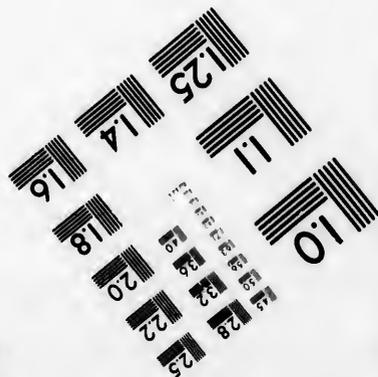
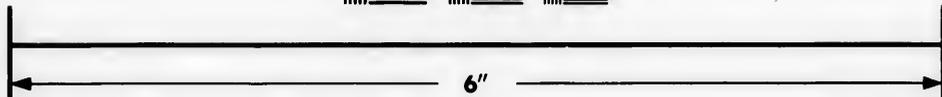
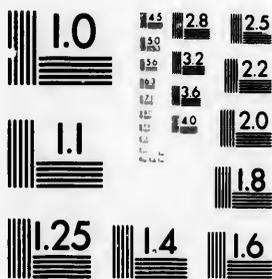
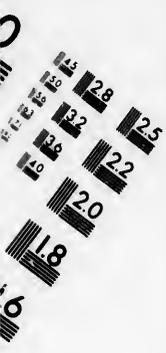


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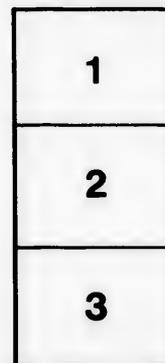
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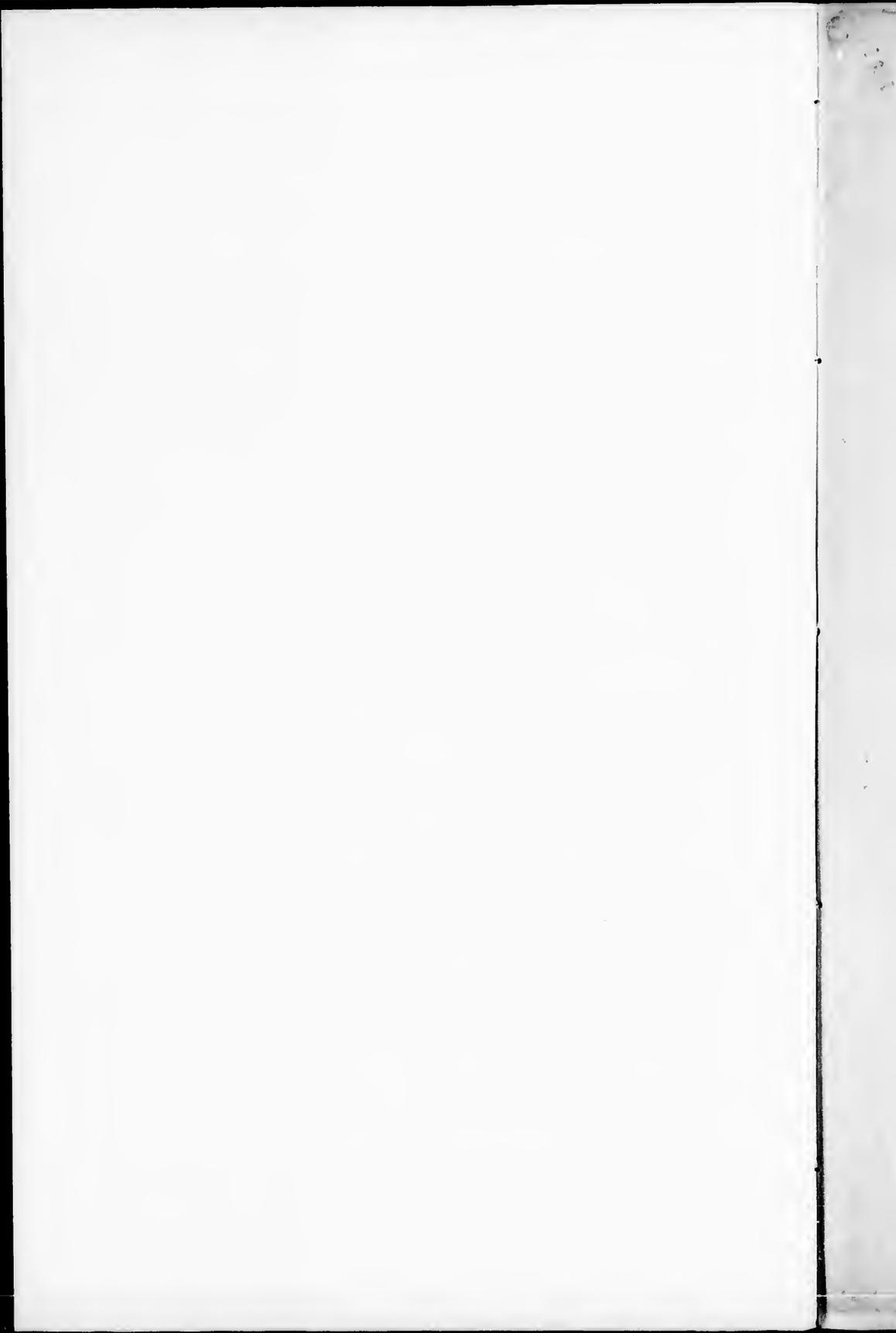
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## MEMORANDUM

### Upon Mr. Blaine's Note to Sir Julian Pauncefote, of December 17th. 1890.

Mr. Blaine joins issue upon the statement made on behalf of Great Britain that the phrase "Pacific Ocean as used in the Treaties" of 1824 and 1825, was intended to include, and does include, the body of water now known as Behring Sea; and he remarks that, that upon this issue the whole question between the two countries depends.

He claims that Behring Sea was understood by the three signatory Powers concerned to be "a separate body of water, and was not included in the phrase 'Pacific Ocean.'" He combats Lord Salisbury's contention that the words "north-west coast" in the correspondence and Conventions include, or included, the whole of that coast as far as Behring Strait.

Mr. Blaine insists that by long prescription the words "north-west coast" mean the coast of the Pacific Ocean between 60 degrees north latitude and 54 degrees 40 minutes.

O. C. 30th August,  
1890.

The undersigned has already supported, by reference to documents and despatches contemporaneous with the Treaties, Lord Salisbury's construction of these words. Touching the words "north west coast," it may be repeated shortly, that Emperor Paul, in the Ukase of 1799, when delimiting the "north-eastern (sic) coast of America," referred to it as lying at 55th degree to Behring Strait. Emperor Alexander, in 1821, used these words as covering the coast "lying from Behring Straits, &c."

Mr. Adams to Mr.  
Rush, 22nd July,  
1823.

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, he said, from the "northern extremity of the Continent." Articles in the *North American Review* (Vol. 15, Art. xviii), and *Quarterly Review* (1821-22, Vol. 26, p. 344), published at the time of the negotiations of 1824-25, so treat the words "north-west coast."

American State  
Papers Foreign  
Relations, vol. 5,  
p. 456.

Mr. Adams in his despatch of 22nd July, 1823, referred to Emperor Paul's Ukase as pretending to grant to the American Company the "exclusive possession of the "north-west coast of America, which belonged to Russia "from the 55th degree of north latitude to Behring Strait." (The italics are those of the undersigned).

After referring to a map (used by Mr. Bancroft, an historian), Mr. Blaine, it is submitted, considerably weakens his argument upon the construction of the words in question, by remarking "the phrase 'north-west coast 'of America' has not infrequently been used in another "sense as including the American coast of the Russian "possessions as far northward as the Strait of Behring."

A reference to the original french version of the Anglo-Russian Convention shows most clearly the phrase was so used there.

Mr. Blaine suggests that the omission of the words "Behring Sea" in the correspondence and Treaties of

1890

(14)

1824-25 was due to the absence of any intention to refer to that sea.

In the list of maps appended by Mr. Blaine in support of this, another, and in the opinion of the undersigned better reason for the omission suggests itself, since neither a Russian, English nor American map is found in the list with the name of Behring Sea upon it.

Maps.

Touching such maps as he has produced, the undersigned has, moreover, to observe that it is not possible in Canada, so far as he is aware, to minutely examine them, but doubtless they will be seen in the British Museum, and there inspected, if it is deemed necessary to enter further into this line of argument.

It may be observed, however, in passing, that it is probable that the style of printing the words "Kamchatka," or "Behring Sea," "Pacific Ocean," "South Pacific," will show one to have been considered by the geographers as part of the other. In the same manner in various types "England," "Buckinghamshire," "Southampton," are used to show subsidiary relationship. Maps show the Atlantic Ocean includes the Bay of Biscay, and the Mediterranean Sea includes the Tyrrhenian and Ionian Seas. It will be seen too that Kamchatka as a sea was marked on a map long before it was known that the American continent was opposite the Peninsula of Kamchatka.

It must not be forgotten that dates appearing on maps often mislead.

The different names in the list of maps are brought forward by Mr. Blaine as though they had been applied to the water now generally known as Behring Sea. "Anadir" or "Anadye," appearing as one of them is however the name of a small river flowing into Behring Sea from Siberia, and the small bay at its mouth is so named, meaning gulf or bay. No evidence is given that the great expanse of water in question was ever so called.

