COSTA RICA-PANAMA ARBITRATION

ARGUMENT OF COSTA RICA

BEFORE THE

ARBITRATOR

HON. EDWARD DOUGLASS WHITE
CHIEF JUSTICE OF THE UNITED STATES

UNDER THE
PROVISIONS OF THE CONVENTION BETWEEN THE REPUBLIC OF COSTA RICA
AND THE REPUBLIC OF PANAMA, CONCLUDED MARCH 17, 1910.

WASHINGTON, D. C.
PRESS OF GIBSON BROTHERS, INC.
1913

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SYNOPSIS

of the

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SYNOPSIS OF THE CASE

OF

COSTA RICA.

THE QUESTION SUBMITTED.

The treaty of March 17, 1910, between Costa Rica and Panama, under which this arbitration is held, submits for the decision of the Honorable Arbitrator the following question:

> What is the boundary between Costa Rica and Panama under and most in accordance with the correct interpretation and true intention of the Award of the President of the French Republic made the 11th of September, 1900?

In Article I of the treaty it is recited that the High Contracting Parties consider that the boundary between their respective territories designated by this Award "is clear and indisputable in the region of the Pacific from Punta Burica to a point beyond Cerro Pando on the Central Cordillera near the ninth degree of north latitude," and no question, therefore, with respect to this portion of the line is raised in this arbitration.

It is further recited in Article I of the treaty that the High Contracting Parties "have not been able to reach an agreement in respect to the interpretation which ought to be given to the Arbitral Award as to the rest of the boundary line;" and under the terms of submission, therefore, the Honorable Arbitrator is called upon to determine where this portion of the boundary line should be located "under and most in accordance with the correct interpretation and

true intention of the Award of the President of the French Republic made the 11th of September, 1900."

The terms of the Award, so far as they relate to the portion of the boundary in dispute, are as follows:

> The frontier between the Republics of Colombia and Costa Rica shall be formed by the spur (counterfort) of the Cordillera which starts from Cape Mona, on the Atlantic Ocean, and closes on the north the valley of the River Tarire or River Sixaola; thence by the chain of the watershed between the Atlantic and Pacific to about the ninth parallel of latitude.

The same Article of the treaty which formulates the question submitted to arbitration further provides that—

> In order to decide this the Arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limitation of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé, Minister of Foreign Relations of France, to His Excellency Señor Peralta, Minister of Costa Rica in Paris, of November 23, 1900, that this boundary line must be drawn within the confines of the territory in dispute as determined by the Convention of Paris between the Republic of Costa Rica and the Republic of Colombia of January 20, 1886.

THE TRUE INTENTION OF THE LOUBET AWARD.

The letter of Minister Delcassé of November 23, 1900, to which reference is made in the above quotation, was written in reply to a request from Señor Peralta for a more precise definition of the location of the line under the Award, in view of the fact that unless the Award was interpreted to mean that the line should follow the Yorquín instead of the Tarire River, it would include within the

region granted to Colombia territory not in dispute, which would be a positive violation of the terms of submission, and therefore could not have been the intention of the President of the French Republic. Minister Delcassé, speaking on behalf of the President of the French Republic, and recognizing the limitations which had been imposed upon him by the terms of the arbitration, explained that owing to the lack of precise geographical data the Arbitrator had not been able to fix the frontier except by means of general indications. He also admitted that there was no doubt, as Señor Peralta had observed, "that in conformity with the terms of Articles 2 and 3 of the Convention of Paris of January 20, 1886, this frontier line must be traced within the limits of the territory in dispute, as they are found to be from the text of said Articles." He therefore pointed out in conclusion that—

> It is according to these principles that the Republics of Colombia and Costa Rica will have to proceed to the material determination of their frontiers, and the Arbitrator relies, in this particular, upon the spirit of conciliation and good understanding which has up to this time inspired the two interested governments.

This letter was clearly intended to open a way for the two governments by mutual agreement, in a spirit of conciliation and good understanding, to revise and correct the Award if it should be found that it exceeded the limits imposed by the terms of submission; and the statement in this letter that the Arbitrator had not been able to fix the frontier except by means of general indications, certainly introduces an element of uncertainty which gives a wide scope in interpreting the meaning of the Award.

Articles 2 and 3 of the Convention of Paris of January 20, 1886, which are referred to as imposing limitations upon

the Award, and which were confirmed and ratified by the treaty of 1896 under which the Award was made, are as follows:

> ARTICLE 2. The territorial boundary which the Republic of Costa Rica claims, on the Atlantic side, reaches as far as the Island of the Escudo de Veragua and the River Chiriquí (Calobébora) inclusive; and on the Pacific side as far as the River Chiriquí Viejo, inclusive, to the east of Punta Burica. The territorial boundary which the United States of Colombia claims reaches, on the Atlantic side, as far as Cape Gracias a Dios, inclusive; and on the Pacific side, as far as the mouth of the River Golfito, in the Gulf of Dulce.
>
> ARTICLE 3. The Arbitral Award must be confined to the territory disputed which lies within the extreme limits already stated, and it cannot in any way affect the rights which a third party, who has not intervened in the arbitration, may allege to the ownership of the territory included within the boundaries indicated.

It will be observed that Article 2 merely fixes the terminal points upon the Atlantic and Pacific of the boundary claimed by the respective parties, while Article 3 imposes an additional limitation which confines the Award to the disputed territory within these extreme limits. In other words, the scope of the Award was confined not merely to territory within the extreme limits stated in Article 2, but to territory within those limits which was actually in dispute in 1886, when that treaty was made.

It therefore becomes evident at the outset that the Award must be interpreted so as not to extend the boundary beyond the territory which was actually in dispute between Costa Rica and Colombia at the time the treaty of 1886 was entered into.

THE POWERS OF THE PRESENT ARBITRATOR.

It is also evident that the present terms of submission contemplate the adoption of an entirely different line from that indicated in the Award in case the general indications, by means of which the Award describes the boundary, cannot be followed, either because they would carry the line beyond the limits of the disputed territory, or because the precise geographical data now before the arbitrator, the lack of which compelled the former arbitrator to confine himself to "general indications" in describing the boundary, prove that the geographical conditions do not support the assumptions upon which these general indications were based.

If for these reasons, or for any other reasons disclosed by the facts presented in this case, the Award is found to be defective, the present arbitrator is at liberty to interpret the Award in such a way as to fix the line in accordance with the merits of the question, disregarding any complications growing out of imperfections in the Award, as it is not to be presumed that the Award of the President of the French Republic could have had any other intention than this. That this was the intention of the terms of submission, is evident from the provision above quoted that in order to decide the question submitted "the arbitrator will take into account all the facts, circumstances, and considerations which may have a bearing upon the case, as well as the limits of the Loubet Award expressed in the letter of His Excellency Monsieur Delcassé" etc.

THE LIMITS OF THE TERRITORY IN DISPUTE.

In considering the question of what territory was in dispute between Colombia and Costa Rica antecedent to their Treaty of 1886 for the purpose of determining the

limitation thereby imposed upon the scope of the Award, it is necessary to understand at the outset that this question relates to two entirely different sections of territory, each of which has a distinctly different historical and legal status.

One of these sections consists of the portion of the so-called Mosquito Coast extending toward the south from Cape Gracias a Dios, which marked about the center of that coast, and the other of these sections comprises a strip of territory extending between the Pacific and Atlantic Oceans to the eastward of a line running from the mouth of the River Golfito on the Pacific side to the mouth of the Sixaola River on the Atlantic. It will be observed that the extreme points of these two sections are those fixed in the treaty of 1886 as the extreme points of the boundary claimed by Colombia—*i. e.* Cape Gracias a Dios on the Atlantic side, and the mouth of the River Golfito on the Pacific side. The location of the line claimed by Colombia between these two points was not described in terms in that treaty, but all uncertainty as to its location was removed by the supplemental provision of that treaty limiting the scope of the Award to the territory then in dispute between the two governments. The evidence produced on behalf of Costa Rica in this case shows that up to that time Colombia had never asserted a claim against Costa Rica for any territory beyond the limits of the two sections above described, and as a matter of fact Colombia had never formally asserted a claim against Costa Rica for the possession of any territory on the Atlantic coast beyond the mouth of the Sixaola River. Costa Rica certainly did not understand that any such claim was outstanding at that time or in any way involved in the issues presented by that treaty. Furthermore when

the President of France was asked and agreed to act as arbitrator under the treaty of 1896, he was furnished by Costa Rica with a map on which was marked a line showing that no territory to the northward of the mouth of the Sixaola River was regarded as in dispute at that time. This map and the letter of June 9, 1897, with which it was transmitted, from Señor Peralta to the French Minister of Foreign Affairs, were made part of the Case of Costa Rica in that arbitration and were acquiesced in without question by Colombia.

THE MOSQUITO COAST.

The reason that Cape Gracias a Dios was inserted in this treaty by Colombia as the extreme point of the boundary claimed by it on the Atlantic Coast was unquestionably because of the desire of that Government not to prejudice or relinquish by implication the possibility of establishing in the future a claim to that part of the Nicaraguan coast adjacent to the mouth of the San Juan River on the ground that it was part of the Mosquito coast; for Colombia was very anxious if possible to secure or at least participate in the control of the Atlantic end of the proposed Nicaraguan Canal in addition to the control it then exercised over the Panama Canal route. On the other hand Costa Rica permitted Cape Gracias a Dios to be named as the extreme point of the boundary claimed by Colombia for several reasons, the most important of which were: first, because the point thus named was not in Costa Rican territory, and therefore was outside of the scope of the arbitration under this treaty, which expressly provided that the rights of third parties could not in any way be affected, and in the second place because it was well understood that the boundary claimed by Colombia

as far as Cape Gracias a Dios related only to the so-called Mosquito Coast which had never comprised any of the territory of Costa Rica, being limited, as is conclusively shown by the evidence presented in this case, to a portion of the Atlantic littoral of Nicaragua north of Punta Gorda, which is more than ten leagues above the San Juan River. Moreover, Colombia's claim to the Mosquito Coast was known to be without valid legal basis, and as is stated above, Colombia had never raised as a distinct issue with Costa Rica, by formal assertion or demand, any claim to any portion of Costa Rican territory, northward of the Sixaola River,—certainly no such claim was at issue between them in 1886; consequently, even if the Mosquito Coast was regarded as including any part of the Atlantic littoral of Costa Rica, it was not strictly speaking territory in dispute between the two countries within the meaning of the treaty of 1886.

