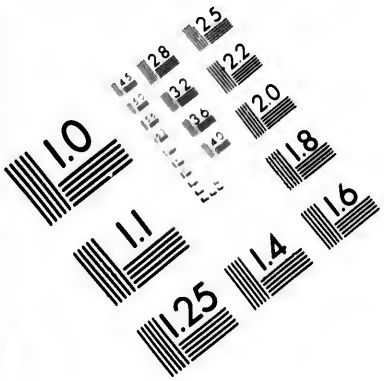

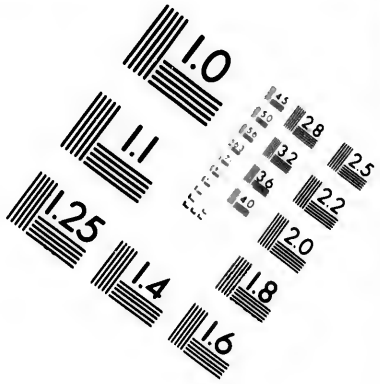

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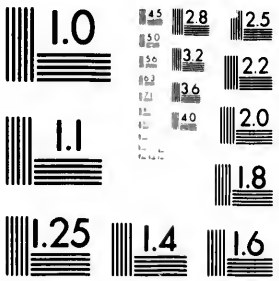

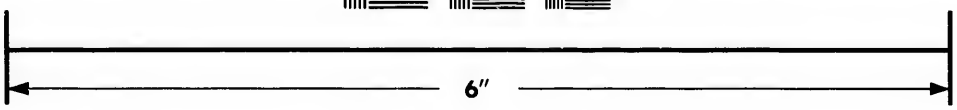

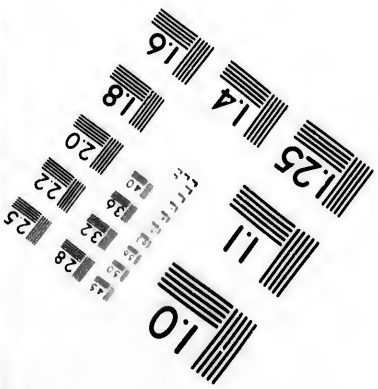

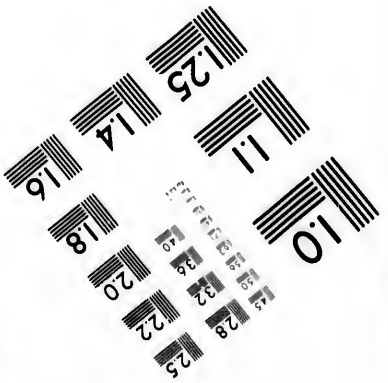

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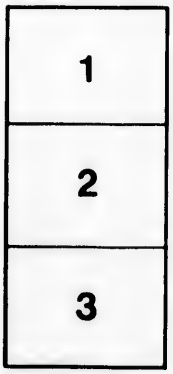

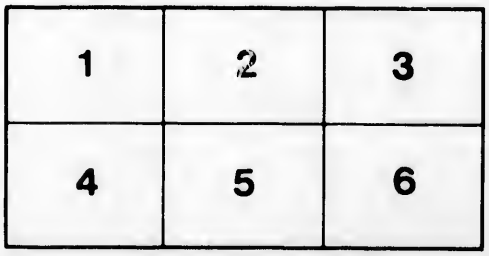

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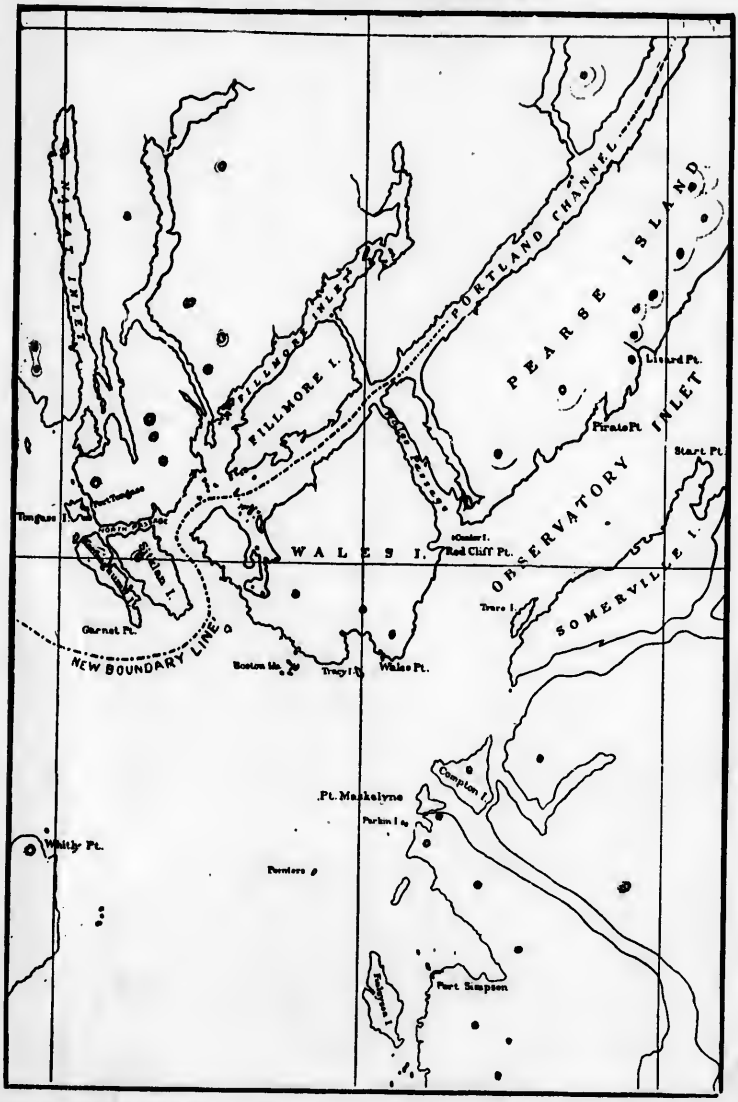
MAP OF PORTLAND CHANNEL.