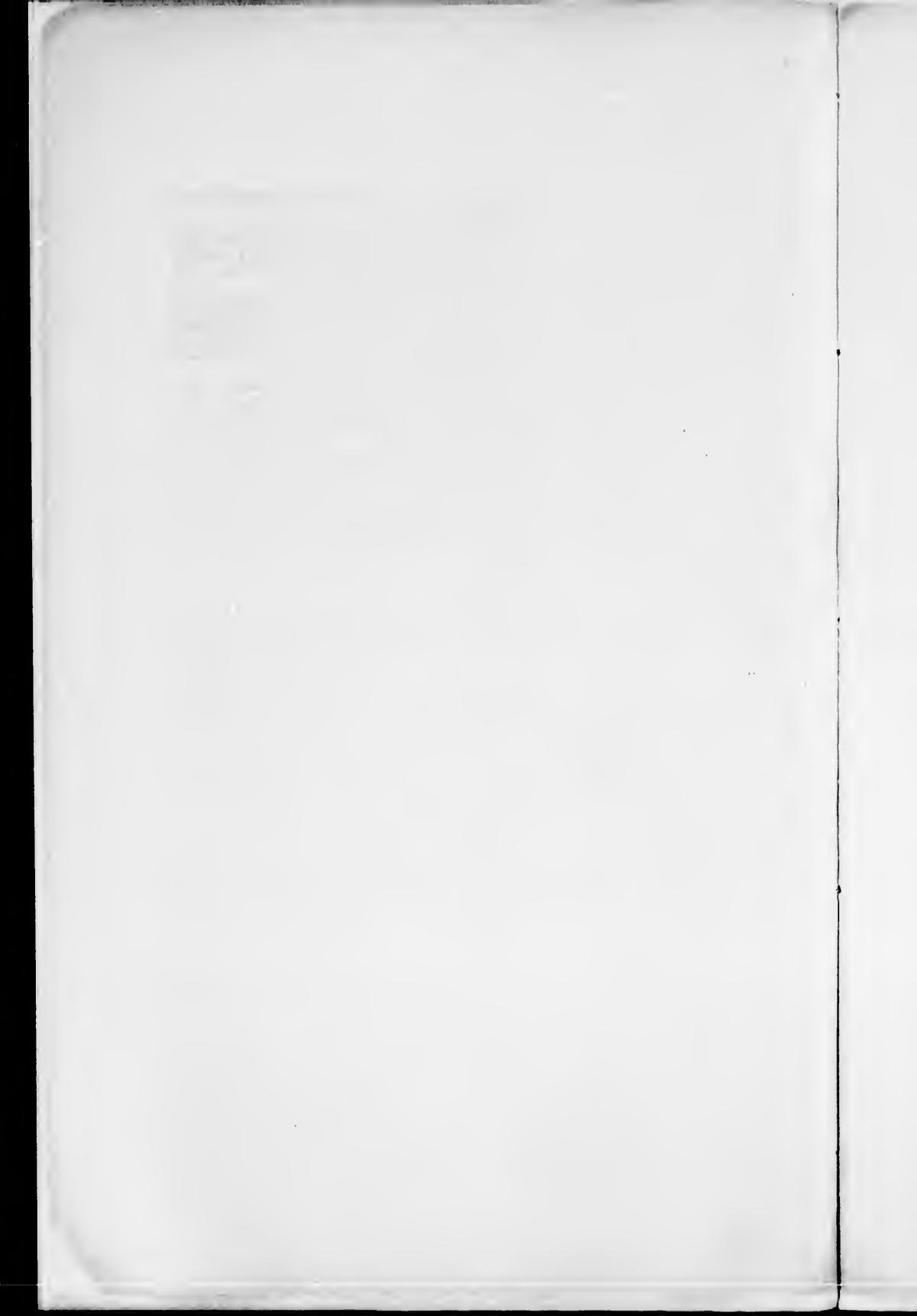
"Mettre dans le bassin."  
 "To put (a ship) into a dock."  
 "Condurre in bacino."  
 "To put (a ship) into a dock."

"Bassin" de Behring, another name in Mr. Blaine's list, means Behring Harbour or Haven, not Behring Sea. This probably applied to Anadir Bay or some other haven in that region; similarly "Bacino," which appears in the title of one or more of the early maps listed by Mr. Blaine, is the Italian for "dock or dry dock." It may have been equivalent to the French "Bassin," or one cartographer have thus translated the language of another.

Original plates of maps have been altered from time to time, without any alteration of the date of the first engraving and publication, as, for instance, a chart published by the United States' Government exists which professes to have been published before the Portland Channel was surveyed, yet this chart includes all details, soundings, &c., of the Portland Channel.

After commenting on the maps, Mr. Blaine asks: "Is it possible that with this cloud of witnesses before the eyes of Mr. Adams and Mr. George Canning, attesting the existence of the Sea of Kamchatka, they would *simply include it in the phrase 'Pacific Ocean.'*" (The italics are those of the undersigned).

Mr. Blaine adds that he cannot believe that Mr. Canning and Mr. Adams would have omitted a distinct reference to the Sea of Kamchatka, or "a description of its metes and bounds" He incidentally dwells on the number of lines used to describe the respective titles of Count Nesselrode, of Mr. Canning and Mr. Poletien, and the absence of a word to secure the full freedom of



Behring Sea, but he has overlooked the fact that it took less than ten lines to secure the freedom of the Pacific Ocean.

There is admittedly in the Conventions an absence of any attempt to define by metes and bounds the Pacific Ocean.

Appended are extracts from authorities on this point.

The fair conclusion of Mr. Blaine's argument therefore under this head would be that nothing was effected by the Convention, so far as the Pacific Ocean was concerned, since of the Treaty, using his own language, it can be said there is "no description of its metes and bounds," and the "deed" does not "recite every fact and feature "necessary for the identification" of the waters involved. The controversy has been carried into dangerous ground for the United States, since every Geography, Encyclopedia, now or at any time published, shows that the words "Pacific Ocean" mean distinctly the waters bounded on the north by "Behring Strait" and the Arctic Ocean. For instance one of the many definitions of the North Pacific is as follows:—"the North Pacific Ocean stretches northward through 132 degrees of lat. " to Behring Straits which separate it from the Arctic " Ocean."

Appendix—  
Behring Strait.  
Kamchatka.  
Pacific Ocean.

McCulloch's Geographical Dictionary,  
vol. 3.

Mr. Adams and Mr. Canning were careful therefore in their draft to use words covering the very waters to which the objectionable Ukase applied. It would appear that advantage is now sought to be taken of the departure from the exact delimitation adopted in the Ukase. An examination of the correspondence shows that the general but sufficient description of the water was used in the Convention to lessen the humiliation of Russia's surrender. The phrase "Pacific Ocean" as used in the Treaties was, according to the best authorities, therefore clearly intended to include, and does to this day include the body of water which is now known as "Behring Sea."

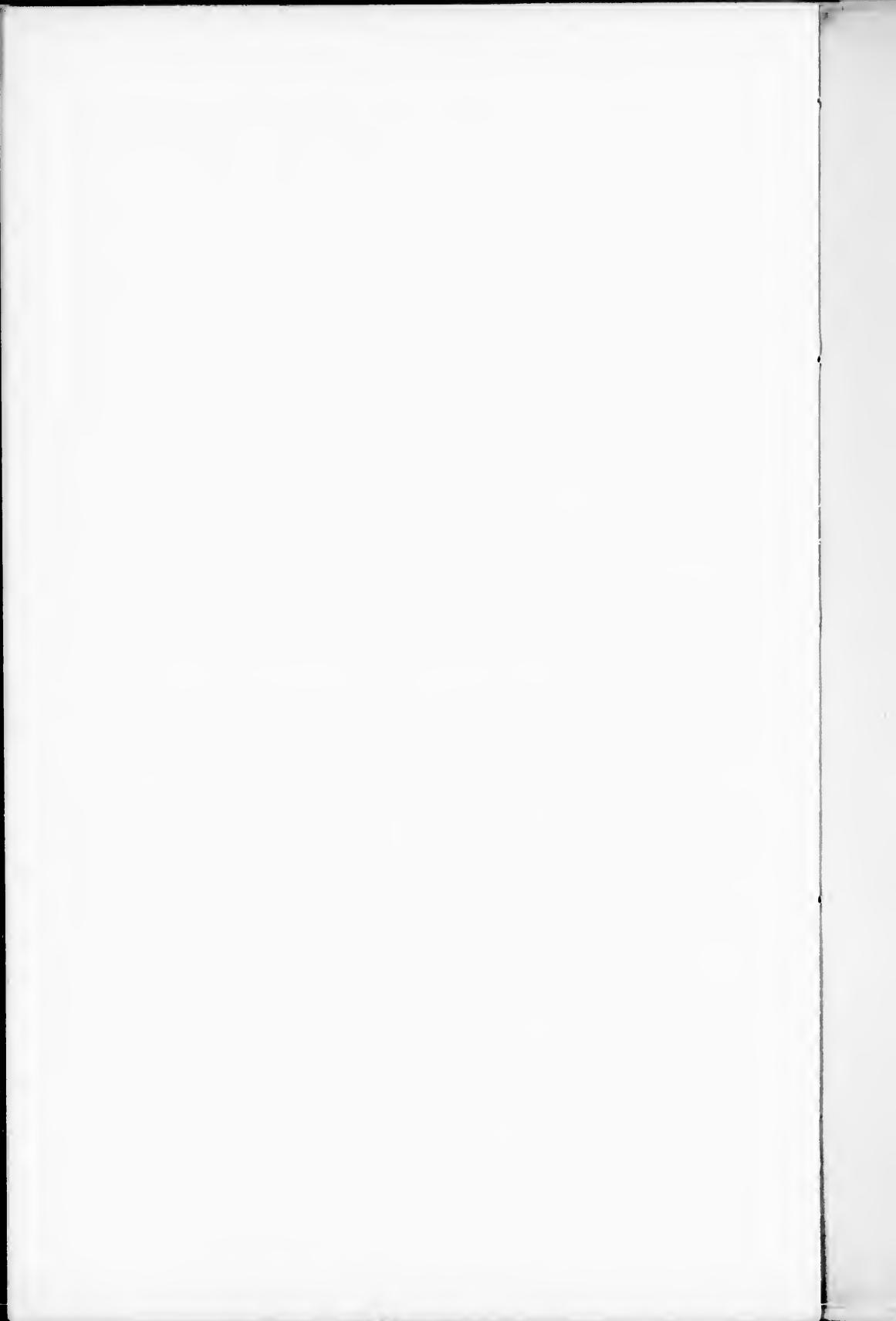
In his Memorandum of 30th August, 1890, it may be added, the undersigned had the honour to call attention to the fact that as late as the year 1882 the Russian Government, in a Proclamation covering a portion of Behring Sea, used as descriptive terms the words "Russian waters " in the Pacific," and "our Pacific waters."

