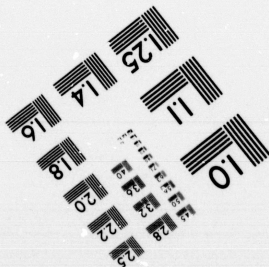
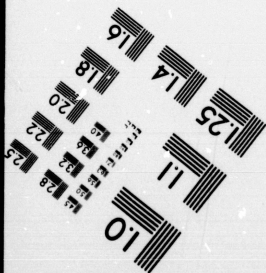
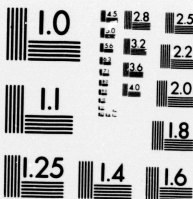


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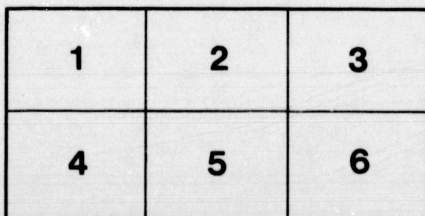
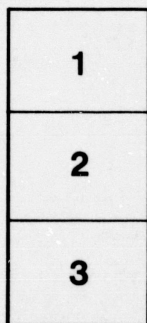
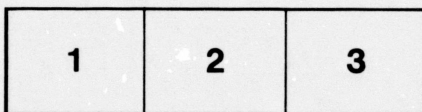
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*Remarks upon the True Location of the International
Boundary Line at the mouth of the River St. Clair,
with reference to the so-called American Canal.*

Attention has been directed to this question in consequence of the seizure, by Customs Officials of the United States, of the steam barge REINDEER and wood barge CAMPBELL, on Lake St. Clair Flats, on the 27th of last June, for landing cord-wood at a pier on the Western side of a Canal then being constructed through those flats.

The object of the following remarks is to shew that the Canal, as laid down on a plan, dated 22nd November, 1870, by Mr. F. L. Foster, Provincial Land Surveyor, of Windsor, Canada, and described thereon as "American Canal made by U. S. Govt.," is wholly within Canadian territory.

The arguments are :

1. The boundary line through Lake St. Clair, as laid down on a map accompanying Commissioners Barclay and Porter's Report under the 6th Article of the Treaty of Ghent, 1814, is not receivable as evidence of the position of the boundary.

Copy of Plan annexed hereto.

Tracing of the Commissioners' Map annexed hereto.

2. The Report of the Commissioners describes a boundary line which runs over one and three-quarter miles to the westward of the Canal; and the position thus described is that of the "true boundary."

3. But, if the description given in the Commissioners' Report, be held to support the accuracy of their map; then, their decision, being contrary to the intent of the Treaty of 1783, is subject to reconsideration, for the Commissioners were only authorized to act "in conformity with the true intent of said Treaty."

See Treaty of Ghent.

Where it has been considered proper to draw particular attention to certain passages, these have been *italicised*.

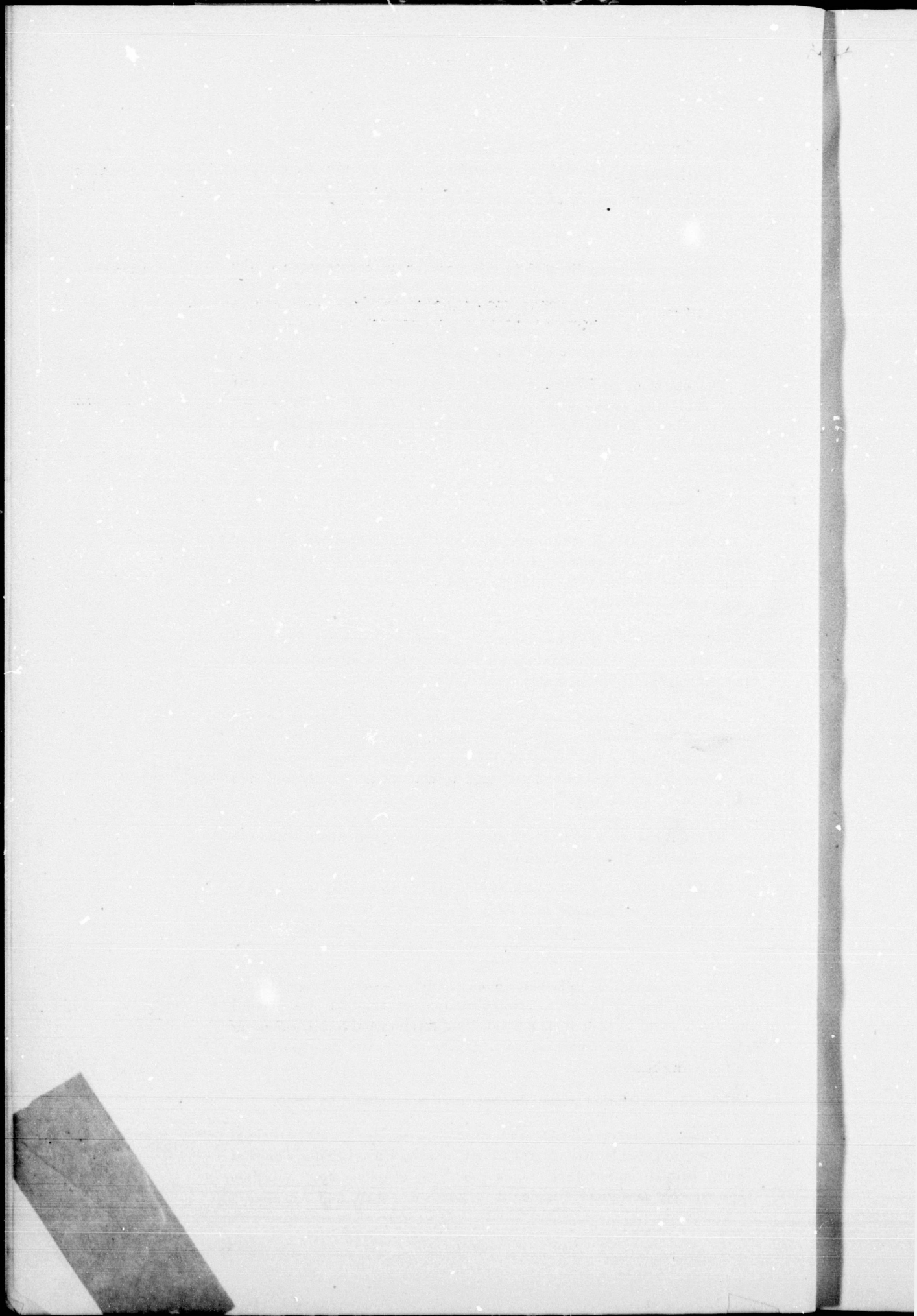
Marginal references are given to indicate the authorities from which quotations have been made, and, with the exception of Mr. M'icken's Report, the authorities may be found in the Parliamentary Library.