Great Britain and Canada claimed that the International Boundary should have been traced through the "north passage" into Portland Channel.

MAP OF LYNN CANAL.

The International Boundary is now traced north of the figures (1), (2) and (3), which had previously indicated the Provisional Boundary of 1899.

THE ALASKA BOUNDARY TRIBUNAL AND INTERNATIONAL LAW.

(From the Canadian Law Times.)

BEFORE reviewing the decisions of the majority of the Alaska Boundary Tribunal, the plain and just-minded people of both nations must admit that both Great Britain and Canada were disastrously handicapped when they submitted the international boundary dispute between Canada and Alaska to a tribunal of six members, one-half of whom, as American politicians, had previously given public expression to decidedly hostile opinions against the then known British-Canadian claims,—subsequently formulated in the British case,—and had therefore that taint of partiality which, according to the principles of international justice, and the rules of the common law of both nations, absolutely disqualified them from sitting as judges or jurors, and eminently from being ranked as "impartial jurists of repute" which the two great sovereignties of Great Britain and the United States, as trustees of the national honour, political justice, and good faith of their respective nations, had agreed to appoint to the Tribunal.

Of those appointed by the United States, one had only three months previously denounced the British claim as "a preposterous claim set up in complete contradiction of the Treaty of 1825;" as "a most manufactured and baseless claim;" as "one which the United States could not accept, and which no nation with an ounce of self-respect could have admitted."

Another had voted to reject the Treaty of Reference, alleging that "there was nothing to arbitrate."

The third was a member of the United States Government, who had advised his government to take military possession of the Disputed Territory; had stationed a garrison of

soldiers in one part of it, and erected military storehouses on another portion of it. By such acts, and as a member of the Executive Government, he was a litigant party in the case, and so came within the common law maxim: "No man should be a judge in his own cause; for it is not allowable for him to be both judge and party." And all were within an old rule of the common law that "no man shall be allowed to be of a jury in any case who has treated of the matter in dispute, or has declared his opinion on the matter beforehand."

With such prejudiced and therefore disqualified members it was judicially, politically, and humanly impossible that impartial justice could be administered, or the recognized doctrines of International Law could be given effect to. And it would have been appropriate that a diplomatic protest should have been made against appointments which dishonoured the real impartiality of Tribunals of International Arbitration, and were a breach of the Treaty-contract to refer the international dispute to "impartial jurists of repute." But in any event it might have prevented the alleged miscarriage of justice had the British jurists declined to join in any decision, as a judicial protest on their part against the violations of the maxims of the common law, and the public faith in international justice and moral principles which should govern nations; for it has been well said by an American author on International Law: "A State is a moral person capable of obligations as well as rights. No acts of its own can annihilate its obligations to another State."

It was within the privilege of Lord Alverstone, as President of the Tribunal, to have followed the course of his British predecessors in former Arbitrations between Great Britain and the United States, and to have refrained from disclosing how he had arrived at his decision on the questions submitted. He might have adopted the late Sir George Jessel's opinion, that it was within the right of a judge, when sitting as a jury, to assume the privilege of jurors and give a verdict without disclosing his reasons. But as the President of the Tribunal has published his reasons, they are open to public review, but only in so far as that review is appropriate to what he has made public.

PORTLAND CHANNEL BOUNDARY

In considering the answer given by the majority of the Tribunal to the second question proposed by the Treaty of Reference: "What channel is the Portland Channel?" it is regrettable to notice that one of the majority of the Tribunal is charged by two of his fellow jurists with being a party to "a grotesque travesty of justice" by altering the unanimous vote of the British members of the Tribunal, which had declared that "as to Portland Channel the case of Great Britain had been demonstrated to be unanswerable;" and then by "a compromise with the plain facts of the case, while awarding Pearse and Wales Islands to Great Britain, determined to make these islands valueless to Great Britain, or to Canada, by giving to the United States the islands called Sitklan and Kannagunut."