The basis of Colombia's pretensions to a part of the so-called Mosquito Coast was a Royal Order of 1803 which provided that "the *part* of the Mosquito Coast from Cape Gracias a Dios, inclusive, toward the River Chagres, shall be segregated from the Captaincy-General of Guatemala, and be dependent on the Viceroyalty of Santa Fe." Colombia claimed to be entitled to possession as the successor to the Viceroyalty of Santa Fe. It will be found, however, from an examination of the arguments and evidence submitted in the case for Costa Rica, that this order never had the effect claimed for it by Colombia, having been adopted for military and not governmental purposes, and the occasion for it having soon thereafter ceased, it never became operative and was always afterwards disregarded, and in any event was superseded and abrogated by a Royal Order of 1806, which

retained the Mosquito Coast under the dependency of Guatemala.

In this connection attention is called to the very able and valuable opinion of the learned Spanish jurists, Señor Don Segismundo Moret y Prendergast and Señor Don Vicente Santamaría de Paredes, who have examined the question of the boundary between Costa Rica and Panama with reference to the Spanish Colonial law, at the request of the Government of Costa Rica, which opinion is now presented as part of the Case of Costa Rica.

It is further shown that the lower end of the Mosquito Coast never extended as far as the northern border of Costa Rica, and that Cape Gracias a Dios was about midway between the upper and lower extremities of that coast. It is also shown that the use of the words "toward the River Chagres" in the Order was not intended to and did not in fact extend the Mosquito Coast along the Atlantic littoral to that river, because the word "toward," as used in that Order, did not mean "as far as," but was merely intended to signify direction, as if that Order had read "that part of the Mosquito Coast below Cape Gracias a Dios," in distinction from the part above that point.

THE LAW APPLICABLE.

It is also proved in this case that Colombia had neither actual nor constructive possession of any part of the Mosquito Coast during its colonial period, or after its independence from Spain was established, so that the principle of *uti possidetis* universally adopted in South and Central America for the determination of boundaries could not be invoked by Colombia with reference to the Mosquito Coast. Colombia's claim to that coast rested wholly upon the Order of 1803, and for that reason Colombia

sought to modify the principle of *uti possidetis* by adding the words "*de jure*," so as to bring within its application a mere claim of right to possession in distinction from a claim based upon actual possession. Even under this modification of the *uti possidetis* principle, however, proof of the validity and continuance of the Order of 1803 down to and after Colombia's separation from Spain was essential to establish even a *prima facie* claim by Colombia to the Mosquito Coast.

Under these circumstances it is incredible that Colombia could ever have hoped to sustain this claim to the Mosquito Coast. Even if the Order of 1803 had not been revoked in 1806 it was always subject to revocation and it stands to reason that when Colombia achieved her independence after revolting from Spain in 1810, she ceased to have any further claim on the Mosquito Coast under the Order of 1803, for a revocable order, such as that was, could not under any principle of law be regarded as thereafter continuing in force for the purpose of transferring to a revolting colony territory situated in a loyal colony, and actually in the possession and control of Spain.

FAILURE OF COLOMBIA'S CLAIM.

It follows as a necessary conclusion from the evidence produced on behalf of Costa Rica that Colombia's claim of right to possession of the Mosquito Coast furnished no justification for extending the Colombian boundary to the north of the Sixaola River, even if the Royal Order of 1803 could be construed as carrying the Mosquito Coast south of the Nicaraguan boundary and along the Costa Rican littoral on the Atlantic. That President Loubet reached this conclusion is shown by the Award itself, which in express terms decides that the territory of Colombia

(Panama) shall not extend beyond Punta Mona on the Atlantic Coast, and that islands in proximity to the coast "situated to the west and to the northwest of the said Punta Mona shall belong to the Republic of Costa Rica." The Award also in express terms refers to other islands "more distant from the continent and included between the Coast of the Mosquitos and the Coast of the Isthmus of Panama."

It is evident, therefore, that it was the intention of President Loubet in this Award to decide that Costa Rican territory intervened along the Atlantic littoral between the Mosquito Coast and Panama, thus denying Colombia's claim that the Mosquito Coast extended south of the San Juan River or intervened between Costa Rica and the sea along any part of the littoral south of the Nicaraguan boundary.

It is also clear from the foregoing that in denying this claim President Loubet at the same time deprived himself of any ground which would justify starting the Atlantic end of the boundary at Punta Mona instead of at the mouth of the Sixaola River, for as above stated, apart from the Mosquito Coast claim, the utmost limit of the boundary for which Colombia had contended in the proceedings resulting in the arbitration treaty was the mouth of the Sixaola River.

THE ONLY TERRITORY ACTUALLY IN DISPUTE.

It remains to consider the course of the line claimed by Colombia, prior to the treaty of 1886, from the mouth of the River Golfito on the Pacific side to the mouth of the River Sixaola on the Atlantic, bounding on the westward the other section above mentioned, within which was comprised the territory in dispute between the two Govern-

ments at that time, and beyond which line, under the terms of the treaty the boundary can not be extended into Costa Rican territory.

In view of the character of the boundary of the Loubet Award and the acceptance by both Governments of that portion of it lying on the Pacific side of the Main Cordillera, it is necessary to consider in this connection only that portion of the territory in dispute lying between the Main Cordillera and the Atlantic Coast. Costa Rica admits that all the territory lying to the southeastward of the Sixaola River for its entire length from its mouth to its junction with the Yorquín River, and to the eastward of the Yorquín River from its mouth to its source was territory in dispute at the time the treaty of 1886 was made and within the meaning of Article 3 of that treaty.

Costa Rica denies that any territory to the westward of the Yorquín or to the northward of the Sixaola River was ever claimed by Colombia prior to 1886, or was in dispute between the two Governments at the time the treaty of 1886 was entered into or prior to the arbitration treaty under which the Loubet Award was made. It will be found that this denial is completely sustained by the proofs and arguments presented on behalf of Costa Rica.

THE BOUNDARY UNDER COLONIAL AND INTERNATIONAL LAW.

A boundary existed between Costa Rica and Panama while they were still Spanish provinces for several years after Colombia had declared her independence of Spain, and subsequently, in the latter part of 1821, when they in turn declared their independence the demarcation of the boundary between them as independent states first became an international question, with which question Colombia

was not concerned until the following year. In this connection it should be noted that the demarcation of the boundary between Costa Rica and Panama presents a distinctly different question from that raised by Colombia's claim to the Mosquito coast. The determination of the boundary between Costa Rica and Panama upon their independence was governed then, as it has been ever since, by the principle of *uti possidetis* in 1821, and after Panama had joined the Republic of Colombia and Costa Rica had joined the United Provinces of the Centre of America, this principle was recognized as applicable to that boundary in the treaty entered into in 1825 by those Powers. By this treaty they guaranteed in Article 5—

> the integrity of their respective territories against the attempts and incursions of the subjects of the King of Spain and their adherents, on the same footing in which they were found naturally before the present War of Independence.

And they agreed in Article 7 —

> to respect their limits as they are at present, reserving the making, in a friendly manner, by means of a Special Convention, of the demarcation by a line dividing one State from the other, as soon as circumstances may permit it, or when one of the parties manifests to the other a desire to take up this negotiation.

The boundary line claimed by Costa Rica at that time, and ever since, as representing the real divisional line between Panama and Costa Rica as provinces and between the territories actually possessed by them respectively at the time of their declaration of independence in 1821, was formed, on the Atlantic side of the Main Cordillera, by the Chiriquí or Calobébora River, which empties into the sea

at a point opposite the Escudo de Veragua. The justice of this contention is fully sustained by the above-mentioned opinion of Señores Moret and de Paredes, who have examined the question with reference to Spanish Colonial law.

This line left on the Costa Rican side of the boundary the entire region known as Bocas del Toro, including the bay of that name comprising the Chiriquí Lagoon and the Bay of Almirante, which, as a glance at the map will show, afforded splendid harbor facilities, of immense value even then on account of the scarcity of spacious harbors in that vicinity, and of much greater value in later years in relation to the Panama Canal.

JURISDICTIONAL CONFLICT.

Costa Rica was left in undisturbed and unquestioned possession of all the region to the west of the Chiriquí or Calobébora River, above mentioned, until 1836, when the Congress of New Granada (successor of the Republic of Colombia) decreed the occupation of Bocas del Toro, which was described in that decree as extending along the Atlantic coast as far as the "Culebras" River. There was no river in that region to which the name "Culebras" properly applied in those days, but the river intended in this decree has been demonstrated to be the river called Changuinola on modern maps.

In the following year New Granada adopted another decree organizing a new canton in this Bocas del Toro region, thus demonstrating that it had not been in the possession of New Granada up to that time. These decrees have always been regarded by Costa Rica as an unlawful encroachment upon Costa Rican territory, the usurpation of which was a violation of the above quoted stipulations of the treaty of 1825.

TREATY OF 1841.

While this question was still in the stage of diplomatic discussion, the Federation of Central America dissolved, Costa Rica resuming its independent existence as a separate state (1838), and shortly thereafter Panama separated from New Granada, becoming the Republic of the Isthmus (1840). These two independent states thereupon entered into a treaty, in 1841, of mutual recognition and friendship, by which it was agreed that—

> The state of Costa Rica reserves its right to claim from the state of the Isthmus the possession of *Bocatoro* upon the Atlantic Ocean, which the Government of New Granada had occupied, going beyond the division line located at the Escudo de Veraguas.

Before these two states could reach an agreement on the adjustment of their boundary, as contemplated in this treaty, Panama was again absorbed by New Granada, and the boundary question was thereafter left in abeyance for upwards of fifteen years.

NEO-GRANADIAN CONTENTIONS.

