it when it was a colony had its most important application in America in the treaty of peace concluded between the United States and Great Britain, and it was upon this basis, arrived at in that treaty after very tedious negotiations, that the frontiers were laid out by common accord.

The Secretary of State, Mr. Marcy, in a note to Mr. Dallas, dated July 26, 1856 (Senate Ex. Doc. No. 74, 58th Congress, Second Session), expressed himself on this subject as follows:

"The United States regards it as an established principle of public law and of international right that, when an European colony in America becomes independent, it succeeds to the territorial limits of the colony as it stood in the hands of the parent country. That is the doctrine which Great Britain and the United States concurred in adopting in the negotiations of Paris, which terminated this country's war of independence. It has been followed by Spain and Portugal in regard to their former colonies in America and by all those colonies as between one another and the United States. No other principle is legitimate, reasonable or just."

In the report submitted by the eminent Mr. Lawrence to Secretary Clayton (Doc. No. 629), are found the following paragraphs:

"When the negotiations were opened for terminating the War of the Revolution, Congress instructed Dr. Franklin and his associates to insist upon the Mississippi as our western boundary, which they did successfully, though opposed by both the French and Spanish courts. It is worthy of remark, that each party insisted upon the principle that the boundaries of the new States were to be determined by the colonial limits. During the negotiations it was asserted,
maintained by the successful result, that the Indians between the river and the mountains were not independent nations, but existed under the protecting sovereignty of the United States.

"I think nothing can be clearer than that these examples establish two general principles, which, combined, determine this whole question: first, that the successful revolt of a colony does not change its political geography; and, second, that the Indian gains no right of domain by such revolt.

"The Spanish claim rested on the romantic exploits of early adventurers and settlers, who established and maintained it under well-defined principles of public law. The King of Spain had no rights there as King of Spain. His title grew out of his sovereignty over Guatemala; and when that sovereignty ceased, the rights incident to it passed into the new dominant power as absolutely as did the dominion of Holland pass into the States-General, or the sovereignty of Portugal into the House of Braganza. It was the discoverer who won, and the settler who retained, the title; and when they severed this title from the Spanish Crown, and became sovereigns in the place of subjects, of right, necessity and by precedent, they became possessed of that which had vested in the crown only through them."

This doctrine had as a precedent the instructions given by the Congress of the United States, which are referred to in one of the passages quoted, and which may be found in "Foreign Relations," Vol. VI, pp. 867–868. The important paragraphs read as follows:

"With respect to the first of these articles, by which the River Mississippi is fixed as the boundary between the Spanish settlements and the United States, it is unnecessary to take notice of any pretensions founded on a priority of discovery, of occupancy or on conquest. It is sufficient that, by the definitive Treaty
of Paris of 1763, article seventh, all the territory now claimed by the United States was expressly and irrevocably ceded to the King of Great Britain; and that the United States are, in consequence of the revolution in their Government, entitled to the benefits of that cession.

"The first of these positions is proved by the treaty itself. To prove the last, it must be observed that it is a fundamental principle in all lawful governments, and particularly in the Constitution of the British Empire, that all the rights of sovereignty are intended for the benefit of those from whom they are derived, and over whom they are exercised. It is also known to have been held for an inviolable principle by the United States, while they remained a part of the British Empire, that the sovereignty of the King of England, with all the rights and powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as King by the people of England, or of any other part of the Empire, but in virtue of his being acknowledged and obeyed as King of the people of America themselves; and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From these principles it results, that all the territory lying within the limits of the States, as fixed by the Sovereign himself, was held by him for their particular benefits, and must equally with his other rights and claims in quality of their Sovereign, be considered as having devolved on them, in consequence of their resumption of the sovereignty to themselves.

"In support of this position it may be further observed, that all the territorial rights of the King of Great Britain within the limits of the United States accrued to him from the enterprises, the risks, the sacrifices, the expense in blood and treasure of the present inhabitants and their progenitors. If in latter times expenses and exertions have been
borne by any other part of the Empire in their immediate defence, it need only be recollected that the ultimate object of them was the general security and advantage of the Empire; that a proportional share was borne by the States themselves; and that if this had not been the case the benefit resulting from an exclusive enjoyment of their trade have been an abundant compensation. Equity and justice, therefore, perfectly coincide, in the present instance, with political and constitutional principles."

This was the basis that was used in the arrangements made by the Spanish-American states among themselves as to their frontiers after they had achieved their independence.

It maybe said that as to the general principle all opinions are unanimous; if there are any divergences they are only in regard to points of mere detail.

There are difficulties which must be met when coming to the application of the doctrine to the cases that arise, but before proceeding to their discussion it will be well to consider the situation in which the colonies of Guatemala, New Granada and Panama found themselves as a result of the war for independence. The effect of the call for independence, of 1810, was to break up, in fact, the unity of the Viceroyalty of Santa Fe, leaving it divided into two sections. One of these sections embraced the New Granadian provinices properly so called, which proclaimed and victoriously obtained their independence, and were united, in 1819, to those of Venezuela for the purpose of forming the Republic of Colombia with a well-defined territory. This was contiguous to the other section, or the Kingdom of Panama, which continued to be subject to Spain. The union of Panama with the Viceroyalty of Santa Fe was certainly not of very long standing; nor was it, ever a very
close one, on account of the enormous distance at which the capital was located from the Isthmus.

The second section, having also a defined territory, was a Spanish territory when Colombia was already a sovereign and independent nation, so that, in 1819 and in 1820, Colombia had only Spain upon her western border. And this part of Spain (under the denomination of the "Kingdom of Panama") was bounded on the east by the Republic of Colombia and on the west by another part of Spain called the "Kingdom of Guatemala." The Republic of Central America had not then begun its international life; but when it did start, at the close of 1821, it had for a short time as its eastern bordering country, not the Republic of Colombia, which had not yet embraced Panama, but the Spanish territory of that name, which shortly afterwards became independent, and on the 9th of February, 1822, was merged in the Republic of Colombia. The acts of the Spanish Government, down to the latter part of 1821 bound the states of Costa Rica and Panama, uninfluenced in any way by the circumstance of the prior neo-Granadian emancipation, proclaimed in 1810.

(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?

To this an affirmative response is given at once, limited, however, to the territories which, during the Spanish domination, formed the Province of Panama and which at that period constituted a perfectly well-defined colonial entity; but the heirship is denied, as regards those territories of which Colombia claimed the sover-
eignty in this litigation, based upon the Royal order issued on November 20, 1803, for the very cogent reason that the contested aggregation of the Mosquito Coast pertaining to the Captaincy-General of Guatemala, which is presumed to have been made in favor of the Vice-royalty of Santa Fe, was expressly granted so that the protection of the said Coast and the adjacent Islands of San Andrés should become immediately dependent, not upon the Province of Panama, but upon the Province of CARTAGENA. This appears by the Royal order, which approved and directed the prompt execution of the provisions contained in the “Reports of the Board of Fortifications and Defense of the Indies,” issued on September 2 and on October 21, 1803 (Doc. Nos. 189 and 190).

In those reports, which were approved and directed to be carried out, the Island of San Andrés was made the headquarters of the Mosquito Coast, under the specific command of its Governor, Don Tomás O’Neill; and it was also provided that the latter should receive orders and obtain assistance of every sort from the Comandante of Cartagena, to whom the Supreme Chief Viceroy of Santa Fe would give full instructions and ample powers for the civil and military administration of the Islands of San Andrés and of the Mosquito Coast, that viceroy being unable to give them directly by reason of the distance. Even in ecclesiastical matters it was ordered that the Bishop of Cartagena should furnish to the new establishments the necessary spiritual assistance, give them a priest and undertake especially the construction of churches and provide for their decoration.

The Government of Panama was absolutely foreign to all of these arrangements, and, therefore, it never interfered in any matter having relation to the Islands of San Andrés
or the Mosquito Coast, by virtue of the provision in the Royal order of 1803; it had no more to do with those territories than the other provinces which made up the Viceroyalty of Santa Fe. Consequently, when O'Neill undertook to give up the island, in 1806, by a capitulation to the arms of Great Britain, he addressed his report on that subject to the *superior authority of Cartagena*; and it was from Cartagena that the decisions of the Council of War came to refrain from any attempt to reconquer the archipelago.

Even if it be admitted, *arguendo* that, by reason of the Royal order of November 20, 1803, Colombia had any right, after revolting from Spain in 1810 or after the revolt of the other provinces in 1821, to deprive Nicaragua of its eastern shores, in part called "Mosquito Coast," *Colombia and not Panama would have that right to-day*, as relating to a dependency of the old *Province of Cartagena*, which is the present Department of Bolívar and forms an integral part of the territory of that Republic. The *secession of Panama* could not change that state of things, for the reason already stated, that the Colombian province of that name never had any connection of any kind with those shores. The proof of this lies in the fact that Panama never has attempted to set up any claim of territorial sovereignty over the Archipelago of San Andrés, the dominion and possession of which Colombia retains, *in every way and for all purposes* independently of the emancipated province which is now the *Republic of Panama*.