Before passing judgment, let the charge be tested by the findings which the learned President, on behalf of that majority, has published as to Portland Channel, and by his reasons therefor.

He finds: "That one entrance of Portland Channel was between the islands now known as Kannagunut and Tongas Islands." This admittedly was the "north passage" into Portland Channel, directly south of Tongas Island, as shewn on the map. Then he adds:

"The narrative of Vancouver refers to the channel between Wales Island and Sitklan Island, known as Tongas Passage, as a passage leading south-south-east towards the ocean,—which he passed in hope of finding a more northern and westerly communication to the sea; and describes his subsequently finding the passage between Tongas Island on the north, and Sitklan and Kannagunut on the south. The narrative and the maps leave some doubt on the question whether he intended to name Portland Channel to include Tongas Passage as well as the passage between Tongas Island on the north and Kannagunut Island on the south. In view of this doubt, I think, having regard to the language, that Vancouver may have intended to include Tongas Passage in that name, and looking to the relative size of the two passages, I

think that the negotiators may well have thought that the Portland Channel, after passing north of Pearse and Wales Islands, issued into the sea by the two passages above described."

The two passages into Portland Channel here referred to are the curved or southern passage between Wales and Sitklan Islands (adopted by the Tribunal), and the straight or northern passage between Tongas and Kannagunut Islands, which was the passage claimed by Great Britain.

After some further observations, the President finds that "the references to Tongas Island in 1835, as being on the frontier of the Russian straits; and in 1863, as being on the north side of the Portland Canal; and in 1869, as to Tongas Island being on the boundary between Alaska and British Columbia, are strongly confirmatory of the view at which I have arrived upon the consideration of the materials which were in existence at the date of the Treaty."

Bearing in mind that "Tongas Island," mentioned in these confirmatory findings, is situated immediately over the north entrance of Portland Channel; and then applying the above findings to the plain and imperative direction in the Treaty-contract of 1825, that the course of the international boundary line, after leaving the Prince of Wales Island, "shall ascend to the north along the channel called Portland Channel," i.e., shall pass upward in an ascending line toward the north along Portland Channel, the question is: why was not the imperative direction and mandate of the Treaty obeyed, and the international boundary line traced through the north entrance of Portland Channel, instead of, as the Tribunal has deflected it, first south-east and then north-west through the southern entrance of Portland Channel? By so tracing the boundary line, the President appears to have reversed the verdict-result of his findings, and to have ignored the imperative mandate of the Treaty-contract. Had the findings of the learned President been applied to the "north" course of the line directed by the Treaty, the boundary should have been traced through what was found on the evidence to be the north entrance into Portland Channel.

How the reversal of these findings was brought about has been unrevealed. But by the signed decision of a majority of the Tribunal, two islands, Sitklan and Kannagunut, which, on the confirmatory findings and the mandate of the Treaty of 1825, were legally within the territorial sovereignty of Great Britain, as part of the Dominion of Canada, have been ceded to the United States.

"COAST," MEANS COAST OF THE CONTINENT.

The learned President clears away some of the difficulties as to the word "coast," suggested during the arguments. He says: "The coast mentioned in Article III. is, in my opinion, the coast of the continent; and the coast referred to in the second paragraph of Article IV. is also the coast of the continent." Inserting these terms, the Articles read:

"III. The line of demarcation between the possessions of the High Contracting Parties, upon the coast of the continent, and the islands of North America to the north-west, shall be drawn in the manner following: Commencing from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54° 40′, north latitude, and between the 131st and the 133rd degrees of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from the last mentioned point the line of demarcation shall follow the summit of the mountains situated parallel to the coast [of the continent] as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and finally, from the same point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood: 1. That the island called Prince of Wales Island shall belong wholly to Russia; 2. That wherever the summit of the mountains, which extend in a direction parallel to the coast [of the continent] from the 56th degree of north latitude to the point

of intersection of the 141st degree of west longitude, shall prove to be of a distance of more than ten marine leagues from the Ocean, the limit between the British possessions and the strip of coast [of the continent], which is to belong to Russia as above mentioned, shall be formed by a line parallel to the windings of the coast [of the continent], and which shall never exceed the distance of ten marine leagues therefrom."

This construction is the only intelligible one the term is capable of; and its equivalent expression may be found in "coast on the mainland," in question five; and "mainland coast on the ocean," in question six.

BOUNDARY LINE CROSSING LYNN CANAL AND INLETS.

Questions five and six formulated the main crux of the dispute; whether the international boundary line crossed the bays and inlets indenting this "coast of the continent."

The fifth question asked: "Was it the intention and meaning of said Convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe, or strip, of coast on the mainland, not exceeding 10 marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the Ocean?" The majority of the Tribunal answered this in the affirmative.