Meanwhile, by way of preparation for the renewal of this discussion, the neo-Granadian Government secured two reports on the subject from Señor Fernández Madrid, an eminent statesman of that Republic, one made by him as a private individual in 1852, and the other prepared by him and adopted in 1855 by the neo-Granadian Senate of which he was a member. These two reports are substantially identical, and the conclusion reached in them is that the "Culebras" River marks the end of the boundary on the Atlantic, but that "as there cannot fail to be noted in one writer or another some dis-

crepancy concerning which of the points stated (Doraces, Culebras or Punta Careta) is the one which in reality does separate the two jurisdictions," it will be admissible for the two governments to deviate from the strictly legal line, and for their accommodation to take another which, without departing in any substantial way from the boundaries indicated, might harmonize more nearly with what was desirable for both countries.

The real interest of New Granada in this boundary question at that time is disclosed by the statement found in these reports that it does not seem impossible to reach an agreement as above suggested "if we confine ourselves to securing our possession of Bocas del Toro and reserving to ourselves a good anchorage in the Gulf of Dulce, being thoroughly convinced that this being settled in a satisfactory manner, all the other points are of entirely secondary interest."

TREATY OF 1856.

In the year 1855 New Granada opened negotiations with Costa Rica for the settlement of this boundary, and in the following year the Treaty of June 11, 1856, was negotiated fixing this portion of the boundary along the middle of the principal channel of the River Doraces from its source to its mouth in the Atlantic. In agreeing to this boundary it was understood on the part of Costa Rica that the Doraces River was the same as the old Estrella, which was called by some geographers the "Culebras," and is now known as the Changuinola on modern maps. This river, it will be remembered, was the same one which, under the name of the Culebras in New Granada's usurpatory decree of 1836, had marked the westernmost extreme on the Atlantic Coast of the Bocas del Toro territory, which at that time was the utmost limit of New

Granada's pretensions. Not content, however, with the extreme concession thus made in this treaty, and at a time when Costa Rica was embarrassed by a foreign war and ravaged by cholera, New Granada sought to force even further concessions from that unhappy country by imposing an interpretation upon this treaty the effect of which would have been to identify the "Doraces" River with "the first river which is found at a short distance to the southeast of Punta Careta," meaning thereby the present Sixaola River. Costa Rica promptly refused to accept this interpretation, and rejected this treaty, which it is important to note never became effective.

TREATY OF 1865.

Upon the failure of the treaty of 1856 Costa Rica decided to regain possession of the region then in dispute, and in the year 1859 took steps providing for the control of the archipelago of Bocas del Toro, by the governor and commander of the Port of Moín, who was authorized to appoint military and police judges in that region, and to expel wrong doers, and exercised other acts of jurisdiction over that region.

As a result of these proceedings, negotiations were undertaken in 1855 between Costa Rica and the Government of the United States of Colombia, then recently established, for the settlement of this question, and on March 30 of that year a treaty was signed by which the boundary of the territory now under consideration was fixed along the main channel of the Cañaveral River from its source to its mouth on the Atlantic. The boundary thus fixed by this treaty was not quite so favorable to Costa Rica as the boundary originally claimed by that country, but it included within

the jurisdiction of Costa Rica the entire Bocas del Toro region which New Granada had sought to obtain under the Treaty of 1856. This boundary has always been recognized as conforming most nearly, both legally and historically to the true boundary, having reference to the principle of *uti possidetis* in 1821 which is controlling in this case. It is worthy of note that the treaty adopting this boundary was approved by the executive power and by the Senate of Colombia, and also on the first reading by the Colombian House of Representatives, and only failed of ratification because its final approval, after a second reading, was left to the legislature for the following year, which rejected it for reasons entirely unrelated to the boundary question.

TREATY OF 1873.

Following the failure to ratify the treaty of 1865, jurisdictional conflicts arose both on the Atlantic and the Pacific side of the territory in dispute, and an attempt was again made to agree upon a treaty settling the boundary, and a treaty for that purpose was finally negotiated in April 1873, by which the section of the boundary now under consideration was fixed along the course of the River Bananos from its source to its outlet in the Bay of Almirante. The line thus fixed was somewhat more favorable to Costa Rica than the line fixed by the Treaty of 1856 along the Doraces or Changuinola River, because the Bananos River lies to the east of that river and empties into Almirante Bay, a part of which was thus reserved to Costa Rica. It was much less favorable, however, to Costa Rica than the Treaty of 1865, and as it was not satisfactory to either country it failed of ratification.

CONTENTIONS AS TO TERRITORIAL POSSESSION PRIOR TO ARBITRATION.

After the failure of this treaty, jurisdictional conflicts

this boundary by agreement would be impossible, and that

Sixaola. This construction is sustained by the third conclusion, above mentioned, of the Colombian Senate, which is as follows:

> 3. Colombia has been in the uninterrupted possession of the territory embraced within the limits indicated in Conclusion 1.

This statement clearly identifies the Yorquín and not the Tarire as the upper part of the river to which the name Culebras is applied in the first Conclusion, because Colombia neither up to that time nor since, ever had any sort of possession of the territory to the westward of the Yorquín between it and the Tarire, the possession of which territory had been in the uninterrupted and unquestioned possession of Costa Rica for upwards of three hundred years.

It will be found upon an examination of Costa Rica's case that all of the foregoing statements are fully sustained by the arguments and evidence therein presented, and it will be found further that until after 1870 Colombia had never exercised any jurisdiction over or even had constructive possession of any territory in this region west of the Changuinola River. This was the situation and the extent of Colombia's claims up to the year 1880, when the first treaty for the settlement of this question by arbitration was entered into, and no substantial change took place in the situation, and no attempt was made by Colombia to encroach further upon Costa Rican territory prior to the making of the second arbitration treaty, dated January 20, 1886, which contained in the Third Article the stipulation already quoted providing that the arbitral award must be confined to the disputed territory which lies within the extreme limits already stated.

THE DISPUTED TERRITORY SUBMITTED TO ARBITRATION AND THE SILVELA LINE.

Prior to the treaty of 1886 a *status quo* line resting chiefly upon actual possession had been established, and from that period down to the present time the entire region to the westward of the Yorquín and northward of the Sixaola Rivers has remained continuously in the possession of Costa Rica just as it always had been from the beginning of the Colonial period. There was, therefore, as a matter of fact no difference in the area of the territory in dispute from the date of the arbitration treaty in 1886 down to the date of the Loubet Award, so that the stipulation above quoted from the treaty of 1886 had the same effect whether applied to conditions in 1886 or 1900. Nevertheless in another aspect this stipulation was of great importance and demonstrates the foresight which was shown in adopting it. It was intended to prevent any attempt on either side to bring into the litigation any claims or extend the scope of the arbitration over territory not in dispute at the time the arbitration was agreed upon. Such an attempt was made in presenting Colombia's case in the arbitration before President Loubet, when the representative of Colombia formally demanded on the part of his government a line, known as the Silvela line, starting several miles to the west of the River Golfito, which was fixed by the treaty of 1886 as the extreme limit of the boundary which could be claimed by Colombia, which line he carried from that point due north to its intersection with the Teliri or Tarire River and thence by a straight line slightly to the west of north until it reached the confluence of the Sarapiquí River with the San Juan River.

This so called Silvela line embraced a vast extent of territory which Colombia never before had claimed, and about which there had never been any dispute between the two countries. Clearly Colombia's claim was inadmissible and incompetent to subject that territory to the hazard of arbitration, and that claim, therefore, should have been wholly disregarded by the arbitrator except in so far as it operated to limit rather than extend the area of the territory now claimed. For that purpose it was competent evidence against Colombia as an admission against the interest of that government which would not have been made unless it was true. In this connection, therefore, it should be noted that inasmuch as the Silvela line cuts across a part of the territory which Panama now claims as granted to it under the Loubet Award it is in effect an admission that the Award line included territory not in dispute.

THE DEFECTS OF THE AWARD.

With these considerations in mind, a glance at the map will show that the entire course of the Loubet Award boundary, from Punta Mona to a point near Cerro Pando on the Main Cordillera, lies beyond the Sixaola-Yorquín Rivers, and in fact even beyond the Sixaola-Tarire Rivers, and therefore for its entire length it runs through territory which was not in dispute, and was for that reason, excluded from the scope of that arbitration.

In addition to the defects above discussed, the case presented by Costa Rica shows that the Award of President Loubet is also subject to revision and correction because the presentation of Costa Rica's case was prejudiced by inequality of treatment during the Arbitration proceedings, and that the Award is further defective on account of

uncertainty and ambiguity by reason of the vagueness of its terms, which are confined to general indications, and also by reason of the fact disclosed by the report of the Commission of Engineers that the geographical conditions along the course of the line, as interpreted by Panama, do not support the assumptions upon which these general indications were based.

COSTA RICA'S CONTENTIONS.

In conclusion, therefore, Costa Rica contends that the Loubet Award must be interpreted in such a way as not to fix a line extending beyond even the most extravagant claim made by Colombia, but so as to confine the boundary within at least the limits of the territory actually in dispute as required by the terms of the treaty of 1886.

Costa Rica further contends that, bearing in mind the principle of *uti possidetis* in 1821 as controlling in this case, together with the right of prescription based upon continuous possession by Costa Rica and the entire absence of possession by Colombia or Panama at that time of any of the territory in dispute, or of any of the territory westward of the Changuinola River until very recent years, it would be more in accordance with justice and historical accuracy that a line approaching more nearly the line which both parties agreed to in their Treaty of 1865, or at least in their Treaty of 1873, should now be adopted as the boundary between them. It will be observed that the section of the Loubet Award line on the Pacific side of the Main Cordillera follows very closely the line adopted in those treaties.

PART FIRST

HISTORICAL DEVELOPMENT OF THE QUESTION

Treaties and International Relations

The Paris Arbitration

CHAPTER I.

FORMATION OF THE STATES OF COLOMBIA, COSTA RICA AND PANAMA. TREATY OF 1825.