When Panama asserted, in its Constitution of 1904, that the insular territory adjudicated to Colombia in the Loubet Award formed a part of its possessions, it inadvertently committed an error, which, in practice, was corrected by the interpretation actually given, whereby it was understood that the constitution referred only to the
insular territory adjacent to the coasts of the state. It does not appear whether that interpretation has any authentic character; but in consulting the “Geografía de Panamá” (third edition, 1909) written by Dr. Don Ramón R. Valdés, who was Attorney-General of the nation, and later the Minister of Panama in Washington—a work officially adopted as a text-book in the schools of the Republic under the certificate issued December 13, 1905 (Doc. No. 623), by Don Nicolás Victoria J., Secretary of Public Instruction and Justice of the Republic of Panama—it may be observed that notwithstanding the large number of islands, islets and banks referred to at length on pages 9 to 13, occupying an area of 7,300 square kilometers in both oceans, no mention is made of the aforesaid Islands of San Andrés. Likewise, in the description of the coasts of the republic (p. 3), extending 817 kilometers and 500 meters along the Atlantic, no mention is made of the Mosquito Coast.

On the other hand, Panama can speak and act, but Colombia must keep silence forever as to everything that relates to the common frontier of the old Provinces of Costa Rica and Veragua, because these constituted during the rule of the Spanish Monarchy distinct colonial entities, coterminous and the extremes, respectively, of the two great administrative entities known as the Captaincy-General of Guatemala and the Viceroyalty of Santa Fe.

There always was and there still exists a question as to boundaries between Costa Rica and Panama, a question which will be terminated when the line of separation between the old Spanish provinces that now constitute the contending republics is fixed in an incontrovertible manner. But the territorial recoveries contemplated by Colombia, as successor to the Viceroyalty of Santa Fe, covering the
Central American territory known under the name of the
“Mosquito Coast,” are matters as to which the present
Panamanian nation, for want of any interest and right,
lacks, in the language of the forum, the personality ad
causam.

The right and interest which Panama never had in the
“Mosquito Coast” she could not acquire by the procla-
mation of her independence; inasmuch as, in accordance
with the unquestioned principles of the law of nations, her
independence could only give her sovereignty over those
territories which at the moment of the declaration were
an integral portion of the provincial or departmental ter-
ritory that launched and maintained the demand for
independence; that is to say, her right to govern herself,
detached from her old central authority.

If what has been stated is correct—and it is not sus-
ceptible of contradiction—the conclusion is irresistible and
logical that the present Republic of Panama, with respect
to the territory situated to the northwest of the Culebras
River, cannot invoke the title of an heir of Colombia for
the purpose of claiming the sovereignty of those territories
held by Costa Rica.

The pretended rights of Veragua and Panama abso-
lutely end at the Culebras River. Toward the north-
west of that river, pretended claims are set up, but
whether they are called the rights of New Granada,
or of Cartagena, or of the Department of Bolívar or of
Colombia, they have no other basis or origin than the
Royal order of 1803, and in no way affect, either for or
against, Veragua or Panama, whether as a Spanish province
or as a state adhering to the Colombian nation, or as an
entity independent thereof.
The foregoing premises having been stated and logically demonstrated, it is clear that no harm would be done to Panama by interpreting the Loubet Award in the sense that the frontier does not extend beyond the real Culebras River, toward the northwest, inasmuch as the Panamanian territory would receive, under such an interpretation, the full expansion to which Panama could aspire under the fullest and most favorable understanding of her titles. It would simply mean that Panama had failed to obtain or acquire an undue enlargement resulting from a patent and manifest legal error, committed to the prejudice of Costa Rica and in favor of Colombia—a nation which never ventured to demand any territory beyond the Culebras River until after Costa Rica had agreed to arbitration, and was not entitled to have adjudicated to it, as a gift, lands it had no right to demand.
CHAPTER III.

TREATY OF BOGOTA, BETWEEN CENTRAL AMERICA AND COLOMBIA.

(1) Colombian Decree of July 5, 1824, Concerning the Mosquito Coast.


(4) Frontier Section on the Atlantic Slope.

(1) Colombian Decree of July 5, 1824, Concerning the Mosquito Coast.

A few days after the law for her territorial division had been published by Colombia, the Executive Power of that Republic issued the Decree of July 5, 1824 (Doc. No. 252), in which it is stated that—

"There is declared illegal every enterprise which is undertaken to colonize any point of that portion of the Mosquito Coast, from Cape Gracias a Dios inclusive toward the River Chagres, which belongs in dominion and property to the Republic of Colombia, in virtue of the formal declaration made at San Lorenzo on November 30, 1803, by which the said part of the Mosquito Coast was definitively added to the old Viceroyalty of New Granada, separating it from the jurisdiction of the Captaincy-General of Guatemala, to which it previously belonged."

(51)
By this disposition Colombia undertook to instill life into the above-mentioned Royal order which had died still-born, to which no one paid any attention during the colonial epoch, and the invalidity and ineffectuality of which, as regards Costa Rica, are conclusively demonstrated in the opinion of Señores Moret and Santamaría de Paredes, which is submitted herewith as part of this Argument. It is worth noting that, the Colombian Congress having, ten days before, issued the law for territorial division in which it was expressly declared that the "whole territory of the Nation" was included within its provisions, that law was wholly inconsistent with the assertion of the claim to dominion over the Mosquito Coast which served as the basis for the Decree of July 5 above referred to. The said Mosquito Coast could only have formed a part of the Department of Magdalena, which was designated as the seventh in the list of the twelve departments into which the whole of the Colombian territory was divided by the law of June 25, (Doc. No. 251), and which was composed of the Provinces of Cartagena, Santa Marta and Río Hacha. With these two last-named provinces the said Coast never had any connection, and that it had no connection with the Province of Cartagena is evident from the fact that among the fifteen cantons in the latter province the Mosquito Coast does not appear, as will be seen by the following enumeration quoted from the aforesaid law:


That the Mosquito Coast did not form a part of the Department of Panama, made up as it was of the Provinces
of Panama and Veragua, is evident from its omission from among the cantons of those provinces, which are enumerated in that law, as follows:


Nor does the Mosquito Coast appear in any of the subdivisions of the remaining ten departments of the Colombian territory. As a proof of this a table is submitted herewith embracing all of the cantons of the Colombian territory (Table No. 1).

Having in view these antecedent facts, the Executive Decree of July 5, in open contradiction to the territorial law of June 25, has no value, and constitutes a mere bald assertion, internationally unproductive of results.

This was the first, and an abortive effort made by Colombia to lay the foundation for a claim to a portion of the eastern coast of Central America. The second attempt was a proposition for the exchange of a portion of that coast for territory admittedly belonging to Costa Rica, from the Lake of Nicaragua to the Gulf of Dulce. That proposition was made, as the basis of a boundary treaty, by the Colombian Minister, Señor Gual, to the plenipotentiary of Central America, Señor Molina, at a conference preliminary to the Treaty of March 15, 1825 (Doc. No. 256), and was promptly rejected by the Central American negotiator. This second attempt was frustrated by the Treaty of Bogotá.

1 The original text says Gaimí instead of Guaimí.
(2) PROTEST OF CENTRAL AMERICA. PROTEST OF COSTA RICA.

As soon as the Decree of July 5 was brought to the knowledge of the Central American Government, that government hastened to make a solemn protest, which appears in the Report submitted to the Congress of the Federation on March 5, 1825 (Doc. No. 477), by the Minister of Foreign Relations, Don Marcial Zebadúa, in which he said:

"In the periodicals of the Republic of Colombia a decree by its government has been published, issued on July 5 last, in which, referring to the news that some foreigners are planning to locate establishments in the territory called Poyais, upon the Mosquito Coast, and for the purpose of preventing such enterprises from being carried out, it is stated that the coasts from Cape Gracias a Dios toward the River Chagres, belong in dominion and ownership to that Republic, in virtue of the declaration made at San Lorenzo on November 30, 1803; and that by it that portion of the coast was definitively added to the old Viceroyalty of New Granada, separating it from the old Captancy-General of Guatemala.

"The Executive Power was surprised to see this declaration by the Government of Colombia. THE TERRITORY SPOKEN OF HAS BELONGED CONTINUOUSLY TO GUATEMALA AND HAS BEEN IN ITS POSSESSION. In the law passed by the Senate and House of Representatives of Colombia on the 23d of June last, relating to the division of its territory, THE MOSQUITO COAST IS NOT EMBRACED; and in the note of July 29, by which the Minister of State forwarded the aforesaid decree to the Intendant of Magdalena, IT IS POSITIVELY STATED THAT IT DOES NOT BELONG TO COLOMBIA."
"Moreover, our envoy near that Republic, in his communication of September 28, says, in relation to this matter, that he had been assured the Government of Colombia had no idea other than to prevent the location of establishments upon the coast mentioned. Our Minister has remained there so as to inform himself in the matter upon his arrival at Bogotá and declare the rights of the Republic in that part of the territory; and the Executive Power directs that the National Assembly be at once advised as to this incident and furnished with all the antecedent facts that could be found in the archives of the previous government, which it was provided be sought for, and the information with proper orders be duly given to the envoy."