The boundary line, as laid down on the maps accompanying Messrs. Barclay and Porter's Report, was intended to serve merely as a general illustration of the text of their decision, and has no legal force to *limit* or *define* the written description of the boundary as given in the report,—for the following reasons :—

1st. The contracting parties did not agree to be bound by maps.

Messrs. Barclay and Porter were appointed, under the 6th Article of the Treaty of Peace between Great Britain and the United States, signed at Ghent—24th December 1814, "to designate" the boundary now in dispute "by a report or Declaration" under their hands and seals, and "to decide"

Hertslet's collection of Treaties, Vol. II, p. 388.



Hertslet's collection of Treaties. Vol. II, p. 383.

to which of the parties several islands belonged. "And"—in the words of the Treaty,—“both parties agree to consider such designation and decision as final and conclusive.”

2nd. The contracting parties, by the Treaty of Ghent, specially excluded the use of map records as a means of binding themselves.

Idem.

Four of the Articles of the Treaty—the 4th, 5th, 6th and 7th,—have reference to parts of the international boundary.

Idem, p. 380.

By the 4th Article, the contracting parties lay down that the Commissioners shall by “a declaration or report” under their hands and seals, decide, &c., and “both parties shall consider such decision as final and conclusive.”

Idem, p. 382.

The 5th Article, after describing the purposes for which the Commissioners are to be appointed under its authority, lays down that they shall “be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding Article, unless otherwise specified in the present Article.” The Article then specifies that “The said Commissioners shall cause the boundary aforesaid,” &c., “to be surveyed and marked,” &c., “according to the said provisions” of the Treaty of 1783, and the “said Commissioners shall make a map of the said boundary, and annex to it a Declaration under their hands and seals, certifying it to be the true map of the said boundary, and particularizing the latitude and longitude of the North-west angle of Nova Scotia, of the North westernmost head of Connecticut River, and of such other points of the said boundary as they may deem proper. And both parties agree to consider such Map and Declaration as finally and conclusively fixing the said boundary.”

Idem, p. 383.

The 6th article—that bearing specially on the subject in hand,—after describing certain doubts which had arisen with regard to the boundary as described in the Treaty of 1783, and repeating the injunction that the two Commissioners to be appointed, “shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article,” specifies that “the said Commissioner shall, by a Report or Declaration, under their hands and seals, designate the boundary through the said river, lakes, and water communications, and decide to which of the two contracting parties the several islands lying within the said river, lakes, and water communications, do respectively belong, in conformity with the true intent of the said Treaty of 1783, and both parties agree to consider such designation and decision as final and conclusive.”

Idem, p. 384.

The 7th article authorizes the Commissioners, appointed under the 6th Article, upon their oaths, “to fix and determine” the continuation of the boundary line to the most north-western point of the Lake of the Woods, and “to decide” to whom the several islands lying along the boundary belong, and “to cause such parts of the said boundary as require it, to be surveyed and marked;” and the Article then lays down that “the said Commissioners shall by a Report or Declaration, under their hands and seals, designate the boundary aforesaid, state their decision upon the points thus referred to them, and particularize the latitude and longitude of the most north-western point of the Lake of the Woods, and of such other

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"parts of the said boundary as they may deem proper. And both parties agree to consider *such designation and decision* as final and conclusive." Hertslet's collection of Treaties, Vol. II, p. 334.

From the foregoing, it appears that the exact manner in which the Commissioners were required to record their decisions, was particularly specified for each of the four cases,—and the contracting parties bound themselves to consider as final, only the decisions recorded in the manner specified.

Now, in the 6th Article, which authorizes the appointment of Commissioners to decide upon the boundary passing through Lake St. Clair, *no mention is made of a map in the specification of the manner in which the Commissioners were to record their decision*; and, inasmuch as the manner in which the Commissioners were required to record their opinion was specified without reference to a map, the injunction that they should be authorized "to act exactly in the manner directed in the next preceding Article, *unless otherwise specified in this present Article*," pointedly excludes maps, which were required from Commissioners acting under the 5th Article. Idem, p. 333.

The correctness of this view is further shewn by a comparison of the terms in which the contracting parties agree to abide by the Commissioners' decisions:—

In the 5th article "both parties agree to consider *such Map and Declaration* as finally and conclusively fixing the said boundary." Idem, p. 332.

But in the 6th article "both parties agree to consider *such designation and decision* as final and conclusive." Idem, p. 333.

Nor is there any room for doubt as to the meaning intended by the expression to designate "by a *Report or Declaration*," since in the 'American Project of a Treaty as returned by the British to the American Plenipotentiaries', it will be seen that the expression came particularly under the consideration of the negotiating parties, and was applied by them to the case of the 4th Article, which, from its very nature, required no map. And again, in the Convention between Great Britain and the United States of America, relative to the reference to arbitration of the disputed points respecting the Boundary Line, under the 5th Article of the Treaty of Ghent, signed at London September 29, 1827, the following sentences will be found in close proximity to one another: State Papers, 1821-1822, Vol. IX., p. 539, et seq. Idem—1825-1827, Vol. XIV., p. 1001.

