was the exclusive sovereignty, and, as I shall show you hereafter more in detail, the exclusive sovereignty over all the waters of this coast, all the inlets and the bays and the gulfs connected with, and used by, her at the proper season for the exploiting of the game and the fishing and the trading with the Indians.

And then, finally, Russia said that she had occupied this North-

Western Coast, and she had done it in these different ways—in the first place by actual notorious possession, and in the second place by hunting, fishing, and trading with the natives, those being the chief uses to which the property could be put by reason of the nature thereof, and the only appropriate use to be made of it, and in the third place by the political control and sovereignty which Russia exercised over the natives inhabiting that land.

Now, without, as I again state, going into the details of the proof upon this question, let me rapidly call your attention to what Russia did in reference to, first, the actual notorious possession, and the proofs for this are all found in the Case and Counter-Case and the Appendix to the Case and Counter-Case of the United States. At least, as early as 1782, the Russians landed in the Yakutat Bay and there set into the ground and planted a copper plate on which was inscribed, "Land of the Russian Crown," and repeatedly, as Mr. Dall says, this was done at different places along the coast (refer to Dall's "Alaska," pp. 202 and 203, and the United States' Appendix, pp. 256 and 257). Baranoff, the Governor of the Russian-American Company in 1795, at the Yakutat Bay, erected on the shore the Russian flag and then continued to Tshilkat Bay, where, the account says:—

"In every possible place he had erected crosses with the inscription, 'This land is Russian territory.'"

And in 1796, as I said yesterday, he established a settlement at Yakutat Bay, which afterwards was destroyed in 1802. I gave that date yesterday of the settlement, but it was settled in 1796 and destroyed in 1802. As early as 1760 the Russians occupied False Pass on the continent, and in 1767-68 and 1772 various expeditions occupied different portions of the land for a period of time. In 1788 two Russian ships of war were sent to Mount St. Elias, where a Russian redoubt and a trading post were established; while in 1790, at Cook's Inlet, and in 1792, at Bristol Bay trading posts were erected. In 1794 orders were given for the settlement on the American continent near Mount St. Elias of twenty-one Russian convicts and their families, while in 1795 New Russia was founded at Yakutat Bay, where a fort was erected and trading posts at least as early as 1802. With reference to Yakutat Bay, there was an establishment erected there, and then the fort was subsequently erected. Various Russian Companies were settled in different places, and one in 1796 exploited Lituya Bay on the coast south of Mount Fairweather. In 1819 there were four settlements at Cook's Inlet, and a Russian factory had been built there as early as 1794. Most of these are referred to in the letter of M. de Poletica to Mr. Adams, dated the 28th February, 1822, and one dated the 2nd April, 1822, to be found in the United States Appendix, volume 1, pp. 33 to 37.

But it is true that the settlements which Russia made between Mount St. Elias down to the 55th parallel, so far as the coasts were concerned, that is the absolute erection of posts or establishments on that coast, were few and far between; but I again call the attention of the Tribunal to the fact that, if it is true that Russia from her point at Yakutat, or at Sitka, or even from her location above the Alaskan peninsula, used the coast for the purposes for which it was fit—hunting, trading, and fishing—she made an occupation

which is somewhat similar to the claim that an individual often makes, and this is especially true of our western territory at 349 home, where if a small hut is erected on one part of an immense tract the owner claims the entire tract by the use of it for the various purposes for which it is fit. And then I come to the fact that the Russian-American Company did hunt and fish and trade with the natives, and that this hunting and fishing and trading with the natives was the appropriate thing for this coast. In the United States' Appendix, Vol. I, p. 251, will be found proof of this.

That all along this coast the Russians had from their positions and establishments on the islands traded with the natives themselves, hunted and fished up all those inlets and bays and around through this inland water. In enclosure No. 3 to Sir Charles Bagot's letter of 18th March, 1824, to Mr. George Canning in the United States Appendix, Vol. I, p. 161, the Russians stated that the Russian-American Company had regularly occupied the island and the neighbouring coasts during the season which allowed them to send their hunters and fishermen there, and Count Nesselrode, in his letter of April 25th, 1824, p. 173 of the United States Appendix, asserted as follows:—

“In the first place, no nation has protested against the Charter of the Emperor Paul, and this universal silence may and should be regarded as a recognition of our rights.

“The objection is raised that we have not made establishments on the North-West Coast below the 57th degree of latitude. This is true; but during the season of hunting and fishing the coast and the neighbouring waters are exploited by our American Company far beyond the 55th and 54th parallels. This is the only manner of occupation of which these localities admit—or, at least, the only one that is necessary with Colonies founded and organized a little farther north.”

And this same claim was made by the Russians during the discussion between M. de Poletica and Sir Charles Bagot that has been referred to so often.

Now, while these assertions were made by the Russians, neither Sir Charles Bagot nor Mr. George Canning ever denied them. That Russia had used this whole North-West Coast, including these inland waters, for hunting and fishing and trading with the natives from at least 1799 seems to have been admitted by Great Britain during these negotiations. That these were the only purposes for which the coast could be used seems equally certain. Then, too, Russia exercised, to some extent, political control over the natives inhabiting that coast. And here you will recollect, if our friends have satisfied you that Vancouver's narrative was before the negotiators—which we deny—but if they have satisfied you of that, and you are to regard those narratives at all, you will recollect that in 1794 Vancouver found, and Captain Cook said in 1778 he found, the Russians were well and firmly established in the sovereignty and political control over the Aleutian Islands, and that, in addition to that, the Russians had occupied a part of the Alaskan Group, and that in connection with this occupation they had exercised sovereignty over the native tribes on the coast and on the island; not that that was an acknowledged successful sovereignty by any means; there were wars and repeated wars, and not that Russia governed those natives as people are governed in London or in New York; but while that is true, there was

the claim of Russia to the sovereignty over them, and she used her army and part of her navy to bring them to subjection, and that while there were wars between the natives and Russia, still all the time Russia claimed that she was entitled to be regarded as the Sovereign of all those coasts and of all those islands, and that the Indians should render obeisance to her in that capacity.

And now call your attention to the fact of how necessary it was that Russia should, as the owner of the Alaskan Group, have this sovereignty over the adjacent coast, and control whoever was to occupy that coast. A glance at this map—which is an enlargement of the Faden—will show the Tribunal how these Alaskan Islands, all the way down from the Mount Fairweather to this 56th parallel, lay. You will notice that the coast recedes from the sea, and that the islands lay almost as if they were in a bay, and between the 54th parallel and Mount Fairweather and these islands running down along there constitute over 1,100 in number.

350 The PRESIDENT. Do I understand you to say that is an enlargement of Faden?

Mr. WATSON. Yes; this map [referring to map]. These islands are over 1,100 in number. Now, allow me to call the attention of the Tribunal to the fact that this map shows—it is No. 10 of the British Atlas—how close to the continent very many of these islands were situated. For example, the Revillagigedo Island is distant from $\frac{1}{2}$ mile to 3 miles from the Alaskan coast. The Wrangell Island, which is down in the neighbourhood of Portland Canal—and which was talked about yesterday—is from $\frac{1}{2}$ mile to 2 miles from the Alaskan coast. The Mitkof Island is from 3 miles to 5 miles; the Kupreanof Island is 3 miles to 8 miles; the Admiralty Island from 3 miles to 6 miles.

The Tribunal will understand I am giving the extreme distances, and near distances—and it is owing to the manner in which the coast winds in and out that these distances vary so much.

The Douglas Island is $\frac{1}{2}$ to 1 mile distant. That island lies between Stephen's Passage and the Lynn Canal. Now, outside of these nearer islands and towards the great ocean, lie the Chichagof Island and Baranof Island, and the Prince of Wales Island, as the Tribunal will see from here [indicating on the map], and these islands have respective distances from this coast as follows:—the Chichagof, 5 to 12 miles; the Baranof Island is distant from the Chichagof $\frac{1}{2}$ mile to 2 miles, and from the Admiralty Island 4 miles to 9 miles. The Prince of Wales Island is distant from the Cleveland Peninsula—which comes down by Clarence Strait—from $3\frac{1}{2}$ miles to 6 miles; and the Tribunal will remember that it was this distance, or nearness of the peninsula to the Prince of Wales Island, which induced Russia to absolutely refuse to make any Treaty which did not run her line up to Portland Channel, so as to give her all of that Cleveland Peninsula and the peninsula west of Portland Channel, because she said that if you give us the Prince of Wales Island, and then give to Great Britain this peninsula—the end of that peninsula being only distant 3 to 6 miles from us—we will be surrounded by Great Britain, and it will be a care and labour to protect that island, instead of it being a benefit to us.

Now, the continental shore line from the Revillagigedo Island, following the indentations and inlets by a course north by west, comes to

about the 59th degree of latitude, and here [indicating] it changed its course, and the varying distances of these islands and different portions of them are due, as I say, to the extreme irregularities of this coast.

Owing to the contiguity of these islands to the mainland, Russia, as the owner of the islands, necessarily insisted upon a strip of territory on the mainland. It will not be overlooked that, while Sir Charles Bagot did at one time cast longing eyes on the islands, Russia's ownership of all of them was never seriously questioned. As Russia was admitted to be the owner of this Alaskan group, it was absolutely necessary for Russia, in order to maintain her ownership there with credit and with profit to herself, that she should not only own the islands, but that she should own the adjacent shore, and that she should control whoever it was that was located on the adjacent shore in any way near to these islands; and thus you have all through the correspondence, with reference to this question, the assertions of the absolute necessity to Russia to own this adjacent shore in order to protect herself in that ownership of the islands; not alone—may it please the Tribunal—for the purpose of protecting the Russian-American Company in the exclusive right of her trading and fishing and hunting—that was, I believe, the main purpose for which this Ukase of the 4th September, 1821, was issued—but, in addition thereto, to protect the sovereignty of Russia on this coast.

Now, permit me to read to the Tribunal just a few sentences from a letter of Count Nesselrode, found on pp. 173-4, following the extract which I read a moment ago, that Russia had had occupation of these coasts in the manner stated. The Count said:—

“We have, then, full right to insist on the continuance of a privilege which our commerce secured as early as 1799, while the English Hudson Bay and North-West Companies have hardly been three years in the vicinity of these latitudes, and they do not yet occupy any point which touches the ocean, and it is well known that it is only with a view to the future that they are trying to secure for themselves the profits of the hunting and fishing. Thus, we wish to *keep*, and the English companies wish to *obtain*. This circumstance alone is sufficient to justify our proposals. The latter are no less consistent with the principle of mutual expediency, which would serve as a basis for the negotiations.

“If Prince of Wales remains to us, it is necessary that it can be of some utility to us. Now, according to the plan of the British Ambassador, it would be for us only a burden, and perhaps an inconvenient one. That island, in fact, and the establishments which we might set up thereon, would find themselves entirely isolated, deprived of all support, surrounded by the domains of Great Britain, and at the mercy of the English establishments of the coast. We would exhaust ourselves in the cost of guarding and watching our part, without any compensation to alleviate the burden.”

If Count Nesselrode thought that this distance of 5 to 6 miles of the Prince of Wales Island from the mainland was too small to permit Great Britain to own any portion of the Cleveland Peninsula that ran down along Clarence Strait, because of the small distance—5 to 6 miles—what would he have said if he had been told by Great Britain that in the Treaty Russia was making with her that Russia's only protection to her Alaskan Islands would be a strip on the mainland which for, say, 40 miles only gave her a width on that mainland of from 1 to 3 miles, and thus left Great Britain, as the owner of the adjoining property, in control of the islands opposite? What would

Count Nesselrode have thought if it had been told him that in the end Russia was going to agree to that when the Count had positively refused to make the Treaty, on the ground that the point on the Cleveland Peninsula was too near the Prince of Wales Island? And again in the latter part of that letter he asserts this:—

“Russia cannot stretch her concessions further. She will make no others, with sufficient positiveness that, according to the most recent charts, England and she is authorized to expect some concessions on the part of England; but once again she demands only negative concessions. It cannot be reiterated with sufficient positiveness that, according to the most recent charts, England possesses no establishment, either up to the latitude of Portland Channel or on the shore of the ocean itself; and Russia, when she insists on conserving a moderate expanse of the mainland (*terre ferme*) only insists fundamentally upon the means of utilizing—we can better say of not losing—the environing islands. This is the position of which we just spoke; we seek no advantage, we wish to avoid serious difficulties.”

If I can turn—and I think I can—to one other reference on this question I desire to give it to the Court. I refer to the letter of Baron Tuyll to Count Nesselrode, p. 112 of the United States Appendix. In speaking of where the line of demarcation is to be drawn, the Baron says:—

“It will doubtless be expedient to make all possible attempts in this direction by alleging the newness of these last establishments.”

That is the establishments of Great Britain—the Hudson Bay Company.

“The clause of the privilege (Charter) of the two united Companies which sets a limit to their future extension.”

I do not exactly understand that, but it is not material to this point.

“And the injury which the proximity of those posts cannot fail to cause the older Russian establishment, known under the name of Novo-Archangelsk. But supposing it to be impossible to succeed in extending the frontiers of Russia much farther towards the south, it seems that it would be indispensable to have them fixed at least at the 55th degree of north latitude or, better still, at the southern point of the archipelago of the Prince of Wales and the Observatory Inlet, which are situated almost under that parallel. Any nearer neighbourhood of the English establishment could not fail to be injurious to that of Novo-Archangelsk, which is in latitude 57 degrees 3 minutes.”

You notice that there Russia asserts that any nearer approach than about 60 miles to Sitka could not be but inimical to the Russian claim.

Mr. LODGE. Did I understand you to say 60 miles? Is it not more than that?

352 Mr. WATSON. I beg your pardon, Sir; 120 miles—from 100 to 120 miles. Yes, I beg your pardon. You see how willingly I concede to Great Britain every point that can fairly be given to her. Now, it is true that, as the owner of this whole Alaskan Group, Russia had to have a decided strip of territory on this mainland if we agree that Baron Tuyll was a little excessive in claiming the whole 120 miles. I claim, therefore, to have proven Russia's title so far as England is concerned, and I now turn to show, both affirmatively and negatively, that England never set up a claim to any part of this Alaskan coast, and never in any way alleged that she was the owner of it, until after this trouble arose, and then she did so in the most formal way, and she did not assert that claim with any force or for any length of time.

Affirmatively this is shown by the correspondence between Great Britain and Russia, and, negatively, it is shown by the fact that until 1821 Great Britain never, by a map or a chart or a publication of any kind, claimed any title whatever to this North-Western Coast; she did not pretend to include it in the grant to the Hudson's Bay Company; she never in any way up to that time—in any way or at any time—alleged that she had either discovered, or that she had formally claimed, or that she had occupied these coasts, and therefore, negatively, the proof would seem to be overwhelmingly against her. But in addition to that, a very brief reference to the correspondence will show that, affirmatively, it is also proven.

I now turn as briefly as I can to this portion of the correspondence and I shall not refer to very many letters. I call attention in the first place to the long letter that Mr. Pelly wrote, dated the 27th March, 1822, which is on p. 106 of the United States Case Appendix, wherein he asserts, and in a pretty vigorous way, what the rights of the Hudson's Bay Company are, and calls the attention of the Foreign Office to the fact that as the Hudson's Bay Company has the fur trade of Great Britain they ought to be regarded and protected as against these claims made by Russia to go down to the 51st latitude and to have this exclusive jurisdiction of the ocean. You will find in that letter, without my stopping to read the whole of it, that the nearest post that he puts forward for the Hudson's Bay Company is a station on the Colombia River with 200 men and establishments to the northward; but he nowhere claims in that letter any right or title to any portion of the North-West Coast now in dispute, and the Colombo River was far south and nowhere in the neighbourhood of the coast that we are now discussing. The Duke of Wellington, who represented Great Britain at Vienna in 1822, was put in charge by the Foreign Office of the discussion with reference to this Ukase question, and on the 11th September, 1822, we find in his Memorandum, which is on p. 108 of the United States Appendix, these significant words. He states what he will claim as against Russia with reference to this 100-mile limit, and then, he says, near the bottom of the page:—

“This is the sense in which I propose to act at Vienna upon this part of the instructions, and it is desirable that I should be informed whether we have any claim to territory on the North-West Coast of America, and what are the opinions and reasonings of the civilians upon the question of *dominion on the sea.*”

You will see that the Duke is entirely ignorant of any claim by Great Britain to any territory on the North-West Coast, and directly puts that question—Have we any claim? And, again, on p. 109 of the same Appendix, on the 11th September, 1822, we have this further Memorandum by the Duke:—

“Since writing the above I have again seen Count Lieven on this subject, and he has informed me that the Emperor has authorized his Minister in the United States to treat upon limits in North America with the United States. He gave me this instruction confidentially, and in order that, if we had any claim to territory on the North-West Coast of America, we might bring it forward, so as not to be shut out by any Agreement made between Russia and the United States.

“It is desirable, therefore, that I should be informed upon this subject as soon as may be convenient.”

353 Certainly the accredited agent going from the Foreign Office to represent Great Britain with reference to the settlement of

this claim under the Ukase was not given to understand that Great Britain had any claim whatever to this North-West Coast in dispute. The Hudson's Bay Company, on the 25th September, 1822, in a letter to Mr. George Canning, which will be found at length on p. 108 of the United States' Case Appendix, gives the location of the posts of the Hudson's Bay Company, and I ask the Tribunal's attention to the significance of this letter, as showing the outside claim that Great Britain at that time made to the territory near to this North-West Coast, because it goes without saying that the Hudson's Bay Company at this time was the only Company claiming under Great Britain that had any establishment anywhere in the neighbourhood, it having in 1821 absorbed the North-West Company.

Now, the location of these posts as given in this letter—and I extract the locations without reading the letter at length—are as follows: First, they had a post situated on the Rocky Mountain portage in 56 degrees north latitude and 121 degrees west longitude. This post, by actual measurement, you will find is distant from the Alaskan Coast from 200 to 300 miles, and I ask the Tribunal to bear in mind now this location and the 56th parallel because possibly you now have a suggestion why Mr. Canning was so tenacious of the proposition that the line on the mainland to delimit the *lisière* should begin at the 56th parallel, in this assertion by the Hudson's Bay Company that they have this post in the Rocky Mountains at the 56th parallel.

The second post was one at Stewart's Lake in latitude 54 degrees 30 minutes north and 125 degrees west longitude, and you will find that this post is distant from the Alaskan coast from 200 to 280 miles depending of course on the point from which you measure it. But clearly it was not within 200 miles of the heads of any of the bays and inlets. The third point was on McLeod's Bay, which was situated at 55 degrees north latitude and 124 degrees west longitude, and this was distant from the Alaskan coast 230 to 300 miles.

MR. AYLESWORTH. How could that be, Mr. Watson? It is on the 55th parallel.

MR. WATSON. Yes, Sir.

MR. AYLESWORTH. And if you measure the length of a degree on that latitude it is 3 degrees away from 130. How can that be over 200 miles?

MR. WATSON. I did not get your Honour's suggestion; I did not catch your Honour's suggestion.

MR. AYLESWORTH. It is on the 55th parallel?

MR. WATSON. Yes, Sir.

MR. AYLESWORTH. And measuring along the 55th parallel a distance of 3 degrees which is the maximum—127 to 130—could not amount to any such mileage as you give.

MR. WATSON. If you will take the map and plot on the Map No. 1, or any of the maps, this McLeod's Lake—

MR. AYLESWORTH. Fraser's Lake is the one I mean.

THE PRESIDENT. McLeod's Lake is the one he is speaking of.

MR. AYLESWORTH. I beg your pardon, I thought you were speaking of Fraser's Lake, which is 127.

354 MR. WATSON. Oh no, Sir.

MR. AYLESWORTH. It is the same latitude, but 3 degrees nearer.

Mr. WATSON. Oh yes, there is a very considerable difference in the distance. I was coming to Fraser's Lake as the fourth proposition. I am sorry I did not catch your Honour's question. Fraser's Lake is in the 55th degree of north latitude and 127 degrees west longitude, and you will find that that is distant from any portion of the Alaskan coast at least 100 miles. The posts, as General Foster calls my attention to it, are put down on Map No. 1 in the American Atlas, and by referring to it and taking the dividers the Tribunal can see that I at least have given liberal measurements in favour of Great Britain instead of against her, so the nearest post to the Alaskan coast was at least 100 miles from it.

Sir EDWARD CARSON. May I ask is that taking it to the head of the inlet nearest or to the coast?

Mr. WATSON. I say to the nearest point. It is to the head of the inlet, measuring to the head of Portland Canal. Now in this same letter he says that there are several minor trading posts whose location is migratory. I want to try to take from these letters certainly all that is favourable to myself, but at the same time, anything that seems to be a comment upon the claim made. But he nowhere claims any post further west toward the Pacific Ocean than the ones given, and in this letter he confesses entire ignorance of that North-Western Coast so far as the present strip of territory is concerned, and says that he does not even know whether any rivers flow into the Pacific Ocean through it, as it has not been explored. He does give some posts on the Mackenzie River, along which the Hudson Bay Company had claimed to have exclusive jurisdiction, but as that is far distant from this Alaskan coast, and flows into the Frozen Ocean, it is hardly necessary to discuss them.

Now, then, it is true that all this most authentic information from Mr. Pelly sustains the propositions that I have been endeavouring to prove, that England had made no claim to this North-Western Coast, and that the nearest post of the Hudson Bay Company to it was distant at least 100 miles. Now, notwithstanding that the Duke of Wellington had in his possession this letter from Mr. Pelly, because it was enclosed to him in a letter from Mr. Canning, which will be found on p. 110, in the course of the negotiations at Verona on the 28th November, 1822 (pp. 113 and 114 of the United States' Appendix), he did assert as I say to Russia, as follows—I read from the bottom of p. 113:—

“The best writers on the laws of nations do not attribute the exclusive sovereignty—particularly of continents—to those who have first discovered them; and although we might, on good grounds, dispute with Russia the priority of discovery of these continents, we contend that the much more easily proved, more conclusive, and more certain title of occupation and use ought to decide the claim of sovereignty.”

You will notice in what an incidental way he contended that they might dispute, but that they would not do it. It is apparent why they would not do it.

“Now we can prove that the English North-West Company and the Hudson's Bay Company have for many years established forts and other trading stations in a country called New Caledonia, situated to the west of a range of mountains called Rocky Mountains, and extending along the shores of the Pacific Ocean from latitude 49 degrees to latitude 60 degrees.

“This company likewise possess factories and other establishments on Mackenzie's River, which falls into the Frozen Ocean as far north as latitude 66 degrees 30 minutes, from whence they carry on trade with the Indians.”

And so forth.

355 "Thus, in opposition to the claim founded on discovery, the priority of which, however, we conceive we might fairly dispute, we have the indisputable claim of occupancy and use for a series of years, which all the best writers on the laws of nations admit is the best founded claim to a territory of this description."

And yet, as a fact, as I have demonstrated, according to the Hudson Bay Company's own letter, the nearest post to this North Pacific Coast was 100 miles. Russia replied to this assertion, made by the Duke of Wellington, and the reply will be found on pp. 115 and 116 of the United States Appendix. Selecting from it merely the passages which I think are material, I read as follows:—

"Russia is far from failing to recognize that use and occupation constitute the best titles by which a state can lay claim to rights of sovereignty over any part of the continent. Russia is farther still from having wished to arbitrarily overstep the boundaries which such title assigns to her dominions on the North-West Coast of America, or to insist as a general principle of maritime law upon the regulations that a purely local necessity had obliged her to impose upon foreign navigation to the neighbourhood of the part of this coast which belongs to her.

"It was, on the contrary, because she regarded these rights of sovereignty as legitimate, and because imperative considerations involving the very existence of the commerce in which she is engaged along the North-West Coast of America, forced her to establish a system of precautions which has become indispensable, that she issued the Ukase of 4th (16th) September, 1821.

"Russia would always be ready to explain the motives which justify her conduct, but, for the present, she will confine herself to the following observations:—

"The Duke of Wellington states in his confidential memorandum of the 17th October, that some English settlements, belonging to two Companies, the Hudson Bay, and the North-West, have been formed in a country called New Caledonia, which extends along the coast of the Pacific Ocean from the 49th degree to the 60th degree of north latitude.

"Russia will not speak of the settlements which may exist between the 49th and 51st parallels, but as to the others she does not hesitate to admit that she is still in ignorance of their existence, at least, so far as their touching the Pacific Ocean is concerned."

That was a very diplomatic way of giving a contradiction. She was perfectly willing to admit that she was entirely ignorant of any evidence that would sustain it.

"Even the most recent and complete English maps do not show a single trading post, mentioned in the Memorandum of 17th October, on the coast of America between the 51st and 60th degrees of north latitude.

"Moreover, since the expeditions of Behring and Tchiricoff—that is, for nearly a century—Russian settlements have been growing so steadily from the 60th degree onward that in 1799 they had reached the 55th parallel, as the first charter of the Russian-American Company shows, which charter at the time received official publicity, and which has called forth no protests on the part of England."

So that there was a direct assertion from Russia in reply to this suggestion of the Duke of Wellington that England had no posts whatever anywhere near the Alaskan coast.

Now, omitting some other references in this correspondence, let me come at once to what seems to me conclusive on this question as showing the absence of claim on the part of England, and practically her recognition of Russia's title to the North-Western Coast down as far as the 55th parallel, but, however, reserving to herself the right of

fixing with Russia, on the ground of mutual convenience, the delimitation between the British and the Russian possessions in the interior. I now refer to the letter of Mr. George Canning, on the 8th December, 1824, to Mr. Stratford Canning, which states that Mr. Matusевич had rearranged the draft of the Treaty which Mr. Canning had drawn, and he had put rather at the end than at the forefront of the Treaty, the provision as to the 100 Italian mile limit, and this Mr. Canning would not consent to.

I am reading now from the bottom of p. 208, where he says:—

“To that transposition we cannot agree for the very reason which Count Nesselrode alleges in favour of it, viz., that the ‘*économie*’ or arrangement of the Treaty ought to have reference to the history of the negotiation.

“The whole negotiation grows out of the Ukase of 1821.

“So entirely and absolutely true is this”——

And I ask your attention to the significance of this; it did not grow out of the Ukase of 1799, which put the southern boundary of Russia down to 55 degrees, it grew out of this Ukase of 1821, which made this claim down to the 51st parallel, and made the claim to the 100 miles at sea.

“So entirely and absolutely true is this proposition that the settlement of the limits of the respective possessions of Great Britain and Russia on the North-West Coast of America was proposed by us” (by Great Britain) “only as a mode of facilitating the adjustment of the difference arising from the Ukase by enabling the Court of Russia, under cover of the more comprehensive arrangement, to withdraw, with less appearance of concession, the offensive pretensions of that edict.

“It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.”

And again on p. 211 of the same letter, reading from the bottom of the page:—

“It remains only in recapitulation, to remind you of the origin and principles of this whole negotiation.

“It is *not* on our part essentially a negotiation about limits.”

It is a mere incident; it is a mere mode of allowing the Czar to withdraw an offensive claim which he made, without offending his dignity.

“It is a demand of the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an ocean of unmeasured extent, but a demand qualified and mitigated in its manner, in order that its justice may be acknowledged and satisfied without soreness or humiliation on the part of Russia.

“We negotiate about territory to cover the remonstrance upon principle.”

The Hudson Bay Company, with whom Mr. Canning consulted during this whole negotiation, and to whom he referred all the Russian proposals, and from whom he got at least the major part of his information, with reference to the questions involved, on the 20th March, 1829, wrote a letter to the Russian-American Company, found on p. 259 of the United States' Case. It is from Governor Simpson to the Manager of the Russian-American Company. He says that—

“The bearer, Mr. Simpson, Lieutenant in His Britannic Majesty's Navy, General Manager of the Hudson's Bay Company on this coast, being now on his way northwards to inspect the harbour of Nass, where we intend to found

next year an office for the promotion of commercial relations with the natives, has also been directed to visit the principal establishment of the Russian-American Company at Novo-Archangel, in order, with your aid, to enter into such relations with this Company as may, I trust, be in the future of benefit to both Companies. (2) The Chartered Company, whose representative I have the honour to be, is certainly known to you by reputation and by the extent of its business. In order to give you an idea of its importance, I deem it necessary to acquaint you with the field of its operations, extending in North America from St. Lawrence Bay to the mouth of the Mackenzie River, which flows into the Arctic Ocean and from the Atlantic to the Pacific Oceans. (3) Up to the present time our attention on this side of the continent has been directed to matters relating to the interior lands"—(now this is up to 1829)—“but now we have in view the extension of our commerce to the coast and the establishment of a house near the northern frontier.”

Up until that time they had not had any posts there; their attention was on the interior of the continent; and now is the time, he said to the Russian-American Company, we intend to go to the Pacific Coast; and you will find that this letter was approved formally in London by a letter dated the 16th December, 1829, addressed to the Russian-American Company, and found on p. 260 of the United States Appendix, in which the Hudson's Bay Company say to the Russian-American Company:—

“I am authorized by the Manager and Directors of the Hudson's Bay Company to transmit to you a copy of a letter, dated Columbia River, 20th March of last year, from Mr. Simpson, Chief Manager of the Company in North America, to the Chief Manager of your affairs in Novo-Archangel, on the North-Western Coast of America, and I am also authorized to inform you that the Manager as well as the Directors express full consent and entire confirmation of the offers made in this letter.”

So that there could not be any more conclusive proof, I submit, as to the fact that up until 1829 this letter says there had not been any post of the Hudson's Bay Company near this Alaskan Coast. The Faden Map, which is found as Map No. 10 in the British Atlas, and was sent to Mr. George Canning by the Hudson's Bay Company, by Mr. Pelly, and which map certainly Mr. George Canning had, and, I think, as I will hereafter show you, which Faden Map was also in the possession of the Russian as well as of the British negotiators, shows the locations of the Hudson's Bay Company's posts made by the Hudson's Bay Company. I refer to p. 65 of the British Appendix. I do not stop to read it, because there is not any question that in that letter the Hudson's Bay Company said to Mr. Canning that they had marked on the Faden map the location of the posts of the Hudson's Bay Company. Now, you will find that the location of those posts, as given on this Faden Map, was the respective distances of McLeod's Lake in latitude 55 degrees north and longitude 123 degrees west, and at least, in a very moderate way, 150 miles from the nearest coast, Stewart Lake Settlement, in latitude 54 degrees north and longitude 125 degrees west, certainly not within 100 miles of the coast and Fraser Lake Establishment of 1806—“in latitude 54 degrees north and 125 degrees west longitude, distant from the Pacific coast 160 miles.”

Now, I pause here for one moment and ask the Tribunal, may I not proceed with my argument with the belief that I have sustained two of my propositions, that is to say, that as between England and Russia, Russia in 1821 to 1825 had the better title to the North-Western Coast down at least to the 56th parallel, where this eastern line begins, and that England practically acknowledged this, and had no claim of title whatever to any portion of this North-Western

Coast, and so if that is true—and I submit that I am entitled to carry with me as a fact that I have established that it is true—then I proceed to the position of the United States at the time this Ukase of the 4th September, 1821, was issued. What the United States claimed I am not going into in detail. The claim of the United States was fully set out in what has already been read to the Court—at least a large portion of it—in Mr. Middleton's Memorandum and the letter of Mr. Adams, the Secretary of State, and in the letter of Mr. Rush to Mr. Middleton. Briefly stated, the claim of the United States was this: They said that Russia was not the first discoverer of the North-West Coast, and they made a point of it, and they said that that discovery had been made by a Spaniard away back, I think they said, some time in 1580, and that under that Treaty which the United States had made with Spain in 1819, Spain had ceded to the United States all her rights of sovereignty on the whole North-Western Coast. I am not going to discuss that; I am not going to change the relation of the United States in reference to that question; I am simply going to say to the Court that whatever title the United States had to this coast only the further now confirms and gives a foundation for our claim to have the exclusive ownership from this 60th parallel up to Mount St. Elias; but it is entirely indifferent, so far as this Treaty is concerned, what the position of the United States was, because you will remember that, while in the early part of the negotiations it was suggested that the United States and Great Britain and Russia would make a Treaty all three together, the United States soon dropped out of that—or, rather, was dropped out by Great Britain, because, after the Monroe Message, Mr. Canning thought it was entirely unsafe to proceed in a negotiation with a country holding the views which we then asserted; and from that time on the negotiations were solely between Great Britain and Russia; and while it may be that, in different portions of them, some light can be thrown on this Treaty, yet, as a fact, I prefer to accept practically, for the sake of the argument here, the position of my friends on the other side, and adhere to the Treaty now, and the negotiations between Great Britain and Russia, and to consider the Treaty as made as between them, and to see if I cannot persuade the Court that, as between them, the original understanding was plain and specific in reference to these different questions that are submitted to you for an answer.

I therefore come to the conclusion which Russia announced while the negotiations were going on, because you will find that in one of the letters of Count Nesselrode to Count Lieven, on p. 173 of the United States' Appendix, he said that the whole question as between Great Britain and Russia was:—

“Thus we wish to keep, and the English Companies wish to obtain, rights within this territory.”

And, again, M. de Poletica, in his letter to Sir Charles Bagot, on p. 141 of the United States Appendix, says:—

“Lastly, I requested Chevalier Bagot to take notice that in this whole matter, so far as Russia was concerned, it could only be a question of concessions.”

England had nothing whatever to grant to Russia; of this North-Western Coast she certainly had nothing whatever to grant, so far

as these inland waters were concerned, and so far as the question of the eastern delimitation was concerned she certainly had nothing to grant outside of the posts of the Hudson's Bay Company.

I then pass to another position, always keeping in mind that I am doing this in order to surround you, as far as I may, with the atmosphere that surrounded these negotiators; and I come then to the question: by whom, and how, Russia was represented on this North-Western Coast, and how and by whom Great Britain was represented. And, now, again briefly referring to the question, and not going into details in reference to it, I take up the assertion that the Russian-American Company in very large degree represented Russia on this North-Western Coast. She represented it, however, only as a tenant having the right to the exclusive possession only of the hunting and the trading and the fishing for a period of twenty years, but she did have that exclusive right for that entire period.