This was stated in the official organ of the Central American Federation; and the head of the State of Costa Rica also wrote most urgently, under date of November 17, 1824, to Dr. Molina, Minister Plenipotentiary of Central America at Bogotá (Doc. No. 253), as follows:

"El Patriotismo," a newspaper published at Guayaquil, in its issue, No. 4, of the 25th of September, of the present year, prints on the reverse of page 15, the following remarkable paragraph:

"By a Decree of the Government of July 5, the territory of Poyais, on the Mosquito Coast, from Cape Gracias a Dios, inclusive, to the River Chagres, has been declared an integral part of Colombia in virtue of the formal declaration made at San Lorenzo in 1803, by which the said part was added to the ancient Viceroyalty of New Granada, separating it from Guatemala. Consequently, there has been declared as illegal every enterprise directed to colonize any part of that Coast, and those who might attempt to do it as having incurred the penalties edicted against usurpers of national property and perturbers of interior peace."
The note goes on to say that this place (Poyais) is the country in which, it was asserted, one MacGregor had founded a monarchy and had been proclaimed King of the Mosquitos, and that—

"The context of the said decree is very strange and of doubtful meaning, because the territory to which it refers comprises, besides the Coast of Mosquitos to the North, the River and the Port of San Juan in the State of Nicaragua, and those of Matina and Bocataro, or Estrella, in this state; and therefore it must be observed that whether or not the Spanish Government declared that Coast dependent on the Government of New Granada, such a measure must be considered as null and as arbitrary as that by which New Granada was depending on Spain (sic), both because the Coast as far as the Escudo de Veragua—according to its topographical situation and natural geography—belongs to the part of the continent or territory of our Republic of the Centre, and for the reason that the Coast of Mosquitos has remained independent in fact. The Coast of the Port and River of San Juan has depended on the State of Nicaragua since immemorial time, as indicated by nature, the same as the ports of Matina and Estrella have depended on this State of Costa Rica, the former being the one that has been constantly used in this part of the Republic on the North, and wherein the inhabitants of this State have their establishments and cacao plantations, and finally the same that by the years 1812 and 1813, was opened by the Cortes as a port of this province.

"Respecting the islands I have no data, save that San Andrés was subject to the Government of Guatemala and lately to that of Santa Fe; but whatever the case may be, it is clear that the supposed decree of that Government [Colombia] as far as the continental spots of the coast are concerned, attacks the integrity of this territory and indirectly the independence of the Republic."
"Hereby and whilst the Supreme Executive Power, being informed of the case, will give the desirable orders, I have been pleased to communicate these observations so as you may use them as you deem it best in the exercise of the high office of which you are in charge.

"God, Union, Liberty, San José, November 17, 1824.

"JUAN MORA."

As the Mosquito Coast never extended further toward the south than Punta Gorda, the Colombian claim of 1824 affected only the Central American territory of Nicaragua and Honduras, leaving that of Costa Rica unaffected, inasmuch as neither the Royal order of 1803, nor the decree of 1824 made the Chagres a boundary of the Mosquito Coast; they mentioned this river ONLY AS AN INDICATION OF DIRECTION, OR COURSE, as appears from the use of the preposition hacia (toward).

The Royal order of San Lorenzo, in speaking of the Mosquito Coast, could not, then, refer—and it is absurd to think that it sought to refer—to the Coast of Matina; and it mentioned the point of Chagres, not as a terminal, an extreme or boundary of the coast to which its dispositions related, but as a point of direction, or course, which might very well be, and in fact was, at a great distance from the southern extremity of the true Mosquito Coast.

This manner of expression was very common during the colonial régime of Spain in America, owing to the absence of precise and reliable geographical information about the new world, as is abundantly shown by the many instances of its use in the celebrated code of Don Carlos II. Law IV, title XV, book II of that code (Doc. No. 106), in fixing
the boundaries of the Audiencia of Tierra Firme, provides that it shall

"* * * have for district the Province of Castilla del Oro as far as Portobelo and its territory; the city of Natá and its territory; the Government of Veragua; and by the South Sea toward Peru as far as the Port of Buenaventura exclusive, and from Portobelo toward Cartagena as far as the River of Darién exclusive, with the Gulf of Urabá and Tierra Firme, etc."

Law X of the same title and book, indicating the territorial jurisdiction of the Audiencia of Quito, says:

"* * * and have for district the Province of Quito and by the coast toward the side of Los Reyes city as far as the Port of Payta, exclusive * * * and by the coast toward Panama to the Port of Buenaventura, inclusive."

No one in reading the texts mentioned could fail to understand that the expression "and by the Sea of the South toward Peru to the Port of Buenaventura, exclusive." did not concede to the Audiencia of Panama jurisdiction as far as Peru, but as far as the Port of Buenaventura, excluding the latter. "Toward" indicated there, "course," "direction;" under no theory can it be accepted as meaning "to" or "as far as." Nor can it be understood that the jurisdiction of said audiencia reached to Cartagena, for that city is merely indicated as a point fixing the direction, or course; the audiencia's jurisdiction stopped at the Darién River, exclusive. In like manner, it cannot be admitted that the Audiencia of Quito, in the direction of the city of Los Reyes, reached as far as that city, for it is evident that it stopped at the Port of Payta,
exclusive; nor did it reach to Panama, but stopped at
Buenaventura.

The Royal order of San Lorenzo says:

"The King has resolved that the Islands of San
Andrés and 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 upon the
Viceroyalty of Santa Fe." * * *

As may be seen the direction but not the terminal is
indicated; and it is improper to convert the one into the
other, since the word "hacia" (toward) and "hasta" (to, or
as far as) have such different and opposite meanings.
The method of expression was in every way imperfect,
incomplete and obscure; and it should now be cleared up
and completed by a correct and legitimate interpretation.
But it would not be legitimate or correct to set up an inter-
pretation that seeks to include in the phrase "Mosquito
Coast" territory that was never embraced in that phrase.
Nor can it be correct or legitimate to suppose that in such
a phrase would be comprised, as belonging to Guatemala,
a section of coast midway between the Escudo de Veraguas
and the Chagres River which, belonging to the Province of
Veragua and in the full and undisputed possession of that
province (itself an integral part of the Viceroyalty of
Santa Fe) would be segregated from the Captaincy-General
of Guatemala of which it was not a part, in order to add it to
the Viceroyalty of Santa Fe of which it was a part, since
the latter was organized on August 20, 1739. To accept
such a supposition is to accuse the minister who authorized
and communicated the order to the captain-general and
viceroy (who merely accepted, but did not comply with
it) of supine ignorance. There is no foundation for such
an accusation.
Nor is there any reason whatever for supposing that
the Coast of Matina, situated to the south of the San
Juan River, would go into the segregation ordered. The
terminal of the part of the Mosquito Coast segregated
from Guatemala was left without being written into the
Royal order of 1803; and it is unquestionable that
the extreme end of that segregated territory had neces-
sarily to be, at the farthest, Punta Gorda, if any
respect is to be paid to the more than abundant proo
that has been gathered, showing that the WHOLE OF
THE MOSQUITO TERRITORY HAD FOR ITS
BOUNDARY, ON THE SOUTH, THE AFORESAID
PUNTA GORDA, to the north of San Juan River.

In order that the truth of this conclusion may be evi-
dent, let it be supposed for a moment that the Royal
order of San Lorenzo, instead of referring to the part of the
Mosquito Coast toward Chagres, should have proposed
to modify the state of things of the same coast in an
opposite direction, or toward New Spain.

Let it be supposed, further, that it had said: "The King
has resolved that the Islands of San Andrés and the
part of the Mosquito Coast, from Cape Gracias a Dios,
inclusive, TOWARD CAPE CATOCHE, shall be segre-
gated from the Captaincy-General of Guatemala and
made dependent upon the Viceroyalty of New Spain."

It is clear that as the territory of Mosquitos did not
extend, on the north, beyond Cape Honduras or Punta de
Castilla, in the vicinity of the city of Trujillo, the part
of the coast segregated had of necessity to end at the
said Cape or Punta; and Trujillo, Omoa, Santo Tomás
and other places included in the part of the coast reaching
as far as Cape Catoche were not, and could not be under-
stood as being subject to such segregation, but remained
safely subject, as before, to the jurisdiction of Honduras, Guatemala and Yucatán, respectively. Under this supposition Cape Catoche would have indicated the course or direction, but nothing more. The boundary or terminal would have been left without being specifically expressed; but by tacit implication it would not have been possible to make it go beyond the known and accepted boundary of the Mosquito Territory on that side; that is to say, Cape Honduras or Punta de Castilla. Furthermore, if the addition had been accorded in favor of the Viceroyalty of New Spain, it would have been absurd to concede to it, as something new, that which already belonged to it, since all the coasts treated of were included in its district.

In a word, it should not be overlooked that the word "part" signifies only a portion of a whole, and necessarily excludes what does not enter into that whole.

Costa Rica, as is shown below, was then in the full, perfect and unquestionable possession of the whole extent of her coast on the North Sea, to the same extent that she kept that possession afterward, excepting the littoral of Bocas del Toro which, in 1836, was the object of forcible occupation by Colombia, in flagrant violation of the Treaty of March 15, 1825 (Doc. No. 257), which it now becomes necessary to discuss.

(3) Treaty of 1825. Mutual recognition of the respective territories and their actual boundaries.