I. THE BOUNDARY QUESTION ACCORDING TO INTERNATIONAL LAW. OBJECT AND DIVISION OF THIS SECTION.

II. THE STATE OF COLOMBIA AND THE STATE OF PANAMA.

(1) The cry for independence of 1810 had no echo in Panama. Colombia was organized in 1819 without being extended to Panama. In October, 1821, Colombia legislated concerning the division of the national territory without including that of Panama.

(2) Independence of Panama proclaimed on November 28, 1821. Incorporation of Panama into the Republic of Colombia, February 9, 1822. Panamanian territory.

(3) Law concerning territorial division of Colombia, issued June 25, 1824. The Mosquito Coast does not appear as a part of Colombian territory. Limits of Costa Rica and Veragua.

(4) Independence of Panama (1903). Its territory, according to the Panamanian Constitution of 1904. The Archipelago of San Andrés and the Mosquito Coast form no part of that territory.

III. THE STATE OF COSTA RICA.

(1) ORGANIZATION OF CENTRAL AMERICA (1824). ITS TERRITORY.

(2) FUNDAMENTAL LAW OF COSTA RICA (1825). ITS TERRITORY.

(3) ERECTION OF THE BISHOPRIC OF COSTA RICA (1849). ITS LIMITS.

(4) RECOGNITION OF THE INDEPENDENCE OF COSTA RICA BY SPAIN (1850).

I. THE BOUNDARY QUESTION ACCORDING TO INTERNATIONAL LAW. OBJECT AND DIVISION OF THIS SECTION.

In examining the boundary question in the light of international law, the discussion will be divided into two parts, the first devoted to the consideration of the *historical development of this question*, or the history of the treaties and the international relations between Costa Rica and Colombia as to their boundaries, and the second to the specific question under discussion before the Honorable Chief Justice, pursuant to the Treaty of Washington of 1910 (Doc. No. 473).

In the first place it will be shown how the two states which were the contending parties were formed, and how the State of Panama—which has only *in part* taken the place of Colombia with respect to the claims of that Government under the decision of the President of the French Republic—was subsequently organized.

It is clear that from the moment the old Spanish provinces of America were emancipated from Spain, and were converted into independent states, the questions relating to their boundaries passed from the sphere of

colonial law into that of international law. But these two classifications of law necessarily run together, not only by reason of their reference to the same peoples, having an identical geographic and historic actuality, but also because those states in the exercise of their sovereignty, and under the principle known as the *uti possidetis*, adopted for their international boundaries the same ones that had served as intercolonial.

II. THE STATE OF COLOMBIA AND THE STATE OF PANAMA.

(1) THE CRY FOR INDEPENDENCE OF 1810 HAD NO ECHO IN PANAMA. COLOMBIA WAS ORGANIZED IN 1819 WITHOUT BEING EXTENDED TO PANAMA. IN OCTOBER, 1821, COLOMBIA LEGISLATED CONCERNING THE DIVISION OF THE NATIONAL TERRITORY WITHOUT INCLUDING THAT OF PANAMA.

The call for independence, launched at Bogotá on the 20th day of July, 1810, found no echo in any part of the Province of Panama. This province, which had remained loyal and tenacious in its adherence to Spain, was a portion of the old Viceroyalty of Santa Fe. It remained under the direct authority of the mother country for a long time after the organization and definitive constitution of the Republic of Colombia, which was formed out of the provinces of Venezuela and New Granada by the law of December 17, 1819, passed by the Congress that met in the city of Angostura (Doc. No. 241), ratified and amplified by the Congress of Cúcuta on July 12, 1821 (Doc. No. 242).

Following this, on October 8, 1821, the Colombian Congress passed a law for the erection and the political

regulation of the departments, provinces and cantons into which the territory of the Republic was to be divided. The number of departments was fixed at seven, to wit, *Orinoco, Venezuela, Sulia, Boyacá, Cundinamarca, Cauca* and *Magdalena.* The Isthmus of Panama was not included, because as yet it formed no part of the Colombian State.

It was to this new state, excluding Panama, that President Monroe referred, in his Message to the Congress of the United States, when on March 8, 1822 (Doc. No. 248), he said:

> "*The provinces composing the Republic of Colombia, after having separately declared their independence, were united by a fundamental law of the 17th of December, 1819.*"

It is clear that Panama, which did not proclaim its independence until the end of 1821, could not have figured, in 1819, among the provinces which, according to the message quoted, *then* formed the Republic of Colombia.

In describing its territory, the Special Diplomatic Agent of Colombia in Washington, Señor Manuel Torres, in a state paper addressed at Philadelphia on November 30, 1821 (Doc. No. 246), to the Secretary of State of the United States, attributed to it a coast extent of 1,200 miles on the Atlantic, from the Orinoco *to the Isthmus of Darién*, and of 700 miles on the Pacific, *from Panama* (the southern border of the latter being understood) to the Bay of Túmbez; for at that time Torres did not know that Panama had proclaimed her independence from Spain and had decided to join Colombia, that action having actually taken place only two days before the date of his communication. Still, even if he had known of the

fact, the union with Colombia was not accepted until some months later.

(2) INDEPENDENCE OF PANAMA PROCLAIMED ON NOVEMBER 28, 1821. INCORPORATION OF PANAMA INTO THE REPUBLIC OF COLOMBIA, FEBRUARY 9, 1822. PANAMANIAN TERRITORY.

Without the slightest assistance from Colombia, or the loss of a drop of blood, the Province of Panama succeeded in attaining its political emancipation, with the help of the Superior Chief Representative of the mother country; and in the very act of proclaiming its independence Panama determined to ask incorporation with the powerful state which, covered with glory and full of splendid promise for the future, had been founded by the immortal Bolívar.

Referring to the deliberations that preceded the proclamation of Panama's independence, a distinguished publicist of that nation and an ex-minister in the diplomatic service of Panama in Washington, Doctor Don Ramón M. Valdés, said:

> "At the general meeting when the independence of the Isthmus was resolved upon, several patriotic Panamanians held the view that the Isthmus should not be added to Colombia, nor to any other nation, but that it should constitute an independent State. This idea, although it had numerous partizans, did not prevail on the 28th of November, 1821; but a few years later those who had combatted that plan most strongly confessed their error, because the political, industrial and economic condition of the provinces of the Isthmus had suffered by reason of the dependency of those provinces upon the government at Bogotá, which was situated hundreds of leagues distant in the interior of the country, the

needs and customs of which were entirely different from those of the Isthmus." (*Geografía de Panamá*, p. 43.)

On the 29th day of November, of the year 1821, above mentioned, the Superior Chief, Don José de Fábrega, sent to President Bolívar the petition for the incorporation of Panama in the Republic of Colombia (Doc. No. 245); but doubtless some difficulty arose to prevent its immediate and favorable acceptance, for on January 10, 1822, that Chief is again writing to the Vice-President of the Republic on this subject (Doc. No. 247).

As will be seen from that communication, Panama asked to be incorporated with Colombia, not unconditionally, but as forming a separate department, with a position similar to that which it had always held while a part of the Viceroyalty of the New Kingdom of Granada, and with the territorial jurisdiction designated for its then extinct Royal Audiencia by Law IV, Title XV, Book II of the *Recopilación de Indias* (Doc. No. 106), which jurisdiction had been kept intact by the Royal *cédula* of July 17, 1751 (Doc. No. 168), for the Government and *Comandancia general* of Panama.

Señor Fábrega enumerated as component parts of the territory of the Department of Panama, the Governments of *Veragua*, *Darién* and *Portobelo*, and the *Alcaldía mayor* of *Natá*, all subordinate in military and political matters to the *Comandancia general and Superior Government of the Capital*. The Mosquito Coast was a territory absolutely outside the Province and ex-Kingdom of Panama, and therefore it was not, and could not be, mentioned in that important document.

In accordance with the wishes of the Panamanians, the executive decree of Colombia, dated February 9, 1822,

created the Department of the Isthmus, *with the provinces which, under the Spanish administration, were covered by the old Comandancia general of Panama, and with the boundaries possessed by those provinces.* In the following May the Colombian Constitution of Cúcuta, of 1821, was promulgated throughout the entire Isthmus.

(3) LAW CONCERNING TERRITORIAL DIVISION OF COLOMBIA, ISSUED JUNE 25, 1824. THE MOSQUITO COAST DOES NOT APPEAR AS A PART OF COLOMBIAN TERRITORY. LIMITS OF COSTA RICA AND VERAGUA.

In 1824, June 25 (Doc. No. 251), the legislature of the Republic of Colombia decreed the division of *the whole territory of the Republic* into twelve departments, with their capitals, part of which decree was as follows:

> "ART. 9. THE ISTHMUS: its capital is Panama."

And it was declared that these twelve departments should embrace the provinces and cantons therein set forth, the Isthmus being divided as follows:

> "ART. 10. The Department of the Isthmus embraces the Provinces: (1) of Panama, its capital Panama; and (2) Veragua, its capital Veragua."

The cantons of the Province of Panama were as follows: (1) Panama, (2) Portobelo, (3) Chorreras, (4) *Natá*, (5) Los Santos, and (6) Yavisa. These cantons are of no interest now, being foreign to the question under discussion.

The cantons into which the Province of Veragua was divided and which are related to the question at issue were: "(1) *Santiago de Veragua;* (2) *Mesa;* (3) *Alanje;* (4) *Guaymí;* and its capital town is *Remedios.*"

It will be observed that *Natá*, an *Alcaldía mayor* independent *ab initio* of Veragua, was included as the fourth canton in the Province of Panama, to which it had always been subject. Veragua and Natá continued just as they had been previously—the latter (Natá) subject to the Province of Panama, and the former (Veragua) a separate province by itself.

Veragua and Costa Rica were the border provinces of Colombia and of Central America, respectively; the first on the east and the second on the west.

This is further confirmed by the noteworthy work published in London by the first Vice-President of Colombia, who was President of the Constituent Congress of Angostura and the first Minister of the Republic in England, Don Francisco Antonio Zea, under the title of "COLOMBIA; Being a Geographical, Statistical, etc., Account of that Country," in 2 volumes; London, 1822. He gives the boundaries of the Province of Veragua as follows:

> "* * * to the North the Caribbean Sea; to the East the Province of Darién in South America, separated from Veragua by the Cordillera of Cantiagua; *to the West, Costa Rica,* and to the South the great Pacific Ocean."