Russia reserved to herself the sovereignty over all this territory, and the absolute ownership of it, and she never, even to the Russian-American Company, withdrew any title to any part of the soil or the territory, but she always asserted that she was the owner by reason of the facts that I have hereinbefore presented. I do not stop to read again any portion of these Ukases giving these exclusive rights to the Russian-American Company, but merely call the attention of the Tribunal to the fact of how exclusive they were, and how necessary

359 it was to the exercise of the exclusive right to the trading and the hunting and the fishing that the Russian-American Company should have the exclusive control of all these inland waters and of a strip of the coast surrounding them. The settlements made by the Russian-American Company from 1799 down to 1821, the time when the Ukase of the 4th September, 1821, was issued, are fully set forth in the Case of the United States, and I do not stop to comment upon them. The trade and business of that Company had largely increased, and in 1819 the Company had five settlements on the Aleutian Islands, four settlements on Cook's Inlet, one settlement at Yakutat Bay, and one at Baranoff Island at Sitka Bay, and they did, as I have already read to the Court, at the appropriate seasons for the hunting and fishing, exploit the entire coast down to at least the 55th degree of latitude, and certainly down to the 56th degree of latitude, which is perhaps the only important point for discussion now. But in the Ukase that was issued on the 13th September, 1821, by Russia to the Russian-American Company, the twenty years having expired of the original grant—and I turn to the United States Appendix, Volume I, p. 27—I find that the Ukase says:—

"I. The Company founded for the exercise of industries on the mainland of North-Western America, and on the Aleutian and Kurile Islands shall be, as heretofore, under the protection of His Imperial Majesty.

"II. It shall have the privilege of carrying on, to the exclusion of all other Russians, and of the subjects of foreign States, all industries connected with the capture of wild animals, and all fishing industries, on the shores of North-Western America, which have from time immemorial belonged to Russia, commencing from the northern point of the Island of Vancouver, under 51 degrees north latitude, to Behring Straits and beyond them, and on all the islands which belong to that coast, as well as on the others situated between it and the eastern shore of Siberia, and also on those of the Kurile Islands where the Company has carried on industries, as far as the southern extremity of the Island of Urup under 45 degrees 50 minutes.

"III. It shall have the exclusive enjoyment of everything in that region which it has hitherto discovered, or which it may in future discover, either on the surface of the earth or in the earth.

"IV. The Company may make discoveries within the limits defined above, and it is authorized to annex such newly-discovered places to the Russian dominions."

And the Tribunal will again notice how exclusive this grant is, how it comprises all the industries, how it includes the capture of all kinds of wild animals, and includes all the fishing industries, and includes all the shores of North-Western America, and how it gives to that Company those rights as against not only other Russians, but as against all foreign Powers.

Early in the negotiations, and in the only letter that we have from M. de Poletica to Count Nesselrode bearing upon this question—I will not stop to read it now, as I will have to do so in connection with another fact—you will find that they had consulted with the Russian-American Company with reference to the position on this North-Western Coast. You will also find this in the correspondence between Admiral Mordvinof and Count Nesselrode, consisting of one letter of the Admiral and a reply to it by Count Nesselrode, with reference to the claims of the Russian-American Company, and how the Russian-American Company thought the line of demarcation between England and Russia should be drawn, and it shows that Russia relied to a considerable extent, as indeed she had to, upon the Russian-American Company to obtain the information as to this North-Western Coast and the rights of Russia on it, and as the Russian-American Company represented Russia the Hudson's Bay Company represented Great Britain

It is needless for me to read the details of the Charter which was granted by King Charles II, in 1670, to the Hudson's Bay Company as to these rights in North-Western America, but I call the attention of the Court merely to a few of the extracts from it, and especially to that portion of it where the King granted unto the Hudson's Bay Company:—

"* * * the sole trade and commerce of those seas, straits, bays, rivers, 360 lakes, creeks, and sounds in whatsoever latitude they shall be that lie within the entrance of the straits commonly called the Hudson Straits, together with all lands, countries, and territories upon the coasts and confines of the seas, the straits, the bays, the lakes, the rivers, the creeks, and the sounds which are now actually possessed by any other of our subjects."

This territory of the Hudson's Bay Company was over to the east, on the other side of the Rocky Mountains, and comprised an immense region lying between the parallels of latitude 55 degrees north and 68 degrees north, and of longitude 78 degrees west and 95 degrees west. After this grant to the Hudson's Bay Company they undoubtedly did extend their posts in the neighbourhood of the Rocky Mountains, and they did occupy both banks of the Mackenzie River, and it is true that Mackenzie himself explored towards the Pacific Ocean coming out from the Hudson's Bay Company's territory on the Pacific Ocean at the 52nd degree of latitude, and it is also true that a company called the North-West Company sprang up, not with any grant whatever from Great Britain, but of adventurers, who did establish posts, as I have already called your attention to so far as is material to this case, on the westward side of the Rocky Mountains, one being in the Rocky Mountain Pass in the 56th degree, and the

other being on the parallel of latitude of 55 degrees, but this North-West Company was absorbed by the Hudson's Bay Company in 1821.

Now, to this Hudson's Bay Company, all through this correspondence, Mr. Canning constantly referred. Indeed, if you will take the British Appendix, and start and read the letters from the Hudson's Bay Company to Mr. Canning, you will have a connected history of the main points of these negotiations, and especially you will find where Mr. Canning got all his suggestions, or, at least, nearly all his suggestions, for the lines of demarcation which he suggested, so that it was true in a superlative sense, that so far as Great Britain was concerned, on this North-West of America the Hudson's Bay Company was her sole representative; she had nothing else in North-Western America at that time to represent her, and it was upon the information of the Hudson's Bay Company that she relied, and as I shall show you, it was to protect the Hudson's Bay Company's interior posts that she drew the line of demarcation as she did. I might refer to these letters more in detail, but if I did I would only go into a detail, I think, which would not be instructive to the Court, and certainly wearying to the person who read.

I then come to another suggestion which I ask attention to for one moment as a significant fact surrounding these negotiators. In 1821, when the negotiations began between Great Britain and Russia, the two nations, Great Britain and Russia—barring now for the consideration of the moment any claims of the United States, because both Russia and Great Britain denied that the United States had any claim up in this neighbourhood, at least above the 55th parallel—Great Britain and Russia had pretty near half a continent to divide between themselves. Take and look at any map; see how this North-Western America lay from the Pacific to the Atlantic, running from at least the 49th parallel up to the Frozen Ocean. Look at the immense distance there was to be divided between them—at least 3,000 miles from one ocean to the other, at least 1,600 or 1,800 miles running up towards the Northern Ocean. Just think of the magnitude of the property which these two nations were to divide between themselves, and then when you do that, and think of the immense possessions that Great Britain obtained on that North-Western Coast, look how comparatively slight was the strip of territory which Russia then claimed to receive according to this eastern boundary-line. When you remember this, and remember that the Rocky Mountains were distant at least 350 miles from the Pacific Coast, and that between the Rocky Mountains and the Pacific Coast the Hudson's Bay Company had no posts except those that I have already located, is it not easy to understand the language of Count Nesselrode in reference to what the strip of territory that Russia was to obtain was? Let me read from p. 174 in the United States' Appendix, from his letter of 5th April, 1824, to Count Lieven. I have already read you that he alleged that England had no possessions on the shore of the ocean itself, and that
Russia—

361 * * * * When she insists on conserving a moderate expanse of the mainland ('terre ferme') only insists fundamentally upon the means of utilizing—we can better say of not losing—the enviroing islands. This is the position of which we just spoke; we seek no advantage, we wish to avoid serious difficulties.

"To sum up, my Lord, so far as the question of right in this affair is concerned, Russia has that derived, on one hand, from a tacit and undeniable con-

sent; on the other, from a peaceful exploitation for the last twenty-five years, which may be considered as equivalent to a continuous occupation.

"So far as the principle of mutual expediency is concerned, Russia leaves an enormous stretch of coast and land to the progressive development of the English establishments; she insures them free outlets; she provides for the interests of their commerce, and, in compensation for all these benefits, which the most sincere spirit of conciliation has impelled her to offer, she reserves for herself only one point of support, without which it would be impossible for her to keep half of her domains."

Now is it not absolutely true that when you consider that Russia only claimed to receive practically what we call a 30-mile belt surrounding this coast from the 56th parallel up to Mount St. Elias, and she gave to Great Britain that entire territory running at least 250 miles from this eastern boundary to the Rocky Mountains—is it not entirely clear that the Count, in all these letters where he talked about the very small distance, about the strip of territory, was speaking comparatively; and is it not comparatively true, is it not comparatively and absolutely true, that it was a very small piece of territory, that it was only a strip, that it was only a point of support, out of the entire distance of 350 miles from this Alaskan coast up to the Rocky Mountains? Great Britain got at least 300 miles in width, and Russia got 30, and it explains all these expressions upon which our friends have commented so much in the progress of the Case, and by which they even seek practically to take from us the very small portion of territory that was allotted to Russia in the end. I read again from p. 161:—

"On the other hand, the Plenipotentiaries of Russia have the honour to repeat to him that without a *lisière* upon the continental coast, starting from Portland Channel, the Russian establishments on the islands in the vicinity would have no support" ("point d'appui"); "that they would be at the mercy of the establishments which strangers might form upon the mainland, and that any such arrangement, far from being founded upon the principle of mutual accommodations, would but offer dangers for one of the Parties and exclusive advantages for the other."

And further up on that page you will find that Russia contrasts the situation that England would be in after this Treaty was made as compared with her own, and she calls Great Britain's attention to the fact that, notwithstanding that they had no posts upon that coast or near it—

"Nevertheless, governed by the principle of mutual accommodation, the plan proposed by the Plenipotentiaries of Russia leaves open to the future expansion of the English Colonies—

"1. All that part of the coast situated between the mouth of Portland Channel and the 51st degree of north latitude, which was regarded as the limit of the Russian possessions in the Ukase of the 4th (16th) September, 1821.

"2. All the territory situated between the English establishments on the 54th parallel and the head of the Portland Channel, which is at the 56th parallel.

"3. All the territory situated behind the chain of mountains, in regard to which there has been dispute hitherto, to the point of intersection of the 139th degree of longitude, meridian of Greenwich."

So that in this whole discussion between these Parties it was absolutely true that all that Russia was claiming was a very small strip of territory compared with the immense distance she was willing to grant to Great Britain. Russia's claim to all the territory to the north of the 59th degree of parallel was never seriously questioned in these negotiations, and, without reading it, I refer now to the Hudson's Bay Company's Memorandum, pp. 109 and 110 of the

United States' Appendix, and of the letter of Mr. George Canning to Sir Charles Bagot on p. 148. This ownership was unqualifiedly asserted by Count Nesselrode in his letter to Count Lieven on p. 203, which was handed to Mr. Canning, and Count Nesselrode there commented upon the fact that the only possible territory there could be in dispute between Great Britain and Russia was not only not north of 59 degrees of north latitude, as to which the title of Russia was undoubted, but it really resolved itself into the difference between the 55th and the 51st degree of latitude, to which the Ukase of the 4th September, 1821, had carried the title of Russia.

I have already called the attention of the Tribunal to the number of the islands in this Alaskan group, to their location along this shore, to their contiguity and their nearness to the shore, and I now just for a moment want to ask your attention to this. The Indian settlements, or the native settlements, on this Alaskan shore were all round these inlets and bays and gulfs, and running from Mount Fairweather down to the 56th degree of latitude you find that in part the tribes themselves are designated by the localities in which they live. For instance, you had the Chilkat tribe and the Chilkoot tribe, and then you had the Stikines, and so you had different names given to the different tribes depending somewhat upon the locality that they occupied, but they all of them occupied those portions of the coast which were around the bays and inlets, and were at the heads of the bays and inlets, and especially at the head of the Lynn Canal where they were near the passes in the mountains.

This whole territory at this time was barren and cold and uninviting, except that you had this curious result, following from what is called the Japan Gulf Stream, which, as I understand, rises somewhat near the Philippine Islands, runs north, coasting Japan until it comes near Behring Strait, when it divides, one branch of it going down along through the Alaskan group, and the other going north up to the other group of islands that were owned by Russia north of the Alaskan peninsula.

Now, the result of that was, that such islands as the Baranof Islands, called here St. George's Archipelago, where Sitka was situated, and some of these other islands, had a temperature which would compare favourably, at least, with London. And it was natural enough, owing to that, that the Russian-American Company made its settlements upon these islands, where different kinds of vegetation could grow, and where, I believe, at the present time they even make some effort, and possibly some successful effort, to cultivate grain. So that you see the climate which is formed by the Gulf Stream indicated as if Nature had herself pointed out the manner in which these islands connected with the shore, all really forming part of one great body, between which incidentally run these waters—as if Nature herself had pointed out that the location of the posts should be on the islands, and that these should be used, well, let me say, as a kind of farmyard in connection with the main establishment, from which the establishments were to get their fur-bearing animals and their fish, and they were to trade with the Indians, so that, connected together, brought together, do you see, it makes practically the islands and the coast one; and, as Count Nesselrode explained it, no nation would take the islands up there unless she had the coast;

and, certainly, nobody would want the coast unless she also had the islands, unless the purpose was to control and, consequently, in the end to conquer the islands. Therefore, it is not to be forgotten in these negotiations that all these posts on the islands, these people connected with them, all this shore, and the use of all these inlets and all these inland waters formed an interdependent whole, and that is true also, you know, if you go up to the islands above the Alaskan Peninsula.

I do not stop to read again the assertions in detail, but I do just want, at this one point, even at the risk of being too tedious, again to impress upon the Tribunal—because to me it is important—the fact that this was the use that was proper to be made of this coast, and, not only that, but the fact that they did use it for that purpose, and it was essential to the rights of the Russian-American Company that it should be so used, and that unless it could be so used by the Russian-American Company their exclusive privileges for twenty years practically amounted to nothing. And, now, I want to read this extract to you again from the letter of Count Nesselrode to Count 363 Lieven, of the 5th April, 1824, on p. 173, wherein he says that it is true we do not have posts south of the 57th degree of latitude on the coast, but—

“ * * * during the season of hunting and fishing the coast and the neighbouring waters are exploited by our American Company far beyond the 55th degree and 54th degree of latitude. This is the only manner of occupation of which these localities admit, or, at least, the only one that is necessary, with colonies founded and organized a little farther north.”

And the same idea is asserted in the Russian Memorandum handed to Sir Charles Bagot, and to be found at p. 161 of the United States' Appendix.

And the Tribunal will pardon me for insisting on a point which I know is perfectly plain without reiteration, that the exclusive privileges now given to the Russian-American Company in connection with these coasts and on these islands absolutely required all these inland waters. Without them the title of the Russian-American Company, the privileges granted to it, as Count Nesselrode explained, as to Prince of Wales Island itself would be a burden and not a benefit. And the Tribunal will also remember the vastness of the interests of the Russian-American Company in this fur trade, and to what extent they had carried on their business, not only with China, but with other nations of the world.

And now let me rapidly pass on to another feature to which I must call the attention of the Tribunal. What information did the negotiators have in reference to these localities as to which this Treaty is made? Well, with the exception of the Russian-American Company, who were on the ground at Sitka and at Kodiak, and at some of their other stations, they absolutely had to rely on the information that the maps gave them, and such information as they had received from the voyages and the explorations made there by different individuals; but principally they had to rely upon the maps. That is self-evident as to such a new country as this, and abundantly appears when you go through the correspondence. The maps that they had before them were, in the first place, Faden's map, and I pause there just for a moment to read this. That is Map No. 10 of the British Atlas, and I need not stop to refer to it now, because I will

have to do that again. But Faden's map is referred to at p. 65 of the British Appendix, and I will read to the Court from the middle of that page a Memorandum from the Hudson's Bay Company to Mr. George Canning:—

“Mr. Pelly presents his compliments to Mr. Secretary Canning, and, as in the conversation he had with Mr. Canning he seemed to consider Mr. Faden's map as the most authentic (an opinion which, in so important a question as that of settling a national boundary, it may, perhaps, be dangerous hastily to admit), Mr. Pelly has had the posts of the Hudson's Bay Company, in that part of the territory under consideration, marked on it; he has likewise had coloured the proposed line from Lynn Canal, the northern extremity of Chatham Strait, as well as the less objectionable one from Mount Elias.”

What a vast amount of trouble it would save us if we only had the maps on which those lines were drawn! But you will notice there that Mr. Canning seemed to consider the Faden map as the most authentic, and while Mr. Pelly did not dissent from that he put in the caution that in settling such an important question as a national boundary that should not be hastily admitted, and yet he proceeds to mark on Faden's map, and sent it to Mr. Canning for his use, the Hudson's Bay Company's posts, the latitude and longitude of which I have already given. You will notice that the letter was written on 16th January, 1824, and on the same page you will find a letter from Mr. George Canning to Sir Charles Bagot dated 20th January, 1824, four days after this letter of the Hudson's Bay Company to Mr. George Canning, in which Mr. George Canning says:—

“I write this separate despatch to your Excellency for the purpose of inclosing to you certain information and suggestions on the subject of
364 our discussion with Russia respecting the North-West Coast of America, which I have received since my despatch on that subject was prepared.

“Any additional information is valuable upon a question of so much doubt and obscurity; and the suggestions are well worth attention, considering the quarters from which they come.”

We think—and I do not understand really our friends on the other side contend to the contrary—that this letter of the 20th January inclosed not only Mr. Pelly's memorandum to Mr. Canning, but also the Faden map, so that Sir Charles Bagot had the Faden map as well as did the Russian negotiators at St. Petersburg.

But you have there the mark of approval put upon that map, and I think I can show you afterwards how true it is that Mr. George Canning relied upon it. You have the mark of approval itself put upon that map by Mr. George Canning in saying that that map was the most authentic of all the maps as to that region. In addition to this map the negotiators undoubtedly had the Russian Quartermaster-General's map of 1802, and I refer to the United States' Appendix, Vol. I, pp. 127 and 145, in reference to that, and without going to the letter itself—because I do not intend to stop and read it to the Tribunal, I do not understand that there really is any controversy with the other side about this—the Tribunal will remember that Sir Charles Bagot inclosed this Russian Quartermaster-General's map in one of his early letters to Mr. George Canning. They then had, in addition to that, the Arrowsmith map.

I want to say quite frankly that I do not know—and I do not think that anybody in this Case knows—what Arrowsmith map they had; but it does not seem probable that they could have had the Arrow-

smith of 1824, for the negotiations were too soon after that; but they did have one of the Arrowsmith maps, because Sir Charles Bagot, in one of his letters, complained, if you remember, that "the Arrowsmith map does not show Archangel on it," and he is not certain as to the latitude in which it is located. And then I am not concerned at all to deny that in addition to that the negotiators did have Vancouver's maps. I want to be perfectly frank with the Tribunal, and to say that whether they had the large chart and also the two smaller charts I do not know. It is not in this Case. But it is the fact that those three charts were out at the time, and if they did have one in all probability they had all three. There was a sixth map marked in the correspondence, and your Honours will find a reference to it in the letter of Mr. George Canning on p. 145 of the United States' Appendix, wherein he refers to a Russian map of 1807. But we do not have in the Case that Russian map, and, so far as I know, there is no trace of it.

Now, so far as these maps are concerned, these were all that we know of that the negotiators had. I do not stop about the Langsdorff map; it neither harms nor helps either side, and while it is possible that the negotiators had it, it does not bear any weight in the discussion. But they did have those four maps. Now, did they have any other information, and what other information did they have? I will put it rather in this way. What other information did they have as to this country? And here I leave the discussion of the question as to whether they had Vancouver's narratives to one of my colleagues, it does not fall within my territory; but these maps they did have.

Now I know this has been tedious, certainly to me, and I have no doubt to the Tribunal, but I thought it my duty to do it, because I am still at the same work of trying to put you in touch with Mr. George Canning, and Count Nesselrode, and M. de Poletica, and Count Lieven, and to give you the information they had, to put before you the maps that they had, and to surround you as far as I can with the atmosphere which surrounded them all during these negotiations.

I now come to one other portion of this discussion, and that is this. I have given you the cause of the quarrel, I have given you the fact that they had agreed that they would negotiate about it, and I have described you the territory about which they were negotiating and the circumstances as far as I could collect them rapidly, which described the territory and gave the salient points in reference to it, and now I come to the correspondence itself, beginning in 1821 and running to 1825. But I do not intend to go into the details of that correspondence. I know that each one of the members of this

365 Tribunal is perhaps as familiar with it as the counsel who addresses them, but what I want to do is, imperfectly as I may succeed in it, to skim that correspondence. I want to take out of it the material points which were discussed; I want to see what the relative positions of England and Russia were; I want to see what England wanted; I want to see what Russia wanted; and if I can do that and give it to you as clearly as it appeals to me, I shall throw a clear light upon this Treaty and materially assist you in reaching an answer to all these different questions.

I have already called your attention to the immense tract of territory that was to be divided between Russia and Great Britain, and I have called your attention also to the fact that England chiefly objected to the 100 miles limit, and I now proceed to prove to you that all that she desired in the interior was to protect the posts of the Hudson's Bay Company, and this requires me to go to the letters that passed between the Parties. In the first place I refer to Mr. George Canning's letter to Mr. Stratford Canning, on the 8th December, 1824, pp. 209, 211, 212 of the United States Appendix—I always mean the United States Appendix unless I name the British Appendix—that I have just read to you for the assertion of the fact which was undoubtedly true that the main opposition of England was to the 100 miles limit, and I do not stop to discuss that because it is evidently true; it is apparent all through the case, it is asserted time and again, as that 100 miles limit was virtually withdrawn by Russia very early in the negotiations, though she would not put that down on paper—you remember that Sir Charles Bagot wanted Count Nesselrode, after they broke off the negotiations about the Portland Channel, to put in some authentic way the withdrawal of the 100 miles limit, and this the Count declined to do without settling the territorial boundary too—but while Russia did not do that she issued instructions to her Ambassador not to insist upon that 100 miles limit, and she virtually withdrew it so far as the real claim was concerned. And now I come to the proof of the fact that in the interior all that Great Britain wanted was the protection of the posts of the Hudson's Bay Company, and I refer in the first place to a letter from Mr. George Canning to the Duke of Wellington, p. 110 of the American Appendix. Mr. Canning had, at great detail in this letter, considered this question of the claim of Russia to this 100 miles limit, and had touched somewhat on the territorial claim made by Russia, and then at the conclusion of that letter on p. 112—and it will be remembered that this was a letter of instructions to the Duke of Wellington as to what the position of Great Britain was to be—Mr. Canning said:—

“I have little doubt, therefore, but that the public notification of the claim to consider the portions of the ocean included between the adjoining coasts of America and the Russian Empire as a *mare clausum*, and to extend the exclusive territorial jurisdiction of Russia to the 100 Italian miles from the coast will be publicly recalled, and I have the King's commands to instruct your Grace further to require of the Russian Minister (on the ground of the facts and reasonings furnished in their despatch and its inclosures) that such a portion of territory alone shall be defined as belonging to Russia as shall not interfere with the rights and actual possessions of His Majesty's subjects in North America.”

Now, you notice that Great Britain starts into this negotiation solely, so far as the territory is concerned, with the intention of drawing a line that shall not interfere with the rights and actual possessions of His Majesty's subjects in North America, to wit, the Hudson's Bay Company as it was at that time, and their posts located as I have said. If you will then turn to p. 145, you will find a letter from Mr. George Canning to Sir Charles Bagot, in which Mr. Canning says:—

“Now, we have good reason to believe that, in respect to the question of territorial dominion between us and Russia, an arrangement may be agreed upon which will satisfy the wishes and secure the convenience of both Parties by a

line of demarcation to be drawn between the southernmost Settlement of Russia

“The most southern establishment of Russia on the North-West Coast of America is Sitka, which is not laid down in our latest maps with sufficient exactness, but which appears by the Russian map published in 1807 to be situated—as the inclosed copy of a letter from Mr. Pelly, Chairman of the Hudson’s Bay Company, also represents it—in latitude 57 degrees, and not (as the map of which a copy was inclosed to your Excellency indicates)” —I think that was the Arrowsmith map—“on the continent, but on a small island of the same name at the mouth of Norfolk Sound. The larger islands.”

And so forth.

You will notice again that it is the territorial dominion that can be arranged to satisfy both parties by drawing a line of demarcation between the southernmost settlement of Russia and the northernmost post of the North-Western Company, which, as you know, was afterwards absorbed into the Hudson’s Bay Company. So you find here confirmation—without stopping to read all these different portions of the letters from Mr. Canning to Sir Charles Bagot, on p. 175—to the same effect, and you will also find at p. 163, in Sir Charles Bagot’s observations to the Russian Plenipotentiaries, that the same idea is carried out as was given in the letter from Mr. Canning. You will also find the same idea which was in the letter that Mr. Canning wrote to the Duke of Wellington, saying that the limits were to be such as would protect the Hudson’s Bay Company, the identical instruction which Mr. Canning gave to Sir Charles Bagot when he confided to him the negotiations of the entire Treaty at St. Petersburg. I will give the reference to that letter; I do not have it just at my hand.

Now, as finally settling the question as to what it was that England wanted and what her position was in this dispute, let me turn to the letter of Sir Charles Bagot to Mr. Canning, to be found on p. 154 of the United States Appendix, under date of 17th March, 1824. Sir Charles said that he agreed “that the question of strict right should be provisionally waived on both sides, and that the adjustment of our mutual pretensions should be made upon the sole principle of the respective convenience of both countries. This basis of negotiation being willingly accepted by all Parties, I stated that, so far as I understood the wishes and interests of Russia, her principal object must be to secure to herself her fisheries upon the islands and shores of the North-West Coasts of North America and the posts which she might have already established upon them; that, on the other hand, our chief objects were to secure the posts upon the continent belonging to the Hudson’s Bay Company, the embouchures of such rivers as might afford an outlet for our fur trade into the Pacific, and the two banks of the Mackenzie River.”

The Tribunal will notice that here was the instructed negotiator for Great Britain in an interview with Count Nesselrode and M. de Poletica, in which he distinctly asserted that all that England desired and claimed was to secure the posts upon the continent belonging to the Hudson’s Bay Company, and the opening of the rivers upon the sea that might afford an outlet for the fur trade of this same Company—the Hudson’s Bay Company—on the Pacific and the two banks of the Mackenzie River, both of which banks were occupied by the Hudson’s Bay Company. I then turn to just one extract from another letter of Mr. George Canning, or to a declaration of Mr. George Canning, which will be found at p. 230 of the United States Appendix in a letter of Count Lieven to Count Nesselrode, dated the

8th May, 1825, in which he refers to an interview that he had had with Mr. George Canning, in which Mr. Canning said this:—

“Mr. Canning, while rendering full justice to the intentions which determined the concessions granted by our Court, whose conduct on this occasion has borne indisputably the stamp of the friendly feelings of His Majesty the Emperor towards England, attempted to justify the persistence of the British Government by assuring me that it arose solely from a sincere desire to prevent the recurrence of any disagreeable discussion in future, and not from any intention of acquiring an increase of territory or of limiting the extension of the Russian possessions.”

So that I may safely pass that point, and say that I have proven that all that England wanted in the interior was to protect the rights of the Hudson's Bay Company and those posts located as I have already given them to the Tribunal.

367 Now, what was the Russian position, and what was it that she desired? She wanted to accomplish the following:—She had issued an Ukase saying, that so far as the sea was concerned, she was going to keep everybody from going within 100 miles of it, and she had to yield that, and rely upon her 10-league limit, and, as the discussion went along, and it was found that the eastern boundary of the Russian territory along the British domains had to be settled, it became apparent to Russia that the one thing that she wanted with reference to that eastern boundary, the main thing was to prevent the approach of the Hudson's Bay Company's posts down into the exclusive territory which had been granted to the Russian-American Company, and the sovereignty of which was to belong exclusively to Russia, and she wanted to so negotiate and to make such a Treaty as would effect this purpose—to keep away the Hudson's Bay Company's posts from her territory, and not to allow those posts to approach and interfere with the exclusive rights granted to the Russian-American Company.

(Adjourned for a short time.)

Mr. WATSON. Russia's claim in all these negotiations, from the start to the finish, was that she was, as I have so often repeated, the exclusive owner of all these coasts and of all these inland waters; and she had the right to grant the exclusive right to trade and the right to fish and hunt in all the waters, and the attention to this was particularly called not only in the express words of the Ukase of 1799, and the Ukase of 4th September, 1821, and the Ukase of 13th September, 1821, all three of which I have referred to, but the attention of England was called to it in a letter of Baron Nicolay to Lord Londonderry, on p. 96 of the American Appendix, and in a letter of Count Nesselrode to Count Lieven, on p. 99. I do not stop to read them, because I have referred to them before; but I do insist that the position was well known to England at the time.

Now, what was it that Russia desired to gain in this negotiation? I have already shown you that England had two things to gain. One was the withdrawal by Russia of this claim to the 100-mile limit, and the next was the protection of the posts of the Hudson's Bay Company; and I now come to the question, what was it that Russia had to gain, and what was it that she claimed that she was entitled to in the settlement of the boundary; and, of course, this chiefly relates to the Eastern boundary, to the interior—what was it that she claimed that she was entitled to? I refer in the first place to

the letter of M. de Poletica to Count Nesselrode on the 3rd November, 1823—p. 137 of the United States' Appendix. And I read from that:—

“I thought that, before entering into negotiations with the English Ambassador and the American Envoy, it would be well for me to be thoroughly informed as to the views of our American Company, both with regard to the question concerning the boundaries of its possessions on the North-West Coast of the American Continent and the more important subject of the maritime jurisdiction, which the edict of the 4th September, 1821, had extended to the distance of 100 Italian miles from the coasts of the mainland. My conversations on these two points with Privy Councillor Count de Lambert, whom the Ministry of Finance had appointed to represent the interests and the wishes of our American Company, convinced me that the interests would be protected and the wishes entirely satisfied if we succeeded in fixing the boundaries of the possessions of the said Company at the 54th degree of north latitude, and by giving them in depth such a degree of longitude (meridian of Greenwich) as, in its prolongation towards the Pole, would leave the Mackenzie River outside of our boundary.”

I drew on one of the maps—and it is a very instructive thing—the line suggested here from the 54th degree, running it up so that it would exclude the Mackenzie River, and it shows what a vast amount of territory Russia had started in to claim:—

368 “In fixing the longitude Count de Lambert had mainly in view 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. At the same time Count de Lambert did not leave me in ignorance of the fact that our American Company was not in the least disposed to make any concessions whatever, either to the English or Americans, with respect to commerce or navigation within the borders of its acknowledged possessions.”

You will notice from this that it covered both commerce and navigation, “that it was, on the contrary, firmly resolved to reserve their exclusive exploitation for itself.” Not the division of these inlets, as our friends now claim, and that England was to have the head and we were to have the mouth of them; but the Russian-American Company was resolved—and was firmly resolved—to reserve their exclusive exploitation for itself, “and this determination on its part is worthy of notice, as in all probability it will constitute the chief and even the only difficulty in the negotiations with the Government of the United States of America.”

At the outstart, then, what Russia wanted for the Russian-American Company was “a barrier at which would be stopped once for all, to the north as well as to the west of the coast allotted to our American Company, the encroachments of the English agents of the Amalgamated Hudson's Bay Company and the 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.” It was looking toward the future, and it was a barrier to prevent the approach of these posts into the territory that was to be allotted to Russia; and especially, if the Tribunal will notice, it was a barrier to the north, and it was a barrier to the west—of what? of the coast allotted to our American Company. If Russia owned all this coast where the land meets the water—as I have been trying to prove to you—the importance of this

coast to Russia was not only as a support to these islands, but also as an advantage to the Russian-American Company to hunt up all these inlets around and through this territory here—then what the Russian-American Company wanted and Russia adopted was such a barrier in the interior as would keep these posts of the Hudson's Bay Company from coming down on to the coast and interfering with the trade of the Russian-American Company and the exclusive rights granted to it by the Czar.

And then I turn to the Russian proposal on p. 158. And I read from that—

“As the parallel of the 55th degree cuts the southern extremity of Prince of Wales Island,”

—and so forth, they will take the whole of the Prince of Wales Island, and—

“To complete the line of demarcation and render it as distinct as possible, the Plenipotentiaries of Russia have expressed the desire to make it follow Portland Channel up to the mountains which border the coast. From this point the boundary would ascend along those mountains parallel to the sinuosities of the coast as far as the 139th degree of longitude (meridian of London) the line of which degree prolonged northward would form the ulterior limit between the Russian and English possessions, to the north as well as to the east. The principal motive which constrains Russia to insist upon sovereignty over the above-indicated *lisière* (strip of territory).”

Not strips, not unconnected, isolated, little portions of land along this main coast, but a *lisière*, a connected strip of territory and not a strip on the water but a strip “upon the mainland (‘terre ferme’) from Portland Channel to the point of intersection of 60 degrees latitude with 139 degrees longitude. The reason is that, deprived of this territory, the Russian-American Company would have no means of sustaining its establishments, which would, therefore, be without any support (‘point d’appui’) and could have no solidity.”

That is just what I have been saying. The Russian-American Company, in the sustaining of its establishments on these islands, had this coast to resort to at the appropriate seasons for the very purpose you know of, the trade, and the hunting and the fishing of which they were granted the exclusive privilege; and if the Hudson's Bay Company were to come down here and interfere with that it would interfere with this exclusive privilege as well as with the sovereignty of Russia.

But this is more plainly shown on p. 161 of the American Appendix and I ask leave to read three or four of those passages, because they show that this barrier idea, which is now apparently derided by Great Britain—at least minimized—was not merely a suggestion that M. de Poletica made to Count Nesselrode, it was put right into the forefront of the negotiations between Sir Charles Bagot and Count Nesselrode. And Russia there said in these negotiations, right in the beginning of them, to Sir Charles Bagot, and Sir Charles Bagot sent this Memorandum to Mr. George Canning as follows in reference to this barrier:—

“The motive which caused the adoption of the principle of mutual expediency to be proposed”—will you notice that?—“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 53rd degree and 54th degree of north lati-

tude. The Russian establishments of the American Company have a tendency to descend southward toward the 55th 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 1790, 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 their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers."