On the date stated a treaty was signed at Bogotá between the Republic of Colombia and the Federal Republic of Central America, of which the State of Costa Rica formed a part, bordering upon Colombia. In that treaty, among other stipulations, both parties mutually
guaranteed the integrity of their respective territories "as they existed prior to the present war of independence." (Art. V.)

THEY OBLIGATED THEMSELVES FORMALLY TO RESPECT THE LIMITS OF EACH OTHER "as they now exist," reserving to themselves the making amicably by means of a special convention the demarcation of a divi-
sional line between the two states, as soon as circumstances permit it, or whenever one of the parties indicates to the other that it desires to take up such negotiations. (Art. VII.)

As Central America did not begin her international life until the 15th of September, 1821, it is evident that prior to that date there could not have been a beginning of the state of war into which she was plunged with Spain by reason of the proclamation of independence of that date. Therefore, the entire area that Central America (previously the Kingdom of Guatemala) held at the moment when the "present war for independence" began was guaranteed to her integrally by Article V of the Treaty of Bogotá. Did Colombia, in 1821 or 1825, possess, govern or administer the coast of the State of Costa Rica, from the San Juan River, her northern limit, to the frontier of Veragua, her southern limit? Certainly not; and the evidence of this fact is abundant and at its proper place in this Argument a minute statement thereof will be given.

This Article V did not and could not have for its object a transfer of dominion of the coast of Costa Rica above mentioned, by Central America, to Colombia. The clear, manifest and only purpose of that Article was to guarantee to the possessor of said coast the dominion which it exercised therein and which belonged to it. The treaty did not create—it did not establish, or legalize—any new right,
but it did recognize and confirm a preexisting right. The idea of a guaranty was in perfect consonance with the pre-existence of the right guaranteed. Colombia guaranteed that right, just as Central America, in its turn, guaranteed Colombia's dominions and possessions existing at the beginning of the state of war in which she was engaged with Spain. The meaning of the disposition under consideration was, therefore, that each of the parties kept as its own, respected and guaranteed by the other party, the territory that the colonial entity represented by it had held when the Spanish domination was finally removed.

In harmony with Article V, as above analyzed, Article VII stipulated that both parties formally obligated themselves and promised to respect their boundaries "as they now exist," reserving the demarcation of those boundaries to be taken up as soon as circumstances should permit, or whenever any of the parties should be disposed to enter upon the negotiation therefor. The provision in Article VII is in substance the same as the one in Article V; or rather, the two are different expressions of one and the same thought or underlying agreement—respect for "the present state of things," which was converted by the stipulations into a single and obligatory guide for the fixing or demarcation of the boundaries on the ground. This state of things could have been changed only by the mutual consent of the parties; without such consent, any alteration that one of them might have made, by its own individual action, to the prejudice of the other party, would have been a violation of the treaty and would have had no other force or effect than to justify the annulment of the treaty at the will of the injured party.

The Treaty of 1825 decided the question as to frontiers peremptorily and in a very equitable and reasonable
manner; and there remained only the conclusion of a friendly arrangement for the simple physical location of the divisionary line. The respective territories taken together as distinct bodies or unities, but adjoining each other, were left safeguarded by the mutual respect for the boundaries "as they now exist," stipulated for in Article VII. The rest merely related to the procedure for the execution of the compact.

The clear and perfect proof that the essential part of the boundary question was settled finally, in principle, by Article VII of the Treaty of 1825, is to be found in the stipulation of Article VIII of the same instrument, which stipulation authorized the contracting parties to send their own commissioners to survey all the points and places on the frontiers, and to prepare such maps thereof as they might deem convenient or necessary, in order to establish the divisional line.

As has been shown, certain frontiers were admitted in 1825. These were the same that had separated the territorial jurisdictions of the two extreme provinces (Costa Rica and Veragua) of the great colonial entities which had their headquarters in Guatemala and Santa Fe, and the same that, since the 15th of September and the 28th of November, in 1821, had separated the territories of the provinces mentioned—both having been subject to the government of the mother country for a long time after the Republic of Colombia had been definitively organized. Numerous documents indicated the most noteworthy localities situated on one side or the other of the jurisdictional frontier which existed at the moment when Costa Rica and Veragua achieved their separation from the mother country; and it was only needful to run the line in such manner as to respect the possessions of each.
The Treaty of 1825, as has been said, definitively settled the boundary question between the Republics of Central America and Colombia when it established these two fundamental bases:

1. THE MUTUAL GUARANTY OF THE RESPECTIVE TERRITORIES "AS THEY EXISTED NATURALLY, BEFORE THE WAR OF INDEPENDENCE."

2. THE RESPECT FOR THE LIMITS "AS THEY NOW EXIST."

It was also stipulated that subsequently a special convention should make the demarcation of the divisional line; but it is clear that, except for agreements to the contrary, the course of such line must have been traced in such way as to show a just respect for then existing limits without infringing that guaranty.

To attain both of these results, and for the full execution of the compact even before the conclusion of the contemplated special boundary convention, two things needed to be ascertained—although in substance they constituted but one—(a) The footing upon which the territories of the contracting parties were found before the war of independence, and (b) The limits which separated the two countries at the moment when the Treaty of 1825 was signed.

This twofold question was, and is, rather a historical than a legal problem. The inquiry has for its object the ascertainment of actual, visible and palpable facts; and the solution is easy, because documents abound in which such facts are reliably stated as is herein elsewhere shown.

(4). FRONTIER SECTION ON THE ATLANTIC SLOPE.

Inasmuch as there is no controversy as to the Pacific slope, that region will be disregarded. In relation to the
Atlantic side it will be well for clearness of discussion, to divide it into six sections, as follows:

First Section.—The section belonging to the Province of Veragua, from the Escudo de Veragua and the Chiriquí or Calobébora River toward the east to the border of that province.

This piece of territory, at the time when the war for the independence of Colombia began (1810), was in the full possession of Spain, and it so remained until the end of November, 1821, when the province mentioned resolved to proclaim its independence, and took part in the movement started in Panama, and, together with the other sections of the Isthmus, asked to be incorporated into the Republic of Colombia which had been a regularly constituted entity since 1819. This territory did not enter upon, nor had it been engaged in a state of war with Spain until the 9th of November, 1821; and after its incorporation into Colombia, in February, 1822, as well as in 1825, it was in the possession of the Republic of Colombia, as an integral part of the latter, until its separation and definitive independence was secured in 1903. With respect to this section, there was not, nor is there now, any controversy of any sort between Costa Rica and Colombia or between Costa Rica and Panama.

Second Section.—This covers the territory of Bocas del Toro, from the Escudo de Veragua and the Calobébora River to the old Estrella River—called, in 1836, the Culebras, and later the Changuinola, Tilorio and Tararia River.

This section belonged to Costa Rica by virtue of her titles, according to the full demonstration made upon this point in the very learned opinion of Señores Moret and Santamaria de Paredes. The territory was the principal object of dispute between Costa Rica and Colombia,
because of its forcible occupation, in 1836, by the latter, which constituted a manifest infraction of the positive stipulations of the Treaty of 1825; but as President Loubet saw fit in his decision to definitively adjudicate that territory to Colombia, its loss will be accepted by Costa Rica if that award is now confirmed.

Third Section.—This corresponds to the territory of Talamanca, from the old Estrella or Culebras River, of 1836 (now the Changuinola) to the Tarire and Sixaola Rivers. This section may be conveniently divided into two parts: (a) the coast region, embraced between the sea and the first mountains of the interior; and (b) the mountain region extending to the main cordillera. Regarding this section Costa Rica cannot exhibit the passivity and the resignation with which she will give up her clear rights to the territory of Bocas del Toro in obedience to the decision—and for a very potent reason, that the region (b), which will be called the interior of Talamanca, never was the subject of controversy between Costa Rica and Colombia, was not submitted to the hazards of arbitration, and consequently could not be legally adjudicated to the latter nation.

That interior region prior to 1810, between 1810 and 1821, in 1825, and afterward down to the present time, was always without the least interruption, in the open, quiet and tranquil possession of Costa Rica. That region, therefore, was protected by the international compact of 1825 and by the unquestioned legal principle that what is not in litigation cannot be included in the judgment.

With regard to the part (a) the same thing is true that has been stated as to (b), the only difference being that by reason of the recent Colombian invasions, Costa Rica's unquestionable possession therein was interfered with prior to the conclusion of the Arbitration Treaty of
1880. This foothold prompted the Colombian Senate to assert the fact of possession in Colombia's favor, although that possession was of a precarious character and was positively so declared to be by that Government in 1888, when the Commission of Engineers of the Panama Canal made the survey and land measurements. This part (a) is bounded by the seashore on the northeast; by the right bank of the Sixaola on the north, from its outlet to the mouth of the Yorquín River; thence by the right bank of the Yorquín to the south, where the latter ceases to be navigable; and on the southeast, by a straight line from this last named point to the Peak of Róbalo. Simultaneously with such proclamation of the Colombian Senate, which was openly in contradiction to the real facts, the inhabitants of the interior of Talamanca continued in possession and enjoyed the use of all the territory on the left bank of the Yorquín River as well as the river itself, and the Costa Rican authorities and the inhabitants—very often in the form of an armed troop—proceeded, without any objection whatever (as they do this very day), to travel by the right bank of the Sixaola, from a point situated in front of the terminal of the road connecting Old Harbor with Cuabre (on the left bank of the river) as far as the Yorquín. This subsection (a) is equally protected by the Treaty of 1825.