(4) INDEPENDENCE OF PANAMA (1903). ITS TERRITORY, ACCORDING TO THE PANAMANIAN CONSTITUTION OF 1904. THE ARCHIPELAGO OF SAN ANDRÉS AND THE MOSQUITO COAST FORM NO PART OF THAT TERRITORY.

It will be unnecessary here to relate the changes the Department of Panama underwent during the eight decades following its incorporation with the Colombian state. At times it was administered in accordance with a strictly centralized political system, and at others under a Federal

system more or less lax. It is sufficient to say that on November 3, 1903, Panama decided to separate herself definitively from the Republic of Colombia and form a sovereign and independent state. That state when so formed was at once recognized by most of the nations of the civilized world and obtained from the United States of America a guaranty of its independence.

The new republic, in putting forth its constitution, under date of February 13, 1904[1] (Doc. No. 621), made the following declaration with respect to the national domain:

> "ART. 3. The territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granada Constitution of 1853, on February 27, 1855, and which was transformed in 1886 into the Department of Panama, together with its islands, and of the continental and insular territory, which was adjudged to the Republic of Colombia in the award made by the President of the French Republic on September 11, 1900. The territory of the Republic remains subject to the jurisdictional limitations stipulated in public treaties concluded with the United States of North America for the construction, maintenance, or sanitation of any means of inter-oceanic transit.
>
> "The boundaries with the Republic of Colombia shall be determined by public treaties."

So that, to ascertain the extent of Panama's national territory under its constitution, there are five public documents that must be taken into consideration, to wit:

> (a) The Constitution of New Granada, of 1853 (Doc. No. 297);
>
> (b) The constitutional amendment of February 27, 1855 (Doc. No. 301);

[1] Papers relating to the foreign relations of the United States, 1904, page 562.

(c) The Colombian Constitution of 1886 (Doc. No. 371),

(d) The award rendered by the President of the French Republic on September 11, 1900 (Doc. Nos. 413, 414),

(e) Treaties concluded with the United States of America for the construction, maintenance and sanitation of any means of inter-oceanic transit (Doc. No. 281).[1]

These documents will now be examined.

The constitution of New Granada, promulgated May 28, 1853, in its Article 1 provided that—

> "The old Viceroyalty of New Granada, which was a part of the extinct Republic of Colombia, and subsequently formed the Republic of New Granada, is constituted, hereby, a Republic, democratic, free, sovereign, independent of any power, authority or foreign dominion, and is not nor shall it ever be the possession of any family or person whatever."

Here is identified as the same, the territory of the Republic of New Granada and that of the old vice-royalty of that name.

The constitutional amendment of February 27, 1855, contained the following provisions.

> "ART. 1. The territory embraced by the Provinces of the Isthmus, to wit: *Panamá, Azuero, Veragua* and *Chiriquí*, form one Federal State, sovereign and an integral part of New Granada, under the name of the State of Panama."
>
> "ART. 2. The limits of the State upon the *West* shall be those that may be definitively established between New Granada and Costa Rica. A later law shall fix the boundaries that are to separate it from the rest of the territory of the Republic."

[1]See also treaty between the United States and Panama, November 18, 1903, in Papers relating to the Foreign Relations of the United States, 1904, pp. 543–551.

The western frontier was left otherwise undetermined, but it is evident that it reached to the extreme limit of the Provinces of Veragua and Chiriquí, in bordering upon Costa Rica; beyond that it could not go.

The Colombian Constitution promulgated on August 4, 1886, provided in Article 3:

> "The boundaries of the Republic are the same as those which in 1810 separated the Viceroyalty of New Granada from the Captaincies-General of Venezuela and Guatemala, from the Viceroyalty of Peru and from the Portuguese Possessions of Brazil; and, provisionally, in respect to Ecuador, those designated by the Treaty of July 9, 1856. The divisional lines separating Colombia from the adjoining nations shall be definitively fixed by public treaties, the latter being based upon the principle of the legal *uti possidetis* of 1810."

Article 4 added: "* * * The old national territories shall remain incorporated in the sections to which they belonged originally." The same uncertainty that has been previously noted is to be observed here.

Article XXXV of the treaty concluded by the United States of America with New Granada, on December 12, 1846, guaranteed, among other provisions, the rights of sovereignty and ownership held and possessed by New Granada over the territory generally denominated as the *Isthmus of Panama*, "from its southernmost extremity *as far as the boundary of Costa Rica;*" and when the new Panamanian nation was established, the first article of the treaty concluded between it and the United States (on November 18, 1903) imposed upon the latter nation the obligation of guaranteeing and maintaining the independence of the Republic of Panama, without specifying its limits.

There now remains to be considered the reference made to the Award of the President of the French Republic. In this connection two observations may be made: First, that the meaning and the effect of that Award having been under discussion (as they were) at the very time when the Republic of Panama was surging forward into its international life, the reference made to the Award in the Panamanian Constitution is and must be understood as conditioned upon the solution to be finally arrived at in the pending controversy; second, that there was no exactness or precision in declaring, in the said constitutional article, that *the whole of the continental and insular territory* adjudicated to the Republic of Colombia in said Award was an integral part of Panamanian territory, because it is evident that the Archipelago of San Andrés, attributed to Colombia by the decision and retained by that Republic, never had belonged to Panama—nor does it belong to her to-day—and because it is proved in another part of this Argument that any portion of territory which, according to that decision, appears to be granted to Colombia *beyond the limits that were assigned* by the Spanish and Colombian laws *to the ancient* PROVINCE OF VERAGUA *and to the ancient Audiencia of* TIERRA FIRME, IS NOT AND CANNOT BE AN APPURTENANCE OF THE REPUBLIC OF PANAMA.

In support of this view it is appropriate to cite the learned opinion of Señor Don Ricardo J. Alfaro, who was the consulting counsel of the Legation of Panama at Washington. In the statement which he presented to the National Executive Power of his country, under the title of "Límites entre Panamá y Costa Rica," at page 93, he expressed himself thus:

"Besides, the Republic of Panama (this is my own opinion, purely personal) does not claim any right over the islands mentioned, inasmuch as it was constituted out of the old State and Department of Panama, which *never had under its jurisdiction the islands of the Canton of* SAN ANDRÉS, *always dependencies of the* PROVINCE OF CARTAGENA AND DEPARTMENT OF BOLÍVAR. And since it is also very clear that Article III of the Constitution established the fact that the national territory is composed of the continental and insular territory adjudicated to Colombia by the Loubet Award, its disposition COULD ONLY REFER TO THE INSULAR TERRITORY NEAR THE COASTS OF THE ISTHMUS AND OVER WHICH THE OLD POLITICAL PANAMANIAN DISTRICTS EXERCISED JURISDICTION."

Summing up what is contained in the five documents under consideration, it appears that the New Granadian Constitution of 1853 makes an equation of the territory of the republic and that of the old viceroyalty; by the amendment of 1855 creating the sovereign State of Panama, the provinces of *Veragua* and *Chiriquí* were located upon the borders of Costa Rica, and as regards the divisional line its exact description was postponed until it should be definitively established; by the Constitution of 1886 the equation of the territory proclaimed in 1853 was renewed; by the treaties concluded with the United States of America the guaranty therein expressed was agreed upon and in one treaty the boundaries were fixed, but in the other this was not done; and, finally, that the text of the Panamanian Constitution is indefinite and can only be understood as *conditioned upon the results of the present controversy*.

It must be borne in mind, furthermore, that there is nothing in all that has been set forth above which would

justify the assumption that to the present Republic of Panama belongs a single square foot of the territory which, as pertaining to the Mosquito Coast, was the subject of the Royal order of November 20, 1803 (Doc. No. 191), providing for the segregation from Guatemala and the addition to Santa Fe of a part of said coast, from Cape Gracias a Dios, inclusive, towards the Chagres River.

III. THE STATE OF COSTA RICA.

(1) Organization of Central America (1824.) Its Territory.

The news of the revolutionary movement that took place in Spain, in 1820, revived the insurrection in Mexico, which had been subdued. General Itúrbide placed himself at its head and on the 24th of February, 1821, put forth the manifesto of Iguala and proclaimed the independence of Mexico (Doc. No. 243). Following this example, Guatemala also declared herself independent from Spain in September, and Costa Rica in October of the same year.

General Itúrbide, on May, 1822, caused himself to be proclaimed Emperor of Mexico, under the title of Agustín I. When in March, 1823, the Empire was dissolved, the provinces of the old Captaincy-General of Guatemala gathered in a Constituent Assembly, and in July of the same year, that body ratified their independence from both Spain and Mexico.

That assembly adopted the *Constitution of the United Provinces of the Center of America*, of November 22, 1824 (Doc. No. 254), and thus formed a republican federation,

composed of five states: Guatemala, Salvador, Honduras, Nicaragua and Costa Rica, each of which, however, had its own constitution.

The federation endured for fourteen years, when the federal compact was broken (by the Congress of 1838) and the five republics composing it entered severally upon an entirely independent existence.

Title I, Section II, Articles 5 to 7, of the Central American Constitution, relating to territory, provided as follows:

> "ART. 5. The territory of the Republic is the same that was formerly embraced in the old Kingdom of Guatemala, with the exception, at present, of the Provinces of Chiapas.
>
> "ART. 6. The federation is now composed of five States, which are: Costa Rica, Nicaragua, Honduras, El Salvador and Guatemala. The Province of Chiapas will be held as a State in the Federation when it freely joins.
>
> "ART. 7. The demarcation of the territory of the States shall be made by a constitutional law, using the requisite data."

(2) FUNDAMENTAL LAW OF COSTA RICA (1825). ITS TERRITORY.