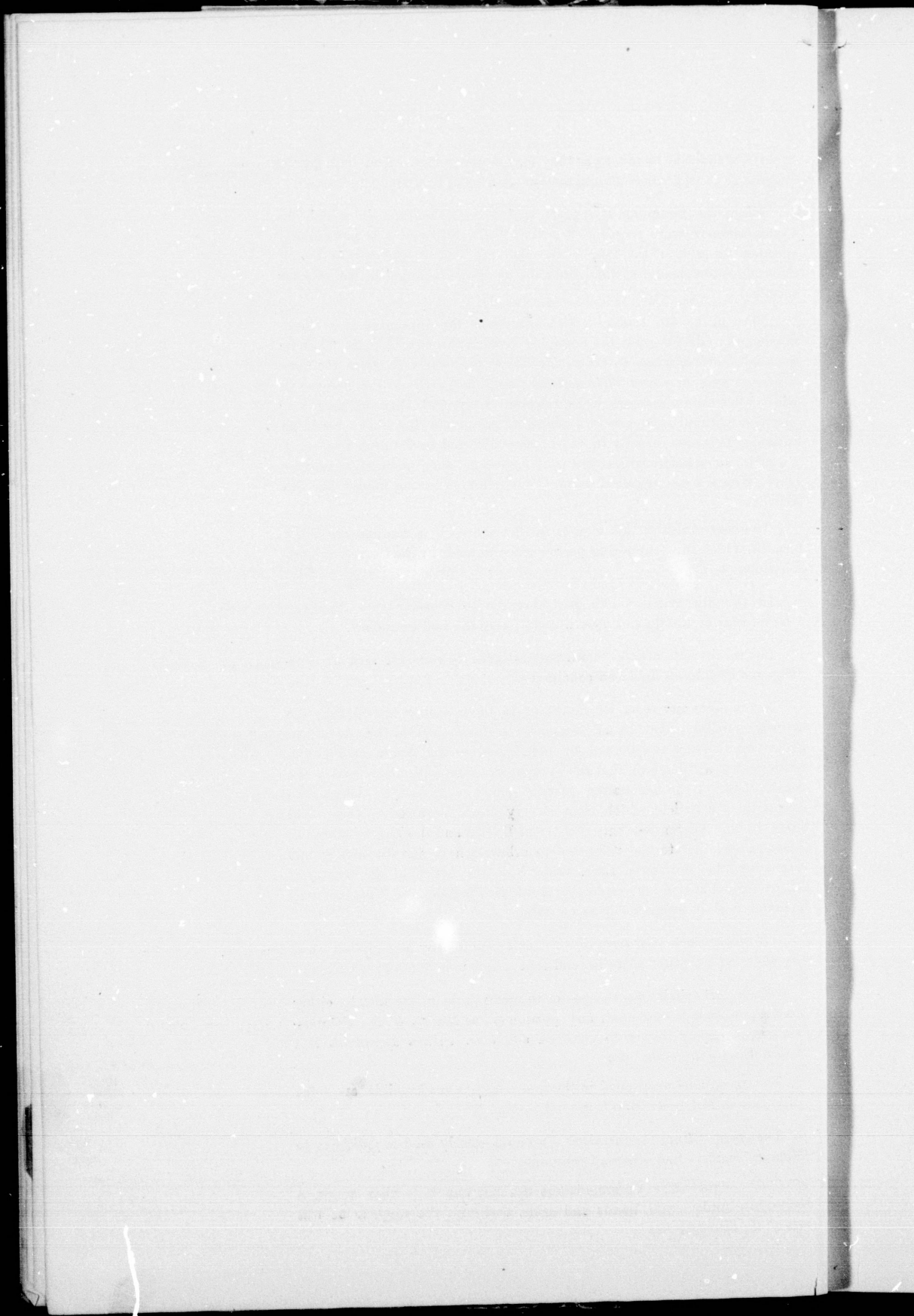
"No maps, surveys or topographical evidence of any description shall be adduced by either party beyond that which is hereinafter stipulated." Idem, p. 1006.

"Each party shall have full power to incorporate in, or annex to, either its first or second statement, any portion of the Reports of the Commissioners, or papers thereunto annexed and other written Documents laid before the Commission," &c.

The exceptions mentioned in the first sentence as adducible, are "the Map called, Mitchell's Map" and "The Map A."

The word "Maps" in the above extract is clearly used in antithesis to "Reports" and "other written Documents."

3rd. The Commissioners did not annex, to their maps, a declaration, under their hands and seals, certifying the maps to be true ones of the boundary line.



Should it be contended, notwithstanding what has been said above, that the maps constitute more than a mere illustration of the Commissioners' *designation and decision*, and that they form part of these in the same spirit that a map, under the 5th Article, was constituted a part of the Commissioners' decision in that case; still, it is to be observed that the maps delivered with the decision under the 6th article, are of no legal effect, for the Commissioners failed to comply with the condition of the 5th Article which required them "to annex to the map, a declaration under their hands and seals, certifying it to be *the true map of the said boundary*."

Hertslet's collection of Treaties, Vol. II, p. 382.

State Papers 1821-1822, Vol. IX, p. 791.
Idem, p. 792.

The Commissioners in their Report, signed at Utica on the 18th of June 1822, refer to the boundary, merely as being "more clearly indicated by a black line on a series of maps accompanying this Report."—While, on the face of the maps, they are merely "*identified* by certificate, subscribed by the Commissioners, and by the two principal Surveyors employed by them."

4th. The Commissioners themselves, did not contemplate that the maps delivered by them would be made use of to limit the description of the boundary given in their *Report or Declaration*.

Idem, p. 791.

In the preamble of the Declaration of the Commissioners, they state their duty to be to "*designate the boundary by a Report or Declaration*" and to decide to which of the two Contracting Parties, the several islands, lying within the said Rivers, Lakes, and Water-communications do belong, in conformity with the true intent of the Treaty of 1783."

Now in the Report of the Commissioners, there are five distinct cases of reference to maps accompanying their Report :

Idem, p. 792.

a. As an assistance in tracing "the following described line" which line, as described in writing, the Commissioners declare to be "the true Boundary intended" by the Treaties of 1783 and of Ghent, 1814.

Idem.

b. As "Exhibiting correct Surveys and delineations of all Rivers, Lakes, Water-communications, and Islands embraced by the 6th Article of the Treaty of Ghent."

Idem.

c. As being "*identified* by a Certificate, subscribed by the Commissioners, and by the two principal Surveyors employed by them."

Idem, pp. 792-3-4.

d. As a means,—by reference to letters and numerals, to distinguish certain islands of which the names were not given; and to distinguish some of a group of islands, from others of the same group, having but one name applicable to all.

Idem, p. 794.

e. And, as shewing "a line (drawn on the map with black ink, and shaded on one side of the point of intersection with blue, and on the other side with red) passing across the river at the head of St. Joseph's islands, and at the foot of the Neebish Rapids, which line denotes the termination of the Boundary" under the 6th Article of the Treaty of Ghent.

But in no case will there be found any reference to a map, which will justify a belief that the Commissioners themselves regarded those they furnished, in any other light than as an assistance to a clearer understanding of their Report, more particularly with reference to the position of nameless islands, which could most easily be identified by an illustrative map.

This view is fully confirmed by the fact that the 1st, 2nd, 3rd and 5th cases of reference are introduced merely parenthetically, while the character of the 4th case of reference, clearly accounts for the greater importance given to it, by the omission of parenthesis.