The perfect possession of the coastal and Talamanca interior subsections, from the Tarire to the Changuinola, is shown in the most satisfactory manner that could be desired, by repeated facts of an incontestable character. One of the most notable of these was the stay in that territory for a period of eighteen months of a body of engineers, in charge of the learned naturalist, Mr. William M. Gabb, under contract and paid by the Government of Costa Rica, while engaged in topographical, mineralogical
and ethnological investigations in that territory. This scientific commission was put in possession of the land by the Governor and Military Comandante of Puerto Limón, in person, General Don Federico Fernández; and all the local authorities, at the head of whom was Mr. John H. Lyon, the Secretary-Director of the tribes of Talamanca, and the various caciques or chiefs whose settlements extended from the Tarire to the Changuinola, received and carried out the orders and instructions communicated to them by the Government of Costa Rica, to respect and assist the work of the said expedition. This was done in the years 1873 and 1874.

In 1875 a part of the work of that commission appeared in the scientific periodicals of the United States. In 1877 the geographical map prepared by Mr. Gabb was published at Gotha (Map XXXIV). In 1892 the Geographical Institute of Costa Rica published a Spanish translation of the principal report submitted by Mr. Gabb to the Costa Rican Government. The persistent silence on the part of Colombia, in the face of such facts, shows her entire acquiescence in the possession of Talamanca by Costa Rica, prior to and after the making of the Arbitration Treaty of 1880.

Numerous documents, which will be referred to at the proper place, confirm the perfect possession by Costa Rica of the territory now under discussion.

Fourth Section.—The coast of Matina, from the mouth of the Sixaola river to the mouth of the San Juan de Nicaragua, with its extension in width over the entire (eastern) slope.

This ought to be divided into two parts, for the sake of clearness: the first part (a) the littoral only, to which was

\footnote{León Fernández, Documentos para la Historia de Costa Rica, vol. III, p. 331.}
confined Colombia's vague claims of dominion under the authority of the supposed transfer of this littoral by the Royal order of San Lorenzo, of November 20, 1803. Colombia sought to maintain that this transfer had been made to the Viceroyalty of Santa Fe under the mistaken idea that it formed a part of the Mosquito Coast, although the latter never extended under Spanish rule to the south of Punta Gorda, in the vicinity of the Rama River.

The second part (b) consists of the lands situated to the west of the above littoral, and embraced the rest of the slope, with respect to which Colombia never advanced any territorial claim of any kind.

Of both of these parts; that is to say, from the shores of the sea westward as far as the slope extended, Costa Rica was in perfect and indisputable possession prior to independence, and so continued without a single day's interruption from the date of her independence down to the present moment, as will be shown by documents that cannot be impeached.

Consequently, the whole of that territory, from the Sixaola to the San Juan, and from the shores of the sea to the peaks of the cordillera, was always, and is now, under the shelter of the Treaty of 1825.

Fifth Section.—Between the San Juan de Nicaragua River and Punta Gorda, or the Rama River, lies the coast belonging to and in the possession of Nicaragua, which
ereignty over that territory; also by the Austrian Empire, which intervened in the arbitration relating to this territory between Great Britain and Nicaragua; and especially by the United States, which, even at the risk of a war with Great Britain, maintained with decision and energy the sovereign rights of Nicaragua over that region.

By the terms of submission under the arbitration treaty as Colombia has admitted, the Mosquito Coast was expressly excluded from the jurisdiction of the Arbitrator, in the suit as to boundaries with Costa Rica,¹ being territory in which a third party is interested, and consequently this is a section respecting which, strictly speaking, nothing can be said in this discussion, since it was not, and is not now, a debatable subject; so that whatever is said about it must be understood as stated for the purpose of illustrating the other points with which it has some relation. But it is not too much to observe that the Mosquito Coast being found to be—as it was in 1821 and 1825—in the full, perfect and indisputable possession of Central America, that territory also is under the shelter of the Treaty of 1825.

The question of boundaries between the States of Costa Rica and Colombia, therefore, is settled, according to international law, by the Treaty of Bogotá and under the principle of uti possidetis, in conformity with the historical and legal facts surrounding the colonial régime. The colonial limits were converted into international limits by mutual consent of the parties interested, in virtue of that peculiarly American principle of international law.

¹V. Exposé présenté à Son Excellence M. le Président de la République Française, par Don Francisco Silvela, pp. 63, 64, 72; M. Poincaré's 2d Memorandum dated Sept. 8, 1899, pp. 85, 86, 104, 105; and M. Poincaré's 3d Memorandum of July 20, 1900, p. 3.
CHAPTER IV.

CONFLICTS AND TREATIES ARISING OUT OF THE QUESTION OF BOUNDARIES. USURPATION OF 1836 AND TREATIES OF 1841 AND 1856.

I. USURPATION OF BOCAS DEL TORO BY NEW GRANADA (COLOMBIA).

(1) Usurpatory decrees.
(2) The territory usurped bounded by the Culebra River.

II. TREATY OF 1841, BETWEEN COSTA RICA AND THE STATE OF THE ISTHMUS.

III. TREATY OF 1856, BETWEEN COSTA RICA AND NEW GRANADA.

(2) Opinion of the Committee on Foreign Relations of the New Granadian Senate (1855).
(3) The Culebras River.
(4) The Treaty of 1856; the Calvo-Herrán line.
(5) Rejection of the Treaty; various interpretations of that line.
(6) General Codazzi, the author of the Golfito—Cordillera de las Cruces—The Culebras line.
(7) The Doraces River.

(72)
I. USURPATION OF BOCAS DEL TORO BY NEW GRANADA (COLOMBIA.)

(I) USURPATORY DECREES.

The Republic founded by Bolívar, known as the Gran Colombia (Great Republic of Colombia), ceased to exist in 1830, having been separated into three independent republics, called New Granada, Venezuela and Ecuador.

The Treaty of Bogotá, of 1825 (Doc. No. 257), continued to govern the relations between the Republics of New Granada and Central America in the matter of boundaries. The Federation of Central America continued to retain possession and dominion of all the territories which had been embraced within the jurisdiction of the Captaincy-General of Guatemala under the sovereignty of Spain, including the Mosquito Coast, the Matina Coast and the coasts of Bocas del Toro or Almirante Bay, as far as the Escudo de Veragua.

In the exercise of its rights, the Government of the Federation, and subsequently the State of Costa Rica, made various concessions to citizens and foreigners for the exploitation of the soil and of mines in those territories.

But the Congress of New Granada, on May 30, 1836 (Doc. No. 267), decreed the occupation of Bocas del Toro, providing that until the constitutional formalities were complied with for legislative determination of the political organization of that district, there should be established on the island known as Boca del Toro in the Channel of the Dragon, a Political Chief with jurisdiction over the whole of the said territory.

The decree did not assert any other reasons for this action than the fact of the existence of numerous foreign settlers "* * * in the islands of Bocas del Toro,* * *"
which belong to the dominion of the Republic * * *"," and the urgent need for affording to their settlers the advantages of a regulated civil administration; assuring at the same time the Republic's proprietorship.

The Government of New Granada actually did occupy, with a military force, the Port of Bocas del Toro (Island of Colón) in January, 1837, and stationed there a Political Chief, compelling the official therein installed as the representative of Central America to withdraw.

That action was preceded by a note, which the Governor of the Province of Veragua, Señor Manuel de Ayala addressed on September 23, 1836 (Doc. No. 269), and in the name of the Government of Colombia, to the Government Secretary of Costa Rica, and to which the latter made reply on November 30 of the same year. Señor Ayala said:

"The object of the present communication is to inform Your Excellency, the Governor of the State of Costa Rica, that there has arrived at the Island of Bocas del Toro, on the North Coast of this Province of Veragua, a citizen of Central America, accompanied by a troop of several persons, who says that he is commissioned by the authorities of your Republic to take possession of the adjoining territory and to exercise over it governmental functions, as emanating from the supreme action of that same State in reference to dominion over that territory."

He added further on:

"As the Executive Power has already adopted the necessary measures for the immediate execution of the legislative action cited (Decree of May 30, 1836), a force will very soon arrive at the Island of Boca del Toro to re-establish on that coast the dominion and lordship of New Granada. For this
reason the undersigned Governor has been advised to address himself to the State of Costa Rica, making a statement of the facts and requesting that, if the Central American individuals who are now on the Island of Boca del Toro in the character of persons charged with keeping the possession thereof, have come by order of the Government of your State, it may be pleased to direct them to immediately withdraw, respecting the rights of proprietorship of the Republic of New Granada and leaving to its authorities the exercise of the jurisdiction that belongs to them over said island and adjacent territory; unless they may desire to remain there as settlers, subject to the Granadian law and authorities. * * *

The undersigned expects that the friendly action which has already been taken, in the name and by the express order of the National Executive Power, will receive due attention by the Governor of the State of Costa Rica; and that in pursuance thereof orders will be duly issued as already indicated for the return of the Central American citizens now in the character of commissioners in the Island of Boca del Toro, or for their peaceful submission to the laws and authorities of the Republic.”