The sixth question was only to become necessary in case the fifth was answered in the negative; and as to the bays and inlets it asked: "Was it the intention and meaning of the said Convention that, where the mainland coast is indented by deep inlets forming part of the territorial waters of Russia, the width of the lisiere was to be measured (*a*) from the line of the general direction of the mainland coast; or (*b*) from the line separating the waters of the Ocean from the territorial wateſs of Russia; or (*c*) from the heads of the aforesaid inlets?"

And here may be noted the loose and unscientific drafting of the Treaty of Reference of 1903, as instanced in the above expression "territorial waters of Russia;" but more especially in clause (*b*) "from the line separating the waters of the Ocean from the territorial waters of Russia." The expression "territorial waters" includes not only the bays,

inlets, and rivers indenting the coast, and designated "arms of the sea," but also the three marine mile belt of sea along the coast, which is subject to the territorial sovereign of the adjoining land. The question should have been limited to whether the inland territorial waters indenting the mainland coast were Russian, or part Russian and part British.

In considering these questions, it should be borne in mind—in addition to other points, hereinafter referred to—that a recognized uniform distance of three marine miles from the low-water mark of the tidal sea, determines where the Ocean begins. And as the majority of the Tribunal holds that tidal bays and inlets, being "sinuosities of the coast," are "ocean" within the Treaty expression "ten marine leagues from the Ocean;" then their low-water mark should also determine where the Tribunal's "ocean" begins.

But the mouths of tidal rivers are also "sinuosities of the coast;" and the influent sea in such tidal rivers has also its low-water mark, which should similarly determine where they become "ocean" according to the above decision. Yet International Law, because the channels of bays, inlets, and rivers are filled to the ocean's tidal level, classes them under the generic term of "arms of the sea," and considers them in regard to sovereignty as if they were land. But the action of the influent sea in perpetually, or occasionally (as in the case of shoals or strands), submerging their lands, precludes them, it is submitted, apart from authority, from being imported into the definition "Ocean;" as that term is understood in International Law.

Here it may be said the Tribunal has only partially disposed of the paradoxical claim of the United States, pointed out in the Contemporary Review last year: "By a strange discordance, the United States concede that the international boundary line crosses at ten marine leagues from the Ocean, certain territorial waters, geographically designated 'rivers;' but deny that it crosses certain other territorial waters, geographically designated 'inlets, bays, and canals;' although, as to their territorial sovereignty, international law declares that both classes of territorial waters are arms of the sea, and treats them as though they were land. The existence of

such bays and canals cannot, therefore, alter the recognized doctrine of International Law, or authorize variations in the inland measurement of the Alaskan lisiere."

Passing from these considerations, but keeping in mind the President's appropriate interpretation of the Treaty-term, "coast," as meaning "coast of the continent," we find that, instead of reviewing the authorities cited by the distinguished counsel for Great Britain, the learned President, after a comment on the term "ocean" (hereinafter considered), said:

"This still leaves open the interpretation of the word 'coast' to which the mountains were to be parallel. There is, as far as I know, no recognized rule of International Law which would, by implication, give a recognized meaning to the word 'coast,' as applied to such sinuosities, and such waters, different from the coast itself."

This seems a regrettable admission, for by not indicating the inapplicability of the cases cited in argument, the President admits that he had no precedents in International Law to guide him; and he thereby allows the public of the disappointed nation to suggest (as will ordinary litigants occasionally — often unjustly) that other influences than the doctrines of International Law had guided him, judicially or diplomatically, in "making the law" under which he has decided against the territorial rights of Great Britain and Canada in their boundary dispute with the United States.

"COAST" IN INTERNATIONAL LAW.

A short review of the recognized French, United States, and British, authorities on International Law will, it is submitted, furnish a recognized meaning of the term "coast" as used in the Treaty, wherever such coast is indented by the sinuosities and waters above mentioned.

And here it may be assumed that International Law being a science, has, like all other sciences, terms of art, or technical terms, which have acquired clear and well-recognized meanings, especially the terms "ocean," "sea," "bay," "river," "territorial waters," "continent," "coast," "shore," "nation," "sovereignty," etc.

Hautefeuille, in his "Droits et Devoirs des Nations Neutres," gives the following: "The coasts of the sea do not present a straight and regular line; they are, on the contrary, almost always indented by bays, capes, etc, etc. If the maritime domain must always be measured from each of their banks, or beaches, or strands, or shores (de chacun des points du rivage), it would result in great inconvenience. It has therefore been agreed by the usage of nations to draw an imaginary line (une ligne fictive) from one promontory [headland] to another, for the place of the departure of the cannon shot;"—*i.e.*, over the three mile belt of territorial water. (tom. 1, p. 59).