In the former cases, the sense is clear, definite, and complete, without the parenthetical reference to maps; but in the 4th case, until the letters and numerals are associated with the islands to which allusion is made—the sense, although clear and complete, is undetermined; and the reference was, therefore, properly made without parenthesis. Yet in this case, the map cannot be considered as limiting the sense of the Report;—for, in spirit and in fact, the designation of an island by an arbitrarily chosen numeral, has exactly, and only, the same force as its designation by a name. The only difference between the cases,—and one arising out of their nature, is that names were already associated with the islands to which they referred, while a means,—in this instance maps,—had to be adopted for associating the numerals with the nameless islands to which they referred: but this association once established, the authority of the map ceases with regard to the boundary line, for the Commissioners “do decide and declare that the following described line is the true boundary,” and in that description no reference is made to maps, except for the purpose just above detailed.

5th. The location of the boundary line on the Commissioners' maps of Lake St. Clair, between Detroit River and River St. Clair, does not agree with the definition of that part of the line as described in the Commissioners' Report, which is declared to be the “true line.”

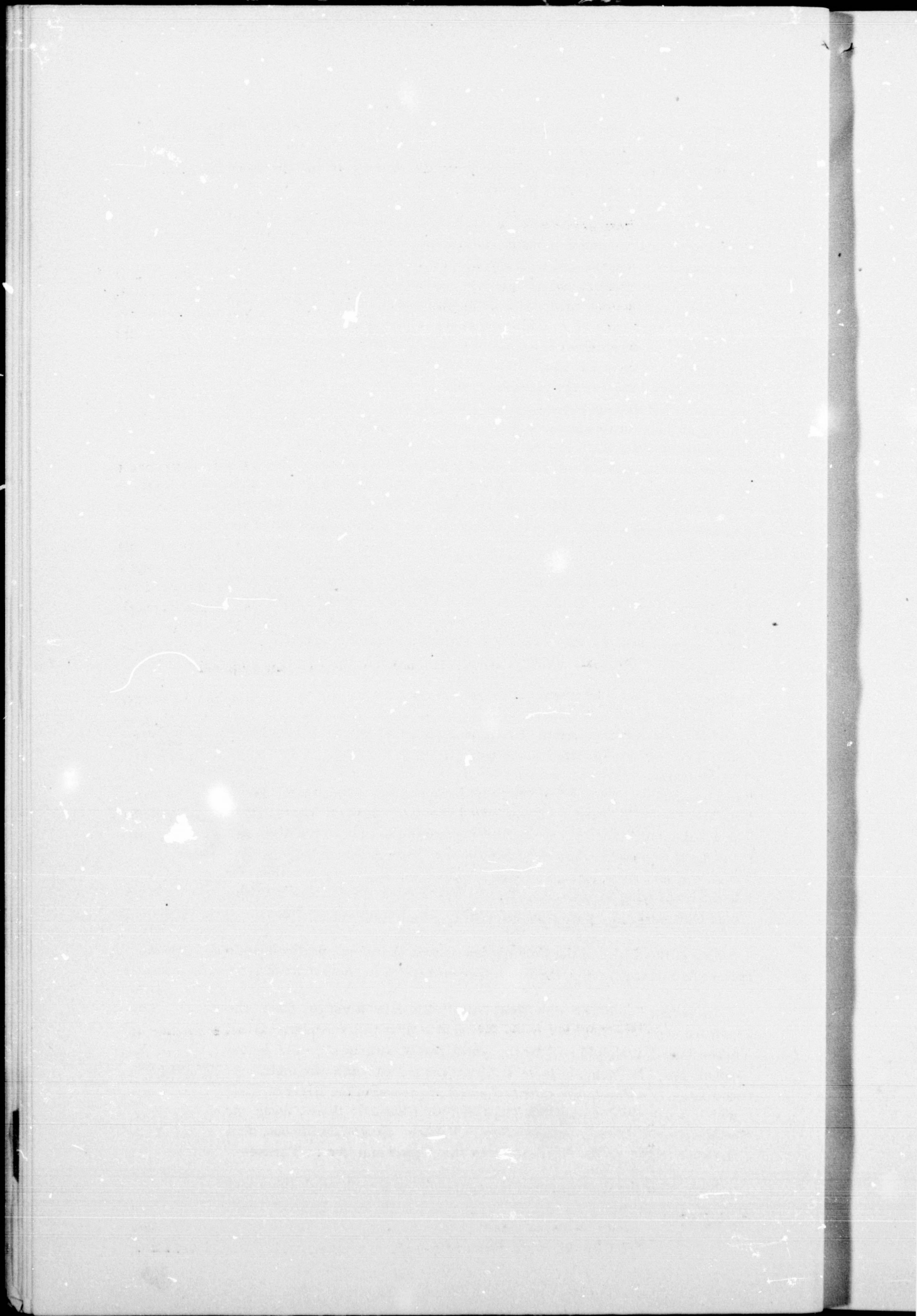
The objects for appointing Commissioners are thus stated in the 6th Article of the Treaty of Ghent:—

“Whereas by the former Treaty of Peace, that portion of the boundary,” &c.—“was declared to be along the middle of the said river into Lake Ontario, through the middle of said Lake until it strikes the communication by water between that Lake and Lake Erie, thence along the middle of said communication into Lake Erie, through the middle of said Lake, until it arrives at the water communication between that Lake and Lake Superior. And whereas doubts have arisen what was the middle of said river, lakes, and water communications, and whether certain islands lying in the same,” &c. “In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners,” &c.

One of the duties of the Commissioners was, therefore, particularly to remove doubts arising from the use of the word *middle* in the Treaty of 1763.

In laying down the line from Detroit River to River St. Clair, the Commissioners decided that, from the middle of the River above Great Turkey Island, it should pass by the Northwest of, and near to the Island called Isle à la Pêche, to Lake St. Clair; thence, through the middle of said Lake, in a direction to enter that mouth or channel of the River St. Clair which is usually denominated The Old Ship Channel; thence, along the middle of said channel, between Squirrel Island on the South-east, and Herson's Island on the North-west, to the Upper end &c.: Thence—

Now, after the description of the course of the line through the upper part of Detroit River by the N. W. of Isle à la Pêche to Lake St. Clair,



State Papers, 1821-
1822, Vol. IX., p.
784.

the sentence, "thence, through the middle of said Lake, in a direction to enter that mouth or channel of the River St. Clair usually denominated the Old Ship Channel," evidently means that the line should be drawn from near the N. W. point of Isle à la Pêche along the most direct navigable course, in this case directly, to the entrance, wherever that entrance may be, of the Old Ship Channel. To read the sentence as implying an irregular or curved line stretching out into Lake St. Clair in an indefinite medial direction, is to suppose that the Commissioners had been inattentive to one of the only two kinds of doubts which they had to remove, viz., the meaning of the word 'middle,' and the sovereignty over the islands along the boundary. But, such a supposition is quite untenable, for immediately after using the words "through the middle of said Lake" the Commissioners accurately defined the course as "in a direction to enter that mouth or channel," &c.