In his answer (Doc. No. 271), the Costa Rican Minister, Señor José Anselmo Sancho, confined himself to the observation that the territory of the State, according to its fundamental law, was bounded on the coast of the North Sea by the mouth of the San Juan River and the Escudo de Veragua, within which extremes were situated the bay of Bocas del Toro and the islands lying therein; and that this being an affair within the cognizance of the Federal Central American Government, a statement would be made thereto in order that proper action might be taken.

By another decree of the New Granadian Congress, May 26, 1837 (Doc. No. 275), the Canton of Bocas del Toro was created out of the parochial districts of that name and
of Mineral, in the Province of Veragua, with the extent indicated in the prior decree.

(2) The Territory usurped bounded by the Culebras River.

The New Granadian decree of May 30, 1836, described the territory of Bocas del Toro, by stating, in its Article I, that it was bounded as follows:

"* * * on the north, by the coast which runs from the River Concepción to that of Culebras, in the Province of Veragua; ON THE NORTHWEST BY THE FRONTIER LINE WHICH SEPARATES TOWARD THAT SIDE THE REPUBLIC OF NEW GRANADA FROM THAT OF CENTRAL AMERICA; on the south by the crest of the cordillera of Chiriquí, following this direction as far as the place called Guayabo; and from there by a line which proceeds by the Mineral de Veragua, toward the place called Barreras, on the banks of the River Concepción, and continuing downstream to its mouth * * *

With this territory there was formed the Canton of Bocas del Toro, made up of the parochial district of Bocas del Toro (to the west) and of that of Mineral (to the east), a canton which is now the province of that name in the Republic of Panama.

Certainly the northern and southern limits of the Canton of Bocas del Toro were determined by this decree; the first by the shore line that connected the Concepción and Culebras Rivers; and the second by the crest of the cordillera of Chiriquí, following the direction from west to east, the line proceeding toward the sites of Guayabo and Barreras, and coming to an end at the Concepción River.

As to the northwest, the decree provides that its boundary shall be "* * * the frontier line which separates toward that side the Republic of New Granada from that of
Central America." There is no further indication for the demarcation of this line; but it is easy to locate it if we take into consideration the two exact geographical facts which follow:

1. The line begins at the mouth of the Culebras River, the end of the frontier assigned to the north side of the figure described, which, starting from the Concepción River, proceeds to the Culebras River. The line that separates the territories of New Granada and Central America forms an angle with the north line indicated at the outlet of the said river.

2. This outlet of the Culebras River, being the point of departure for the second line, the latter ought to be traced in such manner that the Central American territory will be left adjoining the northwestern border of the neo-Granadian territory, and to accomplish this it is indispensable that the course of the divisional line should be from the northeast to southwest. If, however, instead of taking that direction, the separating line should start from the mouth of the Culebras and proceed in a course due west, for example, the neo-Granadian territory would adjoin the Central American territory on the north and not on the northwest. In the same way, if a north-south course were taken from the mouth of the Culebras, the border of the Colombian territory on that of Central America would be on the west and not northwest, as required by the decree of 1836.

The neo-Granadian decree cited makes no other mention of the Culebras River, in relation to the frontier, than its outlet into the sea; and the course of that stream was entirely unknown at that period. There was a significant omission to accept or reject its course as a basis for a
boundary; on the contrary, preference was given to the geographical angle which was clearly adopted.

It should be specially borne in mind that the only legal basis adduced by the Congress of New Granada to possess itself of the territory of Bocas del Toro, was the allegation that that territory belonged to the Province of Veragua, "in the dominion of the Republic."

What is to be understood by the Culebras River? Señor Peralta, in his notable work: "La Géographie historique et les Droits territoriaux de la République de Costa-Rica, states and explains perfectly the five distinct ways in which the name of Culebras has been accepted as designating different streams (p. 50 et seq.) The first way, and the oldest—that which was used and adopted in preparing the maps of the 17th century, and the one always understood by Costa Rica—was that which took the Culebras for the Calobébora or Chiriquí, a stream that empties at a point opposite the Escudo de Veragua, the boundary with the Province of Veragua (and therefore with Colombia) which has always been maintained by Costa Rica.

If any Culebras River ever did exist, it must have been the one corresponding to this first acceptance of the name; but it is evident that the neo-Granadian decree could not have referred to such a stream, inasmuch as its outlet was clearly located a good deal to the east of the Chiriquí Lagoon, and it would have been absurd to think of fixing as the boundary for the Canton of Bocas del Toro, which embraced in addition to that lagoon the Bay of Almirante, a river which was not to the west of that body of water. If the decree of 1836 had taken as the Culebras River the one that figured as such on the charts of the 17th century, there would be no boundary question to-day, for that river is the Chiriquí, or Calobébora, which really separated the
jurisdictions of Costa Rica and Veragua during the colonial régime.

But Colombia has been moving this name along, to designate several of the streams situated to the west of the Bay of Almirante, each time getting further away from the latter as her desire for territorial aggrandizement increased. The geographer D’Anville, who was not acquainted with the country, gave the name “Culebras” to the stream known as the Estrella, Chánguene and Tílorio, on one of the maps of the 18th century (Map VIII), copied by later geographers; and this must be accepted as the one which New Granada adopted in her decree of 1836.

The reason for coming to this conclusion is that Colombia did not carry her line beyond the Estrella or Chánguine River subsequently to 1836, except tentatively, in 1869 and 1870, and because Costa Rica was in full possession of the whole of the territory as far as the Estrella River in 1873-1875, when Gabb made his explorations in Talamanca, which have been spoken of herein elsewhere.\footnote{P. 68.} The same was true in 1880, when arbitration was stipulated for by the treaty signed on December 25 (Doc. No. 364) and also in 1885, when the government of Costa Rica issued its instructions for the negotiations of the compact of 1886 (Doc. No. 368) for the purpose of fixing with precision the area embraced in the dispute, as a result of explanations that had to be made concerning it to avoid objections suggested by the Government of the United States to the progress of the boundary arbitration with Colombia. This was true also because the subsequent advances made by the Republic of Colombia upon Costa Rican territory toward the northwest,
as far as the right bank of the Sixaola, were confined and limited to the littoral along the coast, and Colombia thus respected the possession and jurisdiction of Costa Rica over the right bank of the Sixaola, from Cuabre to the Yorquín River—the only way of communication by land between Talamanca and the ports of the mouth of the Sixaola, Gandoca, Old Harbour, Cahuita and others. The possession and sovereignty of Costa Rica over the central valley of Talamanca and all its dependencies situated on the right bank of the Tarire and left bank of the Yorquín were also respected by Colombia. With regard to the left bank of the Sixaola, from its outlet upstream, the possession of Costa Rica was always scrupulously respected.

The boundary of the Province of Veragua and of the Colombian Territory as fixed by the Decree of 1836, was identified by subsequent facts.

On June 2, 1843 (Doc. No. 478), New Granada issued a new law concerning the organization and the special regulation of Bocas del Toro. In the first Article that district is bounded on the northwest by the frontier line which on that side separates the Republic of New Granada from that of Central America.

On February 27, 1855 (Doc. No. 301), by an amendment to the neo-Granadian Constitution, the sovereign State of Panama was created; and in Article 2 the following provision was made for its boundary on the Costa Rica side:

"The limits of the State on the west shall be those which may be definitively established between New Granada and Costa Rica."

In 1887 a work of an official character was published in Bogotá, entitled "Descripción, histórica, geográfica y
política de la República de Colombia," in which the following statement was made as to boundaries:

"The general limits of the Republic are: on the north the Atlantic Ocean; on the northwest, the Republic of Costa Rica; on the west, the Pacific Ocean; on the south, the republics of Ecuador and of Peru; and on the west the Empire of Brazil and Venezuela."

The same appears in the Colombian geographical works of General Mosquera (Doc. No. 577), Doctor Pérez (Doc. No. 576) and Señor Esguerra.¹

The result, then, is to clearly establish the fact that its territory in the extreme west adjoins that of Costa Rica exclusively and does not include any part of the Mosquito Coast—a fact based upon repeated legislative acts of Colombia and the statements of her official geographers.

The final observation to be made is that notwithstanding the invasion of the territory of Bocas del Toro inflicted the most serious injuries upon the Federal Central American Republic, and more especially upon the State of Costa Rica, the precise and clear description that was made of the territory invaded by virtue of the neo-Granadian decree of occupation presents the advantage of limiting the sphere of the intrusion, for that sphere cannot be overstepped without committing new violations of the territorial rights pertaining to the state adjoining and immediately prejudiced, and with an absolute disregard of the prohibition against such advance which the invading government placed upon itself in defining the area of the invaded territory.

¹ Geographic Dictionary of the United States of Colombia (Diccionario Geográfico de los Estados Unidos de Colombia), by Joaquín Esguerra O. Bogotá, 1879. Under the word "Colombia," p. 63.