The fundamental law of the State of Costa Rica, of January 21, 1825 (Doc. No. 255), stated perfectly the equation between its territory and that of the Spanish province of the same name, fixing its limits in the *same way* that they existed in fact and in law at the moment of the termination of the sovereignty of Spain. It reads:

> "ART. 15. The territory of the State is now extended, from west to east, from the River Salto, which divides it from Nicaragua to the River *Chiriquí*, the end of the Republic of Colombia; and north-south *from one sea to the other*, its limits on the north being at the mouth of the River San Juan and the *Escudo*

de Veragua, and on the south at the outlet of the River Alvarado and that of Chiriquí."

The expression, "now extended," used in relation to Nicaragua, was so used because the addition of Nicoya was expected, that province having manifested its desire to unite with Costa Rica; and it was in fact so united by the decree of the Federal Congress of the Republic of Central America, of December 9, 1825 (Doc. No. 258).

The Law of Bases and Guaranties, of Costa Rica, enacted March 8, 1841 (Doc. No. 277), reads as follows:

> "ART. 2. The territory of the State is embraced within the following limits: upon the West, the River La Flor,[1] the line continuing by the littoral of Lake Nicaragua and the River San Juan to the outlet of the latter in the Atlantic Ocean; upon the North, the *same Ocean, from the mouth of the River San Juan to the Escudo de Veragua;* upon the East *from said point to the River Chiriquí;* and upon the South *from this river, following the coast of the Pacific Ocean, to that of La Flor.*"

According to the Political Constitution of the State, promulgated April 9, 1844 (Doc. No. 280), the boundaries of Costa Rica were fixed as follows:

> "TITLE II. ART. 47. The State recognizes as the limits of its territory; on the West, from the outlet of the River of La Flor on the Pacific, and continuing the line by the littoral of Lake Nicaragua and River San Juan to the outlet of the latter in the Atlantic; on the North, *the same sea from the mouth of the San Juan to the Escudo de Veragua; on the East, from this point to the River Chiriquí,* and on the South *from* the

[1] The Province of Nicoya had already been incorporated with Costa Rica, under the name of "Guanacaste," by virtue of the will of its inhabitants and of the approval of the Central American Federal Congress.

mouth of this river to that of La Flor; but the frontier line on the side of the State of Nicaragua will be definitively fixed when Costa Rica is heard in the national representation, or in default of the latter the matter is submitted to the impartial judgment of one or more States of the Republic.

"ART. 48. The State shall be designated, "Free State of Costa Rica."

The Political Constitution of January 21, 1847, Art. 25, Title II, used the same language.

But the constitution of December 26, 1859 (Doc. No. 315), provided, in Article 4, that

> "The territory of the Republic is embraced within the following limits: on the side which borders upon Nicaragua, those fixed by the treaty made with that Republic on the 15th of April, 1858; upon that of New Granada, those of the *uti possidetis* of 1826, except so far as determined by subsequent treaties with that nation, and upon the other sides the Atlantic and Pacific."

And the constitution of December 7, 1871 (Doc. No. 610), the one now in force, made the following provision:

> "ART. 3. The territory of the Republic is comprised between the Atlantic and Pacific Oceans. It is bounded on the North-west by Nicaragua, from which it is separated by the divisionary line marked out by the Treaty of April 15, 1858, concluded with that Republic; and *on the South-east by the Republic of Colombia; with respect to which the uti possidetis of 1826 is to be observed.* These boundaries may be varied by treaties with the contiguous nations, or by arbitral decision as the case may be."

In substance these constitutional declarations are alike, since the *uti possidetis of 1826*—the year of the exchange of the Molina–Gual Treaty, concluded between Central

America and Colombia, in which an agreement was made to mutually respect the frontiers as they then existed—and the detailed demarcation of the fundamental law of 1825, with the subsequent demarcations down to 1848, coincide exactly; but the form of expression newly adopted, besides being more concise than that formerly employed, excelled the latter inasmuch as it rested upon direct and unquestionable international compacts.

(3) Erection of the Bishopric of Costa Rica (1849). Its limits.

When the diocese of San José de Costa Rica was founded by the Apostolic brief issued at Rome by His Holiness, Pius IX, on the 28th of February, 1849 (Doc. No. 290), the boundaries designated for that diocese were in harmony with the constitutional delimitation of the Costa Rican territory, as follows:

> "* * * River de la Flor in the Pacific Ocean, Lake of Nicaragua, River San Juan; from thence along the Atlantic Ocean to the *Escudo de Veragua*, River Chiriquí and *thence* to the River de la Flor by the Pacific Ocean."

It is clear that the spiritual jurisdiction of the Panamanian bishopric did not extend beyond the Escudo de Veragua on the Atlantic, or the Chiriquí Viejo River on the Pacific, when the Holy See fixed those points as the boundaries of the bishopric of Costa Rica; and upon receiving the *exequatur* of the Government of Costa Rica, the Pontifical Brief was converted into a juridical act of that Government, of immense importance—equivalent, indeed, to the most solemn and positive protest against the New Granadian occupation of *Bocas del Toro*.

No protest was ever made by New Granada against the Pontifical Brief creating the bishopric of Costa Rica with the territory mentioned, and in the exercise of the spiritual jurisdiction confided to the head of the Catholic Church in Costa Rica, the Most Illustrious and Most Reverend Doctor Don Bernardo A. Thiel, whose memory in that country will never be forgotten, visited frequently the *palenques* of Talamanca (Doc. Nos. 534–541), from the summits of the Main Cordillera—one of which bears his name—to the shores of the sea, giving religious instruction and help of all kinds to the natives. Moreover, that wise and self-denying pastor studied the various aboriginal languages, and assembled and printed vocabularies for the use of priests and teachers; he investigated the local traditions and in a thousand ways bestowed kind attentions upon those semi-barbarians in order to attract them to an orderly and religious life, and in this he was to a great extent successful.

(4) Recognition of the independence of Costa Rica by Spain (1850).

On her part, the mother country, Spain, in the Treaty of Peace and Friendship which was signed at Madrid on May 10, 1850 (Doc. No. 293), declared its recognition of the Republic of Costa Rica, with all the territories of which it was made up at that time, in these terms:

> "Art. 1. Her Catholic Majesty * * * renounces forever * * * the sovereignty, rights and authority which belong to her, over the American territory, *situated between the Atlantic and Pacific Oceans, with its adjacent islands, known heretofore under the denomination of the Province of Costa Rica, now the Republic of the same name,* and over the other territories that may now be incorporated in said Republic."

CHAPTER II.

THE PRINCIPLES OF "UTI POSSIDETIS" AND "INHERITANCE OF SOVEREIGNTY."

(1) THE MEMORANDUM ON "UTI POSSIDETIS," PREPARED BY HON. JOHN BASSETT MOORE, IS SUBMITTED AND ADOPTED AS PART OF THIS ARGUMENT.

(2) WHAT PERIOD SHOULD SERVE AS A GUIDE IN FIXING THE "UTI POSSIDETIS?"

(3) WHAT IS THE LEGAL VALUE OF THE ADDITION OF THE TERMS "DE JURE" AND "DE FACTO," APPENDED TO THE EXPRESSION "UTI POSSIDETIS?"

(4) CAN THE PRINCIPLE BE ADMITTED WHEN THE PARTY INVOKING IT IS NOT IN POSSESSION?

(5) CAN THE "UTI POSSIDETIS" BE USED AS THE BASIS OF AN ACTION FOR RECOVERY?

(6) INHERITANCE OF SOVEREIGNTY.

(7) IS PANAMA THE HEIR OF COLOMBIA, WITH RESPECT TO THE WHOLE OF THE TERRITORY ADJUDICATED TO THE LATTER BY THE DECISION WHICH WAS INTENDED TO PUT AN END TO THE BOUNDARY QUESTION?

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(1) THE MEMORANDUM ON "UTI POSSIDETIS," PREPARED BY HON. JOHN BASSETT MOORE, IS SUBMITTED AND ADOPTED AS PART OF THIS ARGUMENT.[1]

The masterly exposition of the doctrine of colonial *uti possidetis* by the learned internationalist, Hon. John Bassett Moore, in his "Memorandum" which accompanies this Argument—and which is adopted *in toto*—would make it unnecessary to add another word to the

[1]Prepared August, 1911.

subject, but for the desire to amplify certain points of mere detail as the case is developed. These points are the following:

(2) WHAT PERIOD SHOULD SERVE AS A GUIDE IN FIXING THE UTI POSSIDETIS?

From a period a few years after the Discovery, down to 1821, *Costa Rica* and *Panama* constituted an unquestionable part of the Spanish domain in America. Between Panama and Costa Rica there did not exist, nor could there be any international frontier *prior to 1821*, those provinces having been theretofore divided by a mere jurisdictional line which separated the territories of the old Royal Audiencia of Guatemala from those of the Government of Panama (previously the Royal Audiencia of Tierra Firme). However, in that year there did exist an international frontier. It was established for the purpose of separating the *Spanish territory* of the ex-Kingdom of Panama, under the name of the Province of Panama, which continued to remain loyal to the mother country, from *the territory of the Republic of Colombia* which had been constituted and organized two years before, as a sovereign and independent nation.

This axiomatic fact is found recorded upon an official map included in the *Atlas Geográfico é Histórico de la República de Colombia* (Geographical and Historical Atlas of the Republic of Colombia) published at Paris in the year 1889. Chart VIII of this atlas, which is submitted herewith (Map XXXIX) and represents the theatre of the war for independence during the period between the years *1810* and *1820*, depicts with entire accuracy the possessory status as between *the Republic of Colombia* and *the King of Spain* during that period. *The new independent nation* (Colom-

bia) is shown by the yellow color; the *Province of Panama* is indicated in pink, that province being, like Costa Rica and the whole of the Kingdom of Guatemala, under the power and the sovereignty of Spain. On that map a line, formed for the most part by the Atrato River, will be observed running from north to south and separating one territory from the other. Between Panama and Costa Rica no international frontier is marked, for those provinces having constituted an undivided part of the Spanish Empire of the Indies at that date such a frontier would have been an absurdity. So that, to apply the *uti possidetis of 1810* to the delimitation between Panama and Colombia, if they had continued to be separated as they were in 1821, might have been possible; but it was not and could not be sensible to apply such *uti possidetis* in undertaking the delimitation between *Costa. Rica* and *Panama,* which provinces achieved their independence simultaneously at the close of 1821, and not before that time.