Reference was made also to the use of the words "Pacific coast" by the Legislature of the Territory of Washington in 1866, as extending to Behring Strait.

Report on the Seal  
Islands of Alaska,  
Washington, 1884.

The "Hydrographic Atlas of the Russian Possessions " on the Pacific," by Captain Tahenkow, St. Petersburg, published in 1852, includes the waters of Behring Sea.

Professor H. W. Elliott, of the Smithsonian Institute, who was engaged in the study of the Seal Islands of Alaska for the United States' Government as late as the year 1880, in his official report on the Seal Islands of Alaska remarked, concerning the seals:—"Their range " in the North Pacific is virtually confined to four islands in " Behring Sea, viz., St. Paul and St. George, of the true " Pribylov Group, and Bering and Copper, of the Com- " mander Islands." (The italics are those of the undersigned). Again, he says: "In the North Atlantic no " suitable territory for their reception exists, or ever did " exist; and really nothing in the North Pacific beyond " what we have designated in Behring Sea." He also describes the rookeries in Behring Sea as "North Pacific " Rookeries." And also: "Geographically, as well as in " regard to Natural History, Bering Island is one of the " most curious islands in the northern part of the Pacific " Ocean." (The italics are those of the undersigned).



The only waters connected with the dispute and to which no reference was made in the Conventions were the Straits of Behring.

If Behring Sea was to be left under the ban of the Ukase of 1821, and such was the intention of the negotiators, what is the signification of the following extracts from the despatches :

Mr. S. Canning to  
Rt. Hon. G. Canning,  
17th Feb.,  
1823.  
(March 1st.)

"With respect to Behring Straits, I am happy to have it  
"in my power to assure you, on the joint authority of the  
"Russian Plenipotentiaries, that the Emperor of Russia  
"has no intention whatever of maintaining any exclusive  
"claim to the navigation of those Straits, or of the seas to  
"the north of them. \* \* \* \*"

Rt. Hon. G. Canning to  
Sir Chas. Bagot, 24th July,  
1824.

"\* \* \* \* The Power which would think of making  
"the Pacific a *mare clausum* may not unnaturally be supposed  
"capable of a disposition to apply the same character  
"to a Strait comprehended between the two shores  
"of which it becomes the undisputable owner. But the  
"shutting up of Behring Straits, or the power to shut  
"them hereafter, would be a thing not to be tolerated by  
"England. Nor could we submit to be excluded from a  
"Sea in which the skill and science of our seamen have  
"been, and are still employed in enterprises interesting,  
"not to this country alone, but to the whole civilized  
"world."

Mr. Blaine has testified to the astuteness of the two Cannings.

With these despatches before him, can Mr. Blaine fairly insist that while Great Britain's representatives would not tolerate the closing of Behring Straits, or of the seas beyond them, they were led to assent by implication or otherwise to the exclusion of British ships from the waters of the only sea by which the Straits and the seas beyond them could be approached ?

Mr. Blaine has contended that Russia did not withdraw the operation of the Ukase of 1821 from the waters of the Behring Sea, and that "proof is conclusive that it was left in full force over" these waters.

It will be seen that by the Ukase "the pursuits of commerce, whaling, and fishery," in waters now known as Behring Sea, were granted exclusively to Russian subjects.

Mr. John Quincy Adams in his despatch to Mr. Henry Middleton, 22nd July, 1823, said, "From the tenor of the Ukase, the pretensions of the Imperial Government extend to an exclusive jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of one hundred miles from the whole of that coast.

"The United States can admit no part of these claims \* \* \* \*"

And the Convention followed.

Writing in 1882 (May 8th-20th), M. de Giers said :—

"Referring to the exchange of communications which has taken place between us on the subject of a notice published by our Consul at Yokohama relating to fishing, hunting, and to trade in the Russian waters of the Pacific, and in reply to the note which you addressed to me, dated March 15-27, I am now in a position to give you the following information :—

"A notice of the tenor of that annexed to your note of the 15th March was, in fact, published by our Consul at



"Yokohama, and our Consul-General at San Francisco is also authorized to publish it.

"This measure refers only to prohibited industries and to the trade in contraband; the restrictions which it established extend strictly to the territorial waters of Russia only. It was required by the numerous abuses proved in late years, and which fell with all their weight on the population of our sea shore and of our islands, whose means of support is by fishing and hunting. These abuses inflicted also a marked injury on the interests of the company to which the Imperial Government had conceded the monopoly of fishing and hunting (exportation), in islands called the 'Commodore' and the 'Seals.'

"Beyond this new regulation, of which the essential point is the obligation imposed upon captains of vessels, who desire to fish and to hunt in the Russian waters of the Pacific to provide themselves at Vladivostok with the permission or license of the Governor General of Oriental Siberia, the right of fishing, hunting, and of trade by foreigners in our territorial waters, is regulated by Article 560, and those following, of Vol. 12, part 2, of the Code of Laws. Informing you of the preceding. I have the honour, &c. \* \* \*

It is clear that Mr. Adams, in 1823 and the Russian Government in 1882, were not of the opinion that the Ukase was in full force in Behring Sea.

The regulations referred to by Mr. de Giers prove that the extraordinary claim now set up by the United States was long ago abandoned by Russia, so far as Behring Sea is concerned. The restrictions upon commerce and fishing are in Behring Sea confined by Russia to islands owned by her, and to the ordinary territorial waters surrounding them.

Mr. Blaine proceeds to refer to the valuable monopoly which had been conferred by the Russian Government upon the Russian American Company, and he argues that this wealth would not be, and was not "thrown away in a phrase which merged the Behring Sea in the Pacific Ocean."

The increase of the wealth of this company hardly proves that the monopoly extended to the waters covered by the Ukase. The ultimate failure and insolvency of the company before 1867, is at any rate, a complete answer to such a supposition.

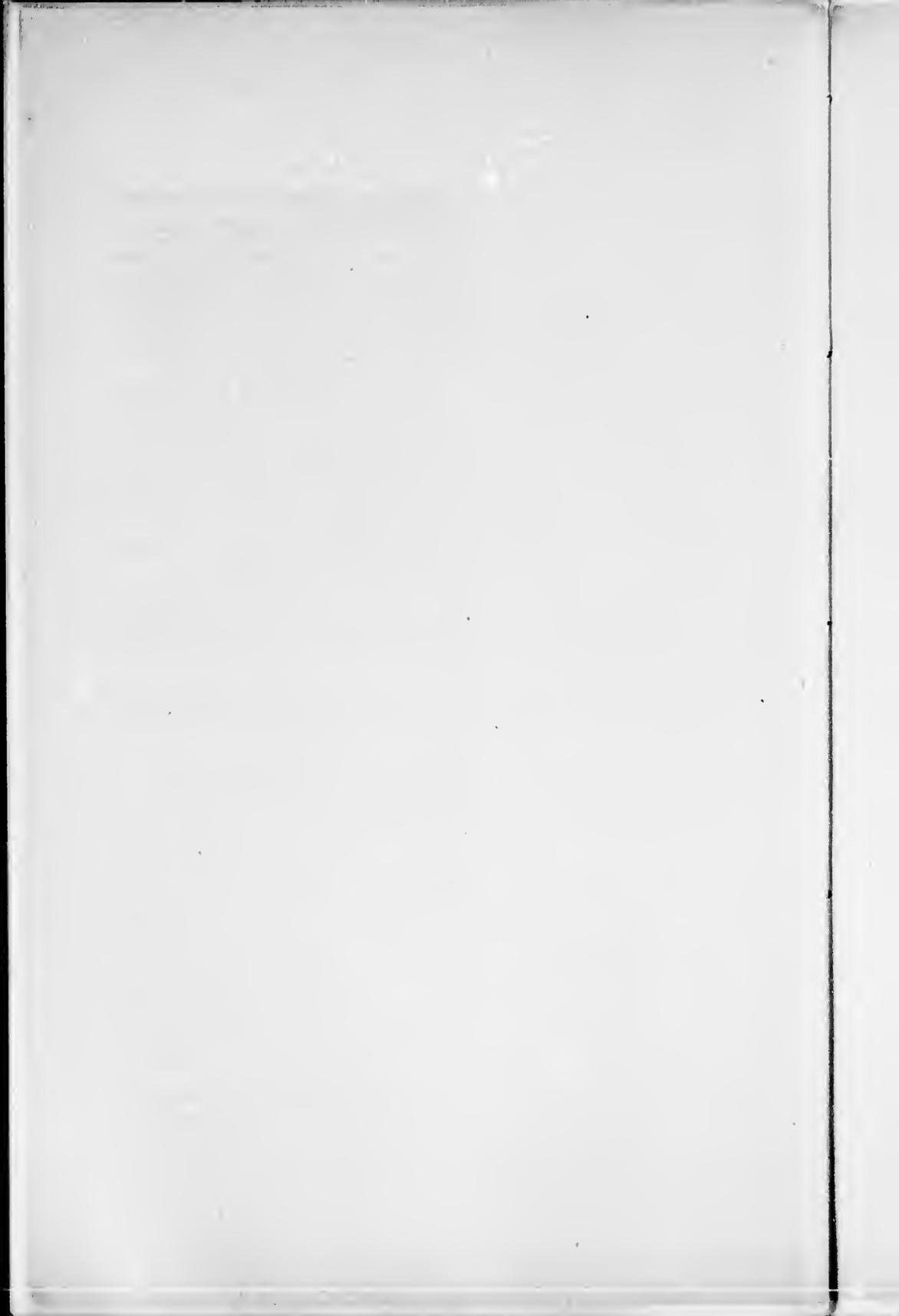
Mr. Blaine avers that the Russian American Company could not be called, as it was by the Imperial Council "a monopoly," if Lord Salisbury's construction of the Treaty is correct. He dwells upon the language of the Imperial Council, where it says:—