Any irregular figure, such as that presented by Lake St. Clair, has a middle point; and a line might be drawn from any other point, such as the N. W. angle of Isle à la Pêche, through it in a direction ultimately to reach any third point, such as the entrance to the Old Ship Channel. But, again, to suppose that the Commissioners intended to convey this meaning, is to avoid a plain and simple construction, and to accept a rendering at once questionable and laying them open to a charge of neglect. Moreover, the line, as indicated on the map, does not pass through the middle point of the Lake St. Clair; nor is it drawn, from its entrance into the lake, "in a direction to enter that mouth or channel of the River St. Clair which is usually denominated the Old Ship Channel."

Idem.

The *channel* of a River is plainly not the River itself, but the deeper part or hollow in which the principal current flows; and, it may, or may not, be marked by banks shewing above the surface: and the channel of a river usually runs out for some distance, beyond the visible banks.

As if purposely to guard against any other than the common acceptance of the word "channel" just given, the Commissioners introduced the alternative term "mouth,"—which lucidly conveys the meaning that the channel is to be entered where it begins.

Again, in describing the course of the line passing from Lake Erie up Detroit River, the Commissioners say:—"Thence" (that is, from the South of the Middle Sisters) "to the middle of Detroit River, in a direction to enter the channel which divides Bois-blanc and Sugar Islands; thence up the said channel to the west of Bois-blanc Island, and to the east of Sugar, Fox, and Stony Islands, until it approaches," &c. But the islands,—Bois-blanc and Sugar, by which the particular channel meant, is indicated,—are not at the mouth of Detroit River: they are at some distance up the stream. Yet it is clear that the word *channel* here implies that the deeper part or navigable course is to be followed from the mouth of the River up to the passage between the islands. Similarly the words "in a direction to enter that mouth or channel of the River St. Clair usually denominated The Old Ship Channel; thence along the middle of said channel, between Squirrel Island on the South-east and Hersons Island on the North-west" &c., must be understood as implying that the course of the Old Ship Channel up to Squirrel and Herson's Islands is to be followed.

Thompson's Coast
Pilot, 1839, p. 89

The following "Sailing Directions for Lake St. Clair, to enter St. Clair River by the South Pass or Channel," extracted from "The Coast Pilot"

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" compiled by Thos. S. Thompson, Licensed Pilot for the Lakes—5th Edition—published at Detroit 1839," will serve to show where the entrance to the South Pass, or Old Ship Channel, of the River St. Clair really is; and also, will furnish an example of the common acceptance of the phrase "to enter by a channel."

" To enter the St. Clair River by the South Pass or Channel, run out of ^{them.} Detroit River E. N. E. until the two first points north of the Lighthouse are open; then N. E. $\frac{1}{2}$ N. 20 miles, till you make the South Pass Light-house, when in 15 feet water, bring the Lighthouse and Beacon Light in range, steer up on this range, passing black buoys to port, and red buoys to starboard, till up to beacon light: thence, haul off to S. E. and leave red buoys to starboard and black to port, until into the river." (See foot note.)

" There are range lights kept on the starboard hand, opposite the turning point into the river, and are thus: red and white for each bend or reach, first from the beacon light to abreast the point, and then up the river and vice versa."

Besides the above evidence as to the position and course of the Old Ship Channel, charts and oral evidence in confirmation are referred to in Mr. M'Micken's Report on this subject.

Report by G. Mc-Micken, Esq., dated 3.10.66 H. Bernard, Esq., Deputy of the Minister of Justice—Ottawa.

The course above described is approximately laid down on the accompanying tracing from a United States Government Chart; also the boundary line transferred from the Commissioners Messrs. Barclay and Porter's Map.

An original copy of the chart is in the possession of the Deputy Minister of Marine.

It is, therefore, evident that the boundary line, as shown on the Commissioners' map, agrees neither in its departure from Detroit River, its course across the lake, nor at its arrival at the Old Ship Channel, with their description of "the true boundary intended" by the Treaties of 1783 and 1814.

And for the various reasons enumerated the Commissioners' map has no legal force to limit or define their written description of the boundary.

This conclusion suggests the following questions, and calls for explanation:—

Why did the Commissioners furnish Maps with their Report?

And, since they did furnish Maps, and indicated the course of the boundary line upon them, what reason is there for supposing that the line so laid down was not intended as an exact representation of the description in their Report?

The 8th Article of the Treaty of Ghent supplies a full answer to the first of these questions. The Article directs that,

"The several boards of two Commissioners mentioned in the four preceding articles, shall respectively have power to appoint a secretary, and to employ such Surveyors or other persons as they shall judge necessary. Duplicates of all their respective reports, declarations, statements and decisions, and of their accounts, and of the journal of their proceed-

NOTE.—What is here called "the River" is the channel confined between visible banks. See also the Sailing directions on the United States Government Chart.



"ings shall be delivered by them to the Agents of His Britannic Majesty, and to the Agents of the United States who may be respectively appointed and authorized to manage the business on behalf of their respective Governments."

In reply to the second question, besides the reference made to the subject in the preceding pages, it is further to be observed, that on the 'Exact Tracing' of that portion of the Commissioners' Map (furnished by H. E. the Governor General) including the entrance to the River St. Clair, there is no reference to subaqueous topography,—and it is therefore assumed that no such reference will be found, affecting the course of the boundary line, on any of the series of maps furnished by the Commissioners.

Now, as the Commissioners did not note on their maps, either soundings or the windings of subaqueous channels, it was not to have been expected that a line,—intended by them merely to afford a general illustration of their Report, and on so small a scale that such minute details as those here referred to, would have been practically useless,—should have been drawn so as to show the narrow and irregular entrance through the shoals at the mouth of the Old Ship Channel, since the written description "in a direction to enter that mouth or channel," sufficiently explained its course.