In the year following the formation of the Canton of Bocas del Toro, the Federation of Central America was dissolved and the State of Costa Rica entered into full enjoyment of its sovereignty (1838). Shortly thereafter, in 1840, Panama separated from New Granada to form the Republic of the Isthmus.

These two independent states thereupon entered into a treaty of mutual recognition and friendship, signed on September 22, 1841 (Doc. No. 278), by the Supreme Chief of Costa Rica and by Don Pedro de Obarrio, as the special representative of the Government of the Isthmus. In the 4th Article it states:

"The State of Costa Rica reserves its right to claim from the State of the Isthmus the possession of Bocas del Toro upon the Atlantic Ocean, which the government of New Granada had occupied, going beyond the division line located at the Escudo de Veraguas."

Ratifications of the treaty were duly exchanged, as appears by the preamble to the Decree XL, issued by the Supreme Chief of the State of Costa Rica and published in the collection of the laws for the years 1841 and 1842, p. 234 (Doc. No. 278), as follows:

"His Excellency, the President of the State of the Isthmus having ratified, within the period of the extension which was requested for that purpose, a treaty of friendship and commerce concluded and signed between that State and that of Costa Rica, in the city of San José, on the 23rd of September of the past year of 1841, after the formalities prescribed in Clause 2, Sec. 1, Art. 5 of the Decree of bases and guaranties, decrees:"
"Sole Article: The following treaty shall be kept and complied with from this day forth as a law of the State * * * ."

In 1842 the State of the Isthmus was again united to New Granada, but the reservation contained in the Carrillo-Obarrio Treaty must be understood as continuing in effect, in view of its purpose as a notification to the invading Power or its successor, of the solemn protest on the part of Costa Rica against the forcible occupation of Bocas del Toro. The legitimate rights of Costa Rica were thus safeguarded in this way in 1841 and 1842.

III. TREATY OF 1856 BETWEEN COSTA RICA AND NEW GRANADA.


The above mentioned treaty was preceded by two noteworthy reports made by that eminent statesman of New Granada, Don Pedro Fernández Madrid—the one as a private individual, in 1852 (Doc. No. 298), and the other as a senator, in 1855 (Doc. No. 302), each of which is very important, not only for the interpretation of the treaty, but also as to the general question of boundaries between the two republics.

Señor Fernández Madrid, as the most competent person in these matters, was consulted by the neo-Granadian Government concerning the question as to the Mosquito Coast, and he delivered an extensive report thereon on November 29, 1852, which report, notwithstanding its great leaning toward the Colombian side, to say nothing of the many errors committed by its author, contained some very significant assertions.
He summed up the subject by advising his government to retire from its pretensions to the Mosquito Coast, because the Royal order of San Lorenzo, of 1803 (Doc. No. 192)—the only title upon which they were based—was worth nothing, and he further advised making use of it as a weapon in the proposed scheme to secure, by means of a boundary treaty with Costa Rica, and by way of set-off, a valid title which would assure the control of New Granada over the region of Bocas del Toro, on the north, and a good port of the Gulf of Dulce, on the south. This opinion strips of all its authority the Royal order of 1803, as a pretext for a claim by Colombia that the Mosquito Coast comprised the whole of the coast of the Atlantic, from Cape Gracias a Dios, to the northern border of her territory; that is to say, the coasts belonging to Honduras, Nicaragua and Costa Rica.

Señor Fernández Madrid begins by declaring that what the Spanish Government, the geographers and navigators always understood by the “Mosquito Coast” was the shore from Cape Honduras to PUNTA GORDA, near the most northern arm of the San Juan de Nicaragua River; and he adds that it was so understood by the British Government, as shown by the note from its legation in 1847 or 1848.

He further says:

"Our title to the dominion of the Coast of Mosquitoes * * * the Royal cédula (it was a Royal order) of November 30, 1803 is worth nothing, nor is it of any utility for ourselves. * * *

"* * * * The title that we have to the dominion of that territory is of such an anomalous and indefinite nature, that strictly it would be reduced to the duty of affording it the maritime protection it might need for its coast guard against outside aggressions * * * and this appears to have been the intention with which the Spanish Government issued the cédula of 1803;"
since by it there was not then added to New Granada any integral province or territory, but simply a portion of the Coast of Mosquitos; and by "coast" cannot be understood the districts of the interior country, nor even the littoral establishments which always were, as they continued after the issue of that order, exclusively dependent upon Central America.

"Under this interpretation, which seems to be the only one that harmonizes well with that document, the dominion we have derived from Spain over the said territory would be left reduced to the islands, which undoubtedly are embraced under the designation of "coast," and to an extension of beach, littoral or shore of the sea, exceedingly difficult to make out and of which we have absolutely no need."

After thus taking away the authority of the Royal order of 1803, he suggests to the neo-Granadian Government the idea of making a boundary treaty which would signify the abandonment or renunciation of the rights over the Mosquito Coast, and which would fix the frontier line with Costa Rica.

He was afraid that Costa Rica would again bring up her claims over the Archipelago of Bocas del Toro and the Island of the Escudo de Veragua; and with this in view he interpreted in his own way the antecedent facts of the colonial régime, saying that the divisional line between New Granada and Guatemala was not established by the Spanish Government in any but the vaguest way. He goes on to say:

"It cannot, however, be doubted that in some official document of the Spanish Government there was fixed as the end of the two jurisdictions, on the Atlantic the River Culebras and on the Pacific the Gulf of Dulce, between Punta Mala and Cape Boruca, since the most accredited old geographers are in accord in the recognition of such boundaries."
These are the points he indicated as the extremes of the line which should be agreed upon, saying with respect to the northern extreme, that it could be Punta Careta, or the outlets of the Doraces or Culebras.

With respect to the line that should connect these extreme points, he thought that it should be left to subsequent negotiations when the ground would be better known and a good topographical map prepared, for, he asserted:

"* * * the fact is that the division line between the two Republics runs through a rough country, which was never explored during the time of the Spanish Government and which even yet has not been surveyed."

(2) OPINION OF THE COMMITTEE ON FOREIGN RELATIONS OF THE NEW GRANADIAN SENATE (1855).

Following the counsel of Señor Fernández Madrid, the Government of New Granada resolved to begin negotiations for the settlement of the boundaries with Costa Rica. The matter was brought before the Senate, and that body gave its consent, in accordance with the opinion of the Committee on Foreign Relations, which was prepared by Señor Fernández Madrid himself and submitted on April 10, 1855 (Doc. No. 302).

Señor Fernández Madrid’s senatorial report is almost a reproduction of the opinion prepared by him, in 1852, in response to the request of the Government, although it was in a form more suitable to the case.

At the outset must be noted the following declaration in this opinion of the Senate:

"The boundary question, therefore, was left (after the emancipation), as it continues, upon the footing
it was placed by the Treaty of March 15, 1825, in Art. 7 of which both parties promised to celebrate a special convention as to boundaries and in the meantime to respect those which then existed, which are still the same that separated the Viceroyalty of Santa Fe from the Captaincy-General of Guatemala.”

He considered, therefore, that the Treaty of Bogotá, of 1825 (Doc. No. 257), was a subsisting compact in respect to boundaries; and esteeming the concessions of Costa Rica in Bocas del Toro as a violation thereof, he sought to justify the legislative decree of 1836, and the occupation of that region as an integral part of the territory of Veragua.

He recognized the uti possidetis to which the treaty referred as that of the colonial régime which existed at the end of the 18th century, the only new thing about it in the 19th century being the Royal order of San Lorenzo relating to the Mosquito Coast, which had at times been subject to the Captaincy-General of Guatemala and at others to that of Cuba, and lastly to New Granada. Then he says:

“...But it is to be observed that these mutations, which had for their sole purpose the better defence and protection of the said coast, did not introduce any substantial change in the limits of the Viceroyalty, properly speaking, the jurisdiction of which * * * was extended constantly to all the territory of the Isthmus * * * which bordered upon the territory of Costa Rica by a line drawn from the middle of the Gulf of Dulce to the mouth of the River Doraces or Culebras, a short distance from Punta Careta * * *."

The Committee on Foreign Relations of the Senate understood that by virtue of the provisions of Art. 7 of the Treaty of Bogotá, the celebration of a special boundary convention between the states of New Granada and Costa
Rica was mandatory; the negotiations for the moment were, therefore, confined to the determination of the divisional line in a general way, fixing the following points:

1. The precise section of the Gulf of Dulce, not yet well known between Punta Mala and Cape Boruca, where the frontier demarcation must be begun; a section or point of departure which, as Señor Colonel Codazzi proposes, can be fixed in the central channel of said Gulf, denominated "Golfito," in which there empties the river of the same name.

2. The irregular line (also unknown in part), which, ascending the River Golfito and passing by the Sierra de la Cruz, must serve as a boundary in the interior, until it reaches the headwaters of the River Doraces or of the Culebras; by the course of one of which streams the frontier must naturally proceed.

3. The point at which the said line ought to come out on the Atlantic, adopting for that purpose the mouth of one of the rivers mentioned, or in the last resort Punta Careta."