"To open our ports to all hunters promiscuously would be a death blow to the fur trade." And he adds that this reference is to Behring Sea ports.

An inspection of the Conventions of 1824-25 certainly disposes of this, since it appears that Russian ports, neither on the main Pacific Ocean nor in its branch, the Behring Sea, were to be "open to all hunters promiscuously."

An extract from Mr. Bancroft's history following immediately after shows, it is true, that the "monopoly" of the company still existed, but it further states that "the boundary was of course changed in accordance with the English and American treaties."

The conclusion of Mr. Blaine from the statement that the Russian American Company were left almost alone in their operations in Behring Sea, after the treaties of 1824-



25, is not, it is claimed, at all reasonable, even if founded on fact.

Possessed, as this company was, of exclusive territorial privileges in a sea surrounded by Russian possessions, and full of unknown dangers, it is not a matter of wonder that English and American fur-hunters were satisfied at the time with the immense and valuable fur products of the better known and more accessible islands in the southern waters of the Pacific.

Elliott, Report on the Seal Islands of Alaska, Washington, 1884, p. 118.

The "monopoly" dwelt upon by Mr. Blaine was, it may be said, similar to that enjoyed since the acquisition of the Seal Islands by the United States. While the South Shetlands and the Mas-a-fueras afforded facilities for taking seals on the rookeries in enormous numbers, it is not surprising that vessels fitted out in New England and Great Britain for the pursuit of seals neglected to engage in the hunting of these animals in the open waters of the Behring Sea.

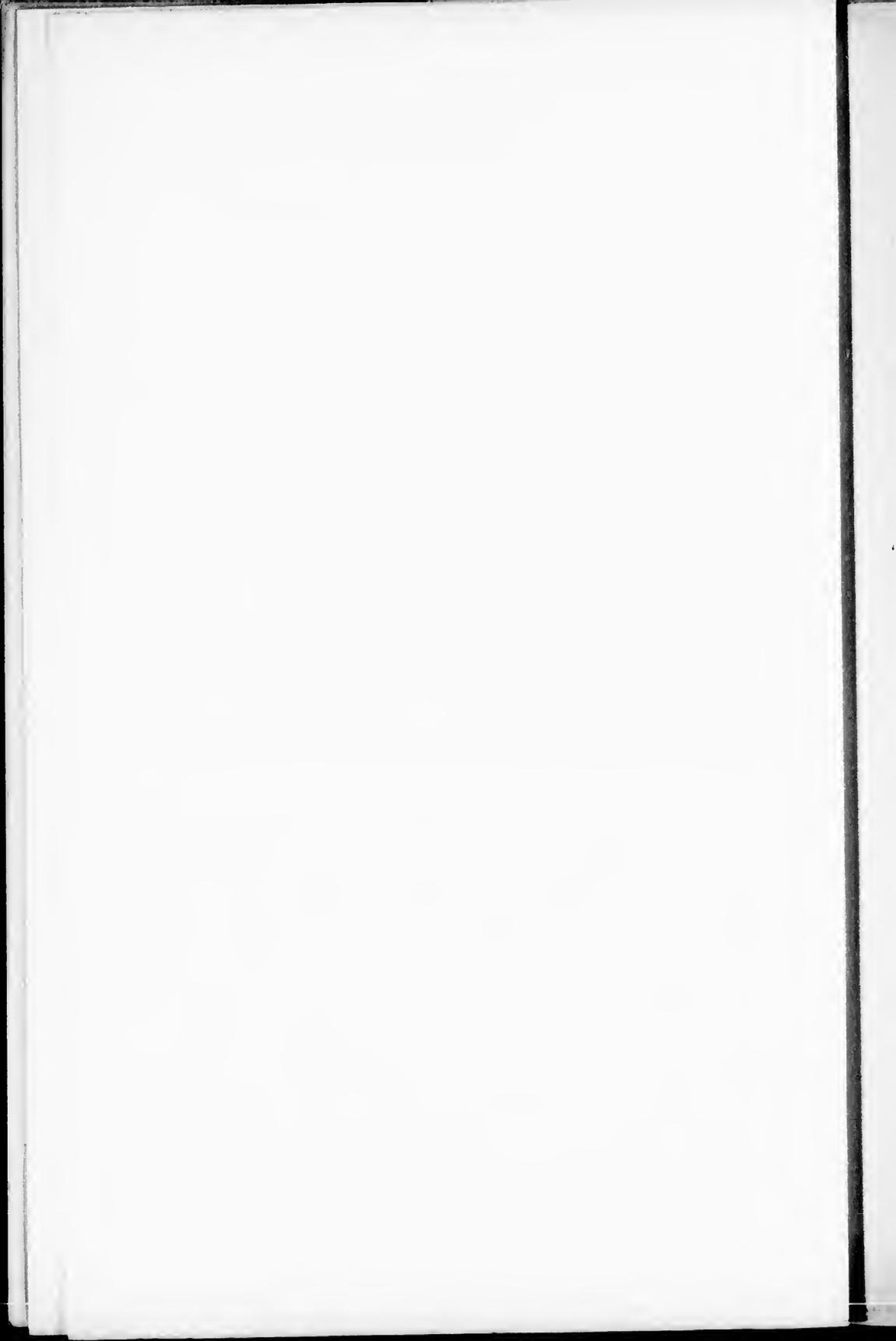
The Ukase 1821, so far as the control of 100 Italian miles from the shores in Behring Sea is concerned, existed unimpaired by the Conventions of 1824-25, according to Mr. Blaine, though he deals only with this control so far as it affects seals and the fur trade.

It would seem that after a protest from Great Britain and the United States against the entire claim set up in the Ukase that any special control of the fur-trade could have been retained only by special reservation in conventions which followed. Certainly, without it the pursuits of whaling and fishing, the fur-trade and commerce mentioned in the Ukase, were in the same category. The Ukase certainly stood or fell in its entirety as regards all of these interests in Behring Sea. Bancroft informs us that as regards whaling and the Ukase, an unmistakable decision was given on the part of Russia in 1842. Etholen, a Russian Governor, had complained of the presence of American whalers in Behring Sea and had asked his Government to hold the sea as a *mare clausum*. The Russian Government promptly replied that the Treaty (between Russia and the United States) gave to American citizens the right to engage in fishing over the whole extent of the Pacific Ocean. (Bancroft, Alaska, p. 583). The whalers were not molested.

Whales were found at sea. The "monopoly" on the islands in territorial waters gave therefore little advantage to the Russian American Company in this regard, and Mr. Blaine has previously admitted that after 1824-25 English and American whalers followed their pursuit without let or hindrance all over the waters of Behring Sea and into the Arctic Ocean.

In the three years following 1848, when whaling in Behring Sea was actively begun, no less than 250 ships obtained cargoes (Encyclopedia Britannica, "Whales"). These vessels sailed mostly from San Francisco. So completely in fact was the Ukase of 1821 annulled that not one vessel was molested, nor was it suggested as a possibility, by warnings or otherwise, that Russia would interfere with these ships.

Reasons have already been given to explain that whaling vessels confined their operations to whales; sealing vessels not able to enjoy the privilege of taking seals on the Islands of Behring Sea naturally sought them upon Islands where they were found in millions free to all. Mr. Blaine still persists, without giving any substantial ground for his opinion, that while the Ukase was nugatory



as affected rights of navigation and of whale hunting, it was in full force and effect so far as it related to seals, and that "the 100 mile limit was observed for that purpose "by all Maritime nations that sent vessels to Behring "waters".

Unable to deny that "the pursuits of commerce, whaling and the fishery," mentioned in the Ukase, were followed in Behring Sea after 1824-25, Mr. Blaine has, as has been stated, repeatedly endeavoured to show recognition by Great Britain of "Russia's power over the seal fisheries." In addition to the arguments already reviewed, he dwells on the absence of any protest against the so-called "Russian monopoly" after the Treaties of 1824-25. Why should a protest have been preferred? The "Monopoly" admittedly existed on the islands and in the ordinary territorial waters. The same monopoly exists under the United States' Administration to-day and Great Britain has not, nor does she now, protest. The protests on this score come from United States' citizens.