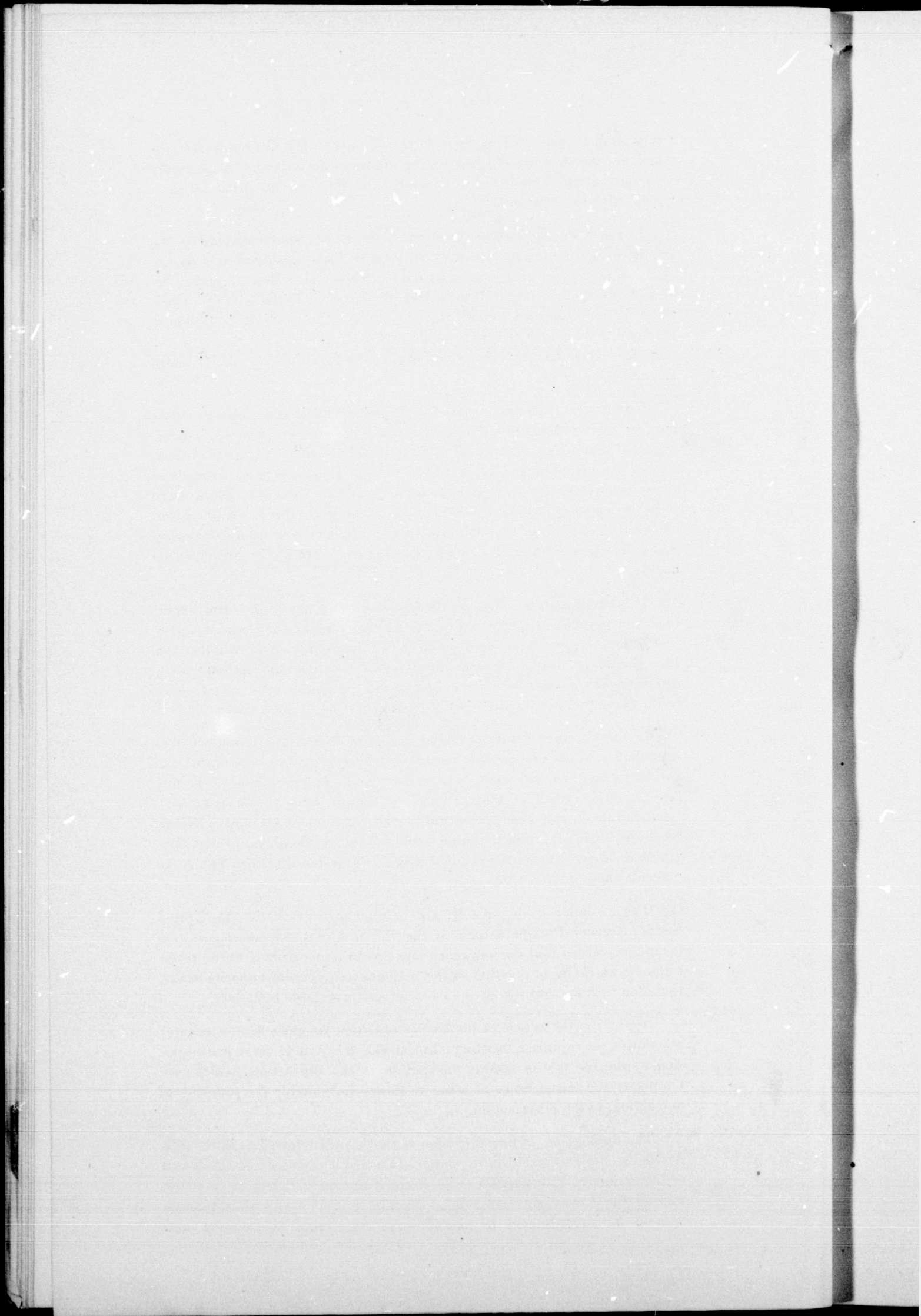
It is presumed, too, that the doubts, with reference to the term "middle," and to the sovereignty over certain islands which the Commissioners had to remove, were not connected with uncertainty as to whether the line should be drawn so as to interfere, or not, with navigation;—but, *assuming the right of navigation as inalienable*, the doubts were with respect to the term "middle" as affecting the sovereignty over certain islands.

In the "former Treaty of Peace"—that of 1783,—the boundary was described as running along the middle of a river, water-communications, and lakes without reference to islands; "and," in the words of the 6th Article of the Treaty of Ghent "whereas doubts have arisen what was the middle of said river, lakes and water-communications, and whether certain islands lying in the same were within the Dominion of His Britannic Majesty or of the United States: In order therefore finally to decide these doubts," &c.

The quotation made from Mr. Clay's letter to Mr. Gallatin—the United States Minister Plenipotentiary at the British Court, shews that it was taken for granted that the boundary line was to be so drawn as not to interfere with the right of either of the nations occupying the opposite banks, to the navigation throughout the co-terminous navigable boundary.

Again, the 1st Article of the Treaty of Ghent provides for the general restoration of captured territory: but, in the 8th Article there is a provision, applicable to the islands referred to in the 6th Article, which contemplates the transference of some of these—indubitably the property of one nation, to the other nation.

The application of this provision to the islands referred to in the 6th Article is only explicable on the supposition that it was assumed the course of the boundary line was not to be decided merely with a view to determining the sovereignty over these islands; but, that this consideration was to be subordinated to another—the "reciprocal advantages and



mutual convenience" of the Treaty of 1783—involving the necessity for drawing the line so as not to interrupt navigation for either country. And the omission, from the Commissioners' maps of all note of soundings and delineation of channels is plainly consistent with the foregoing view.

Moreover, it was to be expected that had the Commissioners to define the exact position of the boundary line on maps, whether such delineation was to be binding on the contracting parties, or not, — the wording of the 6th Article of the Treaty would have conformed with that in the 5th and 7th articles.

Under the former of these: "the Commissioners shall cause the "boundary aforesaid, to be *surveyed and marked.*" And under the 7th Article the Commissioners are directed "to cause such parts of the said "boundary as require it, to be *surveyed and marked.*"

But the 6th Article makes no reference to a survey.

