

ties, is navigable for ships in its whole extent, with the exception of two or three short interruptions, which will probably soon be removed by the construction of artificial canals. To this water communication, and the free use of its navigation, the immense territorial possessions lying on each side of it, and belonging to the respective parties, are indebted for more than half of their value. It became, therefore, the obvious duty of the two commissioners to inquire in what manner, if at all, and to what extent, their operations might affect the rights of the respective parties to this navigation. If the effect of establishing the boundary would be to limit and restrict the rights of navigation, as well as those of territory, it would seem to be incumbent on the commissioners to give such a direction to the line as would secure, as far as practicable, a continuous navigation to each party.

The first time that this question of navigation was agitated between the undersigned and his *present* colleague, was at the meeting of the board in New York, late in the autumn of 1821, after our surveys and maps under the 6th article of the treaty had been completed, but before any decisions had been made in regard to the course of the boundary. It was known to us that some difference of opinion existed even among able jurists, as to the precise relations which ought in particular cases to obtain between territorial rights and the rights of navigation, and how far the one should control or modify the other; and, although it may be said that the question of navigation was not by the treaty submitted to the adjudication of the commissioners, yet so intimate were its connexions with, and so important its bearing upon, the great interests which *were* thus submitted, that it could not be disregarded.

At that meeting a proposition was submitted to and entertained by the board, the import of which was, that the two commissioners, in making their final award and description of the boundary agreed on by them, should accompany it by, or rather incorporate into it, a joint declaration that they had assumed as one of the bases of their operations the principle that the navigation of all the lakes, rivers, and water communications through which, by the treaty of 1783, the boundary is to pass, should continue, as before, open and free to the citizens and subjects of the two Powers, unaffected by the course of the territorial or boundary line to be established by their award; it being, however, understood that the proposition should be first submitted to, and receive the assent of, their respective Governments.

It is obvious that, had we been successful in the adoption of this principle, it would have greatly facilitated our labors, and enabled us to make a more satisfactory distribution of the insular territory, by removing the embarrassment which the question of navigation was constantly interposing. It was, moreover, believed that a distinct declaration in regard to the reciprocal rights of navigation, sanctioned by the two parties, would be highly useful and important in the prevention of future collisions and misunderstandings.

The proposition was accordingly submitted by the commissioners to the ministers of their respective Governments, then at the city of Washington; and, although it was readily acceded to by the President of the United States, the undersigned was given by his colleague to understand that the British minister had declined, on the part of his Government, to give it his sanction. The question of navigation having been

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