It is said that because the Treaties recognized that both the United States and Great Britain had establishments on the "north-west coast" therefore these words meant only the territory south of the Aleutian range, or of 60 degrees north latitude. This conclusion hardly follows. Every establishment on any part of the continent, from the Straits to the territory below the Aleutian range, would be surely on the "north-west coast," if the construction claimed by Great Britain of these words be correct. It does not assist Mr. Blaine to point out the exact position of the establishments, nor to assert that neither country ever claimed territory north of the 60th parallel of latitude. It is submitted, however, that Russia distinctly claimed territory above that parallel of latitude. Mr. Adams was of this opinion.

The reference to the Treaty of 20th October, 1818, between the United States and Great Britain, and to the "north-west coast" of America westward of Stony Mountains therein mentioned, which Mr. Blaine considers conclusive, is of a similar character to that just given. A reference to any part of that coast as the "north-west coast" does not, it is submitted, assist in the attempt to limit the use of these words to that part.

Referring to the Memorandum submitted to Count Nesselrode by Mr. Middleton, Mr. Blaine says: "Mr. Middleton declares that Russia has not the right of 'dominion' upon the *continent of America between the fiftieth and seventieth degree of north latitude*." Still "less," adds Mr. Blaine, "has she the dominion of the "adjacent maritime territory or the sea which washes "these coasts," and citing Mr. Middleton's declarations that Russia has not the "right of exclusion or of "admission on these coasts nor in these seas between the "fiftieth and seventieth degrees of north latitude on the "body of the continent." (The italics are those of Mr. Blaine.)

This is easy proof, it is said, that the coast, in the Treaty, was the "north-west coast" on the Pacific south of 60 degrees north latitude. Mr. Middleton's Memorandum stated "the right of navigating all the free seas "belongs by natural law to every independent nation, "and even constitutes an essential part of this independence," and Mr. Blaine adds that this was a protest against a Ukase which proposed to extend Russian



sovereignty over the Pacific Ocean as far south as 51 degrees of latitude, and that the double reference to "free seas" would have no meaning if Mr. Middleton did not recognize that freedom on certain seas had been restricted. All seas, adds Mr. Blaine, in that region could not have been regarded as free seas. Even a partial reference, such as the above, to the contention of the United States with Russia, gives Mr. Blaine meagre if any support. It is submitted that in trying to restrict the application of the language from the Memorandum of Mr. Middleton in this instance signal failure is apparent. The language of the Memorandum is not restricted. It expressly treats of the right of dominion between the 50th and 60th degrees of north latitude. The 60th degree of north latitude cuts Behring Sea in half and is far north of the Seal Islands.

The sea is referred to as washing *these coasts*, viz, the coasts above and below the Aleutian Isles. The seas washing them are said to be "free seas." The map shows these "free seas" are, the sea known as Behring Sea, Bristol Bay, and the Gulf of Alaska, all portions of the Pacific Ocean. The seas not "free seas" are admittedly the numerous inner seas and gulfs, almost land-locked in Russian territory and the water within the ordinary coastal limit of Russian jurisdiction.

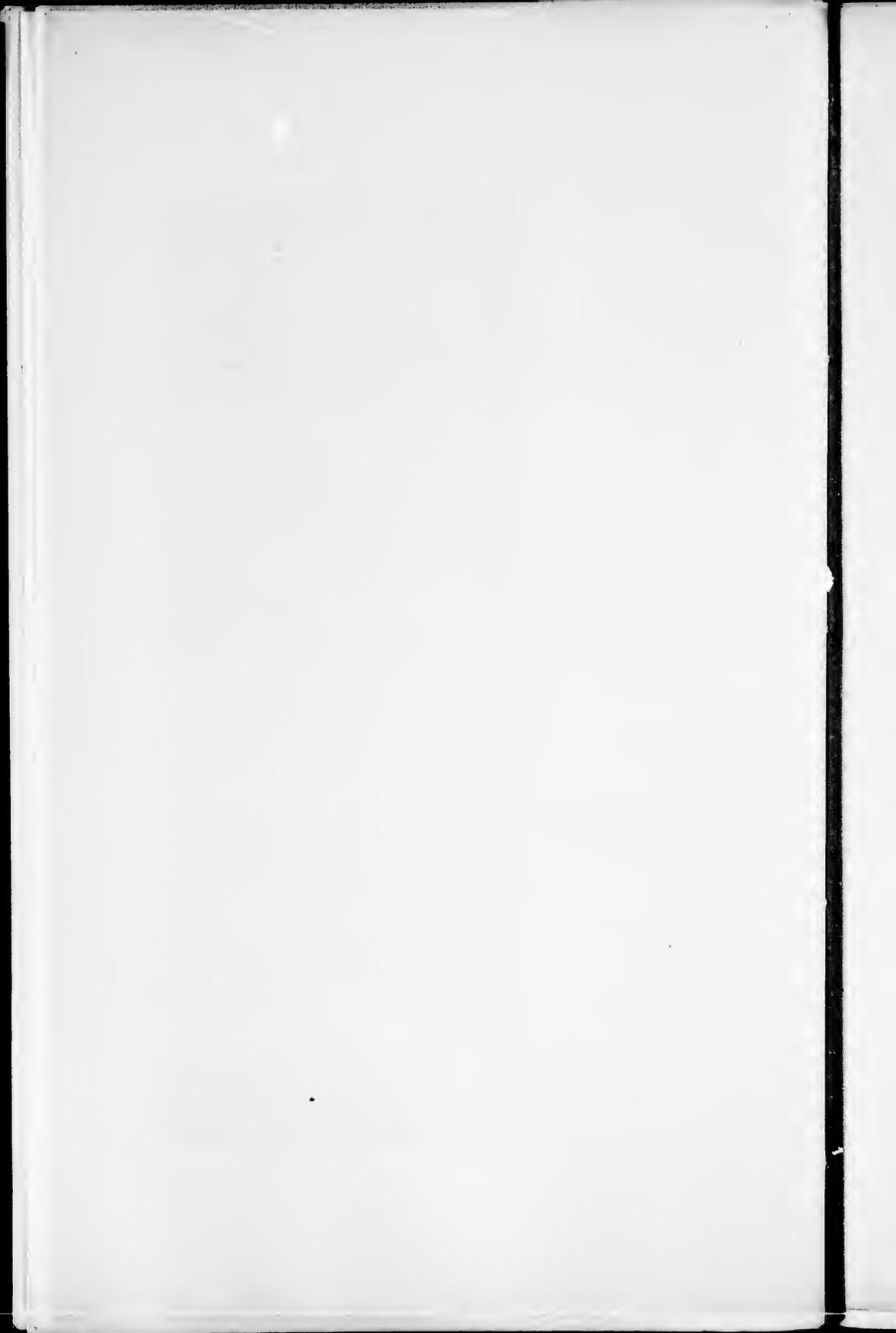
When Mr. Blaine endeavours to confine the dispute to the continent not bordering on Behring Sea, and below the 60th degree of north latitude, it seems only necessary to refer him to the memorial of Mr. Middleton, delivered to the Russian Emperor in 1823, wherein the United States stated that Russia "had no right to claim, either under the title of discovery or of occupation on the continent east or south of Behring Strait about (above) the 60th degree of north latitude."

It was clearly necessary for Mr. Blaine, in seeking so to construe the memorandum of Mr. Middleton as he has done, to add the words, "on the body of the continent" to the declaration in the memorandum that Russia had no right of exclusion on these coasts, nor "in these seas which are free seas." These words are not, it will be found, in the memorandum.

The following language from the Memorial delivered by Mr. Middleton to the Emperor of Russia in 1823 shows an abrupt departure of the United States now from the attitude taken by that country in earlier times:—

"The extension of territorial rights to the distance of a hundred miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties, and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well determined course."

In view of Mr. Blaine's persistency in arguing that Mr. Adams, on behalf of the United States' Government, was not concerned in the waters of the Behring Sea, but was actually ready to concede exclusive jurisdiction in Russia over 100 miles of coastal jurisdiction in that sea, it becomes necessary again to refer to a note of Mr. Adams, wherein he stated:—



"From the tenor of the Ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of the coast.

"The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian claims are concerned, are confined to certain islands north of the fifty-fifth degree of latitude, and have no existence on the continent of America."

The "Southern Ocean" admittedly was understood to cover all the waters of the Pacific, since the southerly course was taken by United States and English ships to reach that Ocean. Exclusive jurisdiction of Russia was Mr. Adams, insisted, confined to islands north of the 55th degree of latitude (in Behring Sea), and had no existence on the continent of America.

Lord Salisbury has dwelt upon Mr. Middleton's declaration on behalf the United States that Russia had no right of exclusion on the coasts of America, between the 50th and 60th degrees of north latitude, nor in the seas that washed these coasts. This latitude, his Lordship observed, strikes straight across Behring Sea, and that sea was therefore not excluded. Mr. Blaine now replies: "The argument of Lord Salisbury on this point is based upon a geographical impossibility." But to sustain this, it becomes necessary again to supply language not used by Mr. Middleton. Mr. Blaine insists that the reference was to a continuous line of coasts upon the continent between two specified points and over waters washing "that coast." But Mr. Middleton spoke entirely of "coasts" and "seas" between these points. He spoke, not of a "continuous" coast, though it is submitted the coasts as such of the North America continent is not in this sense broken or interrupted by the headlands or peninsulas projecting from it.