The "great inconvenience" referred to by Hautefeuille, has been graphically and (as to this Alaska boundary line), most aptly illustrated by the Judge of a State Supreme Court in construing a similar expression to that used in the Treaty of 1825—"ten leagues from the coast." He said: "The contracts require the upper line to be drawn parallel with the coast. How can this line be drawn parallel to the natural one, which has every imaginable curvature and sinuosity? After the whole country is surveyed, it may not be an entire impossibility to trace, upon a map at least, the counterpart of the coast line, however irregular and diversified. But can anyone imagine that a Government would require, or attempt, such a line in a wilderness, for either political purposes, or for fixing the boundaries of property? It would require more numerous monuments and landmarks to ascertain its position than perhaps any other line ever drawn upon the face of the globe. Could any officer, or citizen, ever know with precision when he had passed the boundary; or could not an offender, by dodging from post to pillar, or if he took a straight course, be in and out of the boundary one hundred times a day? Suppose every league of land was to have on its inland side curves corresponding to its curved coast boundary, the confusion and uncertainty of boundaries would be intolerable, and, of course, would never be permitted. The surveyors had no time for an operation almost impracticable in itself, and which, if completed, would have been preposterous as a line of boundary." Several surveyors were examined before the Judge; but the

line which the Court held to be the only practicable compliance with the direction "ten leagues from the coast," was (1) a perpendicular line ten leagues inland from the mouth of one of the main rivers (arm of the sea), and (2) another perpendicular line ten leagues inland from the mouth of another main river (arm of the sea), then (3) a straight line joining the two inland perpendicular points. (11 Texas 715).

This illustration of the "great inconvenience," and how "a preposterous boundary line" had been judicially disposed of, may recall to mind the maxim, "Lex neminem cogit ad vana seu inutilia." But a puzzling and costly labyrinth of zigzag and curved lines over 500 miles of a strip of mountainous coast apparently never before drawn on the face of the globe, is the judicial, or diplomatic, offspring of the Tribunal's labours.

This international doctrine of the ligne fictive had been recognized by the Government of the United States as early as 1793, in the case of the capture of the British ship Grange by a French frigate in Delaware Bay, "within its capes before she had reached the sea." The Government held that such capture was a "violation of the territory of the United States;" and it ordered the restoration of the ship to her British owners. The capes or headlands of Delaware Bay are [illegible] miles apart.

A few years [illegible] Chief Justice Marshall held in a case where the admiralty or territorial jurisdiction was in issue, that a "bay" was an enclosed part of the sea, and not subject to the Admiralty Court; but was part of the territorial domain of the state, and therefore within the territorial jurisdiction of its state court. (3 Wheat. 336).

The doctrine has also been approved by the American author Wheaton, who, in his work on International Law, commends Hautefeuille as "the author of the ablest Treatises on International Law that have appeared in France;" and he translates, and copies approvingly, his dictum. He also defines the term "coast" as including "the natural appendages of the territory which rise out of the water;" but that it does not properly comprehend bays and harbours. And in a note he adds that "coast is properly not

the sea, but the land which bounds the sea. It is the limit of the land jurisdiction," which land jurisdiction, he says, "extends to the ports, harbours, bays, mouths of rivers, and adjacent arms of the sea, enclosed by headlands belonging to the same State." (pp. 320-1).

Halleck, another American author on International Law, concurs as to "the exclusive right of territorial domain over bays or portions of the sea, cut off by lines drawn from one promontory to another, along the coast;" *i.e.*, cut off from the ocean by the ligne fictive.

Daniel Webster had previously expressed the opinion that "ports and harbours, and other navigable arms of the sea, were no parts of the high sea or unenclosed and open ocean, outside the fauces terræ." And when Secretary of State he confirmed this by saying: "A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between capes, or headlands."

This doctrine received later confirmation by the Supreme Court of the United States, which, in 1890, held that a Statute of Massachusetts was an affirmation of the law of nations, which declared that: "where an inlet or arm of the sea does not exceed two marine leagues in width between its headlands, a straight line," [*i.e.*, Hautefeuille's ligne fictive] "from one headland to the other, is equivalent to the shore-line" (139 U. S. 240).

These American authorities, it is submitted, shew that the term "coast" in International Law, means not only the elevated land which rises out of the ocean, but also the imaginary straight line (ligne fictive) across the submerged land at the mouths of bays, inlets, rivers, and other arms of the sea, of six miles' width from headland to headland, which in law becomes the territorial continuation of the "coast of the continent," and the territorial limit of the sovereignty to which the submerged land belongs, and the dividing line between such territorial waters and the Ocean. For the bay, inlet, river, or other arm of the sea, with its submerged land within cannon shot of the ligne fictive, is held in international law to be occupied by the sovereign of the nation, by virtue of his occupation of the adjoining headlands and coast.

This reasoning is in harmony with the earlier doctrines of Pufendorf and Grotius, the former stating that "gulfs and channels, or arms of the sea, are, according to the regular course of nations, supposed to belong to the people within whose lands they are encompassed."