Colombia could not acquire any more land than she had conquered by her arms; this land was limited by the Atrato River, and the territories that Spain kept until 1821 (September 15 and November 28) passed, by inheritance, to Costa Rica and to Panama respectively. Such an inheritance could not be snatched from Costa Rica by a mere pen and paper conquest, whatever its nature. Central America, upon presenting itself as a sovereign entity and being admitted into the family of nations, sheltered under its standard the entire northern coast of the territory which had always been its own, and which had been received by it as an inheritance from the mother country and formed one indivisible whole, from ONE SEA TO THE OTHER. As it had been under the colonial régime, so it was in its autonomy—a coast essential for the defence of the nation's independence and sov-

ereignty and for its communications with the rest of the world.

It was impossible for Colombia to establish a claim to any part of the Atlantic coast of Costa Rica under the principle of the *uti possidetis of 1810*, because it could not be invoked, since in that year, as above stated, Panama and Costa Rica were living under Spanish dominion, and since that principle required one essential condition, which was lacking, so far as Colombia was concerned, to wit, POSSESSION. Whatever may be the value of the only title invoked by Colombia, it is an unquestionable fact that the Spanish Monarchy continued to exercise its sovereignty *until the day when the proclamation of the independence of Central America and Panama was made effective* over every integral portion of the territories of those provinces, *including their shores upon the North Sea*—a possession which was transmitted to the new sovereignties that arose out of them.

Central America, therefore, had no need to dispossess Colombia. Central America was in possession, and she so continued. This fact has been fully recognized by Colombia. It was acknowledged by M. Poincaré, her distinguished counsel before the French Arbitrator, in his Second Memorandum, p. 84, in these words, speaking of the Treaty of 1825:

> "The words *domain* and *property* were intentionally used to oppose legal possession, the *uti possidetis de jure*, to the POSSESSION IN FACT, TO THE PRECARIOUS POSSESSION OF THE REPUBLIC OF THE UNITED PROVINCES OF CENTRAL AMERICA, against which Colombia protested."

It was also acknowledged by Señor Betancourt, the Special Representative of Colombia, before the Arbitrator in the *Résumé Chronologique des Titres Territoriaux de Colombie*, p. 101, referring to the Treaty of 1825, in these words:

> "The words *domain* and *property* were intentionally employed to thoroughly establish the legal possession, the *uti possidetis de jure*, AGAINST THE CLANDESTINE AND PRECARIOUS POSSESSION, WITHOUT VALIDITY, OF THE UNITED PROVINCES OF CENTRAL AMERICA."

Not only Colombia's representative but her counsel also clearly recognized the fact of possession by Central America; only it was pretended that such possession was "precarious, clandestine and without validity"—all of those defects absurd in their very nature, and devoid of any meaning *inasmuch as Central American possession was one and the same with the possession of the Spanish Monarch*, against which the defects suggested are simply ridiculous.

The date of the *uti possidetis* applicable to this case was fully accepted by the Colombian negotiator, Don

Pedro Gual, in the protocol of the conferences held prior to the Treaty of March 15, 1825 (Doc. No. 256), when he said: "* * * Well, then, as to boundaries, it is necessary to hold to the *uti possidetis* of 1810 or 1820, as may be desired;" * * * only the year was stated erroneously as 1820 instead of 1821, to which the representative of Colombia undoubtedly meant to refer.

There is one perfect, conclusive and irrefutable proof that the year 1821 is the one that must be taken for the fixing of the *colonial uti possidetis* in the present controversy, and that is the unequivocal and repeated recognition which the Republic of Colombia has officially made of the correctness, legality and fitness of the doctrine that Costa Rica maintains in that respect. The evidence of this is found in the documents submitted by the Republic of Colombia to the Arbitrator in the former litigation, among which a volume was included, entitled, *Résumé Chronologique des Titres Territoriaux de Colombie;* and this was cited in the Award of September 11, 1900. Its author was Señor Don Julio Betancourt, the Special Representative of Colombia before the Arbitrator, although his authorship does not appear in the volume itself. However, upon pages 98 and 99 of that book are presented as proofs, in favor of Colombia, certain documents belonging to the years 1815, 1816, 1817 and 1819, showing acts of authority by the mother country over the whole of the Isthmus of Panama, and, specifically, over the Province of Veragua, a portion of the Isthmus which, as above shown, was at that time fully and unequivocally a dependency of Spain. It is absolutely impossible to reconcile the invocation of such facts and documents with the fixing of the year 1810 as the basis for the *uti possidetis* between Costa Rica and Colombia. Furthermore it is a historical fact which can-

As the emancipation of the greater part of the colonies of *South America* was mainly due to the movements initiated in 1810, by common consent that year was fixed upon as the basis for the possessory holdings by the new international entities into which the Spanish Empire was divided on that continent. But one of the new republics—that of Peru—never consented to that date, inasmuch as her independence was initiated in 1820 and was not assured until 1824. Concerning this point there was a special discussion in the Congress at Lima of 1847. The plenipotentiary of New Granada, in accord with those of Chile and Bolivia, submitted to the Congress a treaty for the recognition, among other things, of the principle of the *uti possidetis of* 1810; but the plenipotentiary of Peru submitted another plan, based upon the *uti possidetis* of 1824. The difference was arranged by substituting for the discordant dates the more comprehensive and exact expression—

> "The confederated republics declare their perfect right to preserve the frontiers of their territories, as they existed at the time they became independent of Spain, of the respective Viceroyalties, Captaincies-General or Presidencies into which Spanish America was divided. * * * The republics which, having been part of a single State at the proclamation of independence, were separated after 1810, shall keep within the limits with which they were recognized, without prejudice to the treaties concluded or that may be concluded to vary or perfect them *in conformity with the present Article.*"

The mention of the year 1810, as will be seen, refers only to the case of the division of a state, after the movement for independence began; in principle the basis adopted was the *time of independence*.

"From the debates recently had upon the subject, happily the view arrived at was not that the Viceroyalties under discussion were the *primitive* ones; that is to say, for example, Peru and New Spain in the 16th century; nor the other two constituted in the 18th century, or New Granada and Buenos Aires, considered at the moment or in the course of their formation.

"The Viceroyalties to which allusion is made are and must necessarily be those that existed and AS THEY EXISTED AT THE TIME OF THE DESTRUCTION OF THE COLONIAL BOND. Nothing else is an explanation. There is something positive in this reference, it being impossible to suppose that the American States, at the time of being constituted and for their mutual recognition, would bring upon the carpet *the complicated and confused problem of their historical formation.* The point of departure for their territorial delimitation had to be something fixed, near at hand, visible and palpable; that is to say, what the colonies were physically *at the moment of being transformed into independent nations,* and successors, in their respective territories, of the Spanish sovereignty. Therefore, in all the documents which take up this matter in one way or another, the 'old' Viceroyalties are spoken of and not the 'primitive' ones."

This conclusion of the very eminent Spanish jurisconsults quoted is in accord with the universal doctrines on the subject of *uti possidetis.*

Wheaton says:

"The treaty of peace leaves everything in the condition it was before; unless there is an express stipulation to the contrary. The existing state of possession continues, except as it is altered by the terms of the treaty. If nothing is said regarding the countries or peoples conquered, they are left to the conqueror and his title cannot thereafter be contested. While the war continues, the conqueror in possession only

has the right of usufruct, and the latent title of the old sovereign subsists until the treaty of peace, either by its silence or by express provision, extinguishes the title forever. The *uti possidetis* is the basis of every treaty of peace, save by express stipulation to the contrary."

(Wheaton's Elements; Lawrence's Ed., 1863; pp. 878, 882, 886.)

In full accord with the foregoing doctrine Lawrence says:

"As between the belligerent powers themselves, it is held that the conclusion of peace legalizes the state of possession existing at the moment, unless especial stipulations to the contrary are contained in the treaty. This is called the principle of *uti possidetis*, and it is of very wide and far-reaching application. Arrangements that seem at first sight to be pedantic in their minuteness, are often necessary to carry out the intentions of the parties in the face of the rule that, when there are no express stipulations to the contrary, the principle of *uti possidetis* prevails."

(Lawrence, Principles of Int. Law, 4th Ed., 1910, pp. 571–572.)

The war for independence ended in fact upon the firm and irrevocable establishment of the Republics of Central America and Colombia; but the treaties of peace did not come until many years later. That of Costa Rica is dated in the year 1850, and as regards her territory the treaty declares that it reached *from sea to sea* and extended over the entire area that belonged to the old Spanish province of that name. In the one made with Colombia there was no territorial description. It is how-

ecessor. Demarcations not in effect at that last moment of the colonial régime, might form the subject of learned disquisitions of a purely historical character, but in the purview of international law, and for the practical purpose of the physical marking out of the frontiers of the new states, they have no value, for the newly born states arose as the expression of an actual reality—present, effective, visible and tangible—and not of the multitude of historical facts that had slowly prepared the way for their final evolution during the course of several centuries.

One of the most noted opinions, of Colombian origin, that can be cited upon this subject is that by Señor F. de P. Borda, who, by order of his government, made a complete investigation of the question concerning the boundaries of Costa Rica and Colombia. This author defines the *uti possidetis* as follows:

> "*The territorial domain will be limited by frontier lines traced in conformity with the Royal Spanish dispositions concerning colonial divisions* IN FORCE AT THE TIME OF THE EMANCIPATION OF THE COLONIES."

Señor Borda accepts as a frontier basis the colonial division in force at the moment of the emancipation of the colony; not the *past* or *historic* division, but the present and actual division, coincident with its emancipation.

Señor Silvela, the distinguished counsel for Colombia, likewise accepts this principle in his brief, when in the opening paragraph of its first page he says:

> "Both [Costa Rica and Colombia] admit that their boundaries should be the same that the Spanish Monarch fixed, pursuant to the Laws of the Indies and other Royal Resolutions, for the Viceroyalty of Santa Fe of the New Kingdom of Granada and for the Captaincy-General of Guatemala, AT THE EPOCH OF THE INDEPENDENCE OF THE NEW STATES.