Again an attempt is made to narrow the meaning of the word "coasts" by referring to the statement of Mr. Middleton that upon these coasts below the Aleutian Islands the United States has exercised navigation and not in Behring Sea.

The full despatches of the time in question dispose of this narrow restriction of the great questions disputed. Mr. Middleton did not, however, allude, as Mr. Blaine supposes, merely to the development of American commerce on this coast, but expressly to the "navigation in the seas and commerce upon the coasts." The words "navigation in the seas," are read concurrently with the claim elsewhere specifically made by Mr. Adams touching any and every part of the Pacific Ocean.

The third article of the British Treaty is quoted to show a delimitation of the boundary between British America and the Russian possessions. This is said by Mr. Blaine to be from 54 degrees 40 minutes to the northern terminus of the coast known as the "north-west coast." This construction of the article is not admitted,



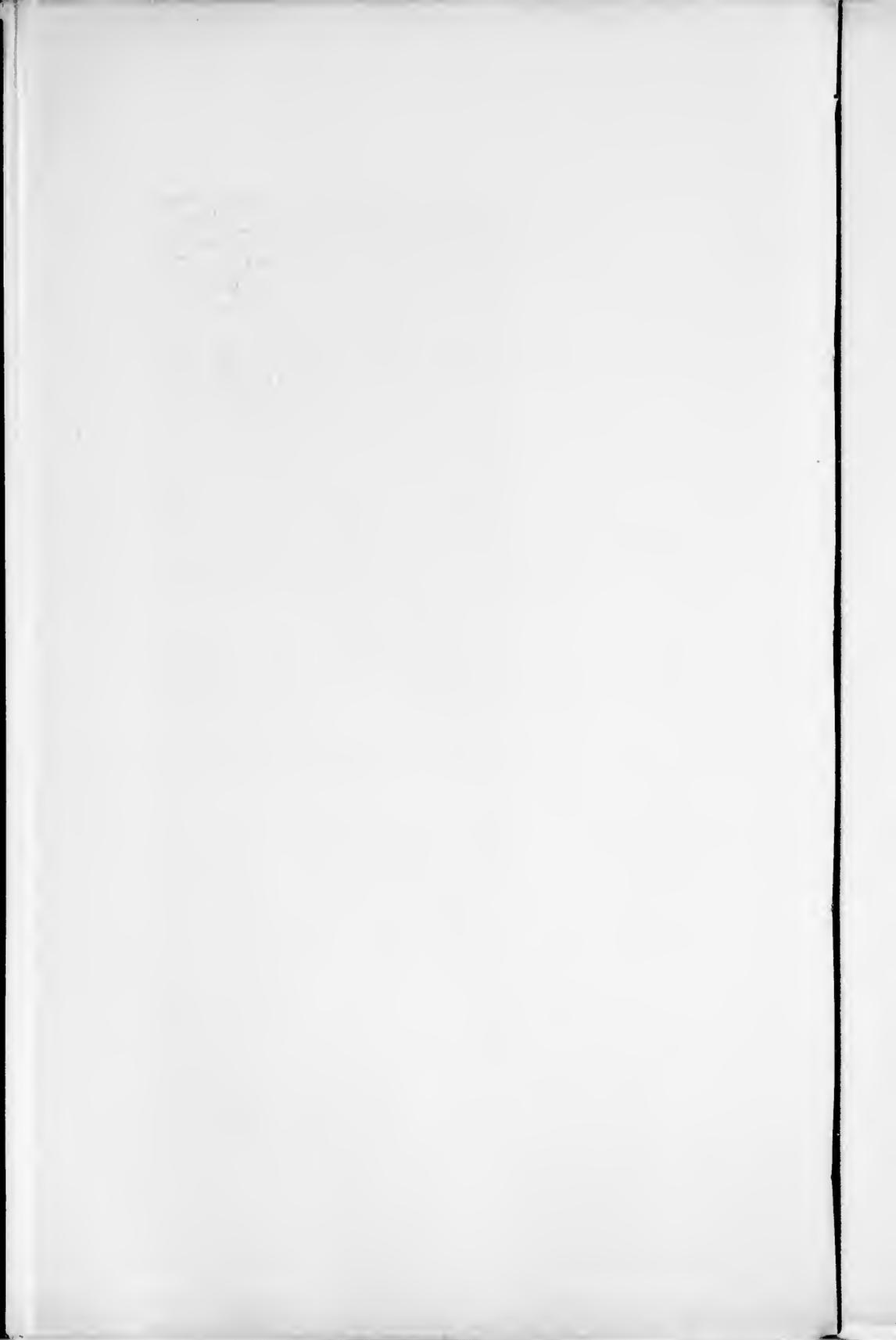
since the line of boundary depends on the southernmost point of Prince of Wales Island as a point of definition, or monument, the latitude being subsidiary. Passing that over, it is sufficient to say this article dealt with no other than a question of territorial and conventional boundary on the continent of America. This was, as is well known, to facilitate the retreat of Russia as to maritime jurisdiction. Mr. G. Canning writes (Dec. 8, 1824): "We negotiate about territory to cover the remonstrance on principle."

When Mr. Blaine argues that because by the Treaty Great Britain obtained under Article 7 a right for ten years to frequent "all the inland seas, gulfs, havens, and creeks," the strip of land conceded to Russia between British America and the sea "for the purpose of fishing and trading with the natives," that therefore British Subjects were not granted right of frequenting the Behring Sea, it appears only necessary to point out that if his construction of these articles be correct his conclusion cannot possibly go further than to say that these privileges were not accorded to British subjects in Behring Sea in such "inland seas, gulfs, havens and creeks," which, under the law of nations, were exclusively enjoyed by the nation owning them. It is not required therefore to follow Mr. Blaine when he refers to the alleged intricacies of Lord Salisbury's language. It may, however, be remarked that no intricacy will be found if Mr. Blaine reads the words "coast" and "north-west coast" with the meaning they generally imply.

A special point is put forward upon the fact that Articles III and IV of the Russian American Convention are represented by four articles differently expressed in the British-Russian Convention. Mr. Blaine argues that Russia feared that in the Treaty with the United States Behring Sea might be considered as included, and that when dealing with Great Britain caution was observed to prevent that Sea being thrown open to fishermen. This supposition is based upon no records cited by Mr. Blaine, nor known to the undersigned. In reply it may be said that a comparison of the articles and a recollection that Russia and Britain made an actual territorial delimitation, which, in the case of the United States and Russia, a mere definition of vague "spheres of influence" was necessary.

That it was the intention of Britain to accept any terms less favourable than those obtained by the United States by the Convention of 1824 is negatived by the action of Mr. S. Canning with reference to a proposed limit of two marine leagues quoted by Mr. Blaine. That it was not the intention of Russia to exclude Behring Sea from the action of the Convention of 1825 is equally clear on account of the omission of any definite claim to the control of that sea, such as was contained in the explanatory note filed with the United States in the previous year. A diary of Mr. Adams is brought forward, in which it is stated that the Russian Government did not understand that the Convention "would give liberty to the citizens of the United States to trade on the coast of Siberia and the Aleutian Islands. The other (note) was to propose a modification of the Convention by which our vessels should be prohibited from trading on the north-west coast north of latitude 57 degrees."

It will be seen in the first place that this reference, and the note of Baron Tuyl in accordance with it, quoted by



Mr. Blaine, refute the pretensions which he at the outset of his argument set up.

After the consummation of a Treaty which it has been contended excluded any reference, express or implied to waters in Behring Sea, or above the 60th degree of north latitude on the body of the continent, Mr. Blaine supplies the evidence:—

(1.) That Russia read the Treaty as possibly applying to the coasts of Siberia.

(2.) That under its terms might be included the *right to trade*, hunt and fish, in the Aleutian Islands, coasts of Siberia and Russian possessions in general on the north-west coast of America to 59 degrees 30 minutes:

(3.) The Aleutian Islands are washed by the *Sea of Kamchatka, or Northern Ocean*.

(4.) It was not the intention of Russia to secure more than the right beyond 59 degs. 30 mins. to exclude foreign vessels from approaching her coasts and her islands, and from fishing within a distance of *two marine leagues*. (It will be remembered that Mr. Blaine now insists that the prohibition in the Ukase was left intact within the waters of Behring Sea).

Notwithstanding a polite conversation recorded in the diary of Mr. Adams, the United States would not and did not yield one point desired by Baron Tzyl, and gave no pledge to obtain from the enjoyment of all rights accorded by the Treaty. The Treaty as it then stood was afterwards ratified and proclaimed. Baron Tzyl's action signifies, if it means anything, that the Russian-America Company understood that the Convention did *inter alia* open up Behring Sea. The attempt was doubtless at their suggestion to repudiate this part of the Convention. It is seen that it failed. The assurance given by Mr. Adams was wholly illusory and not observed. Bancroft, whom Mr. Blaine has brought forward, supplies the information (Alaska, pp. 583-4).

That in 1842 large numbers of American whalers were then entering Behring Sea and landing on the Aleutian Islands for the purpose of trying out blubber. Bancroft long before had reported of an early navigator that "at every point eastward of Kodiak, where he had endeavoured to open up trade, he had found himself forstalled by English or American ships." (Bancroft, p. 384).

Having supplied this answer to his main point, Mr. Blaine next attempts to explain away Baron Tzyl's reference to the words "beyond 59 degs. 30 mins." as meaning "down to 59 degs. 30 mins.," and he asserts that "Northern Ocean" were words used in contradistinction to South Sea or Pacific Ocean.