So that you have there now in the most unmistakable and express language the direct reference to the Hudson's Bay Company posts approaching towards the Pacific coast; and the very reason Russia had—the main reason that she had in defining the eastern boundary was to prevent the approach of those posts within the territory to which Russia claimed the exclusive jurisdiction, and which she here again asserts England never had denied; and if there was to be a Treaty which did not recognize to the full Russia's sovereignty and exclusive rights over these inland waters and along this entire coast, then truly this Treaty, so far as Russia was concerned, was literally, in the words of Count Nesselrode, giving away that which they already possessed, and giving it away in a very large degree, and more than, as I will show you presently, England ever pretended really to claim. And so down along that page, near the end, you have again:—

"On the other hand, the Plenipotentiaries of Russia have the honour to repeat to him that without a *lisière* upon the continental coast, starting from Portland Channel, the Russian establishments on the islands in the vicinity would have no support ('point d'appui'), that they would be at the mercy of the establishments which strangers might form upon the mainland, and that any such arrangement, far from being founded upon the principle of mutual accommodation, would but offer dangers for one of the Parties and exclusive advantages for the other."

You have here in this letter an assertion in the most positive and unqualified terms that the Hudson's Bay Company's posts were not to come and interfere with the trading rights; and, in addition to that, that the islands themselves, which were owned by Russia, were to be so protected by a *lisière* round the coast, that they were not to be surrounded or to be at the mercy of any other nation. And then Russia's final answer, on p. 164 in these negotiations, was:—

"The Emperor charges his Plenipotentiaries to repeat to the Ambassador of England: 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 by the English establishments on the mainland, and completely at the mercy of these latter. That, in consequence, such an arrangement could not in any wise conform to the principle of mutual accommodation."

Now, allow me again to point out there were two things that Russia was particularly anxious about. Here were the islands, and here was the coast. She could not allow any question as to her ownership of these islands or the ownership of this coast so as to control those islands—that was the question affecting her sovereignty. So far as the exclusive rights of the Russian-American Company all

along these coasts were concerned, she could not allow these Hudson's Bay posts to come gradually down and interfere with this exclusive trade which was granted to it. And she wanted such an arrangement on the ground of mutual convenience—that is, on the ground of carrying out and perfecting the mutual rights of the parties to this territory in reference to which the line was to be drawn. She wanted it to be so fixed that her rights to these islands and to this exclusive right of trading would be absolutely settled as against the Hudson's Bay Company.

I next refer to a letter from Count Nesselrode to Admiral Mordvinof on p. 167 of the American Appendix, wherein he said this. Admiral Mordvinof had with indignation referred to the idea that Russia was only to get a 40-mile belt, and the Admiral said that it was ridiculous in settling a dispute like this to give to Russia what might make a nobleman rich, but that Russia ought to receive at the very least a line as far as the Rocky Mountains. Now to that Count Nesselrode replies, and on p. 167 he says: "Without this" he asserts that the Czar is influenced here by the question of right, not merely by the question of convenience, but by the question of right.

"Without this it is impossible to expect success in negotiations, and these rules have served as guides for the Plenipotentiaries appointed by His Imperial Majesty for negotiating respecting the affairs of the Russian-American Company. By rights of first discovery, and by that which is still more real the first establishment of habitations and human activity, our Cabinet demands possession both of the islands and the Western Coast of America from the furthest north to the 55th degree of latitude; but Great Britain, on her part, represents the rights of the Hudson's Bay Company, whose trading posts or refuges, penetrating further and further into the interior of the lands, have nearly reached the North-Western Coast, on about the same parallel. The bases of these mutual pretensions are similar in character; at the same time it must be foreseen that out of the misunderstandings now arising disagreeable consequences may in time ensue, and prudence demands that the interests of both Parties should be quickly reconciled. For this only one expedient presents itself: to establish at some distance from the coast a frontier line, which shall not be infringed by our establishments and trappers, as also by the hunters of the Hudson's Bay Company.

"The Plenipotentiaries on both sides equally recognized the necessity of this measure; but in the width of the coast line necessary for the safe existence and consolidation of our Colonies, the direction of the frontier, and even its starting point on the continent of America, still form subjects of negotiation, and the British Ambassador has declared that for continuing them he must seek new instructions from his Court. I shall not repeat that in these negotiations with England we took, and will continue to take, into equal consideration on the one side the requirements and interests of the establishments of the Russian-American Company, and, on the other, the degree of its rights of possession in the interior of the continent of America, and the measure of methods for firmly securing to the Company the possession of these territories. As
371 I have said above, for the peaceful existence of our Colonies more than all is it necessary to determine with accuracy the frontier, the extent of the country between the coast, and this frontier must be sufficient, and be in correspondence with the condition to what these establishments will, in all probability, in time attain, and by their means of own defence."

I suppose that means, "be their means of own defence." Then again, in a letter of Count Nesselrode to Count Lieven, on pp. 173 and 174, which letter was communicated to Mr. George Canning, we have the same—practically the same—position taken as to the necessity of protection. The point discussed there was the Prince of Wales Island—the necessity of having a strip of territory on the mainland which would be a support to and a protection for Russia not only in

the ownership of those islands, but in the use of them, and that Russia demanded a moderate expanse of the mainland and insisted fundamentally upon that moderate expanse because unless she had it she would lose the control of her own islands. Again in a letter of Count Lieven to Count Nesselrode, on p. 178, is a reference made to an interview that the Count had had with Mr. George Canning, in which Mr. Canning accepted the line of demarcation as suggested by Russia with certain qualifications. And I want to call the attention of the Tribunal just here to this portion of this letter; because it is of curious importance if my construction of it is right.

“The English Government fully accepts this line as it is laid off on the maps.”

If we only had that Russian line. If he means there that the Russian line had been laid off on the maps and the English Government fully accepted it, which is my interpretation of what he says, certainly the production of that map would have settled in large part the controversy here with reference to these eastern limits. But further down on the page he goes on to say:—

“The Imperial Cabinet proposed that this boundary (this eastern line), should be formed by a line of prolongation drawn toward the north, beginning at the 139th degree of longitude west of Greenwich. By following this direction the Russian frontier would end, according to the English Government, at the supposed mouth of the Mackenzie River, which an expedition sent very recently by that Government has just been again ordered to explore more in detail. The establishment of that boundary might consequently produce a collision between the possessions of the two Governments, which it is in the interests and intentions of both to avoid. In order to attain this end, the Cabinet of London proposes that the line of demarcation, starting from Mount Elias, instead of following the prolongation of the 139th degree of longitude shall take a more western course.”

So here you have Mr. Canning insisting that the purpose of the line is to prevent the interference of the respective trading companies with each other, and he wants now, in order to fully protect the Hudson's Bay Company, to have this line of longitude, the meridian there, fixed so that it certainly would exclude all approach to the Mackenzie River.

And then I also call attention to what I call the 10-marine league line of Sir Charles Bagot, and I turn to p. 159 of the American Appendix. The Russians had made a proposal, or rather Sir Charles Bagot had made a proposal which Russia would not agree to, and Sir Charles now comes back and says to the Russian Plenipotentiaries:—

“Since it has been decided to take as a basis of negotiation the mutual advantage of the two countries, it should be noted, in answer to the proposal made by the Russian Plenipotentiaries, that a line of demarcation drawn from the southern extremity of Prince of Wales Island to the mouth of Portland Channel, thence up the middle of the channel”—(your Honours will notice this, that he uses the expression “middle of the channel”)—“until it touches the mainland (‘terre ferme’), thence to the mountains bordering the coast,

and thence along the mountains as far as 139 degrees longitude, would
 372 deprive his Britannic Majesty of sovereignty over all the inlets and small bays lying between latitudes 56 degrees and 54 degrees 45 minutes, whereof several (as there is every reason to believe) communicate directly with the establishments of the Hudson's Bay Company, and are, consequently, of essential importance to its commerce, while, on the other hand, the Russian American Company possesses no establishments on the mainland (‘terre ferme’) between the two above-mentioned parallels, or even on Prince of Wales Island, or on the islands located between the latter and the mainland.

“In accepting the proposal made by Sir Charles Bagot in his first conference with the Russian Plenipotentiaries, Russia would have had, it would seem, only one difficulty, that which might result from the right which might perhaps be claimed by the United States, by virtue of their Convention of 1818 with Great Britain, to navigate freely in all the waters between King George’s Island and the mainland (‘terre ferme’), and thus, in a way, embarrass the trade of the subjects of His Imperial Majesty in these waters.

“In order to obviate this difficulty and to insure to Russia the exclusive sovereignty of these waters, as well as all the islands and coasts where there are really Russian establishments, Great Britain would offer to accept as the line of demarcation between the territories of the two Powers, a line traced from the west toward the east along the middle of the channel which separates Prince of Wales and Duke of York Islands from all the islands situated to the north of the said islands until it touches the mainland (‘terre ferme’).

“Thence extending in the same direction on the mainland to a point 10 marine leagues”—(if you notice, he makes the distance invariable)—“from the coast, the line would run from this point towards the north and north-west, parallel with the sinuosities of the coast, and always at a distance of 10 marine leagues from the shore, as far as the 140th degree of longitude (Greenwich), the prolongation of which it would then follow to the Polar Sea.”

And here you see that, as far as the eastern line is concerned, Sir Charles Bagot ran it at an invariable distance of 10 marine leagues from the sea, starting at its southern boundary and running up, as I shall call to the attention of your Honours in a moment; he fixed the invariable limit there, at 10 marine leagues, thus making a most effectual barrier against the approach of the Hudson’s Bay Company. I will refer to that again.

MR. AYLESWORTH. Let me understand, Mr. Watson. Is it your view, your argument, that that proposal was incorporated afterwards into the actual Treaty, so far as the width of the *lisière* is concerned?

MR. WATSON. When I come to that question I shall claim, and I think I shall be able to satisfy your Honour that the Parties agreed that the invariable width of this *lisière* should be 10 marine leagues unless the mountains actually reduced it; that if the mountains are not there then the 10 marine leagues is a necessary width, and I shall try to persuade the Court, as I think I can, that, taking Sir Charles Bagot’s proposal, taking Count Nesselrode’s letter, taking Mr. George Canning’s letter, they all agreed to this as the invariable width, and that this expression “should not exceed 10 marine leagues from the sea” was understood by both Parties as meaning an absolute fixing of the 10 marine leagues distance, provided the mountains were not there. If the mountains were there, of course that would limit the distance, but that I discuss very fully under a subsequent part of the Case. Have I answered your point?

MR. AYLESWORTH. Entirely.

MR. WATSON. Then allow me to call the Court’s attention, for after all this is a Court established by mutual international agreement even if we only call it a Tribunal, and it is so much easier to address it as a Court than it is to all the time use the word “Tribunal”—let me call your attention to a letter—and a most significant letter—of the Hudson’s Bay Company to Mr. George Canning of the 8th January, 1824, and I read from p. 150 of the United States Appendix. Mr. Pelly there calls attention to the fact that our traders are extending their posts—I am reading from p. 149 now—still further to the north in the country to the

west of the Rocky Mountains, and that Russia has no settlement on the mainland, but only a southern settlement, that at Sitka, on the islands.

And then, at p. 150, he says this:

“From a want of accurate knowledge of the courses of the rivers or ranges of mountains, it is difficult to suggest any satisfactory boundary in the interior of the country in question, and (if consistent with your views) it might perhaps be sufficient at present to settle a boundary on the coast only, and the country 50 or 100 miles inland, leaving the rest of that country to the north of that point and to the west of the range of the mountains which separate the waters which fall into the Pacific from those which flow to the east and north open to the traders of both nations.”

You will notice now that Mr. Pelly—and this is the first suggestion of distance—actually puts the width of the *lisière* at 50 to 100 miles. And going further down in the letter he says:—

“If it is considered proper to fix at present the interior boundary, I would suggest a line drawn from the above-mentioned point at Chatham Straits due north until it strikes the range of mountains which separate the waters (being the supposed continuation of the range called the Rocky Mountains), and thence to follow the ridge of these mountains to the Frozen Ocean.”

There Mr. Pelly gives Russia the Rocky Mountains some 300 miles inland.

I turn next to a letter of Mr. Canning's, on p. 148, one of his communications to Sir Charles Bagot, and a very long one, wherein he disposes of the idea of a joint negotiation with America, and in this communication Mr. Canning says, two-thirds of the way down the page:—

“It would, however, in that case”—(they were now talking about the line running up from the Lynn Canal)—“be expedient to assign, with respect to the mainland southward of that point a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward.”

There again Mr. Canning is willing to give Russia 50 to 100 miles inland:—

“We must not on any account admit the Russian territory to extend at any point to the Rocky Mountains. By such an admission we should establish a direct and complete interruption between our territory to the southward of that point, and that of which we are in possession to the eastward of longitude 135 degrees along the course of the Mackenzie River.”

And does the Court notice that here is the Hudson's Bay Company, which wants to be protected, and here is the Prime Minister of England both agreeing that if Russia would be satisfied with a limit of 50 to 100 miles, England would be satisfied with the same.

And then allow me to turn to p. 81 of the British Appendix. I am dealing now with the question of the barrier that Russia wanted, and I want to call your attention to this letter of the Hudson's Bay Company, written by Mr. Pelly, to show that he has the same idea the Russians have with reference to the proposition that there must be a barrier erected between the respective Companies, the Russian-American Company and the Hudson's Bay Company. At the top of p. 81 he says:—

“I am at a loss to understand how the great object of the arrangement (the prevention of the collision of the traders of the different Powers) is to be attained by these means—”

He is dissatisfied with all this, because the American Treaty has been signed, and he is dissatisfied at the position that England is taking with reference to the boundary:—

374 “Is to be attained by these means, or why Great Britain should cede to Russia the exclusive right to the islands and the coast from latitude 54 degrees 40 minutes northward to Mount Elias, and to which Russia can have no claim, and knows them only by the English names of George III and Prince of Wales Archipelago.”

But what I say that passage is essential for is, that here Mr. Pelly says that the great object of the arrangement—the great object that the Treaty is to effect—is to establish the boundary-line as a protection to the traders of the different Powers. And, again, on p. 110 of the British Appendix, I find the Hudson's Bay Company, through Mr. Pelly, again asserting the same idea. Let me read, at some little extent, that letter. He says:—

“I duly received Lord Francis Conyngham's letter of the 19th instant, with its inclosures, and it does not appear to me that the counter-project of Russia is so essentially different from the one which His Majesty's Ministers have considered it advisable to propose to Russia, as far as the Hudson's Bay Company are concerned, to reject it.”

Now, I do ask the attention of the Court to the fact that here the Hudson's Bay Company assented to the “contre-projet” of Russia, so far as the interests of the Hudson's Bay Company is concerned, except in the following particular, that “in the IInd Article, which should more accurately define the eastern boundary from the Portland Canal to the 61st degree of north latitude to be the chain of mountains.” Our friends say that these mountains are not the chain which is referred to in the Treaty—here the Hudson's Bay Company distinctly defines them as referred to in the “projet” of Russia as being a chain of mountains:—

“* * * at a ‘très petite distance de la côte,’ but that if the summit of those mountains exceed 10 leagues, that the said distance be substituted instead of the mountains.”

As I was answering you a moment ago—you find there a distinct affirmation by Mr. Pelly that if the mountains are not there the 10-marine league distance is to be substituted instead of the mountains—not merely the particular sets of mountains, but the mountains.

MR. AYLESWORTH. That was the idea at that stage of the negotiations.

THE PRESIDENT. This was negotiation at that time; it is not what was subsequently agreed to. I follow your argument perfectly, but I mean this was negotiation—this was not contract.

MR. WATSON. I merely stuck a pin in there, Sir, because I intend to use it hereafter; and if your Honour will keep open that question to allow me to present our views, I do think that I can give you some cogent reasons for believing that this 10-marine leagues line was to be an invariable limit if the mountains were not there I read on.

“It certainly would have been a more advisable arrangement had it been practicable to have made the strait between the mainland and the islands instead of the mountains the division, not only as a more natural one, but would have prevented the possibility of collision of the traders of the two countries, and if this could now be obtained, relinquishing the proposed licence of visiting and trading with the natives for a term of years in that part of the territory to which Russia is to be acknowledged as entitled to the sovereignty.”

Here again now you have the idea put in—the prevention of the possibility of the collision between the traders. And now further down in that letter:—

“On a former occasion I proposed the Strait as the line of demarcation upon the principle of preventing collision, which was not only my idea, but
375 you will recollect was one of the principal reasons stated by Russia for proposing a division of territory.”

So that there could not be any question about it that both sides thought it was a most important matter to draw this line of demarcation in such a way that it would prevent collision between the respective posts. I certainly am entitled to ask the Court to go with me to this extent—that Russia wanted a barrier which would exclude and prevent the posts of the Hudson’s Bay Company coming down to the coast and interfering with her trade with the Indians; with her hunting; with her fishing up these inlets and through this territory where the wild animals were; and also such a barrier as would protect her in the ownership of her islands.

But Russia wanted something else, if the Court please; although what I am now about to state, I think, is included in the views I have already given. Russia wanted the exclusive sovereignty over the waters on the coast, and she did not want any question whatever in reference to that. And now I will refer to the letter of M. de Poletica to Count Nesselrode, in the first place, on p. 142 of the United States Appendix. After stating to Count Nesselrode the difficulty that there had been, and why he could not agree with Sir Charles Bagot as to the boundary-line, on the top of p. 142 he said in this way:—

“Chevalier Bagot, after informing me of the plan of demarcation devised by his Government, agreed unhesitatingly that when the boundaries between our respective possessions were once established, we would be perfectly free to introduce into the territory allotted to us such administrative regulations as our own wisdom might suggest; that is to say, that we shall have full liberty to permit foreign navigation in our waters, or to reserve them exclusively for our own use.”

There was the agreement between Sir Charles Bagot and M. de Poletica at the very opening of the negotiations.

And now let me turn you for a moment to what was the first proposal of Russia, on p. 158. That proposal was, as I have already read it, that they were to go down to the 55th degree, but were to have the whole of the Prince of Wales Island. And then, to complete the line of demarcation, they were to follow Portland Channel up to the mountains which border the coast. And from this point the boundary would ascend along those mountains parallel to the sinuosities of the coast, and the principal motive which constrained Russia to insist upon sovereignty over the above-indicated *lisière* upon the mainland from Portland Channel to the point of intersection of the 60th latitude with 139 degrees of longitude, is that, deprived of this territory, the Russian-American Company would have no means of sustaining its establishments, which would therefore be without any support and could have no solidity. And then following that by the views of Sir Charles Bagot, on p. 163, I call your attention to this. There had been a proposal made by Sir Charles to which Russia would not agree, and Sir Charles then, in reply, uses this argument:—

“Any argument founded on the consideration of the practical advantage of 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, to wit, one passing along the middle of Chatham Straits as far as the northern extremity of Lynn Channel, and thence to Mount Elias, or to the intersection of the 140th degree of longitude; 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 island, but also the possession of all the island 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."

And I turn back to p. 159 to read in connection with this that Sir Charles Bagot, in his first proposal, said that to obviate the
376 objection which Russia had made, that under a settlement of the kind that he suggested, the United States might claim rights of navigating the inland waters. He says:—

"In order to obviate this difficulty, and to ensure to Russia the exclusive sovereignty over these waters, as well as of the islands and coast, where there are really Russian establishments."

Great Britain suggested a new line, so that you have there Sir Charles Bagot's own assertion that the line that was suggested was a line which would give to Russia the exclusive jurisdiction of the waters, and give to her, as he expresses in another letter, the possession of all the waters.

Now, when Mr. Canning drew his first draft, which he sent in his letter of July, 1824, to Sir Charles Bagot, he raised distinctly the question of the exclusive sovereignty of Russia over these inland waters. And I ask your attention to pp. 181 and 182 of the United States Appendix, being Mr. Canning's letter of the 12th July, 1824. That line, you will remember, was the line that Mr. Canning drew along the base of the mountains from the head of Portland Channel to Mount St. Elias. But he coupled with that line this suggestion:—

"Your Excellency will be careful to make it understood that this limitation of time cannot in any case extend to the use (that is, the ten-year limitation) by Great Britain of the Harbour of New Archangel, still less of the rivers, creeks, &c., on the continent, the use of all which is in the nature of a compensation for the perpetual right of territory granted to Russia, and, therefore, must be alike perpetual."

There was Mr. Canning's assertion that in the draft itself of the Treaty there should be a recognition of Great Britain's right to go into these rivers and creeks, &c., on the continent. That is, all the inland waters. And in his draft itself, on p. 183, the proviso that he made was that Russian subjects—I read now Clause 2nd of Article III—"Should for ever freely navigate and travel along the said line of coast and along the neighbouring islands."

Count Nesselrode did not understand that; he did not understand whether that draft was intended to claim a perpetual right on the part of Great Britain to frequent freely all these inland waters, and he therefore inquired of Sir Charles Bagot. And now I call the attention of the Tribunal to the fact that both sides agreed that here the point was distinctly made. Great Britain claimed that the Treaty should have a clause which gave her the right—the perpetual right—of the access to Lynn Canal and these inland waters. Mr. Canning put that in the letter to Sir Charles Bagot, and in definite language he put it in the draft Treaty. But Sir Charles Bagot supplemented the Treaty, and said to Count Nesselrode:

“Yes, that is what it means. We must have the right to all these inland waters.”

Now, what was the reply of Russia? Russia says—

“Rather than grant you this right we will make no Treaty. Under no consideration—for no possible compensation to us will we grant you this right. It would be utterly inconsistent with our idea of sovereignty; it would utterly destroy the purposes for which we are contending here, and rather than grant you this right we will stop. We will make no treaty; and we will take our chances for the future.”

Now, is it possible, is it within the range of any human probability, that Russia, standing on this position, and refusing to make this Treaty, for that reason turned round and made a Treaty in which she gave the heads of all these inlets to Great Britain?

377 She said that she would not even allow Great Britain perpetual access to these inlets; she would give it to her for ten years only; but rather than make a Treaty and give it to her for ever she would stop right where she was. And yet, right on the heels of that, right when the question was fresh, and Russia had taken her determined stand, is it possible that she turned round and made a Treaty and gave them the heads of all the inlets to which she had really refused access? Now, let me read you how determined that controversy was. Because I do submit that I am entitled, and I know that your Honours will give me every whit to which I am entitled, and I hope you will give me a good deal more—but certainly I am entitled to insist here upon this position of Russia in reference to this claim to frequent these inland waters.

I read now from Sir Charles Bagot's letter to Mr. George Canning, dated the 12th August, 1824, pp. 190 and 191, of the United States' Appendix.

When this project was sent to Sir Charles Bagot with the instructions that he had, he discussed them with Count Nesselrode and M. de Poletica, and he reported that there were three points that arose: first, as to the opening for ever to the commerce of the British subjects of the port of Novo-Archangelsk; second, as to the liberty to be granted to British subjects to navigate and trade for ever along the coast of the *lisière*, which it is proposed to cede to Russia from the Portland Canal to the 60th degree of north latitude and the islands adjacent; and third, as to the liberty to be given reciprocally to each Power to visit for a term of years the other parts of the North-Western Coast of America.

As to the second point, now I will read from the bottom of p. 190:—

“The Russian Plenipotentiaries declared that they are ready to grant to His Majesty's subjects for 10 years, but for no longer period, the liberty to navigate and trade along the coast of the *lisière* proposed to be ceded to Russia, from the Portland Channel to the 60th degree of north latitude, and the islands adjacent, and that they are ready for ever the right of ingress and egress into and from whatever rivers may flow from the American continent and fall into the Pacific Ocean within the above-described *lisière*, but that they can, under no circumstances and by no supposed correspondent advantages, be induced to grant to any Power the privilege to navigate and trade in perpetuity within a country the full sovereignty of which was to belong to Russia; that such perpetual concession was repugnant to all national feeling and was inconsistent with the very idea of sovereignty.”

And further down on the same page he said:—

“I am, I think, too well acquainted with, and have too long negotiated upon, this subject to have deceived myself in this respect, and I am fully persuaded, from what has passed between Count Nesselrode, M. Poletica, and myself since the arrival of your instructions, that the determination of the Russian Government is now taken rather to leave the question unsettled between the two Governments for any indefinite time than to recede from their pretensions so far as they regard the three points which I have particularly specified.”

And that was that Russia would not under any circumstances yield that right.

Let me also turn for a moment to p. 202 and p. 204, to Count Nesselrode's reply to this question, in which he takes up the different suggestions that had been made by England, and he presents the matter in this light.

The first suggestion that he calls attention to is the liberty of English subjects to hunt, and to fish, and to trade with the natives of the country perpetually on the whole of that part of the coast which constitutes the subject of discussion, and which extends from 59 degrees of north latitude to 54 degrees 40 minutes, and you will notice there that it is to hunt, to fish, and to trade with the natives along the whole of that coast. On p. 202—it is so long and so wearying, I know, to the Court, and I am certain to myself, to read all this that you, being familiar with the entire correspondence, will take up the point without my following it in detail—on p. 202:—

“We have been willing to suppose that, in spite of a formal taking possession, a long occupation of the principal points, and a peaceful exploitation of the sources of revenue and wealth presented by the countries in question, Russia's rights of sovereignty to the 51st degree of north latitude might be the subject of a doubt. We have consequently confined them to the 54 degrees 40 minutes, and to prevent any new dispute from arising on this point, we have permitted one of the Powers with which we were in litigation to share for ten years, on the whole extent of the coast where our rights had been disputed, the profits of hunting, fishing, and trading with the natives. We offer the same advantages to England; but to grant them for ever would be to obtain the recognition of our rights of sovereignty only to abandon the exercise of them. It would be consenting to possess hereafter only in name what we now possess in fact.”

And he says further on that Russia can make no further concession on this question, and that she will not grant, as he said to Sir Charles Bagot, this demand of Great Britain for the perpetual access to these waters. Now, what did Mr. Canning do? Why, Mr. Canning understood when he came to an obstacle which was wholly insurmountable, and so on in his letter to Mr. Stratford Canning of the 8th December, 1824, he dropped his claim for this access perpetually to these inland waters, and I read from p. 211 of the American Appendix:—

“We are content also to assign the period of ten years for the reciprocal liberty of access and commerce with each other's territories, which stipulation may be best stated precisely in the terms of Article IV of the American Convention.”

In other words he said, Count Nesselrode has offered us ten years. We are now willing to take it, and we will waive this exclusive right. Yet notwithstanding that that conclusion had been reached—and remember now how near that was to the drawing of this Treaty, because it was on the 8th December, 1824, that Mr. Canning wrote

this letter—notwithstanding this conclusion had been then reached, the contention now is that although Russia stood firmly like a rock as against the claim of Great Britain merely to the access perpetually to these inland waters, yet she turned round and made a Treaty which gave to Great Britain more than half of all the bays and inlets.

Now, I submit I am entitled especially under the words of this Treaty of 1903, which says:—

“You shall consider and take into effect” (shall consider, not may), “shall in the construction of this Treaty” (and the making of these answers), “you shall take into effect these negotiations”—

I submit I am entitled to ask the Tribunal to say that before you could ever come to an answer which would give to Great Britain this British line, and thus give to them the halves of all these bays and inlets, they have got to show you in the clearest and most unmistakable manner, by the plainest kind of evidence that this controversy between Russia and England, which was settled in Russia's favour within two months of the time this Treaty was drawn, was completely disregarded, and that Russia turned round for some reason not indicated to us in this case, that Russia turned round and said:—

“Notwithstanding our present position of advantage, we will now waive it, and we will not only give you the perpetual right of access, but we will give you the half of all the bays and inlets.”

You cannot certainly come to that conclusion unless you are satisfied that, taking the whole case altogether, it is perfectly apparent that Russia determined to waive her claim. And that is the most incomprehensible situation to me because Mr. George Canning agreed to the position that Russia took up.

Well, now, I come to another question as to how Russia was to accomplish the purposes which she wanted. I have said that she wanted a barrier. Now, what kind of a barrier did she want? Did she want a barrier that would give her water lines for 37 miles, the distance between Portland Canal and Mount St. Elias? Did she want merely a line over running water with a neighbour owning the upper half with the right to go up and down over Russia's portion? Was that the kind of barrier that Russia was talking about? Why, she was talking about a barrier on the mainland; she was talking about a strip of territory; she was talking about a continuous *lisière* which would prevent the approach of the Hudson's Bay Company's posts.

Will anyone tell me how a line drawn there, as the British line is, and drawn over here, as the British line is—how that prevents the approach of the Hudson's Bay Company down here to interfere with the trade of the Russian-American Company? Tell me how it would accomplish the purpose which Russia wanted, to have this line over flowing waters? Why, let me turn and read to you again some extracts to prove what I am contending for now, and that is, that this *lisière*, this barrier, was to be upon the mainland. It was not to be on the water. Great Britain wanted it on the water at first. Mr. Pelly wanted it on the water, and said it was most effectual. Russia said, “No.” I refer in the first place, now, to Russia's first proposal to Great Britain which contained this suggestion, and I have already

read it to you, that she is bound to insist upon sovereignty on the above indicated *lisière* upon the mainland—it is on p. 158, Appendix, United States' Case, I am reading—from Portland Channel, from the point of intersection of the 56th degree latitude to the 139th degree longitude, and that, deprived of this territory, the Russian-American Company would have no means of sustaining itself, and so forth. You will notice there that the *lisière*, the boundary, was to be upon the mainland. Now, Sir Charles Bagot replied to that, and on p. 159 you will find his reply, wherein he ran the line inland 10 leagues, in his own words, "on the mainland." He went up the channel and he got to the mainland, and then he ran his line 10 leagues inwards, and then continued it around the sinuosities of the coast, and that, you will find, made it a solid body of land. And Sir Charles Bagot himself, on p. 163, called it a strip on the continent. He did not call it "strips." He did not call it a piece of barrier running part over land and part over water. It was a strip upon the mainland.

On p. 161 you find Russia's reply that she wanted a barrier, and I have already read it to you, to not only support her establishments on the islands, but also to prevent the approach of the Hudson's Bay Company posts. And, as I have already called to the attention of the Tribunal, how is it possible with the Hudson's Bay Company posts here in the interior for any line across the water along here [*indicating on map*] to prevent the approach of those posts down into the region of the hunting, and the fishing, and the trading which had been exclusively granted to the Russian-American Company. You find then on pp. 161 and 163 that she insists that the Prince of Wales Island without a strip of territory on the coast would be useless. Count Nesselrode, in his letter to Admiral Mordvinof on the 11th April, 1824, on p. 166, says that the *lisière* will be a considerably extensive zone of country, and, speaking of the extent of the country between the coast and the frontier line, he says that this portion must be sufficient, and be in correspondence with the conditions to what these establishments will, in all probability, in time attain and be their own means of defence. Again, Count Nesselrode writes to Count Lieven on the 5th April, 1824, p. 174. Speaking of this barrier, he says it is to be a moderate expanse on the mainland, and on p. 173, in the same letter, he says it is to be a narrow *lisière* upon the coast itself, and on p. 174 he again calls it a mere strip of the continent, and again on the same page he says that Russia reserves for herself only one point of support. Now, all of these expressions—all of them—are entirely inconsistent with the idea that this barrier was to be a line running across the waters. And Count Lieven writes to Count Nesselrode on the 20th May, 1824, at p. 178, speaking of this barrier as a considerable extent of territory that was to be ceded to them by Great Britain, and says that the 10-marine league line is instituted merely for the purpose of regulating the extent of barrier. He says on p. 178 that England desires a more definite description of the limits within which the portion of territory obtained by Russia on the continent is to be inclosed. It is the territory on the continent, that the delimitation Mr. George Canning wanted, was to make more accurate—to make the strip more accurate—and then Mr. George Canning writes to Count Lieven on

the 29th May, 1824, p. 180, and speaks of the strip of land required by Russia on the continent.

Mr. George Canning writes to Sir Charles Bagot on the 12th July, 1824, p. 181, and speaks of the strip of land to be occupied by Russia on the coast. In Russia's counter-proposal to Mr. George Canning on p. 194 she says of the *lisière* or barrier that it shall not be wider on the continent than 10 marine leagues from the shore of the sea. And, again, Count Nesselrode, in his letter to Count Lieven, on the 31st August, 1824, p. 200, speaks of the strip which we were to possess on the American continent and of the rivers which might cross our territory on the North-West Coast. Count Nesselrode on 20th February, 1825, writes to Count Lieven of the difficulties that Mr. Canning had raised and which related to the limits of the strip of coast which Russia was to possess on the American continent from the 56th degree of north latitude to the point of intersection with the 141st degree of west longitude, and Mr. George Canning, in his last draft to Mr. Stratford Canning in the British Appendix, p. 116, called it "either upon the coast or the waters of the continent." Mr. Stratford Canning, in his draft, p. 124, called it "either on the coast or the strip of mainland included in the limits of the Russian possession," and Mr. Matusevich—who seemed to have a curious faculty of not agreeing with any person as to the arrangement of the Treaty or the meaning of particular phrases—said that the strip was to be either on the coast or on the strip of mainland included in the limits of the Russian possession, and the completed Treaty identifies this barrier either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions. I am reading from a clause in the Articles to the effect that Great Britain shall not settle either upon the coast or upon the border of the continent comprised within the limits of the Russian possession. Now, I certainly might safely ask this Tribunal to agree with me that what Russia expected to get was a strip of territory on the mainland. But our friends on the other side, for once, have come to my aid, and when they argued the line of 54 degrees 40 minutes of the Portland Channel they gave a number of references to prove that our strip of land was to be on the mainland—that our barrier was to be on the mainland. They said we were not to get it on the islands; we were to get it on the mainland.