> "Such is the *uti possidetis de jure*, a principle proclaimed by Colombia after her emancipation, as a sure means of realizing with the utmost peace and concord the delimitation of those territories which formerly belonged to Spain."[1]

Entirely in harmony with this principle is the declaration contained in the circular that Señor Zea, the Colombian Minister, by the order of his government, addressed to the principal powers and sent out from Paris on April 8, 1822 (Doc. No. 249), when he was seeking recognition of the independence of his country. In that memorable document he used these words:

> "The Republic of Colombia has every characteristic of all the recognized governments upon earth; *she does not ask of any of them by what means, or by what right, they have become what they are:—they exist; this is all that concerns her to know. Colombia respects all that exists; she has a right to reciprocity; she demands it; and this demand is dictated neither by interest nor by fear;* either one motive or the other is unworthy of a generous and free nation."[2]

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[1] "Toutes deux admettent que leurs limites doivent être les mêmes que le Monarque Espagnol avait fixées, d'après les Lois des Indes et d'autres Résolutions Royales, à la Vice-Royauté de Santa Fé du Nouveau Royaume de Grenade et à la Capitainerie Générale de Guatemala, À L'ÉPOQUE DE L'INDÉPENDANCE DES NOUVEAUX ÉTATS.

"Tel est l'uti possidetis de jure, principe proclamé par la Colombie lors de son émancipation, comme moyen sûr de réaliser, au sein de la paix et de la concorde, la délimitation de ces territiores qui, jadis, appartinrent à l'Espagne." (SILVELA: Exposé, p. 1).

[2] Colombia: Being a geographical, statistical, agricultural, commercial and political account of that country, adapted for the general reader, the merchant and the colonist; pp. XXIII and XXIX. London, 1822. Published by Baldwin, Cradock and Joy.

(3) WHAT IS THE LEGAL VALUE OF THE ADDITION OF THE TERMS "DE JURE" AND "DE FACTO," APPENDED TO THE EXPRESSION UTI POSSIDETIS?

These additions are novel and it is difficult to justify their use, inasmuch as *possession*, which constitutes the spirit and the essential element of the principle stated, must be real and effective and must have been acquired by proper means, including that of a just war; and this being so, the distinction sought by the qualifications of *de facto* and *de jure* would appear to serve only to produce a confusion of ideas.

In private law the possession which serves as a basis for the *uti possidetis* must be free from the defects of violence, nor can it be clandestine or precarious. In international law there is more laxity and it is sufficient if the possession be effective. Generally it is sanctioned by the treaty of peace that follows, either by confirmation in express terms or tacitly. But when no war intervenes and occupation occurs without being expressly sanctioned by a subsequent treaty, such occupation must always partake of a precarious character; and upon this the *uti possidetis* cannot be founded. If it is desired to use the term with the addition of the words *de facto*, it is better to deny to such occupation the character of *uti possidetis;* in such case there is no object in adding the words *de jure* by way of contrast with the false principle of *uti possidetis de facto*, except it be sought to confuse and identify the *uti possidetis* called *de jure* with the *title of ownership or sovereignty* over a given territory; but that is to involve ideas that should be kept quite distinct; that is to say, *dominion*, on the one hand, and on the other *possession*.

If some jurisconsult had invoked before the Roman Praetor the interdict of *uti possidetis de facto*, it is very

certain such an expression would not have been intelligible. Coming down the ages, neither could these terms of *de jure* and *de facto* be understood between the negotiators for a treaty of peace, appointed to settle the possessory state in which the belligerents may have been left at the termination of the war. In the discussions between Great Britain, Spain and France, when the matter of fixing the frontiers of the American republic, bordering upon the three Powers mentioned, was under discussion, it never occurred to any one to employ phrases so entirely without precedent. It was much later when such expressions were first used; and the result has been such a confusion of ideas that many South Americans have come to mingle in a single conception the *possessory principle* and the legal idea of *title by dominion*. The European and North American jurisconsults have always uniformly repudiated these additions.

Saving, however, the redundancy and the danger of confusion, there is no objection to keeping the additions, provided always that the due distinction be preserved between the official character of the *possessory principle* and that of the *title by dominion*.

(4) Can the principle be admitted when the party invoking it is not in possession?

To state this question is to answer it, for it is inconceivable that any one who is not in possession, which, as has been stated, is the spirit and essential element of the *uti possidetis*, can take advantage of what he begins by acknowledging has no existence. One cannot get something out of nothing. The party who finds himself in such a situation may be supported by the most ample, clear, and perfect rights, and by virtue thereof he may be entitled to an unquestionable victory in the contest; but such a

triumph, if attained, would not be due to the advantage of the *uti possidetis*—a remedy in its very character secondary and supplemental. He will prevail rather by his original, basic and invulnerable titles, attesting his right of ownership and sovereignty.

Any one who had such titles at his disposal would not trouble himself to seek a supplemental remedy, the use of which was interdicted by the lack of possession; but if he did endeavor to make it of use, his action would show the scant confidence he felt in his titles.

In the contest as to boundaries between Costa Rica and Colombia, both parties have legally been able to invoke in their favor the doctrine of *uti possidetis;* but this has been only with reference to *the territories held*, respectively, by one or the other of these republics. In the same way, they have been able to invoke their respective titles of sovereignty, *disregarding the possessory element*, and of course saving the stipulations of treaties. But each of these elements of defense and attack can only be made use of within their respective spheres.

The sole reason for Colombia's attempt to confuse this principle by the addition of the words "de jure" was to lay the foundation for a claim to the littoral of Costa Rica, between the mouth of the Culebras River and that of the San Juan, which has always been in the possession of Costa Rica and not of Colombia.

(5) Can the Uti Possidetis be used as the basis of an action for recovery?

It is clear that any one who has the advantage of the *uti possidetis*, for that very reason has no need of an action of recovery. Why should one institute a proceeding for the delivery of that which he holds in his own hand? The error here had its origin in the false conception of the equivalence of the title of dominion, devoid of possession,

and the principle of the *uti possidetis*, which is inconceivable without it. It may well be that Colombia, in the case under discussion, will invoke the doctrine of *uti possidetis* for the purpose of retaining possession of all those territories of which she can be shown to be in the actual possession; but it is very evident that territorial recoveries of lands she does not possess can only be achieved by virtue of unquestionable titles of ownership. Very far from unquestionable were the basic titles exhibited by Colombia in the late litigation, namely: the Royal cédula of March 2, 1537 (Doc. No. 13), and the Royal order of November 20, 30, 1803 (Docs. Nos. 191, 192). These titles were rejected as having no application to the Costa Rican littoral, and the award to Colombia of a small portion of the territory which was claimed as covered by them was made under a mistake of fact as to actual possession.

Summing up what has already been said, it may be asserted that it is amply demonstrated that the date which must be adhered to for the determination of the possessory status, to be used as a guide in fixing the frontiers of Costa Rica and Veragua, is a date falling within the last months of the year 1821, since it was not until the 15th of September and the 28th of November of that year that the aforesaid adjoining provinces—the former the extreme eastern extension of the Kingdom of Guatemala and the latter the western limit of the New Kingdom of Granada—broke the bonds that tied them to the mother country and assumed the rôle of independent states.

Until that transformation took place both provinces constituted a single Spanish territory, across which a more or less certain and unquestionable line separated mere simple jurisdictions of servitors of one and the same sovereign. If under such a condition of affairs there had sprung up any difference as to frontiers, that difference

would have been settled as a mere question of jurisdiction between two colonial officials, under the laws of the Spanish Monarchy, without any significance of any sort being attached to the call for independence sent forth from Bogotá, in 1810; or to the organization of the Republic of Colombia decreed by the Congress of Angostura in 1819; or to the definitive Constitution of Cúcuta of 1821, inasmuch as it was not until the 28th of November in that same year that Panama separated herself from Spain, and up to that day she constituted internationally one of the Spanish dominions of America. From that time forward, the question at issue was converted from a colonial into an international question; and then it was not a question between Costa Rica and Veragua or Panama, but between Central America and Colombia—and this with respect to the divisional line between the said provinces of Costa Rica and Veragua or Panama. The Mosquito question never affected the colonial Costa Rican territory which, since 1573 (Docs. Nos. 62 and 63), never extended beyond the San Juan de Nicaragua River, and to the northern border of which the Mosquito territory never reached.

If such a case of jurisdiction, as above suggested, had ever arisen between the Guatemalan and New Granadian authorities under the colonial régime, the local Costa Rican officials would have been quite disinterested in the controversy; and they were in the same position after independence, since the territory of the Spanish Province of Costa Rica and that of the independent State of that name was always one and the same, without the least alteration.

(6) INHERITANCE OF SOVEREIGNTY.

It is a principle universally admitted, that when a colony gains its independence, it gains at the same time so much

of the territory covered by it under the old sovereign as is wrested from his possession. To this succession of territorial dominion has been applied the term "*inheritance of sovereignty.*"

In the succession now referred to there really are many aspects of a hereditary right, such as the extinction of the predecessor and the entrance of a successor, the universality of heirship of the things that are the subject of transmission, the instantaneous character of the transfer, etc. There is also much of the conventional consequences of death, especially the compulsory loss of the lordship; so that for want of a better or more accurate expression it has been called the *inheritance of sovereignty.*

The fact is that at a given moment the old sovereignty disappears and for it there is substituted the new one; as, for example, when the rule of the Monarchy of the Indies was ended and there arose a group of republics. The community where the evolution is carried out is of course the same; but the supreme power having charge of its administration is changed by the effect of such evolution. Still, as the community does not change, neither is there any change in the territory within which it is located, and to which it is bound by indissoluble ties growing out of its history. The territorial limits of the new state are, therefore, exactly the same as those which previously bounded the old colony, unless some portion of it remains loyal to the old sovereignty or some change is made by the will of the peoples themselves, who may elect to erect one portion into a state by itself or unite with another state of which it had not before formed a part.

The principle according to which the new independent entity shall keep the territorial limits which circumscribed