This doctrine of ligne fictive is further recognized in the Anglo-French Treaties of 1839 and 1867, the latter providing that the distance of three miles fixed as the general limit of fishing upon the "coasts" of Great Britain and France "shall, with respect to bays the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

This same term "coast" has appeared in the British Hovering Acts since 1736, and in many other Acts of Great Britain and the United States; and has, therefore, a recognized statutory meaning consistent with that given to it by International Law.

An English authority (Willcock on "The Ocean, the River, and the Shore") quoted before the Alaska Tribunal, thus interprets the term "coast:" "In general the coast line follows the shore of the sea, but it crosses" [as ligne fictive] "each inlet." He adds: "The rest of the sea is the ocean, the high or open sea; it is common to all nations, and the people of all nations." And he distinguishes the coast from the sea-shore by defining the latter as being the beach, or land, which lies under the influent sea, as the tide rises to its mark at ordinary high water.

Such are the recognized rules of International Law which might have been appealed to by the learned President to assist him in defining the meaning of the term "coast;" and also how, under the international doctrine of ligne fictive, the windings (sinuosités) caused by bays, inlets, and other arms of the sea, indenting a coast, are bridged over by a universally recognized coast line from headland to headland.

The decision of the Tribunal that the inland waters and shores of Lynn Canal are within the Treaty terms "ocean" and "coast," conflicts with the cited authorities, and also with the judgment of Mr. Justice Story, delivered in 1829, (also cited to the Tribunal), in which he held that Bos-

ton Harbour, having a broad open sea-mouth of about thirty miles, intersected by several islands, was an "arm of the sea," and not part of the high sea or open Ocean, adding: "An arm of the sea may include various subordinate descriptions of inland waters, where the tide ebbs and flows, such as a river, harbour, creek, basin, or bay; and it is sometimes used to designate very extensive waters within the projecting capes of a country." And he also held that islands, at the mouths of such arms of the sea, are opposite shores, or headlands, "in the sense of a line running across." (5 Mason C. C. 301). The widest sea-channel of Boston Harbour is between five and six miles in width; the widest sea-channel of Lynn Canal is four and three-quarter miles in width; while Taku Inlet is only one-fifth of a mile wide, and Glacier Bay three and one-half miles wide at their ocean mouths—each of them less than the recognized width of six marine miles.

Not only, therefore, did the ratio decidendi of these doctrines of International Law conclusively sustain the British contention that the boundary line crossed Lynn Canal and the other inlets, and arms of the sea, indenting the coast of the continent; but the crossing of the boundary line was specially recognized, and made part of the Treaty in the following Article:

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

This had been preceded by the following offer on the part of Russia:

"The plenipotentiaries of His Imperial Majesty, foreseeing the case where on the strip of the coast which would belong to Russia there should happen to be great courses of water (fleuves) by means of which the English establishments should be made to have free intercourse with the Ocean,

were eager to offer, as a persuasive stipulation, the free navigation of those great courses of water."

Taking all the above expressions together, and especially that comprehensive one, "all the rivers and streams which may cross the line of demarcation," they could only be held to mean all the arms of the sea which cross the line of demarcation; for there is nothing in the negotiations suggesting an intention to limit the "persuasive stipulation" of free intercourse with the Ocean through rivers and streams, and deny it through inlets and bays.

Mr. Secretary Blaine's comment in 1890, on the Treaty of 1825, may be cited as practically supporting the British claim. Referring to Article IV. he said: "Nothing is clearer than the reason for this. A strip of land at no point wider than ten marine leagues running along the Pacific Ocean from 54° 40′, was assigned to Russia by the IIIrd Article. Directly to the east of this strip of land, or, as it might be said, behind it, lay the British possessions. To shut out the inhabitants of the British possessions from the sea, by this strip of land, would have been not only unreasonable, but intolerable, to Great Britain. Russia promptly conceded the privilege, and gave to Great Britain the right of navigating all rivers crossing the strip of land from 54° 40′ to the point of intersection with the 141st degree of longitude. Without this concession the Treaty could not have been made."

But the majority of the Tribunal has not confirmed Mr. Blaine's opinion, for the inhabitants of the British possessions behind the long strip of the Alaskan coast, are now practically shut out from the Pacific Ocean by their decision.

Finally, on this question, the modern "barrier" claim of the United States, which the majority of the Tribunal has affirmed, seems to have been put forward as a thin veneer to hide from British eyes one of the historic political motives of the United States Government in acquiring Alaska, and which has been thus disclosed by Mr. Ex-Secretary Foster in his late work, A Century of American Diplomacy:

"Russia indicated a willingness (1845 to 1849) to give us its American possessions if we would adhere to the claim of 50° 40′ on the Pacific, and exclude Great Britain from

that Ocean on the American Continent." . . . Mr. Seward stated, soon after the cession was perfected, that his object in acquiring Alaska was to prevent its purchase by England, thereby preventing the extension of England's coast line on the Pacific."

And Senator Sumner, when the Alaska Treaty was before the Senate, admitted that "the motive of the United States for the acquisition of Alaska might be found in a desire to anticipate the imagined schemes, or necessities, of Great Britain, as it had been sometimes said that Great Britain desired to buy, if Russia would sell."