Now, it is true that they afterwards turned round and said that we were to get it on the water; but as a friendly aid given to me from the other side, I do not want to be ungrateful and refuse it, so I turn to the references that my friends gave and ask them to be incorporated into my own argument, as being perhaps stronger than the ones I have given. They show, on p. 70 of the British Appendix, that Russia's counter-draft in the fifth paragraph speaks of the *lisière* on the mainland. On p. 71 that Russia speaks of the limits on the coasts of the continent. On p. 72, in the eighth paragraph of the draft, they speak of a strip of land on the coast of the continent.

On p. 74 Sir Charles Bagot refers to "a boundary on the mainland coast." On p. 74 Russia refers to "the territory on the coast." On p. 76 Count Nesselrode refers to "the narrow strip on the coast."

Now, again, I say that for once, my friends on the other side and

myself agree, and that agreement is to the extent that this barrier was to be a strip of land on the mainland. It was to be something which would prevent the approach of the Hudson's Bay Company's posts.

The Court will notice now that I have proceeded with this discussion, and I have tried to extract from it the main positions which the respective parties claimed, and just now I wish to go back and recapitulate it at the risk of being considered a little tedious. First of all, it appears that what England wanted was the 100-mile limit to be excluded. That is first; and next she wanted the Hudson's Bay Company to be protected, and she wanted first the posts to be protected. And she next wanted the entrances of the rivers that would run through into the Hudson's Bay Company's property. And third, she wanted both banks of the Mackenzie River. That is what she wanted, and what she asked for. And that is so unmistakable, because Sir Charles Bagot stated that to Count Nesselrode in the plainest and most unequivocal manner. I do not say she did not want more than that at first, because I think you will find out that in one of his early letters Sir Charles Bagot thought they might get some of these islands while they were making this Treaty, but that was abandoned.

Now, what did Russia want? Why in the most unmistakable way she had asserted that she wanted a barrier to prevent the
 381 approach of the Hudson's Bay Company's posts into the
 neighbourhood of the coast which Russia owned down to the
 55th parallel, and she wanted a barrier there that would prevent collision, and she wanted a barrier that was to be sufficient for the future as well as for the present, and she wanted something which would practically and wholly and efficiently prevent the encroachment of the Hudson's Bay Company's posts on this coast of hers, and prevent interference with the exclusive privileges which she had granted to the Russian-American Company to hunt and fish and trade along that coast and in that neighbourhood. And then she wanted, in addition, a strip of territory for the purpose of insuring her in her position of ownership of these 1,100 islands which run along the shore in such close proximity to it as I have hereinbefore suggested. And she said in the most unmistakable way that could be enunciated, if you, Great Britain, insist on the perpetual right of access to our inland waters, to hunt and fish and trade, we will make no Treaty with you. And Sir Charles Bagot said in a letter I have read to you:—

“I am satisfied that Russia will never yield this point—I am satisfied she will never do it.”

And so these were the respective positions and the claims that the respective Parties did make.

Now, I want to see if I can prove to the Court this, as throwing a flood of light on this question that I have been discussing. I think that a careful examination of the correspondence and the negotiations—and I again call your Honours' attention to the fact that the Treaty says you “shall” consider them—shows this, that there never was an eastern boundary-line proposed on the mainland that did not run around the heads of all the bays and inlets. They did have water-lines which Russia would not agree to, but after Russia refused

to agree to the water-lines, there never was a boundary on the mainland that did not run around the heads of all the bays and inlets.

Now, let me see if I can prove that. I can only prove it, of course, by referring to the negotiations. I have already called your attention to the position of Great Britain at the start, and that is that what she wanted, and the only thing she wanted was that the line should be drawn so that the rights of His Majesty's subjects in North America should not be interfered with, and Mr. George Canning, on the 5th February, 1823, in his letter to Sir Charles Bagot, p. 118 of the United States' Appendix, instructed the latter to proceed with the negotiations upon the basis of the instructions to the Duke of Wellington which were the ones I have just given you. Now, what were Mr. Canning's suggestions and what were Sir Charles Bagot's suggestions of that line?

On 12th July, 1823, at p. 124, in a letter from Mr. George Canning to Sir Charles Bagot, he suggests:—

"A line of demarcation drawn at the 57th degree between Russia and British settlers would be an arrangement satisfactory to us and would assign to Russia as much as she can pretend to be due to her."

And Sir Charles Bagot, replying to Mr. Canning on 19th August, 1823, p. 127, said that he had had an interview with Count Nesselrode and told him:—

"That our pretensions had, I believed, always extended to the 59th degree of north latitude, but that a line of demarcation drawn at the 57th degree would be entirely satisfactory to us."

Sir Charles Bagot, in his letter of the 17th October, 1823, p. 131, said that he had told M. de Poletica that the British Government would:—

"* * * I thought be satisfied to take Cross Sound, lying about the latitude of 57½ degrees as the boundary between the two Powers on the coast, and a meridian line drawn from the head of Lynn Canal, as it is laid down in Arrowsmith's last map, or about the 135th degree of west longitude as the boundary in the interior of the continent."

And that:—

"M. de Poletica seemed to suggest the 55th degree as that which, in his opinion, Russia would desire to obtain as her boundary."

MR. TURNER. What is the date of that letter? I ask because it refers to Arrowsmith's last map.

MR. WATSON. 17th October, 1823, at p. 131 of the United States' Appendix.

MR. TURNER. It indicates some other map than the map of 1824.

MR. WATSON. Yes, Sir; I am glad you called my attention to that; I had not noticed it. You will notice that this line ran up to Cross Sound, came up to the head of Lynn Canal, and then went by the meridian line to the Frozen Sea. Mr. Canning wrote to Sir Charles Bagot on the 15th January, 1824, at p. 145, and he considers this question at some length, and he suggests now the following lines:—

"Either the channel between the islands"—

That is these channels in or around here [indicating on map] between the islands.

"* * * or that between the islands and the mainland"—

That is obviously up here [indicating]. That is Stephen's Passage.

"* * * as the most desirable line of demarcation to the eastward, which being agreed to, the line to the southward might be drawn so as to comprehend Sitka and all the Russian settlements upon the islands. * * *

"If one or other of these channels cannot be obtained as the boundary, then the line must be drawn on the mainland to the north of the northernmost post of the North-West Company, from east to west, until it strikes the coast, and then may *descend* to whatever latitude may be necessary for taking in the island on which Sitka stands. * * * If your Excellency can obtain the strait which separates the islands from the mainland as the boundary, the prolongation of the line drawn through that strait would strike the mainland near Mount Elias, the lowest point of unquestioned Russian discovery. But if that were too much to insist upon, the 135th degree of longitude, as suggested by your Excellency, northward from the head of Lynn's Harbour might suffice. It would, however, in that case be expedient to assign, with respect to the mainland *southward* of that point, a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward."

There is some mistake about that meridian line as far as these maps are concerned (here is that meridian shown on the Faden map), but practically it is from the head of the Lynn Canal. It would, however, in that case be expedient to assign with respect to the mainland southward of that point—I ask your attention to this—a limit of say 50 or 100 miles from the coast beyond which the Russian post should not be extended to the eastward. Do you notice that he does take now by this line a portion of the Lynn Channel and he makes that neutral territory—that is, I mean it belongs to both. But now when you get up here [indicating] and take this line to the southward and give to

Russia from 50 to 100 miles, you go round all these inlets and 383 bays every one of them. It would not go round Lynn Canal

because you start the line up there, but the line to the southward would run round these inlets and bays all round down to the 56th parallel. Sir Charles Bagot replied on the 17th March, 1824, pp. 154 and 155, that he was unable to get Russia to agree to Mr. Canning's line, and he then gives an account of his long negotiations with M. de Poletica, in which the propositions of England and of Russia were respectively as follows:—

He says that he stated to M. de Poletica what he regarded as the wishes and interests of Russia on the one hand, and the wishes and interests of England on the other, and he says that he then suggested to Russia, as the boundary, a line drawn through Chatham Straits (he comes back to that; that is he comes to it because he had been so instructed by Mr. George Canning) to the head of Lynn Canal, thence north-west to the 140th degree of longitude west of Greenwich, and and then along that degree of longitude to the Polar Sea.

Now, this line I agree did not give Russia anything down from the 140th degree of longitude to the 56th parallel. It ran up the Lynn Canal and then went up to the Frozen Sea, and instead of doing what Mr. George Canning had suggested should be done, to give Russia 50 or 100 miles down here, he did not even suggest that, but ran the line absolutely on to the Frozen Sea. Russia then suggested this proposition, on p. 158:—

"The 55th degree of north latitude as the line of demarcation between the respective possessions on the North-West Coast of America. As that parallel, however, cuts the northern extremity of Prince of Wales Island, leaving two

points of land outside the line, Russia suggested that the whole of Prince of Wales Island be given to Russia, and she then completed her line as follows."

"To complete the line of demarcation, and render it as distinct as possible, the Plenipotentiaries of Russia have expressed the desire to make it follow Portland Channel up to the mountains which border the coast.

"From this point, the boundary would ascend along those mountains, parallel to the sinuosities of the coast, as far as the 139th degree of longitude, meridian of London, the line of which degree, prolonged northward, would form the ulterior limit between the Russian and English possessions to the north as well as to the east.

"Bagot replied, p. 159, that that line of demarcation would deprive His Britannic Majesty of sovereignty over the inlets and small bays lying between latitudes 56 degrees and 54 degrees 45 minutes."

I am going to give the Court my own construction of that. I do not know whether I am right or not. My idea is this. Here is the 56th degree of latitude up at the head of Portland Canal. I think he was referring to 54 degrees 45 minutes down here [indicating on map], and he had the impression that there were inlets or bays along there that might connect with the Hudson Bay Company's property, and if the line ran up Portland Channel and along the mountains it would cut off the Hudson Bay Company from use of those bays and inlets. Of course, he was mistaken. There were no inlets and bays there to cut them off from. And Sir Charles Bagot then suggested that Great Britain would accept, as the line of demarcation between the two Powers, a line traced from the west towards the east, along the middle of the channel which separates Prince of Wales and Duke of York.

He wants to go up this passage here between the Prince of Wales Island. Here is the channel which separates the Prince of Wales from all these islands up here [indicating], and then he goes up and strikes the coast of the mainland there and—

"Thence extending in the same direction on the *mainland*, to a point 10 marine leagues from the coast."

384 Now there is not any question between us here as to what the coast is. We say the coast is wherever the water and the land meet—whether it means that the water has run up into the interior of the land, or is merely out here on the edge—but we say the coast includes both the interior and the exterior. But we are agreed on the point here [indicating] as to where the coast is. I have had it marked here by a red line. He runs his line 10 marine leagues into the interior to a point 10 marine leagues from the coast. The line would run from that point towards the north or the north-west up this way parallel with the sinuosities of the coast, and always at a distance of 10 marine leagues from the shore as far as the 140th degree of longitude, the prolongation of which it would then follow to the Polar Sea. In other words, as this red line shows here, he came up here 10 marine leagues, and then he ran round practically as our line runs to-day, and he came round the heads of all these bays and inlets, and included them all in the line that he offered to Russia.

I say he came round the heads of all these bays and inlets, and then to the coast, and that by the word "coast" there he meant the line where the water touches the land, because, and I think this is a demonstration of this, because he said in his proposition, as I have already read to you, this would give to Russia the exclusive jurisdiction over

all these waters—not a joint—the exclusive jurisdiction over all these waters. If you will take a divider, and measure the line up around the head of Lynn Canal, you will see it is much more than 10 leagues from what Great Britain now calls the general trend of the coast; 10 leagues only from the general trend of the coast would cut Lynn Canal in two. But Sir Charles expressly states that he intends to give to Russia by his line exclusive jurisdiction of the inland waters, and he could not have meant, therefore, to cut Lynn Canal in two. His line did, and must have, run around the head of the Canal.

The PRESIDENT. You mean, it gives “to you, Russia.” You said “to you, Great Britain.”

Mr. WATSON. Oh, yes. Your Lordship will notice I am trying to give to Great Britain everything that possibly can be disposed of in that way.

The PRESIDENT. I am afraid not.

Mr. WATSON. Absolutely that line must run around all the heads of all the bays and inlets.

Now, what is the significance of that? Why, it is this. Here you have Russia refusing a line which gave to her all of these bays and inlets north of the point where the line struck the mainland, and she objected to it. Why? Not because it was not wide enough. Why did she object to it? Because it did not go down and take in Portland Channel and run up to the 56th parallel, and give them all this peninsula down here in order to guard them as to the Prince of Wales Island—that is the only reason she objected to it. Therefore, now if the British line is correct, and if this Treaty means what Great Britain now says it does, you have the most astonishing revolution. I might almost term it a somersault on the part of Russia. Here was Great Britain offering to give her what she wanted; offering to run the line round the heads of these bays and inlets, except as to Portland Canal, and the offer refused by Russia, because it did not go far enough down to include Portland Canal, and yet you are asked to say now that Russia consented within a few months after this, absolutely consented to a line that would not only not run round all the heads of the bays and inlets, but would cut them all in two.

That would be a most astonishing result. Am I not entitled, Sir, to say that you cannot come to that conclusion unless there is something overpowering in this Case to compel you, because under this Treaty you are bound to take into consideration that pregnant fact in the negotiations; you are bound to do it, and if you find any question of doubt with reference to where this line would run under the exact wording given by the Treaty, then you must go to the circumstances which surrounded it; and you must take them up and

385 you will see that Russia stood here, stood and refused any concession as to these interior waters, absolutely refused this mainland line which would have given her all the heads of these bays and inlets, refused it because it did not go down to Portland Channel—absolutely refused it, and yet turned round and made a Treaty, and understood when she made that Treaty that she absolutely gave away what Great Britain was willing to grant her, and what she said was absolutely essential to her sovereignty and to the protection of the interests which she had granted to the Russian-American Company.

Sir EDWARD CARSON. My Lord, I think it is only fair to remind my friend who is speaking and to draw his attention to a fact so that he may not afterwards be surprised that the word "parages" is, I think, wrongly translated "waters;" it means "districts" or "areas;" it does not mean "waters" at all.

Mr. WATSON. I am very much obliged for that suggestion of the Solicitor-General; but I go back again and say, do you not see it adds to the strength of the argument that I have made?

Sir EDWARD CARSON. That is your interpretation.

Mr. WATSON. That here was a line running round the heads of these bays and inlets that Great Britain offered to Russia, and you say that she turned round afterwards, within a few months, and gave the whole thing away.

Mr WATSON. And now I come to the Treaty of 1825.

(Adjourned till to-morrow at 11 a. m.)

All the Members of the Tribunal were present.

Mr. WATSON. The Solicitor-General was kind enough to refer me yesterday to the paragraph of p. 159, Appendix, United States' Case, which I was discussing, as showing the exclusive jurisdiction that Sir Charles Bagot said his line would give to all these waters. The acoustics of this room are so imperfect that I really did not catch the word that he gave me, but, in looking at the French, I see that what the Solicitor-General called my attention to is that the French has the word "parages." The translation of that on p. 161 of the United States' Case is given as "waters," and I suppose the suggestion was that it was a free translation which was not justified by the use of the word. As I understand it, that word legitimately means the part of the sea near the coast, which is practically what I was contending for; but allow me to ask the Solicitor-General to turn to p. 163 of the United States' Case, and he will find how Sir Charles Bagot explained what the waters were that he was referring to, and now there is no doubt what the waters were which he was referring to. He did not use the word "parages," but he says:—

" * * * The southernmost establishment which she possesses on the islands, but also the possession of all the islands and waters in its vicinity. * * * "

So that those were the waters that were referred to by Sir Charles Bagot, and his line must be run round the heads of the bays and inlets, or else he could not have given to Russia the exclusive jurisdiction which it was his desire and intention in drawing that line to give.

I had reached yesterday the Treaty of 1825, and the growing length of our arguments leads me to say that I shall not discuss that Treaty except in connection with the particular questions which it is my duty to consider. The Treaty itself in general outline is that Articles I and II dispose of the 100-mile limit, and England thereby gained the chief thing for which she entered into those negotiations. Articles III and IV delimit the line, where it shall run and in what way, and Articles IV, V, VI, and VII are in reference to the relative rights of Russia and Great Britain on the North-West Coast and also on this *lisière*. Article VIII relates to the port at Novo-Archangelsk, to which Great Britain is to have access for ten years, and the other Articles of this Treaty are unimportant for the questions which we now have under consideration.

I have so far attempted to put your Honours in the position that the negotiators occupied, and to surround you with the facts and with the circumstances that surrounded them in 1823, 1824, and 1825; and I again ask you, as far as we can, sitting here in 1903, to go back with me to 1823, 1824, and 1825, and take up with Count Nesselrode and M. de Poletica, Sir Charles Bagot and Mr. George Can-

ning and Mr. Stratford Canning, the consideration of the Treaty, and what they meant by the language that they used, and what they were trying to accomplish by the drawing of the Treaty. Because so far as the discussion of the Treaty itself is concerned, and without reference to the acts subsequent to 1826, which I do think throw a flood of light on how this Treaty ought to be construed—but, so far as the Treaty itself is concerned, irrespective of the mode in which the Parties carried it out, you are to look at it as these gentlemen looked at it during the negotiations, and when it was signed in 1825; and you are to take the information which they had, you are to take the resources given to them, and you are from it all, looking through their eyes, looking at it with their information, to say what they thought at that time the Treaty meant. That is part of this argument.

I do insist, as I said before, on behalf of myself and my colleagues, that the acts subsequent to 1826 do throw a flood of light on the construction, and they do show the original understanding in an unmistakable manner. But I am considering this Treaty, as far as this part of the Argument is concerned, solely as these Parties must have considered it at the time of the negotiations and at the time it was executed, and I now arrive at the discussion of the questions in the case, which it is the duty of the Tribunal to answer.

The first question, as to what is intended as the point of commencement, is agreed upon. We both agree that Cape Muzon is the southernmost point of Prince of Wales Island from which the line is to begin, and therefore that needs no discussion. The second question relates to what channel is the Portland Channel. This question is for the consideration of my colleagues, and I do not take up any of the time of the Tribunal myself in discussing it. I then come to the third question, which is, what course should the line take from the point of commencement to the entrance of Portland Channel? The United States request the Tribunal, in answering that, to decide that the line from Cape Muzon should be drawn in an easterly direction until it intersects the centre of the Portland Channel, and its opening into Dixon's Entrance, or, as we subsequently explained, this is the easterly line along the parallel 54 degrees 40 minutes.

Now, what course should that line take under the words of the Treaty? Let me go to and take up the Treaty to see if I can persuade the Court that that line should take the parallel of 54 degrees 40 minutes and run along that parallel until it comes to the point where it reaches the line up the Portland Channel. The Treaty is, Article 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 degrees 40 minutes, north latitude, and between the 131st and 133rd degree 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.”

The Tribunal will notice that the starting point of the line is given, and the point which the line is to reach is given. The end of Prince of Wales Island is the starting point. The point which the line is

to reach is a point where the line was to ascend to the north along the channel called Portland Channel. Here you then have the call for the line and you have the indication as to where the line shall commence. Now, the translation of the words "à partir" by the word "commencing" may be a proper translation, because the word "commence" has also the idea of motion. If you commence at a point you also do something, yet still it does not seem to me it gives the full strength of the French. A more adequate translation would seem to me to be "to depart from." It is something you are going away from—"à partir;" you are leaving it. Now, if that is the correct translation, if that is the correct meaning of the phrase, the line shall depart from—where? It shall depart from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and it shall reach, as I have said, the point where it shall ascend to the north along the channel called Portland Channel.

Now, as a fact, the parallel of 54 degrees 40 minutes does not exactly give the southernmost point of the Prince of Wales Island, because, as has been described to you already, the Canadian survey made that point 54 degrees 39 minutes 48 seconds, and the United States made it 54 degrees 39 minutes 50 seconds; and therefore they both agree that the southernmost point of Prince of Wales Island, as a fact, is not in the parallel 54 degrees 40 minutes.

Now, secondly, the negotiators said in Article IV that the 388 island called Prince of Wales Island shall belong wholly to

Russia. If these gentlemen had no doubt about the latitude—this parallel—it would have been wholly unnecessary to put in the provision that the whole of Prince of Wales Island should belong to Russia; but, having a doubt in reference to this parallel, they put that in.

Now, next, the Treaty, you will notice, says that the point of departure—that is, the point where the line begins and from which it runs—lies in the parallel of 54 degrees 40 minutes, although the negotiators have doubts whether that was the southernmost end of the Prince of Wales Island, because they put in afterwards that all Prince of Wales Island shall belong to Russia.

Now, am I not fairly entitled to this argument, and there may be some persons who can answer it? I have not heard the answer to it yet, and I want to see if I can state it to the Court as it strikes me. You start here [indicating] at the point, the same point of commencement, on the latitude 54 degrees 40 minutes, and you go away from that, and you go away from it until you come to a point where you can turn northward to the Portland Channel. They then start on the latitude. Now, the Treaty does that. It starts you on the latitude 54 degrees 40 minutes, and if it starts you on that latitude 54 degrees 40 minutes, pray tell me what words in the Treaty are there to take you off it until you get to the point where the line shall ascend northerly along Portland Channel? Absolutely none.

Now, why did they put the words 54 degrees 40 minutes in this Treaty? The southernmost point of the Prince of Wales Island was a definite geographical fixed point which was more certain than any degree of latitude that could be given. They did not need to identify that by 54 degrees 40 minutes, and they did not mean that 54 degrees 40 minutes should absolutely identify it, because they said

afterwards whether it was on 54 degrees 40 minutes or not Russia took the whole of Prince of Wales Island; therefore, when they put 54 degrees 40 minutes into this Treaty they must have had some other object than identifying the southernmost point of Prince of Wales Island, because that was a definite fixed point which required no further identification whatever.

So far as the meridians are concerned where the Treaty says the point lies between meridians 131 and 133, it is perfectly obvious why they put that in. Here were two points, and they did not know which was the southernmost. They were not certain which was the southernmost, Muzon or Chacon. These points did not lie within the same meridian, and therefore they said the points lying between 131 and 133, and that is a perfect explanation as to why they inserted that. If it was worth while to have Vancouver's map and turn to his large chart, you would find that he has three points at the southernmost end of Prince of Wales Island, uncertain which one of the three would be the southernmost point. So that now you have a full explanation of the meridians, but you have not a full explanation of why they put in 54 degrees 40 minutes, because it is certain that they did not put it in to be an absolute limit to the extent to which they were to own Prince of Wales Island: and they did not put it in because they were absolutely certain that they could identify the southernmost point; they said they were doubtful about it by the provision in the IVth Article of the Treaty giving the whole of Prince of Wales Island to Russia.

Am I not fairly entitled, then, to apply the rule that a construction which disregards any word or phrase is faulty? As construed by Great Britain, this phrase as to the latitude 54 degrees 40 minutes is rendered absolutely meaningless. The southernmost point does not lie there, and, as I have said, the negotiators showed that they were uncertain as to whether it did, and Great Britain now throws out of consideration, in the determination of this line, this provision in reference to the fact that the line starts on the parallel of latitude 54 degrees 40 minutes, and renders it absolutely meaningless. Now, is that in accordance with the given rules of construction of an Agreement or a Treaty?

Mr. AYLESWORTH. I do not understand your argument exactly, Mr. Watson. Let me know. Is it your contention that the starting point is in 54 degrees 40 minutes?

Mr. WATSON. No, Sir.

389 Mr. AYLESWORTH. That it is Cape Muzon?

Mr. WATSON. No; the starting point is the end of Prince of Wales Island.

Mr. AYLESWORTH. That is about 300 or 400 yards south.

Mr. WATSON. That is about 300 or 400 yards south—yes, Sir; but in connection with that, they put in that it was at the point of latitude 54 degrees 40 minutes, and they connect this point of latitude with this line.

Mr. AYLESWORTH. When the line leaves the point of departure, how does it get to 54 degrees 40 minutes?

Mr. WATSON. It starts from the southernmost end of the Prince of Wales Island. Here it is [indicating]. It goes right up this island and takes this 54 degrees 40 minutes—goes across.

Mr. AYLESWORTH. It goes to 54 degrees 40 minutes by the most direct route?

Mr. WATSON. By the most direct route, and goes right along 54 degrees 40 minutes till it comes to the point opposite Portland Channel.

Mr. AYLESWORTH. Does that carry the argument any further? Once you come opposite the entrance to Portland Channel, at 54 degrees 40 minutes, you depart from 54 degrees 40 minutes, and ascend to the northward.

Mr. WATSON. Oh yes, Sir, because the Treaty says you must; because the words of the Treaty are "remontera"—you remount, you take a new direction, you change your horse, and go ahead in a different way; and then you ascend northerly the Portland Channel, but until you get to there—and here is the point of this argument which I do want to press upon the Court—until you get there you are on your latitude of 54 degrees 40 minutes. The Treaty says that your point of departure is on that. Now, remember that. They say that, so far as leaving Prince of Wales Island is concerned—not so far as the southernmost end is concerned, but so far as leaving Prince of Wales Island is concerned—your point of departure is on 54 degrees 40 minutes.

Now, if you once start on 54 degrees 40 minutes you do not leave it unless there is some due reason shown in the Treaty for leaving it.

Mr. AYLESWORTH. You do not leave it until you come to Portland Channel.

Mr. WATSON. You do not leave it until you come to the point where you go up the Portland Channel; and, now, may I, with the permission of your Lordship, say that that point of departure of the line the Treaty says is latitude 54 degrees 40 minutes, that is where it leaves Prince of Wales Island. I am not talking now about the southernmost end of it, but where it leaves the Prince of Wales Island the point of departure is 54 degrees 40 minutes; the southernmost end of Prince of Wales Island goes to Russia, whatever its latitude is. Well, I submit I am entitled to press this, because it is a construction in accordance with cardinal rules. But when you leave Prince of Wales Island you have absolutely no direction whatever as to how you are to go, unless you go on latitude 54 degrees 40 minutes, which is laid down in the Treaty, and if you start on that latitude 54 degrees 40 minutes, so far as the question of departing from the Prince of Wales Island is concerned, you get on that parallel of latitude, and you do not leave it until you come to the point where
390 you remount to the north along Portland Channel. And now let me call the attention of the Tribunal to a most significant fact. Now, how was it that 54 degrees 40 minutes was put into this Treaty—who put it in there and under what circumstances was it introduced into the Treaty? Now, would you please turn to p. 173 in the United States' Appendix, under date the 5th April, 1824? I read from the letter of Count Nesselrode to Count Lieven:—

"In order not to cut Prince of Wales Island, which, according to this arrangement, would remain to Russia, we proposed to carry the southern frontier of our domains to latitude 54 degrees 40 minutes, and to make it abut upon the continent at the Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island, and which has its origin inland between 55 degrees and 56 degrees of latitude."

You will find that further down in this letter, and in different portions of it, he again asserts that they had carried their frontier down to 54 degrees 40 minutes. You will remember that Great Britain claimed in the opening that this letter was written after the American Treaty was signed, and really on the same day that it was signed, and therefore Count Nesselrode knew that the southern frontier for Russia with the United States was 54 degrees 40 minutes. Now, remember that this letter was sent to Count Lieven, who gave it to Mr. Canning, and Mr. Canning had this letter prior to the time that he drew his first draft in reference to this Treaty, and I beg you now to remember that up till this time no one suggested, and no one of the proposals mentioned, the latitude of 54 degrees 40 minutes: they all went to the departure from the southernmost end of Prince of Wales Island.

Now, I turn in the next place to the draft that Mr. Canning sent to Sir Charles Bagot, which was the first draft of the Treaty which he drew, and you will find it on p. 183 of the American Appendix:—

“Commencing from the two points—

You will notice the position of the two points of Prince of Wales Island as emphasizing why they used the meridians:—

“Commencing from the two points of the island called ‘Prince of Wales Island,’ which form the southern extremity thereof, which points lie in the parallel of 54 degrees 40 minutes.”

That was the first time that latitude was introduced into the Treaty. Why did he introduce it? The Treaty with America which was just made fixed the southern boundary of Russia also at 54 degrees 40 minutes. As soon as Mr. Canning’s attention was drawn to that he introduced 54 degrees 40 minutes into the description of this southern line; and I would ask did not he do that in order to make the southern frontier of Russia, as far as England was concerned, the same as the southern frontier of Russia with regard to the United States? What possible explanation can you give for this fact that this 54 degrees 40 minutes never appeared in this Treaty at all—never was referred to in any of the negotiations until after the line between the United States and Russia had been settled at 54 degrees 40 minutes.

Then when Count Nesselrode calls the attention of England to the fact that the southern frontier with the United States had been settled at 54 degrees 40 minutes, Mr. Canning at once put the line at 54 degrees 40 minutes and put this 54 degrees 40 minutes into the Treaty. Is not that a most persuasive reason—a most persuasive thing to show that the reason of it was to make the two frontiers coincide? Else, what reason can there be why he introduced it into the Treaty after this information had been given to him. Look, if you please, why should not he have done so? If the claim that our friends make to-day is that this line from the southernmost end of the Prince of Wales Island must run from 54 degrees 39 minutes 48 seconds or 54 degrees 39 minutes 50 seconds, you have a line, then, as between Great Britain and Russia made in 1825 which overlaps the line as between Russia and the United States. Why should that be? Why should they do such a thing as that? Why would not they

make the frontier of Russia with Great Britain exactly the same as they did that with the United States, but especially—
 391 why would not they do it when it did not make a single bit of difference to Great Britain—not one particle?

Now, remember, I am not discussing the question of how far this parallel of 54 degrees 40 minutes carries you. It carries you to the point where you do go up the channel and you ascend it northerly. I am pressing the point that these negotiators agreed to make the southern frontier of Russia and England coterminous with the southern frontier of Russia and the United States, and you cannot give any other explanation why this 54 degrees 40 minutes was put into this Treaty, and it makes a consistent construction, and at the risk of repetition I must deal with this further. Now, please do not misunderstand me, the beginning of this line—the absolute beginning of the line—would carry it down, of course, to the end of Prince of Wales Island; but when it leaves the Prince of Wales Island, and goes on its march towards the point where it goes up, it is to be upon latitude 54 degrees 40 minutes. Unless you do that, you must throw out that clause as to 54 degrees 40 minutes, and you must entirely disregard that portion of the negotiations which says that that must have been the purpose of Mr. Canning in putting it in there, and you must overlook the fact that it was Great Britain that put it in there, and not Russia, and that after Great Britain had introduced it, it never was taken out; but you will also notice this line 54 degrees 40 minutes can do no possible damage to Great Britain.

If our contention is sustained by the Tribunal that the channel that we go up is this Portland Channel, and the line was to start from the southernmost end of the Prince of Wales Island at 54 degrees 39 minutes 48 seconds, that just gives to Russia so much more territory; it carries the southern boundary down just so much further. And another suggestion—I know that Count Nesselrode did say in that letter that he proposed to make that line abut upon the continent, and I agree that, if it should abut upon the continent, it would come in contact with that part of the land before touching the continent; but Mr. Canning, before the line reached the continent, ran it up Portland Channel. The line did not go north until it came to the passage called Portland Channel, and then it did.

Mr. TURNER. If the line changes its course to reach the entrance of the Portland Canal, and that canal should prove to be the channel claimed by Great Britain, what difference does it make whether it goes there by 54 degrees 40 minutes or not?

Mr. WATSON. Not a bit. You do notice—and I think I ought to be entitled to the credit for this—I am trying to give the construction of this Treaty which it ought to bear irrespective of how it hurts us. I could claim, if I wanted to take the benefit for the United States that by the line running from the southernmost point of Prince of Wales Island we would get about 1,200 feet of territory more than we should get with the line along 54 degrees 40 minutes, but I hope your Lordship will give me due credit for giving up that portion of it in order to carry into effect the entire words of this Treaty, and I am anxious that your Lordship should not overlook the cardinal rule that if you do not make this construction of 54 degrees 40 minutes that I claim, you will entirely disregard that phrase.

The PRESIDENT. I hope you will be entitled to credit for greater things than that, Mr. Watson.

Mr. WATSON. Your Lordship is very kind, but if you will only give me credit for that I do not claim any more.

Then I leave this 54 degrees 40 minutes with this further suggestion—What is the alternative to this line? Well, the alternative to this line, as claimed by Great Britain, is this—I have such a barricade made here it is extremely difficult to get at the map.

The PRESIDENT. We shall follow it, Mr. Watson.

392 Mr. WATSON. Your Honours won't mind if I make myself invisible for about two minutes while I point out exactly the line that this goes along. You will notice that what Great Britain does is this, she takes a line and she runs it 85 degrees eastward.

Sir EDWARD CARSON. My Lord, I would like to have this first map put aside.

The PRESIDENT. You can see it, Mr. Solicitor, if you will come and look.

Sir EDWARD CARSON. I will come round.

The PRESIDENT. Now, Mr. Watson, you can go on please; the Solicitor-General will follow.

Sir EDWARD CARSON. I will come round.

Mr. WATSON. They have taken the line from the southernmost point of Prince of Wales Island, and they have run it 85 degrees east up here [indicating] until they come to what we call Pearse Channel. Can they tell me where they find in the Treaty anything about 85 degrees east? They entirely disregard 54 degrees 40 minutes, and I would like to find in the Treaty where they discover the direction 85 degrees east? And then by doing that, look at the position it puts them in.

Here [indicating] is Russia's southernmost frontier, as far as the United States is concerned; here is Russia's southern frontier as far as Great Britain is concerned. Who owns the intermediate water here? The parties to this Treaty wanted to fix a certain definite line, and yet the construction of Great Britain fixes a line at this point 85 degrees east, which leaves a parcel of water shown on our maps the property of no one. Looking forward from 1825, it might have been the cause of serious disputes. The line along the parallel 54 degrees 40 minutes, on the contrary, fixed Russia's southern boundary, as between Great Britain and Russia, exactly where Russia's southern boundary was as between her and the United States.

Now I come to Question No. 4:

"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?"

The United States request the Tribunal to answer and decide that the line should be drawn from the head of Portland Channel and north-eastwardly along the same course, on which said line touches the mainland at the head of Portland Channel until it intersects the 56th parallel of north latitude.