The reference to the "two marine leagues" in the last note is unfortunate, since Mr. Blaine admits, notwithstanding Baron Tzyl's Memorandum: "The protocols, however, show that Great Britain was willing to agree to two marine leagues, but the United States was not; and after the concession was made to the United States "Mr. S. Canning insisted upon its being made to Great Britain also."

Further references to despatches alluding to "territorial rights on the north-west coast of America, bordering on the Pacific Ocean," are made by Mr. Blaine, but they carry him no further in his argument as to the waters covered by words "Pacific Ocean." The note of Mr. Blaine then reverts to the argument that when the strip of land on the north-west coast is referred to in the



papers this is proof that the discussions were confined to that part of the Pacific Ocean, &c. There is nothing, however, additional in this reference to what has already been argued.

Mr. Blaine alludes to Mr. S. Canning's letter of 1st March, wherein he said:—

“With respect to Behring Straits, I am happy to have “it in my power to assure you, on the joint authority of “the Russian plenipotentiaries, that the Emperor of “Russia has no intention whatever of maintaining any “exclusive claim to the navigation of those Straits, or of “the seas to the north of them.”

Mr. Blaine treats this as evidence that Great Britain sought a favour in this respect, since her vessels were, as he argues, allowed to navigate Behring Sea outside of the distance of 100 miles from land. The despatches quoted by the undersigned give no colour to this contention. As a right, Great Britain insisted on navigating this Strait and the seas beyond them. The Convention dealt with the Pacific, which every geographer describes as beginning at Behring Straits; no mention of the Straits was made, since it was definitely ascertained that Russia had no intention of maintaining any exclusive claim to their navigation.

Mr. Blaine's estimate of the astuteness of the Cannings is doubtful, when he says that after the despatches, the arguments and the instructions so fully reviewed in these papers, Great Britain tolerated the existence of a Ukase pretending that Russia could exclude her ships from all the waters within 100 miles of Russian territory in Behring Sea, including the Straits of Behring as well. If the Ukase was valid and outstanding in this respect it applied to Behring Straits and closed the entrance from the Pacific Ocean to the seas beyond it; yet the Cannings did not secure the qualification!

When met by Wharton and Kent upon the general question of a nation's jurisdiction over the sea, Mr. Blaine answers that in time past Great Britain has not uniformly recognized the principle laid down “by these most eminent publicists” of the United States. His illustration is, however, not a fortunate one. He cites the case of Napoleon and St. Helena, as a case where Great Britain assumed absolute control over a considerable section of the Atlantic Ocean.

An examination of history shows that this action on the part of Great Britain can in no way be construed as similar or applicable to the Behring Sea case.

By Convention between all of the Great Powers of the day, Great Britain, Austria, Prussia and Russia, signed at Paris on the 2nd August, 1815, the custody of Napoleon was specially given to Great Britain. The choice of place and the means of detention were reserved to His Britannic Majesty.

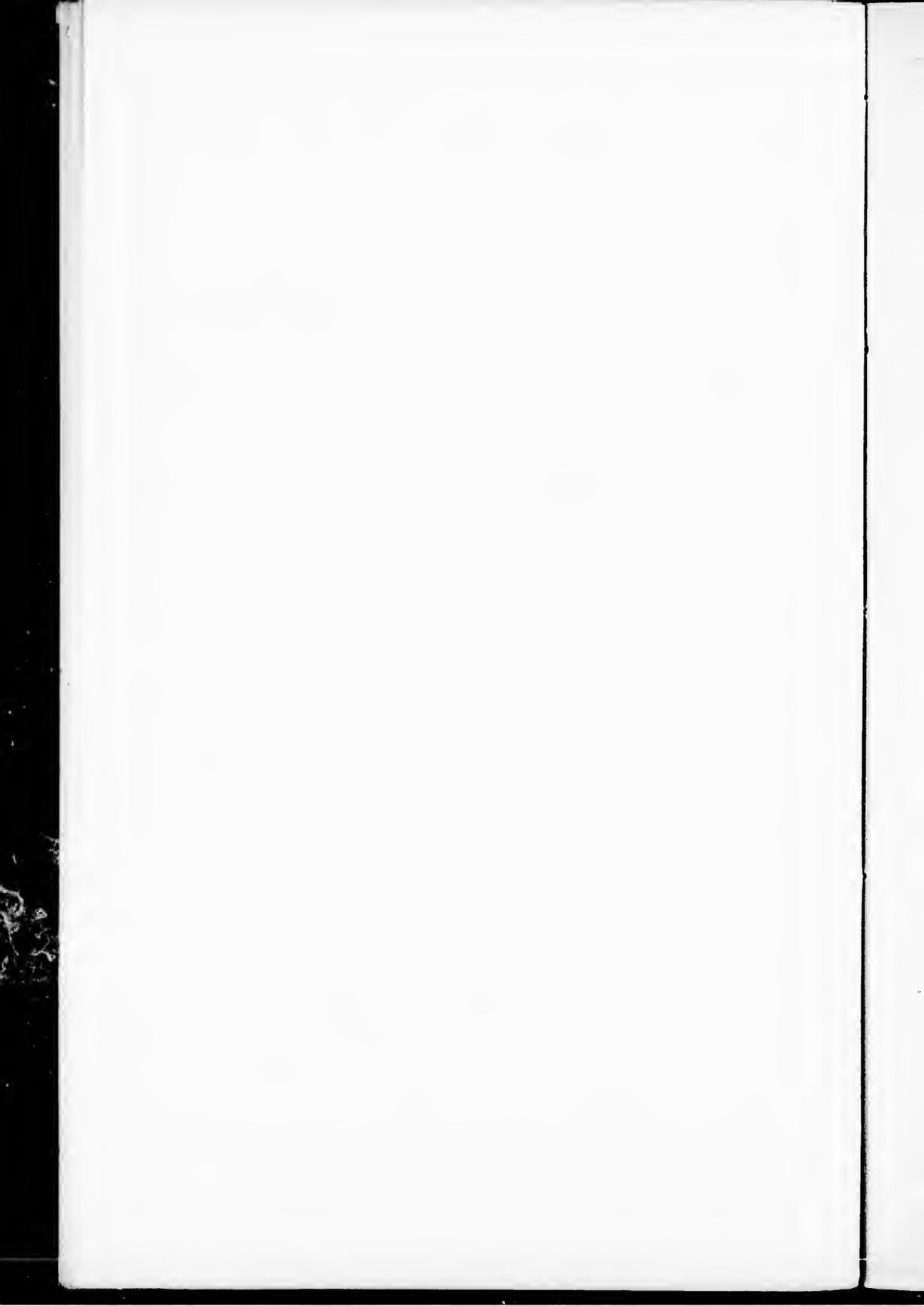
It was enacted by Parliament as necessary for the tranquility of Europe that Napoleon Buonaparte be detained and kept in safe custody, and that he be dealt with as a prisoner of war, and provisions were made for the punishment of any person aiding his escape.

A statement of these facts signally illustrates the high-handed and unprecedented action of the United States in asserting an exclusive control over an ocean without the concurrence or approval of an eminent publicist living or dead, within its own borders, and in the absence of the sanction of any nation in the world.

British State Papers,  
vol. 3, p. 200.

56 Geo. III,  
chap. 22.

British State Papers,  
vol. 3, p. 361.



Even under the extraordinary and singular circumstances detailed, the action of Great Britain in the case of St. Helena was resented by the United States according to Mr. Blaine. The resentment was apparently not prolonged, since it appears that on the 26th August, 1815, Lord Bathurst gave notice from the Foreign Office to all friendly Powers that in conjunction with the Allied Sovereigns, St. Helena had been selected for the retention of Napoleon and that vessels were excluded from approaching it, and that President Madison accepted and signed the Treaty of Commerce, to which Mr. Blaine refers, with the United States that ships would be excluded from communication with or approach to the Island.

British State Papers,  
vol. 3, p. 796.

British State Papers,  
vol. 3, pp. 78 and 82.

American State  
Papers, Foreign  
Relations, vol. 4,  
p. 13.

Letters and des-  
patches of Castle-  
rough, vol. xi, p. 9.

British State Papers,  
vol. 3, p. 82.

It does appear, it is true, that Mr. Adams on another occasion did offer a formal protest against the exclusion of American vessels from St. Helena.