THE TERM "OCEAN" IN THE TREATY.

Dealing next with the term "Ocean," in the Treaty, the President says that he finds a difficulty in the use of that term. And he is perhaps warranted in saying that, in ordinary parlance, no one would call the channels or passages between the islands, and between the islands and the coast of Alaska, "ocean." But, laying aside the preceding references, its identity as "Pacific Ocean," in other Articles of the Treaty, and as affirmed in the Behring Sea Arbitration, is clear. An examination of the historic evolution of that term in the negotiations which led up to the Treaty, will, it is submitted, clear away the stated difficulty, and shew how, after some controversy, the term "Ocean" got into the Treaty, and what the signatory powers meant by its final adoption.

In July, 1824, draft "projets" of treaty were interchanged between the British and Russian Governments, which provided that the inland width of the Russian strip of coast was to be measured from the sea (la mer). Each of these projets was rejected. Another draft was then submitted in December, by the British proposing "ten marine leagues from the Pacifick." This was followed on the 1st February, 1825, by another draft in which they proposed, "ten marine leagues from the Pacific Sea." The Russian Foreign Office struck out the words "Pacific Sea" and reinstated their original "la mer;" but left untouched the expressions "Ocean" and "Pacific Ocean," in the other Articles. This change to "la mer" was rejected by the Bri-

tish; and finally both nations agreed to adopt the expression, "ten marine leagues from the Ocean," in the Treaty signed on the 16-28 February, 1825.

The final substitution of the term "ocean" for "sea," shews that the diplomatists adopted the more accurate term. International Law gives a wider interpretation to the term "sea," than it gives to the term "ocean;" for it makes the term "sea" include, not only the high seas, or open ocean, but also the ports, harbours, bays, and mouths of rivers, and other arms of the sea, indenting the ocean-coast.

Thus the diplomatic contest of "ocean" and 'mer" for a place in the fourth Article of the Treaty, resulted in the British victory of "ocean" over the Russian "mer." But Great Britain has been deprived of the fruits of that victory by the decision of the majority of the Tribunal respecting Lynn Canal and the other inlets indenting the Alaskan coast.

THE TRIBUNAL'S INCONSISTENT INTERPRETATIONS.

It is a maxim of legislative interpretation that where the same expression occurs in various sections of a statute, it shall receive a uniform interpretation in every part of the Act. The maxim applies to Treaties which are of the nature of international laws. And Lord Alverstone, in discussing the term "coast," as used in the Treaty, properly negatives its "being used in two different meanings in the same clause." But when discussing the term "Ocean" in the same Treaty, he seeks to show that it has inconsistent meanings by saying, "It cannot, I think, be disputed that, for the purposes of the Treaty, the waters between those [Wrangell and other] islands and the mainland, were included in the word Ocean." The expression "coast of the continent"—which the 4th Article makes convertible with "Ocean,"—was used to indicate the long trend of seacoast along that ocean. The term "coast"—instead of "shore," —carried into the Treaty the international doctrine of ligne fictive, and thereby excluded bays and inlets indenting that coast from the term "Ocean." The President supported this when he said that no one would describe himself, when reaching "the head of Lynn Canal, or Taku Inlet, as being upon

the Ocean." But his decision negatives the logical result, and gives to Lynn Canal—which, in International Law, is an inland territorial water and is treated as land inside the ligne fictive,—equal dignity in International Law to that of "Ocean," which, as the common highway of nations, is subject to no nation or sovereign,—a Tribunal mosaic shewing how the square pegs of legal science were forced into the sinuous holes of diplomatic finesse.

DATUM LINE OF THE INLAND MEASUREMENT.

Turning now to the words of the Treaty of 1825, it will appear that the "summits of the mountains parallel to the coast" were designated as the primary international boundary line, conditional, however, on their inland limit; and it prescribed what should be the base or datum line of that governing limit, which may be put in terse phraseology thus: "Whenever the summit of the mountains which extend in a direction parallel to the coast . . . shall prove to be of a distance of more than ten marine leagues from the Ocean, . . . the line parallel to the windings of the coast shall never exceed the distance of ten marine leagues therefrom." There words clearly made the ocean "coast of the continent" the base or datum line of the inland measurement.

Had the learned President applied Hautefeuille's rule to his own definition of "coast," he would have found that the base or datum line should be continued across the mouths of Lynn Canal and the other inlets, and that the lisiere boundary line would then cross them at ten marine leagues from the ligne fictive "coast of the continent."

But the learned President again says: "It is difficult to see how the words 'summit of the mountains' could be applicable if it was contemplated that there might be a gap of six miles between summit and summit crossing the water." His difficulty is clearly removed by the Treaty providing for the absence of mountain summits for a boundary line, by the alternative of a substitute boundary line "ten marine leagues from the Ocean;" and if, instead of "a gap of six miles crossing the water," the gap was caused by crossing a level prairie of six miles between summit and summit, would the

Tribunal have been warranted in going inland and round the level prairie until they found mountain summits? The submerged land of the inlets is as bare of mountain summits as the level land of the prairie; and, that being so, where is the suggested difficulty?