Now, are we right about that? Now, let me go back to the Treaty itself, and let me read over again that portion of it:—

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north lati-

tude and between the 131st and 133rd degree 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 situated parallel to the coast."

What was Article III of the Treaty for, unless to fix the line of demarcation? Absolutely nothing. It starts:—

"The line of demarcation between the possessions shall be drawn——"

393 It shall start from this Prince of Wales Island, and go, I say, on parallel 54 degrees 40 minutes, and when it gets to the point opposite the Portland Channel it shall ascend to the north. What shall ascend? The channel is not ascending; it is the line that ascends to the north, and it ascends to the north along what? Along the passage. What is the passage? It is the passage that runs up to the 56th degree. And yet Great Britain argues that because the Treaty says the line shall ascend the passage called Portland Channel, that therefore and because the passage which includes land as well as water is called Portland Channel the passage must stop when the water ceases, and you cannot, therefore, get to the 56th degree, notwithstanding the call in the Treaty absolutely for the 56th degree. Why, surely, that cannot be correct?

On this part of the argument it makes no difference where you reach the channel, but when you reach it you ascend, you go up, and you go up in certain directions northerly. You go up, where? Where is the call? The call is the 56th degree; you have to go up there; the line calls for that. Is it not absolutely true in the construction of all deeds and contracts as to the description of boundaries that the call controls? If you have a call for a certain boundary everything that is subsidiary to that must yield to the call. Your line must go to the call, and to attempt to control this line and make it stop at the end of the water called Portland Channel, merely because they call the passage Portland Channel, is to me a most unsound—I have great respect for the ingenuity which can get up such an argument—a most improper construction of this part of the Treaty. I do not stop to elaborate on that. As to the discussion as to what "elle" means, whether it means the mainland or whether it means the channel, or what it means, such refinements as that will not help this Tribunal in getting at what these negotiators meant. You do not suppose that Count Nesselrode and Mr. George Canning and these gentlemen assembled and discussed for two or three days with reference to what "it" would mean.

The whole of the IIIrd Article—and that is the governing intent of it—the whole of the IIIrd Article is a description of the line, and it is a line which must go up to the 56th parallel. And notice now, if you please, how significant the introduction of the word "passage" is there. In the earlier draft of the Treaty, really I should say, perhaps, in the earlier suggestions, if you go the discussion between Sir Charles Bagot and M. de Poletica and Count Nesselrode, you find that the Russians evidently at first thought that the Portland Channel did go to the 56th degree, and they proposed to run the line up Portland Channel. Then Mr. Canning's instructions came along, and he evidently had noticed on Faden's map, because that certainly is the map that Mr. Canning was relying upon, that

there was at least 12 or 15 miles between the head of Portland Channel and the 56th degree, and as soon as that was recognized, what was done?

Why, the word "passage" was put into the Treaty. And why did they put it there? Simply to make it absolutely certain that if the channel stopped 10 or 15 miles short of the 56th degree the passage would carry them up to the 56th degree, and the line being co-terminous with the passage would go to the call, the 56th degree. I submit that while it is true that as to every contract, or will, or paper, drawn by human being you may by ingenuity and skill evolve constructions which are startling in their consequences and support them by the most ingenious reasonings, yet however ingenious such reasoning may be, I come back to the simple words of this Treaty, and I say that all the ingenuity and skill that may be exercised upon this part of the Treaty cannot take from me the words of the Treaty itself, and the words of the Treaty are that the said line shall ascend to the north along the channel—more properly passage—along the passage called Portland Channel as far as the point of the continent where it strikes the 56th degree, and there you have the call, plain, simple, and direct.

Well, is it not true that Mr. Canning understood this line was to go to this 56th degree in accordance with the suggestions that I have made? Is not that certain? I turn to Mr. George Canning's final instructions to Mr. Stratford Canning, to be found at pp. 115 and 116 of the Appendix to the British Case, and I read that Mr. Canning said that—

394 "The line of frontier between the British and Russian possessions shall ascend northerly (the whole of Prince of Wales Island belonging to Russia) along the channel called 'Portland Channel' till it strikes the coast of the continent in the 56th degree of north latitude. From the point where the line of demarcation strikes this degree it shall be carried along the summit of the mountains."

There is the unequivocally-expressed assertion of Mr. George Canning that it was the line that was to run up to the 56th degree; from the point where the line struck the 56th degree it was to go to the mountain; and then you also find in Mr. Stratford Canning's draft—

Sir L. JETTÉ. Excuse me, the wording of the Treaty is different—the wording of the Article in the Treaty.

Mr. WATSON. Of 1825?

Sir L. JETTÉ. Yes.

Mr. WATSON. Oh yes, I agree to that—I am just coming up to it. My argument is this: Suppose you had any doubt about what the words of the Treaty of 1825, as applied to the location, meant, what would you do? Should you not, under the provisions of Article III of the Treaty of 1903, which delegates to you your power, go to the matters preliminary to the Treaty and see if those will aid you? You will there find this plain, precise statement from Mr. George Canning that I have read, that the line shall go up to the 56th parallel.

In addition, you will find, p. 124 of the British Case, that—

"The line was to go along the passage called Portland Channel *until it touches the coast of the mainland at the 56th degree of north latitude.*"

Now, there is no doubt about it that Mr. Stratford Canning and Mr. George Canning intended to carry that line right to the 56th degree, and I think I must have the assent of each member of the Tribunal to that proposition.

Now what did M. Matusevich do? M. Matusevich struck out the words "until it touches the coast of the mainland at the 56th degree of north latitude." Why? Because they were wholly unnecessary and because the Treaty as subsequently made called still for the 56th degree, and carried the line up the channel until it ran to the 56th degree.

Now let me call attention to what is to me a most convincing and persuasive reason why this line was to go up to the 56th degree. No doubt Mr. George Canning intended it should go there; there cannot be any dissent from that. Undoubtedly Mr. Canning meant that it should go there; there cannot be any dissent from that. Do you remember that after the Treaty was signed, and I shall have to read it to you afterwards, and I do not stop to read it now, Mr. Stratford Canning wrote home to Mr. George Canning that—

"We have fixed this line of demarcation in exact conformity with the instructions given by you."

"In exact conformity"—I will read the exact language hereafter in another connection—"In exact conformity with the instructions given by you." I do not want even to change a word of that, because it would only make it weaker instead of stronger, and so I will read that letter even if I have to read it again. I turn to p. 223 of the United States' Appendix the letter from Mr. Stratford Canning to Mr. George Canning under date the 17th February, 1825:—

395 "By the messenger Latchford I have the honour to send you the accompanying Convention between His Majesty and the Emperor of Russia respecting the Pacific Ocean and North-West Coast of America, which, according to your instructions, I concluded and signed last night with the Russian Plenipotentiaries.

"The alterations which, at their instance, I have admitted into the 'projet' such as I presented it to them at first, will be found, I conceive, to be in strict conformity with the spirit and substance of His Majesty's commands. The order of the two main subjects of our negotiations, as stated in the preamble of the Convention, is preserved in the articles of that instrument. The line of demarcation along the strip of land on the North-West Coast of America assigned to Russia"—this takes in the whole of it—"is laid down in the Convention agreeably to your directions."

It cannot be that Mr. Stratford Canning thought Mr. George Canning's directions as to where this line should run to the 56th degree had been changed by this Treaty of 1825? If he wrote him that "the Treaty of 1825 carries out in the strictest manner the instructions you have given me," can it be that he thought this Treaty of 1825, instead of carrying this line up to the 56th parallel only carried it up to the head of Portland Canal, and changed the entire outline of the boundary as between Russia and Great Britain which Russia had insisted upon from the beginning? Why, it is inconceivable that Mr. Stratford Canning should so have thought. And then Mr. George Canning replies to Mr. Stratford Canning, and he says that "His Majesty the King is delighted with the manner in which you have carried out the instructions given to you." How can there be any reasonable doubt at all as to where this line was to run?

Will the Tribunal now allow me to call attention to another question, and that is the extraordinary features connected with the proposed British line? Where does that line strike the 56th parallel? The line begins, the Treaty of 1825 says, at the southernmost point of the Prince of Wales Island, and then runs to a point where it changes its direction and ascends northerly along the passage called Portland Channel, until it strikes the 56th parallel some miles from the head of Portland Channel.

The British line begins at the head of Portland Channel, and then runs (47) forty-seven miles to where it strikes the 56th parallel at a point opposite the Revillagigedo Islands. Instead of ascending to the 56th parallel, as the words of the Treaty say it should, it descends. Instead of running northerly, as the Treaty says it should, it runs almost due west. Instead of taking the shortest distance from the head of Portland Channel to the 56th parallel, which is about 12 miles, it runs westwardly 47 miles to reach it. The Treaty says nothing about the line running westwardly, but says it should run northerly.

The Treaty says:—

“Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133rd degree 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.”

The British Argument assumes that the mountains along the crest of which the line is to run must connect in some way with the head of Portland Canal, and also with the 56th parallel, but the Treaty says that after the line shall have reached the 56th parallel it shall follow the crest of the mountains situate parallel to the coast. There is nothing in the Treaty to show that the mountains had anything to do with the head of Portland Canal, or that it was, so far as the Treaty was concerned, absolutely necessary that the mountains should be coterminous with the 56th parallel.

396 Permit me here to call your attention to Faden's Map, to which presently I will more at length refer. Looking at that map, you will see that if the line of demarcation be run from the head of Portland Canal, taking the same direction it had in ascending it, it will strike the mountain range on the 56th parallel at the distance of about 10 or 12 miles from Portland Canal.

There was a range on the maps. And remember now you are back in 1825. You are not drawing this Treaty with all the information that you have now as to this locality. You are back in 1825; you are believing there was a mountain range there, and here you have right on the Faden map, which Mr. Canning regarded as the most reliable, this mountain range cutting the 56th parallel and directly at a point where the line projected from the head of Portland Canal would touch it, and exactly in accordance with the words of the Treaty that the line shall ascend to the parallel, and it shall then seek the mountains. That is exactly in accordance with it, and instead of starting the line to the mountains in accordance with that, why, the British line starts from the head of Portland Channel, and instead of going north as I have said, runs west.

I submit that, whatever may be said, and however ingenious the arguments may be in reference to this, it is simply impossible, after a close examination of the correspondence and of the words of this Treaty, to come to any other conclusion than that this line ran all the way to the 56th parallel, and ran there in the direction northerly from the head of Portland Channel.

And now I come to the fifth, sixth, and seventh questions in this Case, and I intend, with the permission of the Tribunal, to discuss those all together instead of separately. I shall refer afterwards to the seventh question more particularly, but I want to take up now and discuss these three questions together and see if I cannot persuade the Court, from the Treaty and from the surrounding circumstances, that in 1825 these negotiators firmly believed in a chain of mountains, shown on Faden's map, shown on Vancouver's map, shown on the Russian map, that ran from the 56th parallel up to the meridian of 141, and that this was the chain to which they referred in this Treaty.

The PRESIDENT. Mr. Watson, I am particularly anxious, I am sure you will understand, to follow you very closely here. Would it be convenient to you to state what your proposition is that you are going to contend for?

MR. WATSON. Yes, my Lord, I intend to state it, and to state the steps of it, if your Lordship would just allow me one word to put it into a shape in which I think I can make it a little more intelligible than I otherwise might. I have difficulty in expressing myself with precision unless I do it in the manner in which I have thought it out myself.

The PRESIDENT. By all means, Mr. Watson; that is what I wish. I only asked the question, but you can answer it afterwards if you have no objection.

MR. WATSON. I am very much obliged to your Lordship for calling my attention to it. I think that all the questions involved here may be included in the answer to the fifth question, and I therefore go now to find out exactly what this fifth question is, and I find that the fifth question is this:—

“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 bay, 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?”

397 Now, with all due submission the verbiage of that proposition, it just means simply one thing: was it the intention that the eastern line of demarcation should run around the heads of all the bays and inlets?

The PRESIDENT. I quite agree.

MR. WATSON. That is all there is in that Question.

The PRESIDENT. I quite agree.

MR. WATSON. Let me state, and let me put in as positive a way as I can, exactly what the United States' contention is, and I should like to do it now, so that it will contrast from the start and make evident to the Tribunal the wide difference between the position of the United States on this question and the position of Great Britain.

They are as far asunder as the poles. The United States contend that it was the meaning and intention of Great Britain and Russia, under this Treaty of 1825, to carry the line of demarcation up to the 56th parallel from the head of the Portland Canal, and, thence, that it should follow the crest of the mountains parallel to the coast, as shown on Faden's, Vancouver's, and the Russian maps—all of which were before the negotiators—that it should go up to and get on those mountains, and follow those mountains from the 56th parallel to the 141st meridian.

The mountains referred to were a continuous chain or ridge or range running from the 56th parallel up to the 141st meridian. It might be that, in that distance of some 500 miles, as in all mountain ranges and mountain chains there were passes. It might be that rivers would intersect them, but whatever the facts were as to that as shown on these maps, it was the intention to go to a certain definite fixed chain of mountains, which was the outline, along the course of which this line was to be drawn, and when it got there—and I surely may press this upon the Court—when it got there, it got into a certain definite fixed location, about which there could be no controversy or dispute whatever. Now, on the contrary, what is the position of Great Britain? Let me read to you what their position is. Great Britain's Printed Argument, p. 42, says that:—

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

Now, let me read another extract from their Argument, and I read now from p. 76: “As has been shown in the British Case and Counter-Case and earlier in this Argument, the Treaty of 1892 is in itself a formal acknowledgment by both Powers that the question of the location of the boundary as it depended upon the topographical facts and data, was still open, and this state of things has been continued by the action of the two Governments.”

And, again, on p. 43, with a side line on the page that the boundary was left to be determined, and has never been determined; the British Argument is that it cannot be denied that under the Treaty the boundary was left to be ascertained in the future.

Let me see if I can state that with the strength with which it appeals to me. Great Britain now says that instead of these negotiators after three years of correspondence and interviews fixing a certain definite eastern line, which was easily understood and clearly defined as they supposed, upon the ground, it was the purpose and the intent of Great Britain and Russia to leave that line wholly unascertained. They worked three years for nothing, and when they got through with it they left the eastern boundary line, the important thing for which Russia was negotiating, and, indeed, the important thing which England wanted, wholly undefined. There is not
398 an indication, they say, in the Treaty as to where that line should run, except that it was to be on mountains parallel to the coast.

Now, think of that, that these people all through this correspondence, and all through these negotiations, came deliberately up to the

end of the negotiations, after all the discussions and their difficulties, came deliberately up and agreed upon a Treaty which did not pretend to make the eastern boundary line, and left that wholly open to be determined by subsequent events. Does that appeal to the reason?

The PRESIDENT. I do not understand that as the British Argument, Mr. Watson.

Mr. WATSON. I have read it from the Argument.

The PRESIDENT. Undefined on the ground is what they meant, not undefined by agreement.

Mr. WATSON. Will your Lordship pardon me for the suggestion. I will read you what they say, and I read now from the British Argument at p. 42, and I ask your Lordship's attention to this. They say:—

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

Absolutely that the data upon which it depended had not been agreed upon. Then they say again, at p. 43 of the British Argument, that the boundary was left to be determined, and never has been determined. And they say that it cannot be denied that under the Treaty the boundary was to be ascertained in the future.

Sir EDWARD CARSON. Well, read the next sentence.

The PRESIDENT. I beg your pardon, Mr. Watson, for interrupting you, I did not so read it; that is all. It does not make much difference, but I did not so read it.

Mr. WATSON. Well, I really do not want to conduct the argument on a misapprehension on my part as to Great Britain's position, but I certainly understood the Attorney-General to say the same thing. Would your Lordship deem it a liberty if I were to ask you what you understood the suggestion of the British Case to be as to this line?

The PRESIDENT. That it could not be ascertained, or the data for laying it out marked until the mountains were surveyed. That is what I understood the Argument to be. I dare say I may be wrong, but that is how I understood it.

Mr. WATSON. Your Lordship will notice the language that I have referred to.

399 The PRESIDENT. I dare say it is open to another construction, but I did not so understand it.

Mr. WATSON. It is certainly open to the construction which I have given to it; and, in addition to that, would your Lordship allow me to remark whether the whole course of the British Argument is not directly in accordance with what I claim. Their position, I think, is that the only indication whatever as to how this line is to be drawn is that it is to be drawn along the mountains that are parallel to the coast. They say that there was not a single thing in the Treaty now except that—that it was to be drawn along the mountains that are parallel to the coast. That was the only indication; and then they say that you cannot draw the line at all until you get a datum line as to the general trend of the coast, and then you select your mountains in accordance with that.

What did that mean? Why, certainly it meant that it was left entirely open for the future to select mountains along which the line

should be drawn. I think it is perfectly apparent from the British Argument that they do not say that the specific mountains are named in the Treaty. We say they are; they say they are not. They say that the negotiators did not refer to any specific mountains; we say they did. They say that the question was left open to be determined. We say no; the range of mountains was fixed and determined at the time the Treaty was made, and that it was the range that was on the Faden map, on the Russian map, and on the Vancouver map. Take it as you may, and qualify the position of Great Britain as you may, is it not true that Great Britain's position is that this line was doubtful and uncertain, to be fixed only as the future would determine in the topographical survey and exploration of the country, and then it was to be fixed along certain mountains that were parallel to a datum line along the coast which was to be drawn. That is their contention. Now, taking this entire line rising from the 56th parallel up to the 141st meridian, you have, I do not know how many hundreds of mountains, but certainly hundreds and hundreds of mountain peaks in the neighbourhood.

Now, you are to select, according to the British position, from those different peaks some forty, fifty, sixty, or seventy peaks along which the line is to be drawn at points where there are four or five or six different peaks where you might select any one of the four or five or six—you are to select one of them only, and you might as well select any other of the six as the one that you do select, and that, of course, can only be done by the consent of the Parties. Here you have, if that is correct, left open to the future the determination of this line of boundary. Well, let me call the attention of the Tribunal to the fact that if there was any one thing which the negotiators were certain about, absolutely determined they would fix in the making of this Treaty, it was that the line should be certain and beyond any question or dispute. Let me turn to and call the attention of the Tribunal to a certain portion of the references which I think bear upon this question. In Russia's first draft of the Treaty (p. 158 of the Appendix to the American Case) she suggested the 55th degree of north latitude as the line of demarcation beginning at the Prince of Wales Island. It is there stated that to complete the line of demarcation and render it as definite as possible, the Plenipotentiaries of Russia have expressed the desire for a line which should follow the mountains at a very short distance from the coast.

You will notice the expression is "render it as distinct as possible." Russia, in her second proposal, prefaced her suggested line by saying that it would have been also to their mutual advantage to fix these limits according to natural, 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 56th degree of north latitude, and to the east the chain of mountains which follow at a very short distance the sinuosities of the coast."

And you will notice there the desire of Russia to have a distinct and certain frontier. Count Nesselrode, in his letter to Admiral Mordvinof, on p. 167, says:—

"As I have said above, for the peaceful existence of our Colonies more than all, is it necessary to determine with accuracy the frontier?"

And he again insisted, in the same letter, that when there are no disputes respecting the boundaries, the neighbourhood of civilised people, far from being harmful, is advantageous. Count Lieven, in his letter to Count Nesselrode, at p. 178, respecting Mr. Canning's acceptance of the terms of the Russian proposition, said that England had made certain suggestions because "it wishes the line claimed by us to be described with more exactness," and Mr. George Canning, in his letter to Count Lieven, at p. 180, giving the reason why he made suggestions of changes in the line proposed, stated that:—

"The qualifications will consist chiefly in a more definite description of the limit to which the strip of land required by Russia on the continent is to be restricted."

Count Lieven, in his letter to Count Nesselrode, said that Mr. Canning's line ran along the base of the mountains and followed the sinuities of the coast, and that he thought the crest of the mountains should be suggested as the line of demarcation, because—

"The word 'base,' from the vague meaning attached to it, and the greater or less extension which may be given to it, did not appear to me to be adapted to protecting the delimitation in question from all controversy."

They were, then, to give this delimitation beyond all controversy, and Count Lieven, in his Memorandum or Letter to Mr. George Canning, observed on p. 189:—

"In the case now under consideration, the word 'base,' because of its indefinite meaning and the greater or less expansion that can be given to it, seems hardly of a nature to fix the boundary line beyond all further question."

And in this same letter he speaks of the mountains chosen for the boundary line—not mountains to be chosen afterwards, but the mountains already chosen for the boundary line, and certainly I am correct in saying that the British position absolutely requires the admission of the fact that there were no specific mountains chosen at the time. He speaks of the mountains that were chosen, and he also refers to a chain of mountains as fixing the boundary line. And then, on p. 200, Count Nesselrode said to Count Lieven, speaking of Mr. Canning's request for a more exact description of the strip which they were to possess on the American continent, that what they desired was a certain and distinct frontier.

On p. 208 appears a letter from Mr. George Canning to Mr. Stratford Canning, containing his last instructions as well as his second draft of the Treaty, and among other things he says in this letter that England cannot agree to Russia's suggestion of the 10 marine leagues line, and his reason for this objection is:—

"It is quite obvious that the boundary of mountains, where they exist, is the most natural and effective boundary. The mountains, as I have said, are a more eligible boundary than any imaginary line of demarcation."

Count Lieven, under his instruction from Count Nesselrode, had criticised to Mr. George Canning Great Britain's position in insisting on limiting the width of the *lisière* to 10 marine leagues. He thought that the width ought to have been left dependent on where the
401 range of mountains actually was, and after this interview Count Lieven wrote to Count Nesselrode, at p. 230, that Mr.

Canning says that he introduced the limitation of the 10 marine leagues—

“* * * solely from a sincere desire to prevent the recurrence of any disagreeable discussion in future, and not from any intention of acquiring an increase of territory, or of limiting the extension of the Russian possessions.”

And Mr. Canning illustrated the difficulty with the United States, and then said to Count Lieven (p. 231) that—

“* * * the English Government, in now insisting upon the fixing of a less vague boundary, thought that it gave a proof of the value which it attaches to the prevention of even the possibility of a discussion as to the tenor of the transaction concluded between the two Cabinets.”

So that you have Mr. George Canning saying that as he understands the conclusion of this Treaty, it was fixed so absolutely—this line was—as to prevent even any contention. Am I not entitled to the argument that so shrewd a man as Mr. George Canning was never could have used that expression, if as a fact, the mountains were not named at all in the Treaty, and were left to be determined from subsequent investigations? It could not but be that there would be disputes and difficulties, and uncertainties about them, if among 600 or 1,000 mountains, you are to select some 90 or 100 peaks for your line. Russia, of course, would select the mountains farthest from the sea, and England would select the mountains which were nearest to the sea, and the controversy would be open and unsettled just as much as it was before 1825, and the result of the Treaty so far as the delimitation of the eastern line was concerned would have amounted to nothing. So that, even qualifying what I again submit is the fair meaning from the extracts which I have read from the British Case, qualifying it as Great Britain may, still the whole course of the British Argument and the British line necessarily asserts that the mountains were to be selected in the future, that they were not fixed and determined in 1825, that it was at some future time they were to be selected, and it therefore necessarily left this question open to dispute and to controversy.

I therefore submit that in the first place I am entitled fairly to the position that certainly the negotiators intended, if they could, to make this eastern line of demarcation certain; they were not to leave that open for future discussion and uncertainty, and if I am able to persuade the Tribunal that this eastern line was run—as we say it was—along the chain of mountains, am I not correct in saying that I have solved the difficulty in this case, and solved it in a way which is simple and plain, and would appeal to the negotiators at the time, and would appeal to any person who took up this question of running that eastern boundary line, with the information and the maps that these negotiators had before them?

Now, then, secondly, I want to call the attention of the Tribunal to the fact of how these mountains were designated from the beginning of the discussion here—how they were designated. You will remember that in the first suggestion of Russia—which is found on p. 158 of the United States Appendix—the line was to ascend the Portland Channel, and thence was to run along the mountains, and Sir Charles Bagot refused, and Russia renewed their original line, not changing it in any respect; and now I ask your attention to what it was, when this line of theirs again came up for discussion,

that Russia said the line was to be. I turn to p. 161 of the United States' Appendix. Russia, in describing what the line was, said:—

“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 56th degree of north latitude, and to the east”—do you notice that expression?—“and to the east the chain of mountains which follow at a very short distance the sinuosities of the coast.”

402 Allow me to call your attention to Faden's map, which Mr. Canning said was the most reliable map that was published.

There is the head of Portland Channel [indicating on map]. The line goes on north until it comes on to the 56th parallel and the chain of mountains. Was it supposed that [indicating on map] the Russians designated it as a chain of mountains? That is Map No. 10, Sir, in the British Case, and I do ask your Lordship to follow me for a moment in reference to this.

The PRESIDENT. I am following you, Mr. Watson.

Mr. WATSON. That is from the head of Portland Channel [indicating on map] you run up the 56th parallel, and then it follows a chain of mountains. And where do the Russians say that you find the chain of mountains? You take the chain by going to the east. You will notice those are the exact words—and to the east the chain of mountains which follows at a very short distance the sinuosities of the coast. Now, if they had Faden's map before them—and I do not understand that there is any dispute about that—what chain of mountains are they to take? This chain of mountains up here [indicating on map]. You get up to the 56th parallel, and then you go to the east, and then you go to the chain of mountains which runs around until it reaches the 141st meridian. In Mr. Canning's first draft he carried the line to the seaward base of the mountains by which it was bounded, and he ran it as a coast line. Would you allow me again to point it out on Faden's map? He carried the line up to this 56th parallel [indicating on map], he ran it to the seaward base of these mountains, which he described as following all the sinuosities of the coast. Then the Russian counter-draft totally left out the mountains, and said, “We will take Sir Charles Bagot's 10 marine leagues line,” and Mr. Canning, when he gave his final instructions to Mr. Stratford Canning, refused to agree to this modification, and insisted that the Russian line should be taken. I read now from p. 210 of the United States' Appendix; I will read from the middle of the page.

“The next articles relate to the territorial demarcation, and upon them I have only to make the following observation:—

“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”—that is the crest; that is the more literal interpretation of that—the crest—“of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities.”

Does not this chain of mountains appear according to the map to follow all the sinuosities of the coast [indicating on map]? And that is the chain of mountains to which attention is called by Mr. George Canning as the chain which Russia suggested. There it is [indicating on map]:—

“* * * 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 substi-

tute generally that which we suggested only as a corrective of their first proposition."

The PRESIDENT. What page is that, Mr. Watson?

Mr. WATSON. Page 210 of the United States' Appendix, about the middle of the page.

"We cannot agree to this change. It is quite obvious that 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 and can thoroughly explain to the Russian Plenipotentiaries to have existed on the other side of the American continent, when mountains laid down on a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States, 403 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 they only intended to ask, a strip of sea-coast.

"To avoid the chance of this inconvenience we proposed to qualify the general proposition 'that the mountains should be the boundary. * * *'"

Not "mountains," but "*the* mountains"; they were not to be selected hereafter; it was "the mountains"; it was the Russian mountains which had been referred to by Russia, and which Mr. Canning goes back to and says, "You have referred to these mountains and you must take them."

"* * * 'that the mountains should be the boundary, with the condition if those mountains should not be found to extend beyond 10 leagues from the coast.' The Russian Plenipotentiaries now propose to take the distance invariably as the rule. But we cannot consent to this change. The mountains, as I have said, are a more eligible boundary than any imaginary line of demarcation, and this being their own original proposition, the Russian Plenipotentiaries cannot reasonably refuse to adhere to it."

Now, is not that a demonstration that what Mr. Canning did was to go back to the Russian line of mountains, and that the Russian line, chain, or range of mountains, whichever word you choose to call it by, was described by Russia as the mountains which you see as a chain of mountains, and which you reach to the east by a line striking the 56th parallel and then following, as Mr. George Canning said, the sinuosities of the coast down to the 141st meridian? Am I not fairly entitled to the admission that surely there Mr. George Canning referred to the identical chain of mountains which was reached by a line to the east from the 56th parallel, and which ran, according to him, parallel with the sinuosities of the coast to the 141st meridian? What other mountains could they have referred to? What possible mountains could they have referred to except that chain of mountains there delineated [indicating on map]? And if that is so, is it not certain that there you have an agreement between Russia and Great Britain that that is the chain of mountains along whose crest this line of demarcation is to be drawn? And if that is so, the answer to the fifth proposition is beyond all question; the chain runs around the heads of all the bays and inlets; it does not cut across them; it does not run parallel to any base line of a main coast; it does not follow the sinuosities of a line of the general trend of the coast; it defines its own sinuosities; *there* it is [indicating on map] around the heads of all the bays and inlets. That is the chain of mountains that Russia referred to, and that is the chain of mountains that Mr. Canning came back to, and said:—

"You referred to them first, and now you have got to take them; our 10 marine leagues line is only a substituted line if certain things should follow with reference to the crest of the mountains."

I call your attention to the fact that Mr. Canning here refers distinctly to these mountains as the mountains shown on the maps; distinctly—not mountains to be selected hereafter and not shown on the maps, as the British line is, but the mountains shown on the maps. Let me read:—

"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. * * *"

I read that "summit" as "crest." I think it is a more correct interpretation.

MR. AYLESWORTH. The "top."

404 MR. WATSON. Yes, the "top," or "crest," or "ridge."

"* * * the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities."

Was he not referring to the mountains on the map? And if he was referring to the mountains on the map, what other mountains could he have referred to than this chain of mountains, which was struck at the 56th parallel by going north, and then carrying the line of demarcation along?

MR. TURNER. Mr. Watson, Mr Canning himself appears to have referred to this as a chain of mountains in his last interview with Count Lieven.

MR. WATSON. Yes, Sir. Not only that, I was just going to refer to the draft in which Mr. Canning stated it more expressly than that. There we have only the testimony of Count Lieven as to what he said, but I want to show you that Mr. Canning himself called it a range of mountains—specifically called it so. I now turn to the British Appendix, and I ask the Tribunal's attention to pp. 115 and 116. Remember, this was the draft that was put into this letter, sent with this letter, wherein he writes about these mountains, which, according to the map, appear to follow all the sinuosities of the coast, and the mountains which Russia had referred to. Now let me read—I will read from the top of p. 116:—

"From the point where the line of demarcation strikes this degree it shall be carried along the summit of the mountains parallel to the coast as far as the 140th degree of longitude west of the said meridian; thence the said meridian line of 140th degree west longitude, in its extension as far as the Frozen Ocean, shall form the boundary of the British and Russian possessions on the continent of America to the north-west.

"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 a certain thing shall follow. He distinctly designated in connection directly with this letter that this was a range of mountains along which this line was to follow.

I have already called the attention of the Tribunal to the fact that these negotiators had before them Faden's map, Vancouver's charts, the Russian map, and the Arrowsmith map. I want to be perfectly frank about the matter; I confess I do not see any general range of mountains on the Arrowsmith map; I see something which I might say was a range of mountains on the Arrowsmith map, but if I were

to be called to testify about it I would not like to assert it. But then, I take up the Faden map. Now, why do I take that up? Why, I take it up simply because Mr. Canning said it was the most authentic map they had; it was the latest map they had, and Mr. George Canning said it was the most reliable, and Mr. Pelly marked on it for Mr. George Canning the posts of the Hudson's Bay Company, and there could not be any question or any reasonable doubt that that map was sent to Russia.

What does that map show? Why, it shows in the most unmistakable way a bold sweeping range or chain of mountains running all along the sinuosities of the coast from the 56th parallel to the 141st meridian; and I submit to any member of the Tribunal that if to-day this Treaty was to be drawn, and you knew nothing whatever about the country except these maps they had before them, and you had Faden's map, and you saw this range of mountains running along here [indicating on map], separating the British from the Russian possessions, would there be any doubt about the fact that it would be the most natural thing in the world to run the eastern line of demarcation along these mountains? Would not that be the ordinary and natural thing to do? And then, if you turn from Faden's map to Vancouver's map, and notice the bold and striking manner in which

405 this chain of mountains sweeps from the 56th parallel down to the 141st meridian, the stately strides, and the tall mountains which run around all the bays and inlets, and—as Mr. Canning says—appear to follow the sinuosities of the coast, would you not, if you had that map alone, adopt that mountain chain as the distinct and certain and undoubted mountain chain along the crest of which the boundary should run, and along which the line should be drawn? And then, if you turned from both of these maps, and went to the Russian map which is found both in our Atlas and in the British Atlas, and which I do not stop to follow in detail—if you went to that and noticed the mountain ranges that run around there continuously from the 56th parallel to the 141st meridian, would you not follow them?

And, especially, would you not do that if what you wanted to accomplish was to establish a barrier beyond which the posts of the Hudson's Bay Company should not come down into this territory, and if you wanted to give to Russia a *lisière* which would support her ownership of all these islands, and if you wanted to bar out all other nations from interfering with the exclusive jurisdiction of Russia in and to all these inlets and inland waters. If you were going to draw that Treaty to-day, would you not do it? And especially, would you not do it when you remember that the range shown on the Faden map is approximately at about 30 miles from the coast, as it follows around all its sinuosities? I do not say all along; there are places where the distance is less, and there are places where the distance is more, but it does follow around the heads of all the bays and inlets, and makes that "très petite distance," that "moderate expanse of territory," that "point of support" which Count Nesselrode wanted, and which England was willing to grant?

(Adjourned for a short time.)

Mr. WATSON. It is due to the Tribunal that in considering these charts I should myself call attention to the fact that the line up Portland Channel where it strikes the 56th parallel and the moun-

tains is only directly shown on Faden's map, and it is true that you take the charts of Vancouver, and especially taking these charts which I have tacked here [indicating] the line of demarcation would strike the mountains prior to the 56th parallel. I want to draw your attention to that, and I want to ask you, when you are considering this question, to turn and also look at the line which was to meet the 56th parallel on the Russian map. I think it meets it in a way practically as in Faden's map. I do not stop to press that. The Tribunal will understand that I am not pressing the details of this thing; I am not pretending that these maps are exactly accurate. I am not pretending that there are not differences in the maps. I am not pretending that Charts Nos. 7 and 8 of Vancouver are not practically irreconcilable at certain points. That is not my point. My point is that all the maps and all the charts which these negotiators had before them showed this distinct, dominant, persistent, continuous chain which ran from the 56th parallel to the 141st meridian, and that it was the only range that did run from the 56th parallel to the 141st meridian.