The Commissioners, then, furnished maps in compliance with the 8th Article of the Treaty of Ghent, but not being required to mark the boundary *in situ*, nor to furnish delineations of subaqueous topography (which would have involved an enormous and unnecessary addition to their labor), they depicted the line as passing from visible to visible landmark, in a manner to generally illustrate their written description, which defined a navigable course, and thus may be accounted for—the indefinite medial direction given, on the maps, to the line when passing through large sheets of navigable water.*

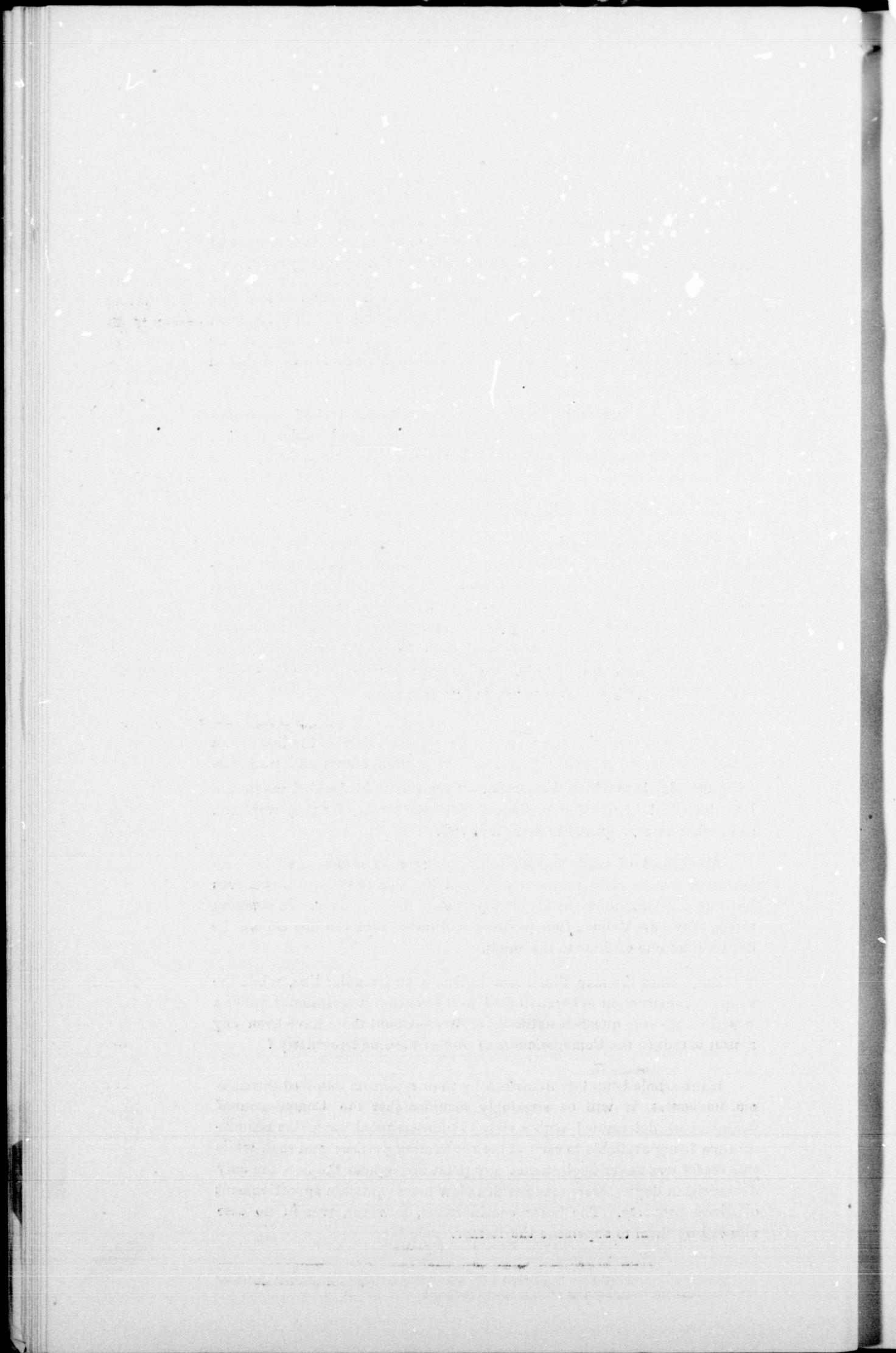
Assuming, then, that the map can be regarded only in the light of an illustration, except in so far as it associates certain letters and numerals with the islands to which these refer,—it remains to be decided where the line, described by the Commissioners as *the true one*, is; for they were not, as in other cases, required to mark it *in situ*.

Now, short of mathematical technical terms, it is conceived that no language can be clearer than that which the Commissioners themselves have used in describing the disputed portion of the boundary. In common terms, they have defined two points, and directed that the line should be drawn from one of these to the other.

But,—since the map illustration indicates an irregular line, while the simplest construction to be attributed to the written description, implies a straight line,—the question naturally occurs:—Could there have been any reason to induce the Commissioners to project the line irregularly?

If the whole boundary described by their report be followed throughout its course, it will be strikingly manifest that the Commissioners' decision was determined with a view to uninterrupted navigable communication being available to each of the contracting parties; and that, while this object was never neglected at any point throughout the line, the only deviations in degree, were made with a view to an equitable apportionment of island property. The latter consideration, however, was in no case allowed by them to supersede the former.

*It will be observed that the United States Bureau of Topographical Engineers' Charts of the lakes omit the boundary line when it enters the lakes.



During negotiations between the United States and the British Government with reference to the right, claimed by the former, of navigating the lower St. Lawrence—Mr. Clay in a letter (dated, Department of State Washington 19th June 1826,) to Mr. Gallatin, refers to the Great Lakes, and says “they are entirely enclosed within the Territories of the United States and Great Britain, and the right to their navigation, common to both, is guaranteed by the faith of Treaties, and rests upon the still higher authority of the law of nature. The Great Lakes are united by but one natural outlet to the Ocean, the navigation of which (Ocean) is common to all mankind. That outlet, along a considerable part of its course, forms a common boundary between the Territories of the United States and Great Britain and to that extent the right of navigating it is enjoyed by both. The United States contend that they are invested with a right to pass from those lakes, the uncontested privilege of navigating which they exercise, through that natural outlet to the Ocean,” &c.

State Papers, 1831-1832, Vol. X, X., p. 1089.

State Papers, 1831-1832, Vol. IX, p. 1089.

From this extract it is clear that the United States Government held the same view as the Report of the Commissioners indicates was held by them, with regard to the right of each of the Contracting Parties to retain uninterrupted navigable communication along the boundary the Commissioners had to define. Moreover, four years after the decision of the Commissioners under the 6th Article of the Treaty of Ghent had been delivered, the United States Government are seen, in the foregoing quotation, to have declared that the right of navigation at the now disputed point—for it is included in the “common boundary” to which reference was made,—besides resting on the supreme Law of Nature, was also guaranteed to both Parties, by faith of Treaties.