PROBABLE EFFECT ON THE FISHERY CLAUSES OF 1818.

The ratio decidendi of the Tribunal's decision makes the term "coast," synonymous with the term "shore,"—a term which Wheaton and other American authorities have used as appropriate to bays, tidal rivers, and inlets;—and it may enable the United States to raise an influential argument against the persistent enforcement of the doctrine of "ligne fictive" by Great Britain against the claims of American fishermen, under the Treaty of 1818. By that Treaty, the United States renounced forever any liberty theretofore enjoyed, or claimed by their inhabitants, "to take, dry, or cure fish on, or within, three marine miles of any of the coasts, bays, creeks, or harbours, of His Majesty's dominions in America," other than the localities previously specified.

The argument of Mr. Rush against that enforcement was: "We inserted the clause of renunciation. In signing it, we retained the right of fishing in the sea, whether called bay, gulf, or by whatever name designated, that washed the coast of the British North American Provinces—with the single exception that we should not come within a marine league of its shore." And the American Minister, Mr. Stevenson, complained to Lord Palmerston in 1841, that Canada had "assumed the right to exclude the fishing vessels of the United States from all bays; and likewise to prohibit their approach within three miles of a line drawn from headland to headland—instead of from the indents of the shores of the Provinces."

It was further contended by the United States that where the bay widened beyond six miles within its headlands, that American fishermen could ply their avocation so long as they kept outside of the three miles from its interior shores. But the British Government held that the sovereignty over the bay as a British territorial water could not be questioned where

the mouth was six miles wide,—thus giving practical recognition to the international doctrine of the ligne fictive.

MOUNTAINS PARALLEL TO THE COAST.

Then as to the seventh question: "What are the mountains situated parallel to the coast?" The British originally proposed the sea-ward base of the mountains as the boundary line. Russia objected, because the mountains might slope directly to the ocean, and practically give them no foothold on the coast, and asked that the line should be on the summit of "the mountains bordering on the coast." This was conceded in the Treaty by the words: "the summit of the mountains situated parallel to the coast." But the majority of the Tribunal has adopted a line which, at a number of points, rests on mountains lying far inland from the coast, and separated from it by mountains nearer to the coast, which came more within the words of the treaty as "situated parallel to the coast," than those selected by the Tribunal.

It may be fairly claimed that any alleged acquiescence of Great Britain in the occupation by the United States of Lynn Canal or other portions of the Disputed Territory, had been abandoned by the unconditional terms of the Treaty-Conventions of 1892 and 1894, by which the two nations reaffirmed the contract of the Anglo-Russian Treaty of 1825, and agreed to deliminate the international boundary line "in accordance with the spirit and intent of the existing Treaties" of 1825 and 1867. The effect of such unconditional reaffirmation was to free the boundary dispute of any alleged rights or equities arising out of prior acts of occupation, or prior settlements, by the United States, and of Great Britain's alleged acquiescence in the same which might have been claimable against her by the United States. But the conclusive legal doctrine of the Treaty-Conventions of 1892 and 1894, appears to have been waived by Great Britain in Article III. of the Treaty of Reference of 1903, which allowed the Tribunal "to take into consideration any action of the several governments preliminary, or subsequent, to the conclusion of the said Treaties." But there has been no finding that Great Britain, or, Canada, had, by any act or conduct, waived a strict interpretation of the Treaty of 1825.

DECISIONS NOT PRECEDENTS IN INTERNATIONAL LAW.

Taking into consideration the taint of partiality, and the consequent disqualification by the common law, of the representatives of the United States as "impartial jurists of repute;" and how the several questions proposed by the Treaty of Reference have been answered, and testing the answers by the findings of fact, and the meanings given by International Law to the political terms "coast" and "ocean" used in the Treaty, and submitting them to the clear reasons for the principles and doctrines of International Law, and also to the more crucial tests of ordinary law as authoritatively expounded in reported cases, it is unfortunate that the decisions of the majority of the Alaska Boundary Tribunal do not seem to carry that legal or logical force and consistency which would make them acceptable as judicial authorities, or entitled to be enthroned as unchallengeable precedents in International Law for the guidance of future Tribunals of International Arbitration. They partake more of the flavour and quality of what may be termed the political compromises which diplomatic exigencies require, or diplomatic finesse approves; and they painfully revive the historic remembrances of those diplomatic disasters which, in other days, had ceded portions of the original territorial domain of Canada, won on the Plains of Abraham, for the territorial enlargement of the United States, and which have been thus truly stated by a former Under-Secretary for Foreign Affairs in Problems of Greater Britain: "It is a fact that in by-gone days British diplomacy has cost Canada dear."

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