Our friends argued about interior ranges of mountains, as shown on the Russian map, and the Vancouver map, and the Faden map; but if you will take and study each one of those maps in detail you will see that they do not pretend to be an unbroken chain of mountains—I do not require an unbroken range, I mean a continuous chain of mountains running from the 56th parallel to the 141st meridian. The interior mountains are not, and they do not pretend to be, the bold, dominant, controlling range of mountains in that locality, and I ask the Tribunal's attention to this, in addition, that, suppose, for the sake of the Argument, I would admit, what I do as a fact deny, that it was the interior range of mountains nearest to the sea which was referred to in this Treaty. Every map—Faden, Vancouver, and the Russian map, show even the interior mountains carried around the heads of all the bays and inlets—every one of them.

If you go to these maps and you say that the negotiators had the least faith in them and believed that there were mountain ranges as shown upon these maps, then so far as your answer to the fifth
406 question is concerned, it is practically indifferent whether you take that bold dominant range or whether you take this interior range around nearer to the sea. Each one of the ranges goes all around the bays and inlets. One gives to Russia a larger *lisière*, but each gives to Russia the exclusive jurisdiction in all these waters. Now the criticism has been made by Great Britain on these different maps that the negotiators did not believe in them at all. They did not confide in them. There were several marked differences; there were such peculiarities connected with them that such men as were the negotiators would entirely throw the maps out of consideration, and not regard them at all. Now, in a moment, I will refer you to the testimony on that, but what I want to make certain is that, if human language is to be confided in, Mr. George Canning thought and believed that there was a range of mountains substantially as shown on these maps, which ran around the heads of all the bays and inlets. He did not have any doubt about the fact that there was a range; it was not that; his sole doubt was that possibly the maps might have depicted that range as nearer to the sea than it really was;

his doubt was not whether the range was there, that it was a marked definite feature of the country, that it was so dominant and persistent and plain, that it was as if nature had laid out the boundary line itself as between Russia and Great Britain. And now let me turn and see if I cannot prove that to you, in Mr. Canning's own language, and I refer, in the first place, to Mr. Canning's letter, on p. 181, dated the 12th July, 1824, to Sir Charles Bagot. I read from the latter part of that page:—

“There are two points which are left to be settled by your Excellency:—

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

“This is done by a proviso that the line should in no case (*i. e.*, not in that of the mountains which appear by the map)—you notice that Mr. Canning goes back to that again—“almost to border the coast, turning out to be far removed from it) be carried further to the east than a specified number of leagues from the sea.”

Is there any doubt about it that he believed that this map showed, and correctly showed, a range of mountains, and that his only doubt was that they might inaccurately show the location of them, and that they might be further from the sea than the maps indicated, and that, therefore, he would put in this 10-marine leagues limit. And now, let me refer you again to p. 210, where Mr. Canning again emphasizes exactly the same idea, and the Tribunal will pardon me if in this discussion I do seem to repeat a portion of these letters. I cannot help but do it if I am to bring out what I think is the strength of the letters on each of the different points:—

“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 that 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 and can thoroughly explain to the Russian Plenipotentiaries to have existed on the other side of the American Continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States 407 turned out”—What? Not to be not there at all, but turned out—“to be quite differently situated”—that is the only doubt he had, “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 they only intended to ask, a strip of sea coast.

“To avoid the chance of this inconvenience, we proposed to qualify the general proposition that the mountains should be the boundary”—Did he not believe there were mountains there? “that the mountains should be the bound-inland territory where we only intended to give, and they only intended to ask, beyond 10 leagues from the coast.”

But beyond all question he believed—as did everyone of these negotiators believe—and as everyone must have believed who relied on

these maps, that the mountain range was there, and that the only doubt at all about it was as to how far the mountains were from the coast, and it is entirely immaterial that whoever made these different charts of Vancouver varied the mountains, and that where the charts joined they located the mountains incorrectly.

That is entirely unimportant so far as my argument is concerned. My argument is that all these maps show this dominant and persistent range running from the 56th parallel to the 141st meridian, and it is the only range which the maps do show, and it is the only range along which the line could follow the crest of the mountains parallel to the sinuosities of the coast. This range following down along here [indicating the map], along which I say Mr. Canning and Count Nesselrode and Sir Charles Bagot intended this line to run—is definite and fixed and certain and dominant, and is the very range to which any person who was drawing this Treaty and attempting to give to England all she wanted, and attempting to give to Russia all she wanted would have suggested.

Now it is suggested that this range on Faden's map, and the range on Vancouver's map and the range on the Russian map of 1802 is broken. I do not care, for the sake of this Argument, whether it is or not; no man ever knew a mountain range of 500 miles that did not have passes that was not intersected by rivers, and this Treaty contemplates that. Take the Alps; take the range of the Alleghany Mountains at home, near where I live; take the Rocky Mountains—does not everyone designate those as ranges of mountains having a crest—and a continuous range of mountains having a crest? And if it is true that they do have passes, that there are depressions on them which pass through the mountains, and which in one sense are an interruption of the range, still, speaking in a general way, as these people did, this mountain range is continuous, and it runs from the 56th parallel to the 141st meridian? And the reason why I now stop on that is that our friends have criticised that point, and they say, "Oh, but your mountain range is broken here." Taku Inlet is one place where it is broken, and you see it on this enlarged map. I have made that break more than it really appears if you examine the map closely; and again here at Berner's Bay they say the same thing, and again when they come to Chilcoot they say the same thing. But is it not plain that, allowing the criticisms of Great Britain as to these interruptions in the connected chain of mountains, yet it is still true that this range of mountains shown on the Faden-Vancouver-Russian map was, and would be, properly called a chain of mountains or range of mountains, running from the 56th parallel to the 141st meridian? and one would no more say that these passes in the mountains destroyed the continuity of the range than one would say that the passes in the Alps over which we drive destroyed the continuity of that range, or that the passes in the Rocky Mountains at home, or the Alleghany Mountains at home, and the passage that the Pennsylvania Railroad makes through the Alleghany Mountains destroyed the continuity of that range, and destroyed the continuity of the ridge.

Well, I next come to the question, did the negotiators refer to and rely upon these maps? If they did, if they really believed in these

maps and believed that there was a range of mountains as shown on these maps, then beyond all question they read these maps
408 into the Treaty, and they might as well have put a Memorandum in the Treaty, "See Faden's map," "See Vancouver's map," "See the Russian map with reference to our line," because they are read into and made part of the Treaty.

Now, I purpose to prove, and I think I can, that the negotiators did believe in these maps, did believe in this range of mountains, and only doubted its exact locality. In the first place, they had to rely upon the maps; they had nothing else to rely upon, unless it was some narratives in reference to the country. These maps were maps that pretended to show in considerable detail the exact location of mountains and of islands and of waters in that locality. You will see, on referring to Article III and Article IV, that the Treaty itself refers to the natural features of the country and designates a boundary line which necessitates a reference to the maps. The negotiators had no personal knowledge of the locality, and they relied as to sounds, as to channels, as to straits, as to mountains, upon these maps. You will find that the Treaty referred to the most southernmost point of Prince of Wales Island as shown on these maps; the degrees of latitude and longitude, 54 degrees 40 minutes, and 56 degrees, and the 131st and 133rd and 141st meridians were all referred to as helping to define the boundary line. And the maps were constantly referred to in the correspondence between the parties.

Right from the inception of the correspondence down until the Treaty was signed these maps were constantly referred to. Then on the 17th November, 1821, almost in the opening of the correspondence, Sir Charles Bagot sent to Lord Londonderry the Russian map of 1802, on which the Russian settlements were marked. I refer to p. 101 of the United States Appendix. Again, on p. 116, Count Lieven wrote to Count Nesselrode, on the 11th November, 1822, and referred to the "recent and complete English maps," showing that they had the recent and complete English maps in reference to this locality. Sir Charles Bagot, on the 19th August, 1823 (p. 127), referred to the Russian map of 1802, and the Arrowsmith map furnished him by the Foreign Office, as to which Arrowsmith map he complained that it did not show accurately the location of Novo-Archangelsk. On p. 131 Sir Charles Bagot wrote to Mr. Canning on the 17th October, 1823, and referred to Arrowsmith's last map. You will notice that the date of that is 1823, and it could not have been Arrowsmith's map of 1824.

MR. AYLESWORTH. It is pretty evident that it was Arrowsmith's map that appeared in 1818—Map No. 8 of the United States' Atlas.

MR. WATSON. Yes. And now I want to call your attention to a peculiar circumstance connected with this, as showing that these people must have had Faden's map, and I want to say that all these details I do not rely upon except as tending to prove and sustain the general proposition. On p. 140 is an account, dated the 3rd November, 1823, of an interview between Chevalier Bagot and M. de Poletica, and Chevalier Bagot in that letter, describing to Count Nesselrode what had happened between himself and M. de Poletica, said as follows (I will read from the middle of p. 140):—

"Chevalier Bagot then placed himself before the geographical map * * *"

I wish to call attention to the fact that Faden's map was the only geographical map that was before these people, that the rest were all

charts, but I do not think these negotiators paid such an attention to detail or were so exact in the use of language that so much can be taken from such expressions.

“Chevalier Bagot then placed himself before the geographical map which we had at hand, and traced upon it with his finger a line beginning at the 57th degree of latitude, the intersection of which designated the 135th degree of longitude west of Greenwich, precisely at the point where our establishment of Novo Archangelsk appears to be.”

Remember, please, that this letter was on the 23rd November, 1823. Sir Charles Bagot has complained that the Arrowsmith map did not show that location, and the location then of Novo Archangelsk was here [indicating on map]. If you look at the map, you will
409 find that, according to Faden’s map—if this Faden’s map was before them—there was the line that Chevalier Bagot laid out, and it corresponds exactly with the Faden map, and is persuasive of the fact that these people had before them at that time the Faden map.

In a letter from Mr. Canning to Sir Charles Bagot, dated the 15th January, 1824, these maps and plans are referred to. Mr. Canning refers in the first place to the latest map—probably, I think, Faden’s—I do not mean that that is in the letter; it is the inference I made. Secondly, he refers to the Russian map of 1807; and thirdly, he refers to a map of which a copy had been sent to Sir Charles Bagot—probably, I suppose, it was the Arrowsmith map which he referred to there. And then, again, on p. 161, on the 7th March, 1824, Russia refers to the Hudson’s Bay Company’s posts “according to the most recent and best maps published in England,” showing that she had some map on which the Hudson’s Bay Company’s posts were located, and probably it was the Faden map. I do not press that, because I know that on the later Arrowsmith map the Hudson’s Bay Company’s posts were to be seen, but it is not probable that on the 7th March, 1824, they had the last Arrowsmith map.

However, I am referring to these to prove the fact that they did rely upon the maps—not so much a particular map, as the maps. Again, on p. 165, in March, 1824, Russia refers to the maps as follows: “According to the testimony of the most recent maps published in England”; and, again, on p. 173, Count Nesselrode refers to the difference “regarded on the map.” You will remember that that is in reference to the line that Sir Charles Bagot drew and Count Nesselrode refused to accept because it did not take in Portland Channel, and in which Count Nesselrode said to Count Lieven, “Now, looking at the maps and regarding the difference as shown on the map,” it is immaterial, but, as a fact, it is of great importance. And then again, on p. 174, I find a reference, “according to the most recent charts”; and then, on the same page, and on p. 178, I find that Count Lieven writes again to Count Nesselrode that England “fully accepts this line as it is laid off on the maps, but as they think that the maps are defective” they want this 10-league limitation. Mr. Canning, on p. 181, said, “the mountains which appear by the map almost to border the sea”; he was constantly referring to the mountains which appeared on the map—he did so again in his letter of the 12th July, 1824, to Sir Charles Bagot; he did it in his letter of December, 1824, to Mr. Stratford Canning; he did it in his letter on p. 181, “the mountains which appear by the map almost to border the sea.”

And again, Count Nesselrode, on p. 201, said that "the evidence of the latest maps published in England show so and so" with reference to the location of the Hudson's Bay Company's posts. And Mr. Canning, on p. 210, said, "the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities." And Mr. Canning again, on the same page, said: "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" to which she is not entitled. That Mr. Canning followed and believed in Faden's map is most apparent, for you will remember that in the British Case Appendix, p. 65, I have already read to you Mr. Pelly's letter, in which he said that Mr. Canning regarded the Faden map as the most authentic, and Mr. Pelly cautioned him that in a Case of this importance in regard to national boundaries he ought to be careful about it.

May I not, then, say, and say with an assurance of the acquiescence of the Tribunal in the proposition, that the negotiators did rely upon the maps, they did rely upon the mountains as shown upon the maps? They never had any doubt but that the mountains were there; they were sure that there was a mountain range there, and as I have read to you from the letters of Mr. Canning the only doubt whatever that they had in reference to that mountain range was as to its distance from the ocean or from the coast. They did doubt that. Mr. Canning said: "I have got into trouble already with the United States—England has—about the location of the mountains out there. True, the mountains were there, but the maps did not show them where they actually were, and it may be that these mountains which, on the Faden map, seem almost to border the coast when we come actually to lay on the ground—the land—the line of demarcation—we may find that instead of the mountains bordering the coast they are away back here [indicating on map], and we will assign to Russia large tracts of territory which we do not intend to assign, and for which Russia does not ask."

If you will pardon the reiteration that I am making in reference to this, which may be painful to the Tribunal, but certainly, from my point of view, advisable, I do again assert that all this correspondence shows that these people did rely upon these maps, that they did rely upon the fact that the mountains were as shown upon the maps, and never had any doubt that the mountain range was there; they only doubted as to its exact locality.

Well, now, if that be true, what follows? Why, it follows that when the Treaty said that from the 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 with the 141st degree of west longitude, you have got to go to the maps to find out what these mountains were.

MR. AYLESWORTH. You have got to go where?

MR. WATSON. You have got to go to the maps to find out what the mountains were. Where else would you go?

MR. AYLESWORTH. I would suggest to the ground.

MR. WATSON. The Parties were making a Treaty, I submit, in St. Petersburg and London, not on the territory itself, and were defining a certain line, and they concluded the Treaty without going to

the ground. It might have been more advisable if they had gone to the ground, I agree, but, as a fact, they signed the Treaty in St. Petersburg. Had they not to rely upon the maps as to whether the mountains were there? What other information had they? What other information could they rely upon? If they turned to Vancouver's narrative, which our friends insist was before the negotiators, and read that narrative, look at how repeatedly Vancouver speaks of the lofty mountain ranges. In the Appendix to our Argument you will find some of these extracts.

But without it be Vancouver's narrative or Langsdorff's—and it may be some other books which we do not now have before us—the negotiators could not go to any other place to locate the mountains except to the maps. And even the narratives do not pretend to locate the mountains. It is the maps only that locate the mountains. And you must—I do not see how you can escape it, if these maps were before them, and if they were referring to them, and if it is true that Mr. Canning referred to the mountains, and referred to them as a range, and referred to them as the mountains which run parallel to the sinuosities of the coast, as appears upon the map—must you not go to the map to find out what the mountains were that he meant? Must you not do it? Is there any escape from the proposition that to these maps you are absolutely forced to go to find out what the mountains were along which this line was to run? And if that be true, then you have read into and you have made part of this Treaty these maps, and you have done it just as certainly and just as efficiently as if the Treaty itself had said in so many words that this line of demarcation is to run along the crest of the mountains from the 56th parallel to the 141st meridian as shown on Faden's map or Vancouver's map or the Russian map.

I submit that I am entitled as I go along, as it were, to drive my stakes in no uncertain territory, and to drive them deep and well, and to mark them. Now I have led up to the fact, and I think proved the fact, that all these negotiators relied upon the mountains on this map, and especially Mr. George Canning, whom I read from about them, and who referred to them twice in the letters that I have read to you, and that Russia relied upon them when she referred to the mountains which were to be reached from the 56th parallel by a line east. I submit that I am entitled to mark in the most open
411 manner this station in my journey. These people did, in making this Treaty, refer to the mountains on the Faden map, the Vancouver map, the Russian map. For argument's sake, I might admit (what I do deny as a fact) that they referred to the interior range of mountains, for it as well as the dominant range runs around the head of all the bays and inlets—and if they referred to either range, the answer of this Tribunal to Question 5 must be in the affirmative.

I claim that I am entitled to insist that, in order to determine what the mountains are which the Treaty refers to, you must turn to the Faden, Vancouver, and Russian maps.

But not only that. The whole negotiations are full of the proof that it was the chain of mountains, the range of mountains, which ran from the 56th parallel to the 141st meridian to which these parties referred. Now, let me see if I can prove that. At the risk of going a little into detail, let me refer now to the correspondence between

these parties as to what these mountains were, and show how they designated in the correspondence between them the mountains along which this line was to run. In the first place, the Russian "projet" originally made (p. 158 of the United States' Appendix) was that the line was to run along these mountains parallel to the sinuosities of the coast, and when I turn to any one of these maps, am I not entitled to say that here, on the Vancouver, the Faden, or the Russian map, were the mountains parallel to the sinuosities of the coast?

And Sir Charles Bagot, commenting on this proposal, p. 159, says:—

"Thence up the mountains bordering the coast, and thence along the mountains."

And is it not true that here are the mountains that border the coast; is not that true? And if you take Vancouver's map—is not it true—here are the mountain ranges that border the coast [indicating on map]? And Russia, on p. 161, insisted on her proposal, and then said that the mountains that she was referring to—now I quote from that page—were:—

"The chain of mountains which follows at a very short distance the sinuosities of the coast."

They believed in the chain, and thought it was "the chain of mountains." And remember that was communicated directly to Sir Charles Bagot, showing that he understood that the Russians were seeking a chain of mountains that was in that neighbourhood and shown on the map. And he communicated that proposal to Mr. George Canning, and Mr. George Canning turned it over to the Hudson's Bay Company; and do you remember that the Hudson's Bay Company said:—

"So far as our interests are concerned they are not interfered with by the line along this chain of mountains; but we suggest that you put in a limit as to the distance which those mountains may be from the coast."

Count Nesselrode, on the 5th April, 1824, wrote to Count Lieven, p. 172, and spoke of the mountains "which follow the sinuosities of the coast," and Count Lieven wrote to Count Nesselrode on the 20th May, 1824, p. 178, and said:—

"The proposition of our Court was to make this frontier run along the mountains which follow the windings of the coast (that ought to be translated 'sinuosities') to Mount St. Elias."

The English Government accepts this line as it is laid off on the maps, but 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 desires 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. Do you notice,

412 again, that England accepts this line as it is laid off on the maps, showing that these people had run this line on the maps, and run it along the mountain range to which Mr. George Canning refers, and along which the Russians ran it when they said that the line went to the mountain range by going to the east, and then continued along it up to the 141st meridian.

Mr. George Canning in his letter to Sir Charles Bagot on the 12th July, 1824, p. 171, puts beyond question that he means the mountain range as shown on the map. He speaks of the mountains which appear by the map almost to border the coast. Constantly Mr. George Canning was referring to these maps and to the mountains that were shown on them. And he says that he fears that the maps may be wrong in the location of the mountains—not in the existence of them—the location of them; and therefore he wants this 10 marine leagues limit. Count Lieven objects to Mr. Canning's suggestion as to the base of the mountains, and suggests—p. 189—that when a chain of mountains serves to fix any boundary line, it is always the summit of the mountains which constitutes the line of demarcation. Then Russia dropped the mountains as the boundary-line, and on p. 194 she substituted absolutely the 10-marine-league line; and here was a curious circumstance—when Russia accepts Sir Charles Bagot's line, Mr. Canning turns round and says:—

“No, Sir; you proposed the mountains in the first place, and to the mountains you must return, notwithstanding Sir Charles Bagot's suggestion of this 10-marine-league line.”

And then Mr. George Canning, in his final instructions to Mr. Stratford Canning, on the 8th December, 1824, p. 210, repeatedly shows he is speaking of the chain of mountains shown on the map. He says these mountains are parallel to the coast, and appear, according to the map, to follow all its sinuosities. Evidently he had a map before him, which he had examined, on which these mountains were laid down; and we know he had the Faden map, and we know he relied upon it. And then he refers, as I have already called to your attention, to the fact of the trouble that he had got into with the United States about the actual location of the eastern mountains; but that Mr. George Canning had any doubt about the existence of a mountain range, substantially as shown on Faden's map and Vancouver's map and the Russian map, is simply impossible to believe if you think that he was telling the truth when he wrote those letters.

And then again, as I have already read to you in the draft of the Treaty which Mr. George Canning enclosed to Mr. Stratford Canning, and which was the draft you will remember which Mr. Stratford Canning said the Treaty, as completed, accurately followed, Mr. George Canning unmistakably refers to “the range of mountains,” and he must have referred to this range of mountains, which he said appears, according to the map, to follow all its sinuosities. And after the Treaty is signed, Mr. George Canning explains—so Count Lieven says in his letter of the 8th May, 1825, p. 230, to Count Nesselrode—that the 10-league line of England was to avoid future trouble; because in the Treaty with the United States Great Britain had—I now quote—“likewise fixed a chain of mountains as the frontier.” And while they believed that the chain of mountains was there, and as a fact they were there, they turned out to be in an entirely different location from that which the map showed.

In addition to this, the Hudson's Bay Company, to whom all despatches were sent by Mr. George Canning, said on the 26th May, 1824, in the British Case, p. 80, that it desired a more particular description of how the mountains range with regard to the sinuosities of the coast, as it is possible those mountains represented in the

charts as closely bordering the sea may be much more distant from it, still carrying out the idea that Mr. Canning had—not that they doubted the existence of the mountains, but they doubted the location of them. And besides this—referring for a moment to testimony outside, in one way of the limit of my discussion—let me read from the letter of Mr. Dawson, of Canada, on the 7th February, 1888, in the British Case, p. 259, wherein he says that:—

413 “ * * * the definition of the *lisière* by a line following ‘la crête des montagnes situées parallèlement à la côte,’ is precisely that which would be adopted as the most convenient on an examination of Vancouver’s charts and descriptions of the coast.”

That is just exactly what I have been arguing. That is what Mr. Dawson says: it is exactly the line which would be adopted as the most convenient on an examination of Vancouver’s charts, and certainly so on the examination of Faden’s map. I do not refer because it will be discussed by others—to the correspondence between Mr. Bayard and Mr. Phelps, and Lord Salisbury, except to ask the Tribunal’s attention to the fact that Lord Salisbury evidently understood that these mountains that were referred to in the Treaty were the mountains as shown on the maps.

I will not stop—I will read that again—I promise your Honours I will not drop it. Lord Salisbury refers to it practically as the range of mountains. I do not pretend to give his exact wording, and I will read from his letter.

Sir EDWARD CARSON. I think it is p. 298 of the British Appendix.

Mr. WATSON. I am very much obliged to you indeed.

The PRESIDENT. British Appendix, p. 298.

Mr. WATSON. I am very much obliged to you indeed. The Marquis of Salisbury, in his instructions to the British High Commissioners of July 19th, 1898, said:—

“From Portland Channel to Glacier Bay there is no such continuous range of mountains running parallel to the coast as the terms of the Treaty of 1825 appear to contemplate.”

From that evidently Lord Salisbury thought, with the negotiators, that it was a range of mountains which ran parallel with the coast. And again, on p. 161, Appendix, United States’ Case, Russia calls these mountains along which the line is to run “the chain of mountains,” and she refers again, on p. 161, to the large territory which England will obtain by the Treaty behind the chain of mountains which is to be the boundary, and Count Lieven, in writing to Mr. George Canning, p. 199, calls it “the chain of mountains,” and the Hudson Bay Company, in its letters to Mr. George Canning, repeatedly so called it. On the 19th April, 1824, p. 78, British Appendix, the Hudson’s Bay Company speaks of “the supposed chain of mountains,” and suggests that it be restrained by restricting it to the nearest chain of mountains. Just let me stop here for one moment about that nearest chain of mountains which our friends on the other side claim controls, in some respects, the mountains.

You will find the word “nearest” used just twice in the whole negotiations: once in this letter of Mr. Pelly, of the Hudson’s Bay Company, the other in the letter of the 12th July, 1824, from Mr. Canning to Sir Charles Bagot, in which he suggests the mountains

nearest to the sea; but you will not find the word "nearest" in a single draft of the Treaty, and you will not find any agreement by Russia with England that it should be the mountains that were nearest to the sea. On the 20th October, 1824, British Case, p. 110, the Russian eastern line was described as "the chain of mountains." Mr. Stratford Canning had an interview with Mr. Middleton, in which he said the line ran to the east along the mountains—and here I want to state the position which the United States assumes as to that letter of Mr. Middleton in which he relates the interview with Mr. Stratford Canning. Now I do not pretend for a moment that if we were in a Court of law, and we only had a letter from Mr. Middleton saying what Mr. Stratford Canning said to him, that that was evidence that could be introduced and be binding at all; but the rules of evidence governing this Tribunal are so widely different under the provisions of the Treaty from what the ordinary rules of law

414 are on that question, that our view is this: Mr. Stratford Canning had just signed this Treaty with Russia, and he signed it for Great Britain; and, for the time being, when he signed it, he was Great Britain, and he represented its sovereignty—and he was signing it almost as if it was an individual act of Mr. Stratford Canning.

Now, suppose that Mr. Stratford Canning had made a personal contract with M. de Poletica in reference to this line of demarcation and the day after he made it he, the party who made it, had gone to Mr. Middleton and said, "The line runs to the east along the highest ridge of the chain of mountains," and a litigation came up subsequently in reference to whether that was the correct construction of the contract, is there any doubt that I could introduce the declarations of the party to the contract as to what his understanding was—provided always with the permission of the Court it did not contradict the contract, but if it served to throw light upon it. And so we regard here this declaration of Mr. Stratford Canning to Mr. Middleton in the light of the declaration of a party who had himself made the contract and was explaining what he meant as to the line of demarcation.

Mr. AYLESWORTH. Let me understand you there, Mr. Watson. Is it your contention that, supposing a landowner had made a conveyance to another person of a certain piece of real estate, describing it by metes and bounds, and the same day he said to a neighbour, "I have just executed a deed of my farm to So-and-so, and the boundary between the land I have retained and the land I have parted with begins at a certain tree," mentioning the tree, that statement of his could in any way control or affect the interpretation of the conveyance?

Mr. WATSON. Not for a moment, unless you had taken your conveyance and you had laid it down upon the ground, and you found then there was a latent ambiguity, that the boundaries called for in the contract did not piece themselves out around the land.

And let me put this to you, if your Honours please: Suppose that in that same description of the piece of land that the man had sold he said that "My land begins at a certain point and runs to a white oak; where it runs to there were four white oaks," and the day after he had made the contract he went to a neighbour and said, "I mean the white oak that stands in a certain locality and is marked by a cross," and afterwards you had litigation about that, and the ques-

tion was to find out what the white oak was, would I not be entitled to that declaration?

Mr. AYLESWORTH. That might be admissible as an admission against his own interest.

Mr. WATSON. Yes, Sir, and as bearing upon the white oak that he meant in the contract. And so if this was an individual act of Mr. Canning, and he had said that when we refer in this Treaty to the line which shall follow the crest of the mountains parallel to the coast, we mean the dominant range of mountains that run from the 56th parallel which the line reaches by running east, and there is a latent ambiguity when you lay that Treaty down on the land equally I am entitled to the declaration. I submit to the Court that this is the view that the United States takes, and, to say the least of it, I submit it is not so grossly irregular that it does not upon its face have a bearing, especially if you remember what kind of a Tribunal you are a member of, and what kind of evidence it is that you are considering.

Mr. TURNER. Do you think that this Tribunal was constituted to interpret this Treaty according to the narrow rules of the Common Law?

Mr. WATSON. Oh! no, Sir. In opening it, I said that you find in Article III, and I thought that I commented upon that, that it was the duty of the Tribunal to read it in the light of the negotiations.

415 Mr. TURNER. I ask because you appear to be measuring this by the Common Law rules.

Mr. WATSON. Yes. Mr. George Canning, in his last instructions to Mr. Stratford Canning in the British Case, p. 124, speaks of the mountain range, and he says—I am referring to his draft which was included in his letter—“if the summits of the aforesaid mountains shall turn out to be in any part of their range beyond a certain distance from the coast.” He evidently was referring to a range, and so this idea of a mountain chain and a mountain range is carried through all this correspondence. And, after this Treaty was signed, you will find, if you turn to the letters of Count Nesselrode, on pp. 225, 226, and 227, and you refer to the interview that Count Lieven had with Mr. George Canning, and which is reported on p. 230, they all speak of the chain of mountains, every one of them; and, if Count Lieven has correctly reported him, Mr. George Canning spoke of the range of mountains along which this line was to run.

And now the Tribunal will notice that I have so far treated this case on the question of this mountain range without going into details with reference to the Treaty itself, and I now ask you to turn with me to the Treaty for a while and see what assistance we can gain from it with reference to what this mountain range was to be along which this line was to run. I do not think you can doubt, now we are up to the point, that it was to be a mountain range, that it was to be a mountain chain along the crest of which the line was to run. Even if, so far, you have not gone with me to the full extent to which I claim, still you cannot doubt that all these people were talking about a mountain range and a mountain chain, and that they must have referred to this when they used the words in the Treaty about the mountains running parallel with the coast.

And now I turn to the Treaty itself, and I ask you to follow me for

a little while I outline what seems to me significant of the argument that I am making—to wit, that this Treaty referred to the certain and definite fixed range of mountains shown on Vancouver's map, Faden's map, and the Russian map, and that these mountains are the mountains referred to in the Treaty, and that these mountains run around the heads of all the bays and inlets.

Now, the first thing that I call your attention to is this—and I think your Lordship would go with me that far—I at least am entitled to say, even if you do not accept the extreme view that I take of the British position, that Great Britain certainly alleges that there were no certain definite mountains referred to in the Treaty, but that those mountains were left to be afterwards ascertained. Let me state that again, now that the Treaty itself, according to Great Britain, does not refer to any definite chosen mountains—that those definite mountains along which the line is to follow are to be selected afterwards.

The PRESIDENT. I think it is only an ambiguity in words, Mr. Watson; I agree with you—I think everybody will agree, at least subject to what others may say—that this Treaty does refer to a supposed chain of mountains; but where it actually was on the actual land nobody knew at that time. I should not have thought that wanted much argument.

Mr. WATSON. Well, if I have the concession—

The PRESIDENT. Oh, you must not take it as a concession; I am telling you what is in my mind.

Mr. WATSON. I beg your Lordship's pardon; I did not mean to state it in a position that would be aggressive at all; but if that is true—if that is what the Treaty refers to, a definite range of mountains that were shown on the map—then I come back again to the same line of reasoning that I have adopted before, to wit, that 416 it could not have been any other range of mountains than the mountains that were referred to on the Faden, the Vancouver, and the Russian maps.

Mr. AYLESWORTH. And if there were, in fact, mountains such as that map shows, I do not suppose we should be sitting here to-day.

The PRESIDENT. No.

Mr. WATSON. Oh no, Sir, I agree to that; but do not let me be misapprehended in reference to my position. I say that the negotiators believed that those mountains were there; and I do not see how anyone can read this correspondence and look at these maps and doubt it; and the only thing they doubted was about their locality; and, as I shall show you in a moment, it turns out that the mountains is not there; but because that range of mountains which they thought were there are not there, it does not authorize you to go out and try to select mountains among those six or eight hundred mountains along the coast.

The PRESIDENT. I will just put one question to you; I will not interrupt you again, Mr. Watson. Do you contend that, whether we take the British view or your view—I will assume for a moment that we take your view of there being a *lisière* round the inlets—do you contend that nowhere at any part of this boundary are there mountains such as are referred to in Question VII of the Treaty?

Mr. WATSON. Oh, certainly, Sir.

The PRESIDENT. Nowhere?

Mr. WATSON. Nowhere.

The PRESIDENT. Neither at the head of the Lynn Canal, nor between Cape Spencer and Mount Elias, nor anywhere else?

Mr. WATSON. I beg your Honour's pardon.

The PRESIDENT. That is what I want to know.

Mr. WATSON. The proposition I make to your Honour is, there is no such range of mountains from the 56th parallel to the 141st meridian such as is shown on these maps. Now, whether on an investigation by the experts that are to go into and determine this, they will find out that there is a part of a range running around the heads of Lynn Canal or a part of the range called the Mount St. Elias Alps is a question that this Court, I respectfully submit, does not decide, and a question upon which it has not the evidence to determine.

The PRESIDENT. That, of course, we shall see, but I must know—I speak for myself—I shall want to know, in dealing with Question VII, is it your contention that nowhere between Mount Elias and Cape Spencer, and nowhere round the head of the Lynn Canal, or round the head of any other inlet, is there a chain of mountains which corresponds with Question VII of the Treaty of 1903, or any part of a chain?—because the words are “partout out.” I only want to know your position; that is all.

Mr. WATSON. Yes, Sir.

417 The PRESIDENT. I beg your pardon for interrupting you.

Mr. WATSON. Not at all, Sir; I am very much obliged to your Lordship for doing it, because I certainly want to be understood as I go along in reference to what my argument is. I would produce very little effect, if I were talking to you in the dark. Now I will see again if I can fairly state what our position is, and if I do not state it so as to meet your Lordship's view, I shall be very much obliged indeed if you will say so to me.

The Treaty says:—

“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 (of the same meridian).”

“And finally”—and so forth. Therefore it calls for a mountain range which runs from the 56th parallel up to the 141st meridian. We say that the negotiators believed that that was the range which really existed, and which they had referred to and put into the Treaty. Now, second, as a fact, that range does not, as a whole or in any substantial part, exist. Third, it is a fact that at the head of Lynn Canal and beyond Lynn Canal there are still portions of the ranges of mountains which were part of this original range running from the 56th degree to the 141st meridian.