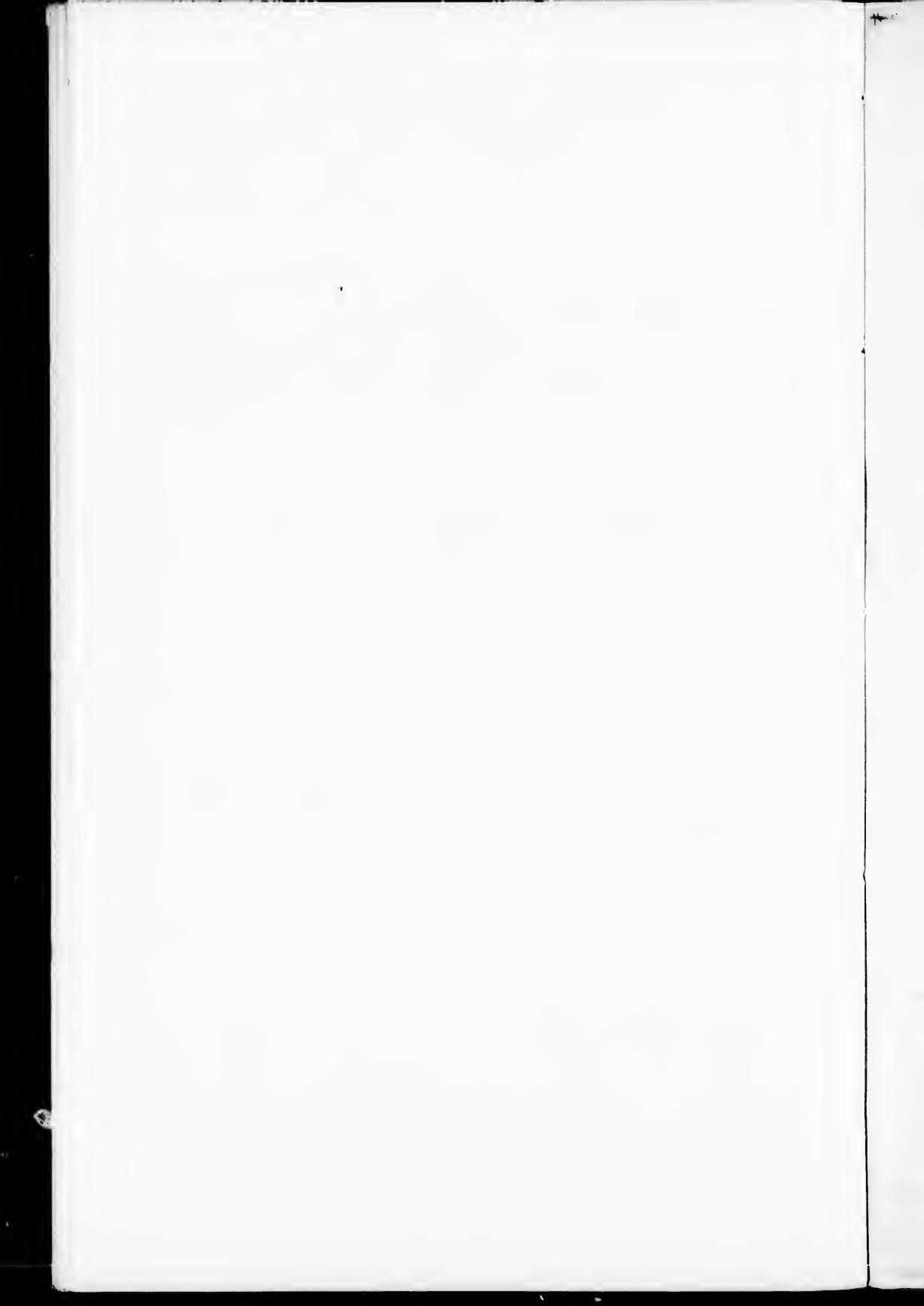
But inasmuch as the Treaty was accepted by the United States, with this very clear official notification of exclusion specially mentioned in the President's Message, it is obvious that the United States' Government did not take the same line as their Envoy. Yet in a case such as detailed, Mr. Blaine asks: "Is this Government to understand that Lord Salisbury maintains the right of England, at her will and pleasure, to obstruct the highway of commerce in mid-ocean, and that she will at the same time interpose objections to the United States exercising her jurisdiction beyond the three-mile limit, in a remote and unused sea, for the sole purpose of preserving the most valuable fur-seal fishery in the world from remediless destruction?"

Mr. Blaine professes to see only one answer to the alleged precedent he has given, viz. that it is remote! He then repeats another alleged precedent which he cited in a previous note, the pearl fisheries of Ceylon. Mr. Blaine has already been informed that Great Britain has never pretended to control the actions or conduct of foreign citizens when engaged in any part of the pearl fisheries, outside of the three-mile limit.

It never occurred to urge these cases as precedents in 1824-25. The facts relating to Napoleon and St. Helena and to the pearl fisheries were then well known. It is possible that, being well known, they were not deemed pertinent to the claim of jurisdiction either over an ocean or to secure the monopoly of the pursuit of seals when in coastal waters within 100 miles from shore.

Finally, Mr. Blaine declares that the United States assert that they make no pretension that the Behring Sea is a *mare clausum*.

Kent and other writers on the law of Nations will be searched in vain for any other theory upon which to base the claim set up in the Ukase of Alexander, which Mr. Blaine asserts to be in full force, so far as regards the pursuit of seals within one hundred miles of the islands and coasts in Behring Sea.



## APPENDIX.

### BOUNDARIES OF NORTH PACIFIC OCEAN.

- McCulloch's "Geographical Dictionary." Vol. III, English work.
- Blackie's "Imperial Gazetteer," vol. II, English work.
- Harper's "Universal Gazetteer." American work. Also Johnston's "Dictionary of Geography." English work.
- Johnston's "General Gazetteer." English work.
- "Encyclopedia Britannica." Ninth Edition, New York, 1878, Vol. III, p. 509.
- "Encyclopedia Britannica." Ninth Edition, New York, 1878, Vol. III, p. 509.
- The "English Encyclopedia."
- "Encyclopedia Britannica." Ninth Edition, Edinburgh, 1885, Vol. XVIII, p. 115.
- "Stretches northward through 132 degrees of latitude to Behring Straits, which separate it from the Arctic Ocean."
- "Boreal or North extending from Behring Strait or the Arctic Circle to the Tropic of Cancer." \* \* \* "In the North the Pacific gradually contracts in width; the Continents of America and Asia stretching out and approximating, so as to leave the comparatively narrow channel of Behring Strait as the only communication between the Pacific and Arctic Oceans. Between the Strait on the north, the Aleutian Islands on the south, and the remarkable peninsulas of Alaska on the east and Kamchatka on the west, one of the largest and best defined branches of the Pacific is the Sea of Behring."
- "Extends from the Arctic to the Antarctic Circle, through 127 degrees of latitude." \* \* \* "It narrows especially towards the north where it communicates with the Arctic Ocean by Behring Strait."
- "Extends from the Arctic to the Antarctic Circle, through 126 degrees of latitude." \* \* \* "It narrows especially towards the north where it communicates with the Arctic Ocean by Behring Strait."
- "Behring Island, the most westerly of the Aleutian group in the North Pacific, in 55 degrees 22 minutes north latitude, 166 degrees east longitude. It is rocky and desolate, and is only remarkable as being the place where the navigator, Behring, was wrecked and died in 1741. Population 2,500."
- "Behring Strait, the narrow sea between the north-east part of Asia and the north-west part of North America, connecting the North Pacific with the Arctic Ocean."
- "Behring Strait which connects the Pacific with the Arctic \* \* \*"
- "Behring Island is [situated in the North Pacific \* \* \*]"
- "Kamchatka, a peninsula projecting from the north-western part of Asia into the Pacific Ocean," *i. e.*, into Behring Sea.
- "Extent.—The Pacific Ocean, formerly called the South Sea, and sometimes still so named by the French and Germans (*la Mer du Sud*; *Sudsee*, *Anstraloocean*) with whom, however, *La Mer (l'Océan) Pacifique*, and *Grosser Ocean*, or *Stilles Meer*, are the more usual designations, is bounded on the north by Behring Strait and the coasts of Russia and Alaska; on the east by the west coasts of North and South America; on the south the imaginary line of the Antarctic Circle divides it from the Antarctic Ocean, while its westerly boundary is the east coast of Australia, the Malay Archipelago separating it from the Indian Ocean and the eastern coasts of the Chinese Empire. Some modern geographers place the southern limit of the Atlantic, Pacific and Indian Oceans at the 40th parallel, and name the body of water which surrounds the earth between that latitude and the Antarctic Circle the Southern Ocean.



"Although differing from the Atlantic in its general form, being more nearly land-locked to the north, the Pacific Ocean resembles it, in being open to the south, forming, in fact, a great projection northwards of that vast Southern Ocean of which the Atlantic is another arm.

"The Pacific is the largest expanse of water in the world, covering more than a quarter of its superficies, and comprising fully one-half of its water surface.

"It extends through 132 degrees of latitude—in other words, it measures 9,000 miles from north to south. From east to west its breadth varies from about 40 miles at Behring Strait, where Asia and America come within sight of each other, to 8,500 miles from California and China, on the Tropic of Cancer, and to more than 10,000 miles on the Equator, between Quito and the Moluccas, where the ocean is the widest. The area has been variously estimated at from 50,000,000 to 100,000,000 square miles; but defining its boundaries as above, Keith Johnston, from careful measurement, estimated it, with probably a near approach to the truth, at 67,810,000 square miles."

*Behring Sea.*

Johnston's "Dictionary of Geography." "That part of North Pacific Ocean between Aleutian Islands and Behring Strait."

"Imperial Gazetteer. Vol I. Harper's "Universal Gazetteer" and Murray's "Gazetteer of the World." Scotch work. Gives same description. "Is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring Strait."

*Definition of "Ocean."*

"Webster's International Dictionary." "The whole body of salt water which covers more than three-fifths of the surface of the Globe—called also the sea, or great sea.

"One of the large bodies of water into which the great ocean is regarded as divided, as the Atlantic, Pacific, &c., Oceans.

"An immense expanse; any vast space or quantity without apparent limits; as the boundless ocean of eternity; an ocean of affairs.

"Of or pertaining to the main or great sea; as the ocean waves; an ocean steamer."

"Worcester's Dictionary." "The vast body of salt water which surrounds the Continents and is the receptacle of their running waters; the main; the great sea; an immense expanse; those boundless oceans of eternity and immensity. Relating to the ocean."

"Richardson's Dictionary." Vol. II. "The main sea; anything wide, extended, or immense. as the main sea."