But such guarantees could not have existed if the boundary was run as it is marked on the map of Lake St. Clair which accompanies the Commissioners report,—for there was no navigable channel to the South or Eastward of the Old Ship Channel leading out of Lake St. Clair into River St. Clair. On the other hand, there is another navigable, but circuitous, channel in American water—the new Ship channel,—to the North-west of the Old Ship Channel.

In 1854 a Bill passed both houses of Congress, appropriating a large sum for the improvement of the natural entrance to the Old Ship Channel. The President vetoed the Bill. Then the Secretary of the Buffalo Board of Trade wrote, on the 10th April, 1855, to the Provincial Secretary of Canada, asking aid from the Canadian Government, and saying that on the Board attempting themselves to carry the object of the Bill into effect, “it was ascertained that the Channel was in Canadian water, and the project was therefore abandoned.” Canada made the required grant, and the United States Government afterwards appropriated some funds for the same work.

Again, it may be asked: Why did the Commissioners select the Old Ship Channel as the course of the boundary? A more direct line might have been drawn from Detroit River to River St. Clair than that indicated on their map,—and, this too, supposing their object to have been to give Squirrel Island to one of the parties, and to assign Herson’s Island to the other. Nor, to accomplish this, was it necessary to cross dry land, for there are several other courses,—at least three, to the Eastward of the boundary line, and all more direct, which would have satisfied the condition of mere water-communication, if that were all that was required by the Treaty of 1783. The only explanation,—and it is a very simple one, and quite consistent with the principle which manifestly actuated the Com-

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missioners throughout the performance of their duty,—is that the Old Ship Channel afforded the most direct *navigable* communication between Lake St. Clair and Lake Huron.

A reference to charts, or to the "Sailing Directions" already quoted, will show that no interruption to navigation occurs between the north-west point of Isle à la Pêche, or near thereto, and the entrance to the Old Ship Channel *by its mouth*;—while, on the other hand, the lighthouses, beacons, and irregular course indicated in the former, and the soundings noted on the latter, prove the existence of unnavigable shoal water between Isle à la Pêche and the point where the existence of the navigable channel is first marked by banks shewing above the surface of the water.

Now the so-called American Canal strikes into the Old Ship Channel quite close to the point just mentioned, and is cut through the shoals referred to, nearly parallel to, and a little to the westward, or American side of the boundary line indicated on the Commissioners map; while, the mouth of the channel, or its true connecting point with Lake St. Clair basin, is more than a mile and three-quarters to the westward of the American Canal.

Foster's Map.
Copy attached
hereto.

It is to be observed, too, that whether the straight line implied by the words "*in a direction* to enter that mouth or channel of the River St. Clair "usually denominated the Old Ship Channel"—whether such a straight line, from near Isle à la Pêche, be drawn to the true entrance to the Old Ship Channel, or to intersect it over one and three-quarter miles up its course, and be considered the "true boundary line intended," in either of these cases the Canal will be within Canadian jurisdiction,—in the first, wholly so; in the second, all but the upper portion of its western side.

State Papers, 1831-
1832, Vol. IX,
p. 798.

Idem, pp. 791 and
792.

On the other hand, if it be held that the Commissioners Report supports the view that the Canal is in American water, it follows that before 1842* Canada had no navigable communication between Lake St. Clair and Lake Huron, and the question is immediately raised—Did the Commissioners comply with the true intent of the Treaty of 1783, which, in its preamble declares that intent to have been "to establish such a beneficial and satisfactory "intercourse between the two countries, upon the grounds of reciprocal "advantages and mutual convenience, as may promote and secure to both "perpetual peace and harmony?"

Chalmers' collec-
tion of Treaties,
1691-1783, Vol. 11,
p. 525.

And a precedent for raising such a point may be found in the "Pro-
"test of the American Minister at the Court of the Hague, against the
"decision of the King of the Netherlands, upon the disputed points of
"boundary, under the 5th Article of the Treaty of Ghent, of 1814, between
"Great Britain and the United States—dated 12th January 1831," which
resulted in that decision being cancelled. The point of the Minister's
protest was that the King's decision did not comply with the requirements
of the Treaty of 1783.

State Papers, 1831-
1832, Vol. XIX,
p. 132.

Idem, p. 214.

It has been shewn, then, that for many reasons, detailed above, the maps accompanying the Commissioners' Report under the 6th Article of the Treaty of Ghent cannot be accepted as part of their decision.

On the other hand the written Report describes the *true* boundary, and is binding.

The course described strikingly proves that the Commissioners were guided in their decision, by an intention to confirm to each of the Contracting parties a right of navigation along the water-communications

* By Article VII. of the Ashburton Treaty, 1842, all the channels and passages between the River and Lake St. Clair were declared "equally free and open to the ships, vessels, and boats of both parties."—State Papers, vol. 30, 1841-42, p. 365.

NOTE—But it may be observed that a probable effect of diverting the stream of the Old Ship Channel, will be to throw a bar across the channel just to the westward of the point where the Canal enters it,—and thus to close against Canada the passage which up to the present time, has been used in common by the two nations.

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between the Eastern and Western parts of their Territories. The American Government held that such a right was theirs by nature; and, moreover, four years after the publication of the Commissioners decision touching the boundary through Lake St. Clair they declared that the enjoyment of this right was further assured to both Nations, on the faith of Treaties. The existence of such a right can alone account for the transference of islands indisputably the property of one nation to the other as contemplated by the 8th Article of the Treaty of Ghent. And, the Commissioners having to decide in conformity with the *true intent* of the Treaty of 1783, could not have neglected this consideration.

But they did not neglect it; for it is only by a strained interpretation of the words of their written description that the course of the boundary line can be so drawn as to interfere with natural navigation. And the strained interpretation rests upon a mistaken view regarding the maps furnished by the Commissioners.

No subsequent topography is shewn on these maps; and it could not have been expected that on maps, shewing a line only with reference to visible landmarks, the Commissioners would delineate that line as conforming to the windings of hidden channels, for, not being required to mark the line *in situ*, they would not have undertaken the unnecessary and laborious task of recording soundings.

Under these circumstances the general medial direction of the boundary line as delineated on crossing large sheets of water is perfectly consistent with the most familiar and most literal interpretation of the Commissioners description of the *true line* as regards Lake St. Clair.

But such an interpretation involves a line about two miles to the westward of that assumed by the constructors of the so-called "American Canal," and brings the Canal entirely within Canadian jurisdiction.

D. R. CAMERON,
Capt. R. A.

Ottawa,
26th December, 1870.