That is a question for the experts to settle. But admitting now that the range at the head of Lynn Canal and the Mount St. Elias range, as it is called, were part of this range—do you not see that does not help you on the 5th question? They run around the heads of all the bays and inlets just the same at this range does. If it is a part of this range, well and good; that is a matter for the experts to determine. No issue has ever been joined in this case on that question, as I submit. That is a question to be determined by the experts. If those mountains are a part of this range, do you not see it does not vary the answer to the 5th question, because those mountains do run around the heads of all the bays and inlets?

The PRESIDENT. As you have asked me to say so, you must not assume that I think that if we are of opinion to take an undisputed part for the moment—that if we were of opinion that there was a range in the sense that you have been indicating from Cape Spencer up to Mount St. Elias—that there is anything to send to the experts in that case. We have got to answer the question. In that case it is what, if any, are the mountains?

Mr. WATSON. Oh, your Lordship is referring more particularly to the discussion I am to make in answer to the seventh question.

The PRESIDENT. I was. That is why I put the question.

Mr. WATSON. I beg your Lordship's pardon; I will take that up, and I have given you in a general way the position of the United States in reference to it; and I assure you, Sir, and I am perfectly sincere in this, I do want to be understood; and I do not want to avoid any issues in this case.

The PRESIDENT. Well, Mr. Watson, please do not think that I say it complimenting you, but I really feel that you have addressed to us a most powerful argument with regard to how the *lisière* is to run; I quite follow that, and I follow everything you have said about it. All I wanted to know was that I might be able to follow you when you come to Question 7—that I might understand what your contention was with regard to our duty under Question 7—as to there being some part of the range in some place.

Mr. WATSON. I am under many obligations to your Lordship; and I promise you that within the range of my ability I will state to you specifically and fully our position in reference to it; and I will take it up and discuss it now.

418 The PRESIDENT. No, no, no.

Mr. WATSON. But with your permission I can proceed better with the steps of my argument as I have prepared them.

The PRESIDENT. Well, I thought you had reached this.

Mr. WATSON. The fact of the matter is, Sir, that to a man who is not accustomed to talk two or three days, which I am not, it is pretty hard to keep the line of your thought if you diverge once and discuss other questions.

The PRESIDENT. We do not want you to alter your own line.

Mr. WATSON. Oh, yes, your Lordship understands me.

The PRESIDENT. Do not alter it in the least, Mr. Watson. I only wanted to follow you.

Mr. WATSON. Yes. Well, now, I turn to the Treaty of 1825; and I ask you to let me see if I can prove to you that the Treaty also refers to this same chain of mountains that I have been referring to and that are shown on Faden's map. And I call your attention now to it—let me read it:—

“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.”

Does the Court notice that there is no direction whatever given as to how that crest will run?

It is to run from the 56th degree to the 141st meridian—how is it to run? Is it to run up this way, or this way, or down this way [indicating on map]? There is absolutely no direction given in this Treaty in reference to it, and why? Because they refer to a certain, specific, well-known chosen range of mountains. Now, unless you

agree to that, you have got here an uncertainty in this Treaty which leaves open the question as between the 56th parallel and the 141st meridian as to where this line is to run. Russia might claim that the line was to run away up this way until it got to that meridian, and England would, of course, claim that it was to run away down this way [indicating on map]. And the Treaty does not indicate in any way the course of that line except that it runs along the mountains.

Now why? Simply because they had a certain known, definite chain of mountains agreed upon, and that is the mountains shown on Faden's map. And that reconciles and makes perfectly consistent this portion of the Treaty, and shows you, in addition to the arguments that I have been addressing to you, that it referred to a certain definite chain of mountains. And then the Treaty says that the line shall follow the crest of the mountains situated parallel to the coast. The line shall follow the crest, the comb of the cock, the ridge of the mountains—the Russians call it the backbone of the mountains—Mr. Pelly called it the ridge of the mountains—shall follow the ridge or the backbone of the mountains situate parallel to the coast. Does not that refer to a continuous range of mountains? If the line was to follow the ridge or the crest of the mountains between the 56th parallel and the 141st meridian; if it was to go along the backbone of the mountains, does not that necessarily imply continuity? Does it not imply a range of mountains of which there is a backbone? Does it not refer to a chain of mountains of which there is a ridge? And the Court will notice that it is the crest of the mountains; it is the backbone of the mountains; it is the continuity that is implied in this word "crête." It is not different summits of different mountains connected by artificial lines.

Mr. AYLESWORTH. I have difficulty, Mr. Watson, in understanding quite what is in your mind in that regard. Suppose there were the very best defined chain of mountains in the world, they would
419 consist necessarily of a series of summits; and is it not your view that a line drawn upon the crest of such a chain of mountains would zigzag from mountain peak to mountain peak?

Mr. WATSON. Yes, in all probability; but it must be a chain or a range; it cannot be isolated peaks.

Mr. AYLESWORTH. Well, the different peaks of the chain would be isolated one from the other.

Mr. WATSON. Of course, the different peaks of the chain are a portion of the backbone of the ridge—a portion of the backbone of the mountains, along which the crest runs. Take the Alps, with the permission of the Court. Is it not true that all along the Alps you talk about the crest of the range of mountains? You would not talk about going up and selecting where there are perhaps 600 mountains running in irregular ways and connecting them by an artificial line. You refer to the line which Nature has drawn along the chain of mountains.

Mr. AYLESWORTH. But if you happen to get a country like the Adirondacks you have to take it as you find it.

Mr. WATSON. But, well then, is not that true? If you take the reference of these people to the chain of mountains, the chain on Faden's map, you have answered all the difficulties in the case. You

have answered all the difficulties of the case, and you have a continuous range, a continuous crest running from the 56th parallel up to the 141st meridian. In other words, may I not suggest this, your Honour: could there be any doubt that if your Honour and myself journeyed up to this Alaskan coast and looked at the topography of the country, we would very quickly decide whether there was a continuous chain of mountains there which had a ridge from the 56th parallel to the 141st meridian? If we found a bold dominant chain such as is shown on Faden's map, we would not have any doubt about saying that there was a chain of mountains, and we would never imagine we would have to get down from the mountain range, and have to select from among 500 or 600 other peaks, and draw an artificial line one to the other, and make an artificial crest. What I am arguing to the Court is that this is the crest which Nature made on the summit of this chain, and which these people supposed was a fact, mistakenly as it turns out, but they supposed it was, and they brought that into their Treaty, and when they used the word "crest" they used the idea of a continuous backbone, of course, with ups and downs, but still a continuous line, and I submit that you never could get a crest or a backbone or a ridge of mountains by going and selecting 90 peaks, as the British have done, out of some 700 or 800 peaks, unconnected with each other.

Sir LOUIS JETTÉ. Mr Watson, if it had been the intention to express the words "chaîne de montagnes," do you not think that a critic like M. Matusevich would have inserted in the Treaty the very word itself?

Mr. WATSON. Sir Louis, I do not know what is the matter with me in this room, but I do have a great difficulty in hearing; if you have the same difficulty in hearing me—

Sir LOUIS JETTÉ. My observation was this: the Treaty was revised by M. Matusevich, and you pointed yourself to what corrections he made.

Mr. WATSON. Yes.

Sir LOUIS JETTÉ. He was a very apt critic, I believe, and if the intention had been to say "chain of mountains," do you not believe that M. Matusevich would have said "a chain of mountains," or "a range of mountains"?

Mr. WATSON. Oh yes, if M. Matusevich had known that this Treaty was to be discussed in this way, I have no doubt about it he would have put in the chain, but these negotiators were so certain of this range of mountains on this Faden map that it never suggested itself to them that it was necessary to put in a chain. Your Honour has had long experience on the Bench—

Sir LOUIS JETTÉ. Diplomatic language is generally so precise that it is hard for me to suppose that if they intended to speak of a range of mountains they would have said only mountains.

Mr. WATSON. Your Honour will pardon me in merely replying that the Russians always call it the chain of mountains; Mr. Canning called it a range of mountains; the maps show that it is a range of mountains. They were so sure of the exact range of mountains that they were selecting, that they never thought of the necessity of calling it a chain. With your long experience on the Bench, I think I can safely say that I could call you as a witness to prove how often the simple words that ought to have been interjected into a contract or a

Treaty or a will, have been left out simply because they were not thought necessary at the time; and you know how dangerous it is, in coming to construe a contract or a will or a Treaty, to make it turn on a question that a certain word was not inserted. If your Honour and myself had been there drawing this Treaty, under the circumstances it may have been that doubtless your Honour would have suggested the chain should have been put in; and if I had had that map before me, and I had referred to the mountains as running from the parallel to the meridian with a crest, I may have thought—I do not know—that it would have been useless to have put in the word “chain.” I wish they had; but am I not entitled now fairly to the suggestion that they did not put in separate and independent mountains, but they put in mountains with a crest?—they did put in mountains, that is mountains with a crest that could be seen and remembered. Now, I have read the maps into the Treaty, and I may be mistaken, but I think your Honour went with me on that, and now I have got the maps into the Treaty, and they refer to this particular chain.

I, of course, admit that human language is necessarily so uncertain and indefinite that the construction of any contract, or a will, or a Treaty, or a Statute one hundred years after it is made is an exceedingly difficult matter, and it is exceedingly dangerous, I submit, to apply technical rules to the construction of such a document, and especially it is extremely dangerous to make it turn upon the absence of a certain word which would have made it more certain if it had been inserted. For example, now if all these reasons taken together would satisfy you that the Treaty referred to a continuous chain of mountains which had a crest, and then the argument was made by my friends on the other side, “Oh, but you did not say chain of mountains, and therefore you cannot so construe it,” you, of course, would reply, “Now that is an argument to be taken into consideration as to whether the persons meant a chain of mountains, but it is not conclusive merely because they did not put the word ‘chain’ in there.”

And then I suggest that if it is a crest, or a backbone, or a ridge, it, of necessity, is on the mainland—it is not a crest over water. It is not a crest when the British line runs for thirty-seven (37) miles over water. It could hardly be called a crest where the British line runs across Lynn Canal or runs up the side of Lynn Canal and then crosses it.

And then again, this Treaty says that the line shall follow the mountains—shall follow the summit of the mountains situated parallel to the coast. Now, we all agree that this is a general parallelism, not particular, but am I not again right in saying that, if the mountains are to be parallel to the coast, it is to all the coast, is it not? It is to the coast, the whole way from the 56th parallel down to the 141st meridian. It is then a continuity which is best answered by a mountain chain which, observe, is “parallèlement à la côte” the

entire distance from the 56th parallel to the 141st meridian. Then the Treaty says, IVth Article, that the mountains that are referred to are the mountains which stretch themselves out. Notice that expression: it is translated here “extend.” It is the mountains which stretch themselves out in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st meridian. mountains which stretch out or extend themselves.

It is something, then, that has a direction. It has an extent. It is something that goes along from one point to another, and I call the Tribunal's attention again to the fact that the only way that this mountain range is defined along which the crest runs is that it goes from the 56th parallel of north latitude to the 141st meridian, and it is simply inconceivable to me that these gentlemen who were trying to make this Treaty certain—and Mr. George Canning said that he had made so certain that there could be no question about it—meant to leave this open to a discussion and a controversy happening, it may be, 100 years afterwards in selection of the mountains along which the line was to be drawn. They meant certain definite fixed mountains.

MR. TURNER. Where do you get that expression from—"stretch out?"

MR. WATSON. If you will take the French of that word "extend."

MR. TURNER. The French of what?

MR. WATSON. The French of this word here, "s'étend."

MR. TURNER. In the Treaty?

MR. WATSON. That I am on. The fourth paragraph; and, Sir Louis, I would be obliged to you if you would give me the correct translation of the French word there "s'étend"?

THE PRESIDENT. "Extend" is just as good a word for your argument as "s'étend." You are putting too much into it—"s'étend."

MR. WATSON. I think so myself; the words "stretch out" seem to me to be a little strong.

THE PRESIDENT. There is no "out" in it.

SIR LOUIS JETTÉ. "Qui s'étend."

MR. WATSON. What is the correct translation of it?

SIR LOUIS JETTÉ. Well, your translation is quite correct.

MR. WATSON. It is well, Sir. I am obliged to you for that.

SIR LOUIS JETTÉ. The translation is good English.

MR. WATSON. And will the Tribunal allow me to call their attention to another significant fact in reference to this chain of mountains, if you will follow, from 56th parallel, on Faden's map, up to 141st meridian, you will not find it intersected by a single river or by a single parcel of water; and if you will turn to Vancouver's map, you will see a continuous uninterrupted chain of mountains
422 between these points which are not intersected, and you will

find that wherever they came to water, this chain of mountains ran along and outside of it. And there you see now the significant application of the provision in the Treaty that if exploration should determine that the *lisière* was bisected by rivers which ran from the Hudson's Bay Company into the Pacific Ocean, it still was not to interfere with the fact that here was a crest running along the chain of mountains along which the line was to run and the right was to be given to Great Britain to navigate that river, but not to use it for any other purposes.

I do not stop to read to the Tribunal the many extracts from Vancouver's narrative which will be found in the Appendix to our book. If we object to a piece of evidence on the trial of a cause, and the Court admits it, we understand that, once admitted, we can use it as well as the other side, and Vancouver's narrative is admitted against

us, still we are entitled to use it in our favour to the full effect that it will bear on a fair interpretation. Well, now, I have followed the line of argument so far as this mountain chain was concerned, and, with due submission, I do claim that I have made out a case that I am entitled to an answer to the fifth question as follows.

The negotiators did insert into the Treaty this mountain chain, and that is what they meant when they said this line was to run along the crest of the mountains, and that mountain chain runs around the heads of all the bays and inlets, and therefore when the fifth question is submitted to you to determine whether the line of demarcation runs around the heads of all the bays and inlets, I submit you must answer it in the affirmative. And do not your Honours see how much work I have relieved you from if I have only satisfied you of the fact that the negotiators, when reading these maps into their Treaty, did intend that the line should run along this crest of mountains. It answers all questions except 54 degrees 40 minutes, and the Portland Canal will settle the matter definitely and determinately.

Now look how clear that is and look how simple it is. These negotiators were seeking for a certain definite boundary, and they wanted to make absolutely certain of the line of demarcation between Russia and Great Britain, and therefore they selected this mountain chain. Now, in the first place, if that is true, it makes certain all questions as to the *lisière*. There you are upon the mountains. Your crest runs along these, Russia takes all between that and the sea. That all belongs to Russia; it disposes of the very ingenious argument of our friends, by which they seek to make this line turn upon the meaning of the word "côte" because if you ask me what the word "côte" means that is named in the third paragraph of the Treaty parallel to which the mountains shall run, I say look at the map. There it is, here is the parallel, here is the "côte", here it is it runs all around, it follows the heads of all the bays and inlets, and goes round them, and is "côte" in its general known significance, that is wherever the water and land meet.

And if you ask me, in addition, what is the meaning of the word "ocean," as used in paragraph 4, I still go back and stand on this chain of mountains, and I say evidently ocean means not only the great ocean itself, but all its arms and bays. It could not mean otherwise, and simply for this reason. Now, I ask your attention to this proposition, to see if I am not correct. Mr. Canning doubted whether these mountains were more than 10 marine leagues from the sea. He did not doubt that on the map they were not. He said in effect:—

"That is all right. If the mountains are as located on the map, they are within the 10 marine leagues, and therefore you get your *lisière* between the mountains and the sea."

Now, Mr. Canning could not have had any doubt that the word "coast" did not mean, what our friends claim to-day, the main coast, or the main trend of the coast, or the general coast, for the simple reason that if you will go here to Lynn Canal and take a measurement from what they term the main coast, the head of that canal is some 75 or 80 miles from the main coast, and no man who

measured it could have the least bit of doubt about it that the mountains carried them more than 10 marine leagues from the sea. 423 Mr. Canning must have meant the coast at the head of the canal, just as he meant the coast at the head of the Portland Canal, and so he stated it in his Draft.

And, then, if you further ask me what the Treaty means when it talks about sinuosities, I turn again to the mountains; I say there it defines it. Mr. Canning said these mountains, as appear by the map, follow all the sinuosities of the coast, and these sinuosities include all these bays and inlets and all these inland waters.

And then, particularly, I desire to press upon the attention of the Court, in conclusion, that this mountain line carries out the purposes and desires of both Great Britain and Russia.

It gives to Russia exclusive sovereignty over all these waters. It gives to her protection against the Hudson's Bay Company's posts. It gives to Russia exclusive sovereignty over all these inland waters. It gives her protection against the approach upon the coasts of the Hudson's Bay Company's posts. It gives her a point of support and protection on the mainland for all her islands and the establishments upon them. It protects the Russian-American Company from interference with her exclusive rights of fishing and hunting and trading.

It gives to England the protection of all the ports of the Hudson's Bay Company—gives her both banks of the McKenzie River, and compels Russia to withdraw her claim of sovereignty over 100 miles limit over the ocean. And so you find now that, if you consider what these negotiators were trying to arrive at, and what the purposes of this Treaty were, and you get up on that mountain line, you have peace and comfort and safety there. And this Treaty then unwinds itself and unfolds itself. It is as simple to follow as if you had not heard this long and weary discussion in reference to it. The air is bracing up there and the prospect is good. And you answer all the questions, and you do not have any doubt about them, and it is the simple solution of all these questions that are raised in reference to this eastern boundary, and it is a solution in accordance with the real merits and substantial merits of the case.

Now, second. Notwithstanding the negotiators believed that this chain of mountains was there, and I do not see how you can read Mr. George Canning's letters, and doubt it—notwithstanding that they did that—it has turned out that that chain of mountains, at least, is not within 10 marine leagues of the sea. Whether it shall hereafter be determined that away back here in this unexplored region is a dominant chain of this kind, which is more than 10 marine leagues from the sea, has yet to be determined, and I want to suggest, as I proceed, just this idea as to that situation.

The negotiators assumed as a fact that those mountains were there, and doubted only as to their distance from the sea; the mountains turn out not to be within 10 marine leagues of the sea. Is there such a chain of mountains more than 10 marine leagues from the sea? You do not have any proof upon it, but am I not entitled to say that as between the Parties to this Treaty, looking at it now under the light of 1825, *juris et de jure*, there is a presumption of the existence of these mountains somewhere in the interior, and until overcome by evidence that there is no such range of mountains there at all, we

have a right to assume that future discoveries may reveal in the interior such a range of mountains as is depicted on this map?

But, as a fact, the range as shown on the map does not exist within 10 marine leagues of the sea. Now, I have prepared, and I have a number of references to support this proposition, but it does seem to me that as this argument proceeds and the Case develops, and your Honours have a grasp of the entire situation, that I am probably using time to no good purpose in discussing that question, and unless the Court indicates that I should proceed with my evidence in reference to it, I would assume that the Tribunal would agree with me that this chain of mountains, as shown on the Faden and Vancouver maps, does not exist within 10 marine leagues of the sea. If that is the fact, then I, of course, proceed to another stage of my argument, but if there be any doubt about that I will refer to the evidence—and perhaps it is the better way, too, for me just briefly to refer to the evidence that we have within the case. It seems to me it is full—that this range of mountains, as a fact, does not exist within 10 marine leagues of the sea.

424 Mr. ROOT. Do you now go on to Question 7, Mr. Watson?

Mr. WATSON. No, Sir, I do not. I am still on this mountain range, Sir, and if I can prevent it, no person shall take me down from it until I have settled this eastern boundary-line, and then I will discuss the question of the answer to Question 7 hereafter. My proposition claims that this mountain range, as shown on this map, does not exist within 10 marine leagues of the sea.

Mr. AYLESWORTH. Is it your proposition that it exists anywhere?

Mr. WATSON. I have already stated to the Court that, whether this mountain chain is away back in the interior of Alaska, if you call me as a witness, I will answer faithfully, "I do not know," but if you apply to me as one of the Counsel representing the United States, I say to you that both Parties to these negotiations assumed as a fact that such a range of mountains did exist somewhere—absolutely assumed it, both sides, and that *juris et de jure* without contradiction. There is a presumption as between those Parties, and so far as the Treaty is concerned, that that range of mountains will yet be discovered, and that, therefore, if there is to be any proof advanced on that side, the proof is from Great Britain, and not from us. All that is material to us to say is this, that within the 10 marine leagues from the sea, that range of mountains does not exist.

And allow me just briefly to call your attention to the evidence which supports that proposition. Now, if it is a fact that this chain of mountains exists, I have enough confidence in Great Britain to believe that she never would have attempted to draw her line, this substituted mountain line. She certainly could not have disregarded that main dominant chain, and if that appeared there, as these people thought it did, and shown on the maps, and your Honours went there with the Treaty in your hands, and said, "Which is the mountain chain referred to?" I do not think even Great Britain would say that the Treaty referred to any other mountain chain than this mountain chain on Faden's map, and therefore the fact that Great Britain has drawn a line such as she has is the most conclusive proof that, so far as she is concerned, this mountain chain does not exist in that neighbourhood.

And then, in addition to that, the affidavits that have been filed on behalf of the United States, and which have been so severely criticised by Great Britain, were directed expressly to the point—and, I thought, clearly and explicitly directed to the point—that this mountain range did not exist there within 10 marine leagues of the sea. I do not stop to go over in detail these affidavits; your Honours will find them all in the Case.

And then, negatively, there is absolutely no evidence to show on the part of anybody in this case that such a range of mountains as a fact does exist there; all the proof is to the contrary, and I therefore pass that proposition referring merely as I go to the letter of Lord Salisbury containing his instructions to the High Commissioners of Great Britain, and which is to be found on p. 298, to which I have already called the attention of the Court and have read to the Court, in which the express admission is made by Great Britain that such a chain of mountains does not exist there within 10 marine leagues of the sea, as the maps show, and as this Treaty contemplated. If that is so, what follows? Oh yes! I intended to call the attention of the Court to this. I have already referred in this Argument to Faden's map, and it is No. 10, British Atlas, and I have asked your Honours to look at it. I do not pretend that I have indicated on this enlarged map all the detail, but I do claim that this is a substantial reproduction of the Faden map, as you will find it on No. 10 enlarged in that way. I have changed the colouring here of the water. Faden's map is exceedingly dark, and it was suggested to me that if I hung this map up here and had all those dark lines around here, you would not know when I was pointing it out whether I was pointing to water or whether I was pointing to land.

The PRESIDENT. We will look at the original map. You need not trouble about that, Mr. Watson.

425 Mr. WATSON. Yes, Sir.

The PRESIDENT. Treat that as a picture; we quite understand you.

Mr. WATSON. Yes, Sir. I now turn to Article IV of this Treaty, and I am exceedingly distressed, not only for myself but for the Court, to have to announce that it is impossible for me, without say an hour on Monday, to conclude.

The PRESIDENT. Oh, certainly, Mr. Watson, you are entitled; do not press yourself.

Mr. WATSON. I can only assure your Lordship that I did not spare myself in trying to reduce this.

The PRESIDENT. Oh! no, no; we are quite sure of that, Mr. Watson.

Mr. WATSON. And I might suggest that if the Court had agreed with me as I went along in all my propositions I, of course, would have got through them sooner than having to discuss them occasionally.

Sir EDWARD CARSON. They would have to agree with me afterwards.

The PRESIDENT. I am afraid that would not have shortened the proceedings.

Mr. WATSON. Well, it would have shortened my argument, although it might not have shortened the proceedings.

Sir EDWARD CARSON. It would have lengthened the proceedings.

Mr. WATSON. Now I come to Article 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.”

Would your Lordship pardon me if I promise to conclude by 1 o'clock on Monday for asking that you would adjourn now instead of my opening this question?

The PRESIDENT. Oh, you do not want to go any further? By all means, Mr. Watson, we do not want to put you under any promise; if you wish to adjourn now of course we are willing to do so.

Mr. WATSON. It is 10 minutes to 4 now, and I am opening up on a subject upon which I can only go ahead now for a little while.

The PRESIDENT. You will begin on Question VII on Monday morning?

Mr. WATSON. I will conclude by 1 o'clock on Monday.

426 Sir ROBERT FINLAY. Before the Tribunal adjourns to-day

I would ask that my friend, Mr. Watson, when we meet on Monday, should supply us with the census referred to by him in his speech the day before yesterday. This is the sentence in his speech to which I refer:—

“ * * * And without stopping to go into the detail in reference to them, I want to call the Tribunal's attention to the fact that in 1900, when our census was taken with reference to Alaska, we had 20,000 citizens residing within this *lisière*, principally along these inlets, half of which are now claimed by Great Britain.”

I would ask if my friend could let us have that.

Mr. WATSON. I will hand you that page of my brief in which some person has put there some 20,000; as a fact he ought to have put in 11,332 with 7,300.

Sir ROBERT FINLAY. I beg your pardon. What I want is if you could let us have it.

Mr. WATSON. Oh, the census itself.

Sir ROBERT FINLAY. Yes, the census.

Mr. WATSON. Oh, yes, Sir.

Sir ROBERT FINLAY. Because it would show how many of the number, whatever it be, reside on particular parts of the *lisière*.

Mr. WATSON. Oh, yes, Sir, I will give you the whole thing, but I want to say to you that some person had put 20,000 there, and wanting to follow my brief, I named that figure. As a fact, it ought to be 11,332, and I have a Memorandum to call your attention to it.

Sir ROBERT FINLAY. I am much obliged to you. What I want is the census to see how many of these 11,300 live on certain parts of the *lisière*.

The PRESIDENT. Yes, I understand, Mr. Attorney, Mr. Watson will let you have it. Mr. Attorney and Mr. Dickinson, with reference to the contours which are from point to point, and from peak to peak, we follow them perfectly, although the scale is so small that it is rather difficult to appreciate the picture. We might want to see some contours drawn approximately perpendicular to the coast at some points. Would Mr. King and Mr. Tittmann kindly just see between now and our meeting again—not do it—whether that could be done if necessary. Of course we do not want many.

Sir ROBERT FINLAY. What your Lordship means is take a section.

The PRESIDENT. A given point on the coast, and take a section roughly, going up as far as the survey will permit you to go, we might see what that sort of contour is.

Mr. DICKINSON. Your Lordship, we are having some contours of that sort made, or rather a profile.

The PRESIDENT. Very well; very likely, Mr. Dickinson, you will give us what we want.

Mr. TURNER. I would suggest, likewise, a profile drawn parallel to the profile line already put in, but drawn further back from the coast.

427 Mr. DICKINSON. We are having profiles drawn parallel going back to the line shown on the map.

The PRESIDENT. I am not speaking for the moment of profiles along a supposed range, but a profile perpendicular to a supposed range. All I meant is if Mr. Tittman on your behalf and Mr. King on behalf of Great Britain will kindly see if the information enables them to draw these if we want them.

Mr. DICKINSON. We will have that done.

(Adjourned till Monday next at 11 a. m.)

All the Members of the Tribunal were present.

Mr. WATSON. I have been endeavouring so far to persuade this Tribunal as to the eastern line of demarcation. The negotiators adopted and inserted in the Treaty language which applied to and can only, I think, apply to the definite mountain chain on the Faden, Vancouver, and Russian maps running from the 56th parallel to the 141st meridian; and, second, that subsequent investigations have shown that the negotiators were mistaken in assuming that that definite chain existed within 10 marine leagues of the sea; and I now come to my third proposition, which is in the shape of the question—How was the line—the eastern demarcation line—to be drawn between the British and the Russian possessions, the mountains having failed? And I now go to the IVth Article of the Treaty, which defines that line and outlines the conditions under which, and the contingency in which, that line shall be drawn. I read the IVth Article as follows:—

“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.

“2nd. That whenever the summit”—(I always get a clearer meaning by reading that “the crest of the mountains”)—“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.”

Now, I call the attention of the Tribunal, in the first place, to this. This Article speaks of the crest 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. It therefore speaks of the entire crest, and it does not limit you to any portion of the crest. It includes the whole of it, and therefore it includes the whole of the mountain chain from the 56th degree of north latitude to the 141st degree of west longitude. To say that here the language merely refers to a portion, and not to that entire line, seems to me to violate the plain language of that Article.

Remembering, then, that we are speaking about the entire mountain crest from the parallel to the meridian, I turn to the dictionary and ask your attention just for one moment to the definitions that are given to this word “partout,” and I find that it is defined as “everywhere,” “wherever,” “on all sides,” “from all sides,” “in every part,” “all over.” I then turn to the Treaty, and taking that definition of the word “partout,” I find that what the Treaty says

is "that wherever, all over, in all its parts, the crest of the mountain shall be more than 10 marine leagues from the sea," then the substituted line shall apply. Now, if that is true, if that word fairly means what I have said that it applies in every part all over this entire line, by what rule of construction can you restrict the meaning merely to a portion of the entire line. If you speak of all over, in all parts of the line, and you say that as to all parts of the line if it shall find itself more than 10 marine leagues from the sea, why does that not include the entire line as well as any one of its parts?

429 What authority is there for restricting that meaning merely to a part of the entirety, when the word that is used includes every part of the entirety. And taking merely the word "wherever" that has been used as the English translation of "partout," does not that fairly include the entire line as well as any portions of the line; and taking the position of the Argument of Great Britain that this was intended only to apply to horseshoe formations in the line, I submit to the Tribunal that that is an unauthorised and restricted user of the word "partout" and of this sentence that I have read, that you cannot give the fair full meaning to every word that is used here, which is the rule of construction, unless you come to the conclusion that this applies to the entire line as well as to any part of it.

And then see how persuasive of that construction the subsequent part of Article IV is; allow me to read it to you. The subsequent part of that Article is that if this contingency shall happen that the mountain crest is more than 10 marine leagues from the sea, then the Article provides that 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 sinuosities of the coast.

Does the Tribunal notice that here is a specific reiteration of the prefix to Article III, that here it is said that the limit between the British possessions—not part of them, but all of them, and the line of coast which is to belong to Russia—that is, the *lisière*, the whole of it—shall be formed by a line parallel to the coast? Does not that speak of the entire eastern line of demarcation? If the mountains are all removed more than 10 marine leagues from the ocean, does not this portion of Article IV provide for the entire eastern line of demarcation—and as it does provide for the entire eastern line of demarcation, is that not strongly persuasive of the fact that it contemplated the possibility of the entire mountains being found more than 10 leagues from the ocean?

Unless this meaning be given to these words, then you arrive at this result, now claimed by Great Britain, that the substituted line applies solely and alone to horse-shoe formations in the mountain-chain, thus most unnaturally restricting the plain meaning of the words used.

Is it not, I submit now to the Tribunal, a demonstration that this contemplated a line which might possibly have to be drawn between the whole of the possessions and for the whole length of the possessions from the 56th parallel to the 141st meridian? If, as I repeat, it is restricted merely to the horse-shoes, and if that is all it means, is it not a very curious thing that the negotiators put right into the

Treaty here that the limit between the British possession and the *lisière* was to be formed by a line parallel to the windings of the coast from the 56th parallel up to the 141st meridian? Pray allow me to call your attention to the preface to Article 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. * * *”

There it states that the line was to be drawn between the British and the Russian possessions. Well now, why did they repeat that language in the latter part of Article IV unless it contemplated the possibility that the whole 10-marine-league line would have to be used instead of the mountains? And yet it does repeat it and puts it there in so many words, and I submit, unless you violate the rule of construction which I have before referred to, that you must give a due fair meaning to each word used, you must come to the conclusion that this 10-marine-league line is a possible line for the entire distance as well as for any portion of the distance. But I wish to be permitted to say that when that argument was made by our friend on the other side, that this 10-marine-league line did not apply in the case of the absence altogether of the mountains, I was somewhat confused, because I thought that I had read in the British Case directly the contrary construction of Article IV, and I ask the Tribunal to turn to pp. 80 and 81 of the British Case, and allow me to read to them my authority for that construction:—

“Where a gap of this character is found in the mountains on the occurrence of a river, a narrow inlet, or a narrow valley, the line should be continued
430 across that gap, and should not be suddenly set back up the gorge of the river or the course of the inlet or valley to the 10-marine-league point. The 10-marine-league line applies to supersede the mountain only where the mountains cease altogether or recede beyond the 10 marine leagues.”

I surely cannot be mistaken in saying that the position of the British Case is that if the mountains recede altogether, or receded more than the 10-marine-league limit, then the 10-league-limit line applies; and I submit that the position that is now taken up by Great Britain is entirely inconsistent with the position they took in their Case. But not only that—if you have any doubt on Article IV as to whether this 10-marine-league line was not intended to apply for the entire distance, Article III of the Treaty of 1903 says that then you *must* go—not that you *may*, but that you *must*—go to the negotiations between the parties which preceded the Treaty, and if you do that and you go to the declaration of the man who suggested the 10-marine-league line, to wit, Mr. Pelly, and read from his declaration on p. 110 of the British Case, you find there he says, in the most unequivocal language, that this line was intended to apply to the entire length.

If the summit of those mountains exceed 10 leagues the said distance is to be substituted instead of the mountains, in language most unequivocal, including the entire mountain range; and then if you go to Mr. George Canning and you read why he wanted this line, I submit that you have a process of argument which arrives at a conclusion that is totally inconsistent with any other construction of this Article, except that it might provide for the entire 10-marine-league line. On p. 210 of the United States' Appendix I read from Mr. George Canning's letter to Mr. Stratford Canning, the last letter that

he wrote, on 8th December, 1824, the reasons why he wanted the 10-marine-league limit, and, notwithstanding that I have read this already to the Tribunal, I ask you to pardon me for two minutes until I read it over again on this point. He says:—

“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 that 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 and can thoroughly explain to the Russian Plenipotentiaries to have existed on the other side of the American continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory.”

Is not that totally inapplicable to the British Argument, that this line was only to apply in case of there being any horse-shoe? What did Mr. Canning care whether a little horse-shoe came into that mountain line which would give Russia a little more strip of territory. It is “immense tracts of territory” he talks about that might be conceded to Russia, which Great Britain did not intend to concede if those mountains which they supposed, according to the Faden map, to be within 10 marine leagues of the sea, went back afterwards 30 marine leagues.

Now, take the reason Mr. Canning asserts here for putting in that provision. How can you possibly take that and give to it any weight in construing this if you say that the IVth Article was intended only to apply as to horse-shoes? That would not be assigning immense tracts of inland territory. Supposing there were twenty horse-shoes in the line through its entire distance from the 56th parallel to the 141st meridian, that would not be assigning to Russia immense tracts of territory. It could only be a few miles at the most; but does not that language most forcibly apply to the argument that I am making, that this IVth Article did contemplate that the line of demarcation, this 10-marine-league line, might apply as to the entire mountains, and not merely as to part of them.

431 Then may I call your attention again for one moment as to how Mr. Canning emphasized that? Surely Mr. Canning did not understand that the language he had used was intended to apply merely to horse-shoe formations? Mr. Canning said—I am reading from the letter of Count Lieven, at p. 178:—

“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, 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.”

And I submit, with all due respect, to any person who shall differ from me on the construction of that Article, that you cannot give the full effect to the reasons why Mr. Canning inserted that provision

in the Treaty unless you say that it applies both in the cases where there might be horse-shoe formations, and also in the cases where the mountains might be removed more than 10 marine leagues from the sea.

Allow me now, just for a moment, to illustrate that to the Court. Supposing it were a fact that this mountain chain in the Faden map was removed $10\frac{1}{2}$ leagues from the sea, and there stood in all its grandeur, does anyone pretend to argue that, if that was true, that this 10-marine-league limit would not apply, merely because there was not a definite part of the mountain that came within the 10 marine leagues? Is it possible that the parties could have meant that; and especially is it possible that they could have meant it when, beyond all question, they intended by this Treaty to fix provision for a line which would be absolutely certain and definite in all contingencies, as Mr. Canning said to Count Lieven, not to leave a question open for discussion? And then let me put it in another shape, if it said that this line, this 10-marine-league line, is to apply as to the horse-shoe projections from the 56th parallel to the 141st meridian, I ask my friends on the other side how many horse-shoes will it apply to. Well, if it will apply to one, it will apply to 50, will it not? It would apply to 500.

Supposing there should turn out to be from the 56th parallel to the 141st meridian a horse-shoe formation which runs for 999-thousandths of this line outside the 10-marine-league limit it still would apply under their Argument. Is it not perfectly apparent that the negotiators of this Treaty certainly could not have meant any such construction as would in that case make the 10-marine-league line apply, and would not make it apply if the whole mountain range was just $10\frac{1}{2}$ leagues distant?

And then, allow me to show what a curious divergence from the British position this IVth Article takes; it was intended to be a general corrective Article. That is the reason Mr. Canning put it in. It was intended to make a certain defined line. Now my friend says it applies only to horse-shoe formations. Look now what a most curious position that puts them in. Here we say now there are two horse-shoe formations to which it will apply. According to them the limit between the British possessions and the line of the *lisière* of Russia, which is above described and is described in the IIIrd Article, would only mean a horse-shoe formation. You put in this whole Article to cover nothing but the few horse-shoe formations that could not possibly make a difference of 50 square miles either to Russia or Great Britain with reference to the territory.

And then again, look how irreconcilable with the fair construction of this Article this is. In the contingency that this 10-marine-league line applies, how is the line to be drawn? It is to be drawn parallel to the sinuosities of the coast. Why did they put the sinuosities of the coast in? Certainly not to meet the horse-shoe formation—and why? Because it is perfectly obvious that if there was a horse-shoe formation which is projected more than 10 marine leagues from the sea—the 10-marine-league line came just exactly at the distance, and it became a homogeneous part of the mountain chain, and there would
 432 be no necessity of describing that particular portion of the line as parallel to the sinuosities of the coast. The Treaty says it

is to be parallel to the sinuosities of the coast—referring to the entire coast. So that it does seem to me, whoever shall differ from me, that there is a demonstration that this IVth Article refers to the entire eastern line; and not only that, if the Court please, but is it not a fact that ever since this Treaty was made in 1825, down until this controversy got quite warm no person questioned that construction?

Russia adopted it and she drew her 10-marine-league line from the 56th parallel to the 141st meridian. Arrowsmith in his map of 1833 drew his 10-marine-league line from the 56th parallel to the 141st meridian, and the Hudson's Bay Company, in the map published by the House of Commons in 1857, drew the line the same way for the entire distance in direct accordance with what I think is the meaning of the IVth Article, and utterly inconsistent with the position that Great Britain takes on this argument. Lord Salisbury, in his letter on p. 298 of the British Case, evidently contemplates that this 10-marine-league line might apply for the entire distance from the 56th parallel to the 141st meridian.

The PRESIDENT. What page, Mr. Watson?

Mr. WATSON. 298; and your Honours will remember that this was the instruction to the Commissioners who had this matter in charge:—

“With regard to the southern portion, however, wide divergence exists between the views of the two Governments. From Portland Channel to Glacier Bay there is no such continuous range of mountains running parallel to the coast as the terms of the Treaty of 1825 appear to contemplate. That Treaty, again, provides that the line should be parallel to the sinuosities of the coast, and that it should never exceed the distance of 10 leagues from the Pacific Ocean. Considering the number and size of the projections and indentations along the coast, it would be difficult to trace the boundary according to the Treaty.”

Does not Lord Salisbury there say that the continuous mountain range is not there, and consequently does he not contemplate that this 10-marine-league line is to take the place of the entire mountain range?

Then, Lord Iddesleigh, in sending to Mr. Phelps a copy of the map, which had on it this entire 10-marine-league line, says:—

“In forwarding to you a copy of the map in question, I have the honour to invite your attention to the fact, that the Alaska boundary line shown therein is merely an indication of the occurrence of such dividing line somewhere in that region.”

And that must apply to the whole line.

“It will, of course, be clearly understood that no weight could attach to the map location of the line now denoted, inasmuch as the Convention between Great Britain and Russia of the 28th February, 1825, which defines the line making its location dependent on alternative circumstances, the occurrence, or the non-occurrence, of mountains, and, as is well known to all concerned, the country has never been topographically surveyed.” (British Appendix, p. 255.)

Certainly; Lord Iddesleigh, in sending that map, and in that letter, thought that the rule was to apply if the mountains altogether failed.

I therefore submit that, in the third place, the position of the United States should be asserted and maintained by the Tribunal, and, if the mountains are removed further than the 10 leagues from the sea—the whole eastern line of demarcation is the 10-marine-

league line—the whole of it would be drawn exactly where and as the Faden Mountains appeared on the maps of the negotiators, except that now, instead of being the exact distance, the Faden mountains show it was to be a distance of 10 marine leagues from the coast.

Our friends say you cannot draw your 10-marine league line. Why cannot it be drawn? It was drawn on the Faden map as the mountain line. What is the 10-marine-league line for? To be substituted for that chain of mountains. It would make absolutely no difference at all, except that you carry it at all points 10 marine leagues from the sea. Its formation is the same as that chain of mountains. Its location at the head of bays and inlets is the same, and the only possible difference is that now it must have an invariable distance, as I shall argue to you in a moment, of 10 marine leagues from the sea, but, whatever the distance is, it must run around the heads of the bays and inlets absolutely for so the chain of mountains did.

And now I come to one other question, and so far I hope the argument has convinced the Tribunal that the line of demarcation between Russia and Great Britain must be a line that runs around the heads of the bays and inlets just exactly as the chain of mountains did.

I come now to the fourth question, which I do not know is absolutely necessary for discussion, but I do discuss it because it has been discussed on the other side, and is thought to be of some importance, and that question is, what is the width of the *lisière* to be? And I turn and read the language of that article IV. According to that it says that the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned should be formed by a line parallel to the sinuosities of the coast, and which shall not exceed a distance of 10 marine leagues therefrom. That is put, I agree, in the negative form, but allow me now for a few minutes to call your attention to the fact that this apparently negative form here fixes absolutely and invariably the distance of 10 marine leagues, and it must do so under the words of the Treaty.

Now, let me see if I can prove that. Our friends on the other side say that this 10-marine-league line was to apply in the case of horse-shoe formations, and I agree with them that it was to apply in that case, and the only point in which I differ from them is that I say that it also applies if the entire mountains are not there. Very well then, here we will say we have a projection which is 11 leagues from the shore, how do you draw now your 10-marine-league line? You draw it of course to extend to a distance of 10 leagues, do not you? Now, I am not talking at present about where you draw it from, I am talking about the width. You fix absolutely the 10 leagues. It is only when the mountains extend to a distance of more than 10 leagues from the shore that you are to draw it. If the mountains were exactly on the 10-marine-league line you would not have to draw it; it was only in the case of the horse-shoe projection that you were to draw it. You draw a line along here [indicating] a 10-marine-league line—that is perfectly plain, is it not? Then if that is so as to the part why is it not so as to the whole? How can you say it does not apply to the whole 10-marine-league line? You would

apply it absolutely to the distance of 10 marine leagues as to the horse-shoe; you would apply the 10-marine-league line as to the entire distance of the mountains where every horse-shoe appears. But what distinction can you make between them? What authority is there to make any difference whether or not the entire mountain chain is 10 marine leagues distant. I submit, with all respect to my friends on the other side, that I would like to have a demonstration why that result does not necessarily follow from the admitted facts in this case from the position of Great Britain. She says that in the case of the horse-shoe formation the 10 marine leagues should be drawn from the coast. The width is absolutely to be 10 marine leagues. Well, if so, why is it not equally to be so in case the whole mountain chain is more than 10 marine leagues from the ocean? Why not also then fix an absolute width of 10 marine leagues as you did for the horse-shoes?

Now, the Tribunal will not overlook the fact, because it is material to the discussion here that this 10-marine-league distance was a distance to which both sides agreed. If the mountains had been exactly 10 marine leagues from the sea there could not have been any controversy between Great Britain and Russia as to the *lisière*, and in

434 that case the *lisière* would be between the mountain line and the sea, and, therefore, the burden is on the other side to show how it is possible to say, with any show of reason, that the 10-marine-league limit, that would be absolute and fixed as to the horse-shoe formation, would be absolutely nothing if the mountains were more than 10 leagues from the sea. And look for a moment, if you please, that you cannot pick out just this expression, "more than 10 marine leagues from the sea," and blot out everything else. Read the whole text. What are the parties talking about? About the mountains 10 marine leagues distant. Is it not perfectly apparent that you might have written into that Treaty, and fairly written into it, that if the mountains are 10 marine leagues from the sea we agree to it, and only if they are more do we disagree from it, and that is the meaning of that expression, "shall never exceed more than 10 marine leagues from the sea"? Beyond all question Mr. Canning so understood this, and he understood it in the last communication that he wrote to Mr. Stratford Canning, and I ask the Tribunal to turn for a moment to p. 116 of the British Case, while I show that that is correct. I read from the second paragraph on that page:—

"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 parallel to the coast and its windings, at the said distance of 10 marine leagues therefrom."

"At the said distance"—so that the said line of demarcation shall never extend further than 10 marines leagues. Did he not put the invariable distance there, at the said distance of 10 marine leagues?

Sir LOUIS JETTÉ. But he says "for that space."

Mr. WATSON. Yes, he does; but does he not put the invariable distance "for the space of 10 marine leagues"? I go back now for a moment, because your suggestion, Sir, carries me back to the other part of the argument, as to whether this line was to apply to the entire distance, and I take up his expression there "for that space"; and now I ask your attention for one moment to the consideration

of that expression. What space was it that Mr. Canning spoke of? "For that space," wherever it shall be, leading from the 56th parallel to the 141st meridian, is not restricted to only a portion of that line. He says it was for all of it, wherever the spaces are. If there was one space it applied; if there were fifty it equally applied; and if there were a thousand it equally applied, did it not? All the spaces on the line that shall be more distant therefrom, and am I not fairly entitled to read that in connection with Mr. Canning's own letter as to why he made this limitation? Am I not fairly entitled to say that these spaces would include every inch of that line, and, if it include every inch of that line, it took it all?

I ask you, Sir, when you read that expression, "for that space," to turn to p. 210. I do not go back to it to read the reasons Mr. Canning gave why he put that provision in, but I ask you to consider whether it is possible when Mr. Canning spoke about "immense tracts of territory" that he was providing against being given to Russia, to read that limitation merely as to the few spaces that might give Russia a hundred square miles, but certainly could not give them immense tracts of territory?

Mr. Canning, then, in his Treaty, in his draft of the Treaty, certainly understood that it applied absolutely, because he says so, in so many words: "The line shall be at the said distance of 10 marine leagues therefrom;" and then he adds afterwards, as if to make it stronger: "it shall never exceed 10 leagues." It puts the absolute and certain limitation.

Well, how did this negative expression creep into this Treaty? Why, allow me to show you, and it is a curious instance of how the greatest men in the use of language will use a phrase that seems perfectly clear to them, and fifty years afterwards a number of learned gentlemen are called upon to decide as to what it means. That is the almost invariable rule in reference to wills, Statutes, and everything else. In Russia's first draft of the Treaty, at p. 194 of United States Appendix, she inserted an Article as to the line of the *lisière* as follows—Article II she made it:—

435 "The *lisière* (strip of territory) on the North-West Coast belonging to Russia, from Portland Channel to the point of intersection of the 139th degree of west longitude (meridian of Greenwich) shall not be wider on the continent than 10 marine leagues from the shore of the sea."

You see she put it in the negative form, "shall not be." Now, what did Count Nesselrode and M. de Poletica mean when they put that expression in that shape? Allow me to point you to p. 204 of the United States' Appendix to show what they did mean by putting it in that shape. The Count said on that page:—

"Our counter-draft carries our boundary from the 51st degree of north latitude to 54 degrees 40 minutes. It leaves to 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."

Now, remember he had in his mind the absolute 10 leagues that Sir Charles Bagot had twice offered to give, and he says that, by the use of this expression in this draft of the Treaty, he intended to limit the width to the 10 leagues in accordance with—what? "In accordance

with the wishes of England." The only wishes of England that he had so far considered were that she was willing to give them this width of 10 marine leagues, and therefore he undoubtedly meant by the use of this expression in the negative form that it was to be the absolute width, and was to be fixed "in accordance with the wishes of England." Mr. George Canning had a copy of this letter of Count Nesselrode's prior to the time that he drew his second draft and wrote his letter to Mr. Stratford Canning, and with this letter of Count Nesselrode's saying what Count Nesselrode understood as to this expression before him, you find that Mr. George Canning, in his draft of the Treaty, puts in what I have already read to you from p. 116 of the British Case, that "the line shall be at the said distance of 10 marine leagues therefrom," so that the said line of demarcation shall never extend further than 10 marine leagues from the coast; in other words, he makes it positive and certain? Now, is it not true that, so far as Count Nesselrode was concerned, and so far as Mr. Canning was concerned, and certainly they were the two master minds that drafted this Treaty—they meant by this expression to fix an absolute invariable width of 10 leagues in case of the horse-shoes, and also in case the mountains receded altogether more than 10 leagues from the sea?

I do not stop now to weary the Tribunal with the recital again of the fact that Mr. Pelly first suggested a width of 50 or 100 miles, or that Mr. George Canning suggested a width of 50 or 100 miles, but no person ever suggested a less width than 10 leagues for this *lisière*; but suppose now I assume, for the sake of argument, that I am mistaken about this; I do not think I am; but suppose I assume for the sake of argument that I am mistaken, and that this expression is merely a negative one, and it is merely intended in a negative and not in a positive sense, then what happens?

It seems to me there is a demonstration, an absolute demonstration, that this eastern line must run round the heads of the bays and inlets, even on their own concession, and that was so absolutely fixed in Count Nesselrode's mind that he was absolutely indifferent as to the width of the *lisière*. Now, how do I get at that? You remember Sir Charles Bagot offered the 10-marine-league line, and I think I have demonstrated to the Court that the 10 marine-league line would have carried him round all the heads of the bays and inlets. You will also remember that Count Nesselrode absolutely refused to sign this Treaty unless to Russia was granted the exclusive jurisdiction of all these inland waters, and that Sir Charles Bagot wrote home to Mr. Canning and said:—

"I am satisfied that Russia will stand where she is and that she will not concede an iota of that position. She must have the exclusive jurisdiction of these waters or she will not make the Treaty."

Well, now, if it is true, as our friends on the other side claim, that this 10-marine-league limit was to be measured merely from the ocean, and was to be in a negative sense, is it not the strongest kind of argument that Count Nesselrode was so fixed in his conclusions that the line of *lisière*, the line of demarcation, should always go round the heads of the bays and inlets—of all of them—that he was absolutely indifferent about the width; other-

wise you have to assume that he entirely disregarded his prior position where he said:—

“I will stand here, and I will not make any Treaty if you do not concede our exclusive jurisdiction to these waters.”

And then conceded to Great Britain the upper half of these inlets.

And Mr. Canning, you will remember, had conceded his position, and they agreed upon the ten-year access only to Great Britain. You have got to assume that after he gained his point he turned round and threw it away, and the correspondence here certainly does not show that that was the disposition of Count Nesselrode. For these reasons the United States insist that as these mountains are more than 10 marine leagues from the sea, the 10-marine-league limit applies; and I have now followed, as well as I can, the line of argument which has always appealed, if you will allow me to say so, to myself in this Case, first that the negotiators adopted the chain of mountains shown on the Faden and Vancouver, and Russian maps. Secondly, that that chain of mountains is more than 10 marine leagues from the sea; thirdly, that in that case the line of demarcation is to be a line, in the words of the Treaty, drawn between the British and the Russian possessions, and, as I have shown you, at 10 marine leagues from the sea, and therefore the answer to the fifth question must be in the affirmative, that the line of demarcation shall run around the heads of the bays and inlets, and that is the answer to that question. And you get the full results from considering just that question: shall the line run around the head of all the bays and inlets? If it does, it takes in all the heads of the bays and inlets, and it takes in all the land between them and the sea, and, therefore, I submit that the position of the United States, for these reasons, should be affirmed.

I now pass for a moment to the seventh question because my results reached render wholly unnecessary a discussion of the sixth question which will be considered by one of my colleagues so far as it is necessary.

Mr. AYLESWORTH. Before you go to that question Mr. Watson, will you kindly let me know your position for my own information? Supposing the condition of things there was open prairie from the sea for 100 miles or 100 leagues inland, is it your contention that the *lisière* would then be measured of a width of 10 marine leagues from the water?

Mr. WATSON. Yes.

Mr. AYLESWORTH. Why?

Mr. WATSON. Because the Treaty so says.

Mr. AYLESWORTH. The Treaty says that is to be done if there is a range of mountains.

Mr. WATSON. Yes, Sir.

Mr. AYLESWORTH. But I am putting the case, supposing there were no range; suppose it were prairie.

Mr. WATSON. I understand, but pardon me, you will understand I am trying to give you exactly what my position is. Remembering that I am talking of the year 1825, put yourself in the position of Count Nesselrode and Mr. Canning. Now, they believed there were mountains there. Secondly, they feared those mountains might be

more than 10 marine leagues from the sea. Therefore, they put in the 10-marine-league limit, but I submit that the mountains were an incident in reference to the width of the *lisière*, and that
437 the eastern demarcation line must be drawn at the 10 marine league, else you have absolutely no provision for it; you get no certainty.

Mr. AYLESWORTH. It would be a case not provided for.

Mr. WATSON. Yes, Sir, it would be a case absolutely not provided for.

Mr. AYLESWORTH. Does not that bring us just back to this position, that the negotiators, in everything they did provide for, contemplated the presence of mountains within 10 marine leagues of the sea.

Mr. WATSON. I agree they thought the mountains were within 10 marine leagues of the sea; but they intended to provide for the contingency that the mountains might be more than 10 marine leagues from the sea. If, as a fact, the mountains were there, more than 10 marine leagues from the sea, then the substituted 10-marine-league line would apply. Now, if that is so, if the mountains were merely $10\frac{1}{2}$ leagues, then you agree with me it would not make any difference, but if the mountains were 100 leagues distant, does not the same result follow? If this were a perfect plain back to 100 leagues, does not the reason for the substituted line equally apply? Does not the eastern line of demarcation have to be drawn at the distance of 10 marine leagues, and if you do not do it, do you not see that the general intent of the Treaty fails?

The PRESIDENT. We quite appreciate your contention, Mr. Watson.

Mr. WATSON. I now come to the answer to the seventh question: will your Lordship allow me to say that when you put the question to me that you did, I was thinking on an entirely different line of thought, and I did not apprehend the breadth of your Lordship's question. I thought your Lordship was talking about the mountains from among which the British had selected 90 peaks to connect all together by an artificial line.

The PRESIDENT. I want to know your contention, not the British.

Mr. WATSON. Yes.

The PRESIDENT. I want to know your contention.

Mr. WATSON. Yes, Sir, and I made the answer I did, thinking solely of that; and now let me read the question and give you the position of the United States in reference to it:—

“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 answer of the United States, making it broad and applying it to all the contingencies, as put in our Case, is:—

“The United States request the Tribunal to answer and decide that such mountains do not exist within 10 marine leagues from the coast.”

And the reason of that reply was that, as we understood this seventh question referred to the mountains which run from the 56th parallel to the 141st meridian, and the reply we made was in accordance with that understanding of the question.

Now, allow me to state to your Lordship and the Tribunal the

position of the United States on it. Our position is, first, that under the evidence the chain of mountains along or across which the line is to run as provided for in the Treaty of 1825, does not exist between the 56th parallel and the 141st meridian, and therefore the 10 marine league line must apply.

Secondly, that under the Treaty the negotiators assumed, for the purpose of the Treaty, that such a chain of mountains did exist somewhere, and there is no evidence to show that that chain does not exist beyond the 10-marine-league limit.

Thirdly, it is a question for the Tribunal to determine whether in substance any portion of the chain of mountains contemplated by the Treaty, and which is shown on the Faden, Vancouver, and Russian maps, does exist within 10 marine leagues from the sea. For example, the Tribunal may take into consideration and determine whether the mountains around the head of Lynn Canal and the Mount St. Elias Alps are parts of the chain of mountains referred to in the Treaty of 1825.

Fourth, we do not think the Tribunal has the power to select from among 600 mountain peaks scattered all along the Alaskan coast, say, 60 to 90 of them, drawing from one peak to another an artificial line and call that line "a crest"—such a crest as was referred to in Article III of the Treaty.

And now but a few words—

The PRESIDENT. Is that the statement of your contention?

Mr. WATSON. Yes, my Lord.

The PRESIDENT. Of course, you are not obliged to answer it, Mr. Watson, but I only point out to you that you have not answered my question, which I tried to put as distinctly as I could. Assuming your contention for the moment to be good about the *lisière*, I am assuming that in your favour. What I asked you distinctly was, do you contend—I put it as clearly as I could—that at no part of this line are there any mountains in accordance with the Articles of the Treaty right away? I am not speaking of the whole only, but at no part right away from Mount Elias to Portland Channel. I know you said we may consider that, but I must know what your contention is.

Mr. WATSON. We say that there is no evidence in the Case.

The PRESIDENT. At no part?

Mr. WATSON. We say there is nothing which shows that at any part.

The PRESIDENT. At any part—very well, now I understand.

Mr. WATSON. I am sorry I did not more fully explain it.

The PRESIDENT. Now, I understand you say there is no evidence that there are any mountains at any part of the line.

Mr. WATSON. Yes, Sir, that is the United States' contention with reference to it, but it is a question of course left to the Tribunal for their decision. I think that anyone who reads the correspondence in this Case and gets in full touch with the situation as it was from 1822 to 1825 cannot help but be impressed with the idea that what the negotiators were after was to make a certain definite boundary between the British and the Russian possessions, and that this Treaty should be looked at and the results arrived at and the answers to the

questions made, remembering that the general intent here was to make a certain and sure boundary, and I think that the Treaty itself, in the light of all this correspondence, overwhelmingly should receive that construction.

Suppose I put it in a milder sense that it only fairly bears it, the Tribunal, I submit, would be bound to give it that construction, because it is in accordance with the general intent, and it supports and sustains the Treaty instead of rendering it null and void, and am I not correct in saying that the position of the United States throughout is simple and plain, and affirms the certainty of the boundary line, and that the position of Great Britain leaves the boundary, especially as to this eastern limit, wholly uncertain and undefined. It does seem to me, in addition to what I read from the British Argument the other day, taking the British Argument as it has
439 been presented to us with all its lucidity and strength, that there is a demonstration that the position of Great Britain necessarily is that the negotiators did not contemplate any certain definite mountains; their position drives them to that. They select ninety peaks out of 600; they select one peak for example out of a group of four; they select the peaks that are nearest the sea. Well, Great Britain cannot alone select these peaks; the peaks must be assented to by Russia, and there at once you raise a controversy that is almost as undecided and indefinite as it was in 1825. Russia would claim the peaks furthest from the sea and Great Britain would claim the peaks nearest to the sea, and pray tell me who would decide between them. The Treaty speaks of the line of mountains, the crest of the mountains which are parallel to the coast. How do our friends get a line of mountains parallel to the coast? Why, they first draw what they call a datum line of the general range of the coast, but when I turn to Article III I do not see anything about a datum line or the general range of the coast.

I see merely the word "coast"—the general word without any limitation, and having drawn that datum line and put that into the Treaty, then they select arbitrarily these different ninety peaks, from one of which to the other of which they draw this line and call it a crest. And they not only do that, but when the Treaty says that you shall ascend northerly along the passage called Portland Channel to the 56th parallel, and the Treaty definitely says you shall go along the passage until you reach the parallel, they restrict the passage to water merely because the Treaty says it was called Portland Channel. And then they stop 10 to 15 miles short of the 56th parallel, and then from a meridian line they do what? Why, they draw a line west forty-seven (47) miles to strike the 56th parallel, whereas the Treaty says the line shall ascend northerly to the 56th parallel, and it is only from 10 to 15 miles in a northerly direction from the head of Portland Channel to the 56th parallel. Great Britain runs her line from the head of Portland Channel westwardly 47 miles to strike that parallel.

The Treaty says the line up Portland Channel shall ascend northerly to the 56th parallel, whereas Great Britain draws her line westwardly and descends instead of ascending. The beginning of the line of Great Britain must be wrong, and if so, her whole line fails.

The Treaty says in the IIIrd Article that the line shall be along the crest of the mountains which is parallel to the coast. There is no limitation there as to what is coast. It does not say the general trend of the coast; it is coast where the land and water meet. My friends do not define coast under Article III. When they come to it they say, "Wait a moment now and we will define it by getting its definition in some place else." Then they go down to Article IV, and Article IV reads that "when the mountains shall be 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 sinuosities of the coast." Well, they say the contingency is that the distance must be more than 10 marine leagues from the ocean, and then what do they do? They read the word "ocean" as great ocean; they do not include the arms and limbs of the ocean as the arms and limbs of a man are included when you talk about a man. When you talk about the ocean you mean its arms and limbs just as when you speak of a man you include his arms and limbs. But Great Britain does not do that. She limits the word "ocean" to the Great Ocean only. And then, where on this Alaskan Coast does she locate the Great Ocean? If she logically followed her definition she would have to locate it outside of all the islands.

Canada at first attempted to do that, but she found if she did so the 10-league limit would deprive Russia of a portion of her islands, which was wholly inconsistent with the Treaty.

Where, then, did Great Britain locate the Great Ocean? Why, she said Stephen's Passage [indicating on the map] was a part of the Great Ocean. It is a narrow parcel of water between the islands and the mainland. Stephen's Passage is directly connected with Taku Inlet and Lynn Canal. How can Great Britain arbitrarily draw a line at the mouth of Taku Inlet and Lynn Canal, or at some distance up either, and then say up to this line is part of the ocean, but beyond is not?

How can Great Britain possibly do that?

440 Are not Taku Inlet and Lynn Canal filled with the waters of and formed by the action of the Great Ocean just as much as Stephen's Passage is?

Is not Stephen's Passage as much inland water as either Taku Inlet or Lynn Canal?

Well, having to her own satisfaction selected of these inland waters Stephen's Passage alone as inland water from which to draw the 10-league line, what else does she do?

Why, she draws a line some leagues distant from the mouth of Lynn Canal up that canal and then she runs that line across the canal. Having done so, all the water below that line she calls ocean and all above it inland waters.

What possible justification can there be for such a distinction?

Having, to her own satisfaction, fixed Stephen's Passage and the lower portions of Taku Inlet and Lynn Canal as parts of the ocean, what does she do? She turns round and controls the word "coast" by the word "ocean," and says: "Do not you see now that in the

IVth Article 'coast' is synonymous with 'ocean,' and, therefore, it must mean not the coast along the bays and inlets, but the main trend of the coast?" and then, having thus secured a definition to her own satisfaction of the word "coast," she walks back to Article III and reads that definition into Article III, and then, so far as the eastern boundary-line is concerned, she makes the Treaty turn upon the definition of the word "coast" thus artificially secured. She wholly disregards the maps as far as this eastern line is concerned, and says they were not reliable, although, as a fact, she uses them as to Portland Channel, and she necessarily leaves open for decision at least the following questions, which can only be decided by the consent of both parties: First, as to what is the Great Ocean. Secondly, she leaves open and for decision where the datum line is to be drawn. Thirdly, she does not absolutely fix her own line across Lynn Canal, but makes it vary several leagues, dependent on circumstances. Fourthly, from Portland Channel up along the *lisière* are at least 600 mountains, and from these she selects, say, ninety, from the peaks of which she draws her line. But Great Britain cannot herself select those ninety peaks—she must have the consent of Russia to do so. Here again, Great Britain's construction of the Treaty leaves open a most important question—to decide it a new Treaty would have to be made. Is it not a demonstration that the result of Great Britain's construction would be to leave this Treaty wholly uncertain as to this eastern line, and instead of Mr. Canning's assertion being true that they had fixed upon a line that is so definite and certain that there cannot be any dispute about it, they really and truly assert that the eastern line puts Great Britain and Russia, supposing they still hold this property, in practically the same situation, so far as the line is concerned, as they were in 1825?

And then our friends have commented at great length on the expression of Count Lieven that the mountains which the Treaty refers to might by an imperceptible declivity descend to the sea, and they say that proves that Russia did not expect her *lisière* to be more than a few miles wide. Well, I was studying this Treaty on my way from Pittsburg to New York, where we run through the Alleghany Mountains, and the mountains are not so high as the elevations which are given of the different peaks of the British line, and we started in at Latrobe, and we gradually ascended that mountain chain—the mountain side—on the Pennsylvania railroad, but so imperceptible was the slope of the mountains 3,000, 4,000, or 5,000 feet in height, that there was a distance of over 30 miles there. If these Alaskan mountains are 3,000, 4,000, or 5,000 feet in height, would not an imperceptible slope to the sea cover over 30 miles in that case also? You surely would not get down to the sea, as our friends are now taking us down in a rapid manner, in 2 or 3 miles. That is an abrupt declivity; this is an imperceptible declivity.

When you recollect that Count Nesselrode refused to make a Treaty which gave to Great Britain a portion of the peninsula that was opposite the Prince of Wales Island because Russia required such a strip on the coast as would give her protection for her islands, and not leave those islands at the mercy of whatever other nation owned the mainland opposite. That he spoke of a consider-

able zone of territory necessary for Russia. That the exclusive privileges granted the Russian-American Company required
441 the ownership of a belt of land running around the heads of all the bays and inlets it is incredible that this present suggestion of Great Britain can be correct.

The Russian-American Company, from its establishment at Novo Archangelsk, regularly fished, hunted, and traded over this portion of the mainland and along these inland waters. Now, to say all that Russia wanted under the language I have read to the Court was the right to go across and get on to the mainland shore, and therefore if Great Britain gave her a little peak here and a little peak there, that was all she wanted, is to entirely disregard the demands of Russia and the acquiescence of Great Britain in reference to what she should get. And then in addition they cut Russia's *lisière* into numerous parcels; that will be discussed by others, but I want to call the attention of the Court to the fact that what they have left us as a *lisière* is a number of unconnected strips, and instead of giving us a barrier against the Hudson's Bay Company's posts they have gone and given us for 36 miles merely lines over water. That would not be very much of a barrier, especially with the argument of my friends on the other side that they had the right to the access to and fro over that water. If this mountain line on the Faden map is adopted, or this substituted line of 10 marine leagues drawn where the mountain line would have been, and as the mountain line is shown in Faden's map 10 marine leagues from the sea, you give to each side here exactly what each side wanted.

What was it that Great Britain wanted? She first wanted the withdrawal of the 100-mile limit; that is withdrawn by Articles I and II of the Treaty. She, secondly, wanted protection of the post of the Hudson's Bay Company. That was her second position. Mr. Pelly's letter is in the British Case, showing that this line does protect the interests of the Hudson's Bay Company, and, so far as they are concerned, they have no contention to make (British Appendix, pp. 80 and 110). It gives to Great Britain both banks of the Mackenzie River; it gives to Great Britain the freedom of the navigation of the streams which run through the *lisière* from the Hudson's Bay Company's property to the Pacific Ocean. Everything that she contended for—take Sir Charles Bagot's language in the broadest sense—and this line that I plead for gives to her every one of the things which she claimed should result to her from the adoption of the line, and on the other hand it does the same to Russia. It gives to her comparatively but a strip of territory, it gives to her but a small portion of land on this Alaskan coast when you contemplate the immense distance back to the Rocky Mountains some 300 miles which was conceded to Great Britain. It also gives to Russia the exclusive jurisdiction over the inland waters. It gives her a barrier against the approach of the Hudson's Bay Company's post; it gives her a means of protection for her 1,100 islands that lay in the Alaskan group, without which support and protection those islands become a burden, as Count Nesselrode said, instead of a benefit. So for all reasons I submit that the United States is entitled to the answer to these different questions that she claims.

And now, may it please the Tribunal, the end of my task has arrived. My colleagues will discuss other questions in the Case. Please believe me when I say that I am most sensible of the extreme courtesy with which you have treated me during this discussion, and to thank you sincerely for it.

The PRESIDENT. Mr. Watson, we wish to thank you for your very powerful argument, which has made absolutely clear to us the contentions of the United States on those parts of the Case to which you have directed your attention.

Mr. WATSON. I am obliged to your Lordship.

O