The Senatorial Committee then added the following interesting paragraphs:

"The most general and accepted opinion of the geographers and historians of America and the acts themselves of the Spanish Government, taken altogether, as has already been seen, indicate the end of the division line in the River Culebras; but as there cannot fail to be noted in one writer or another some discrepancy concerning which of the points stated (Doraces, Culebras or Punta Careta) is the one which in reality does separate the two jurisdictions, it seems that this uncertainty, although of little weight in comparison with the other uniform data which designate the River Culebras as the border, it could nevertheless be admitted, thanks to the freedom the two governments enjoy (under the Treaty) to deviate from a strictly legal line and accommodate themselves, if
they deem it proper, to take another, which, without departing in any absolute way from the boundaries already indicated, may be more in harmony with what is desirable for both countries.

"Proceeding thus, with a frank and sincere mutual desire to reach an agreement, it does not seem that it will be impossible to secure it, especially 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."

It clearly results from this opinion of the neo-Granadian Senate, of 1855, and much more from the very frank explanations in Señor Fernández Madrid's report of 1852:

1. That New Granada desisted from her pretension to territoriality on the Atlantic side of Costa Rica based upon the Royal order of 1803, the authority of which she completely abandoned.

2. That she undertook to legitimize her occupation of the territory of Bocas del Toro, not by relying upon the Royal order of 1803, but upon the colonial *uti possidetis* prior thereto and not modified thereby—holding said territory to be integral portion of the Province of Veragua.

3. That as this second pretension to territoriality involved the boundary question, Article 7 of the Treaty of Bogotá of 1825 was resorted to by her on the theory that it still subsisted as to this point.

4. That for extreme points of the divisional line she indicated the *Culebras* and *Golfito* Rivers with the double purpose of assuring to herself the possession of Bocas del
Toro and obtaining a good anchorage in the Gulf of Dulce—holding all else to be unimportant.

(3) THE CULEBRAS RIVER.

This river has been described as the mythical Culebras River and that appellation will now be justified. If geographical maps by themselves alone, unsupported by the documents of the period or the traditions duly handed down, could be used as legitimate evidence of the existence of streams which for centuries were supposed to serve as boundary lines for original administrative jurisdictions—and later for the international partition of adjacent countries—it might well be accepted as true that the Culebras River, which was created in the 18th century out of the fancy of the geographer D'Anville (who had the fortune to be quoted by others) is the Estrella, or Changuinola River of the present day. BUT NO DOCUMENT, ANCIENT OR MODERN, AND NO MAP DATED PRIOR TO 1836, SHOWS THAT THE RIVER CULEBRAS IS THE TARIRE OR THE SIXAOLA RIVER.

And this being a vital point in the present controversy, the utmost pains have been taken to search through the voluminous documents of both parties for any passage or passages that might make mention of a river which, under this particular name of Culebras and as a distinct water-course from the Calobébora or Chiriquí River could have formed the separating line between jurisdictions during the Spanish administration, or of sovereignties that came into existence subsequently to independence and prior to 1836. It is to be supposed that a person so well versed in these matters as Señor Fernández Madrid would have sought to discover such basis for the neo-Granadian
claims; it is evident, however, that he did not have the good fortune to find it, for, instead of citing or invoking it in support of the rights of his country, what he did do was to state in his reports of 1852 and 1855 that—

"It cannot, however, be doubted, that in some official document * * * there was fixed as the end of the two jurisdictions, upon the Atlantic the River Culebras * * * since the most accredited old geographers are in accord in the recognition of such boundaries * * * ."

Colombia carried on the most diligent researches in the archives of Bogotá and in those of Spain, seeking to discover the document which Senator Fernández Madrid said he had no doubt was in existence, but in vain, for no such document ever came to light, nor was there any sign or news of it. Finally, General Don Antonio B. Cuervo, Minister Plenipotentiary of Colombia in Spain, and the author of a rich collection of papers from the Spanish archives, in four large volumes, concerning the territorial questions of Colombia, announced to the world the happy discovery. These are his words:

"This first volume embraces the description and study of the Colombian coasts upon the Sea of the Antilles; and in order to make it as complete as possible many important documents are included, all unpublished. After Fidalgo there follows a document of no less importance, to wit, the exploration of the beaches of the north coast of the Ancient Province of Veragua, made by the retired Sergeant Manuel de Jesús Atencio. THIS ACCOUNT SERVES TO DEMONSTRATE THE JURISDICTION EXERCISED BY THE GOVERNMENT OF THE PROVINCE OF VERAGUA OVER THE TERRITORY OF THE Isthmus AS FAR AS THE
CULEBRAS RIVER; and the territory occupied by the Doraces and Guaimíes Indians, including the WHOLE of the littoral of the Bay of Almirante and Bocas del Toro, for which Colombia is now contending with the neighboring Republic of Costa Rica.

Noting, therefore, that in this account by the retired Sergeant Atencio, the proof, according to General Cuervo, is to be found of the existence of the famous Culebras River, the international boundary between Costa Rica and Colombia, that precious document has been read with the greatest care; but that document does not furnish the evidence desired by Señor Fernández Madrid, for not even once does it make any mention of such a stream as Culebras. Atencio cites in his account thirty streams both great and small; these are given, in their alphabetical order, in Table No. 2, and show this fact: that the name of CULEBRAS, as applied to a river or a place, does not appear a single time in the writing of Señor Atencio, and that the latter did not penetrate the shores of the Lagoon of Chiriquí or Bay of Almirante; nor did he pass further than the Cañaveral River, which empties in front of the Island of Escudo. Indeed, as a matter of fact, the learned General Cuervo read into the account of Atencio what the latter never wrote therein.

There does not exist, nor has there ever existed, as an international frontier between Costa Rica and Veragua, any Culebras River; that river is a purely modern invention, if we disregard its synonym, the Calobébora. Señor Fernández Madrid must have expected with perfect good faith that some document would turn up of the time of the Spanish Government which would come to the support of the Colombian territorial pretensions; but
one who dedicated a great part of his life to the study of these questions and wrote with a fuller knowledge of these matters than any one else, Señor Don Francisco de Paula Borda, after the most laborious investigations, which he carried on for twenty years, was compelled to come to the positive and definite conclusion set forth in the following words:

"This doubtless, is the reason why, as we have stated elsewhere in this book, when some official of the Viceroyalty speaks of the extent of the territory subject to the political and military command of his Viceroy, he fixes the limits of the Viceroyalty at Punta Burica, on the Pacific, and at Punta Careta or the Doraces River or the Culebras, on the Atlantic. The same thing was done by some worthy geographers, historians and travellers who followed that authority, as will be seen in the chapter of this book treating of the opinions of geographers and historians. NO ONE, HOWEVER, UP TO THE PRESENT TIME, HAS EXHIBITED, IF WE EXCEPT THE TWO MAPS OF WHICH WE SHALL SPEAK HERE-AFTER, ANY OFFICIAL DOCUMENT WHERE-IN SUCH ARBITRARY LIMITS ARE FIXED BY THE KING OR IT IS STATED THAT THEY WERE AT ANY TIME FIXED. WE, OURSELVES, FOLLOWING THE GENERAL CURRENT, FELL INTO THIS INVOLUNTARY AND TRADITIONAL ERROR FOR SOME YEARS. NOW WE REJECT IT ABSOLUTELY * * *"

After this categorical declaration, made by a person so thoroughly acquainted with the question, no one in Co-

lombia undertook to search for any document which would indicate the Culebras River during the time of the Spanish Government as the jurisdictional limit of New Granada on the side of Central America; and, therefore, in the records of the past litigation, notwithstanding the declarations made in 1880 by the Senate of Plenipotentiaries of Colombia, which were the immediate precedent for the basic arbitration treaty between Costa Rica and Colombia, THERE WILL NOT BE FOUND, EVEN ON A SINGLE OCCASION, ANY MENTION OF THE CULEBRAS RIVER, either in the memorandum of Señor Silvela, which made official demands on behalf of Colombia, or in the memorandum of M. Poincaré, which served as a reply to the brief for Costa Rica, or in the Résumé or summary of Colombia's territorial titles prepared by the representative of that Republic before the Arbitrator, Señor Betancourt, or, much less, in any of the other memoranda that were made use of before the Arbitrator, in addition to those stipulated for in the Treaty of Arbitration, which memoranda, furthermore, were made use of without the knowledge of the representative of Costa Rica.

As Señores Moret and Santamaría de Paredes have very justly observed in their learned opinion, Colombia was not trying in that proceeding to defend the frontier of her territory bordering upon Costa Rica—frontier which, up to the moment when the arbitration treaty was signed, she had maintained was formed by the mouth of the Culebras River; but she was seeking to eliminate Costa Rica from the map, and on the strange and contradictory theory that the Province of Veragua extended, on the Atlantic side, as far as Cape Gracias a Dios; and that the transference of the protection of the Mosquito Coast to the Viceroyalty,
ordered in 1803, brought it down from Cape Gracias a Dios as far as the frontier of Veragua, which, as before stated, then became, not the Escudo de Veragua, or the imaginary Culebras River, but the very same Cape Gracias a Dios itself.

This absurd theory—doomed from its very inception by its inherent self-contradiction—was adopted as the result of the true and well founded statement made by Señor Borda as to the non-existence of any document which would fix the CULEBRAS River as the limit of Veragua; for, as the action of Colombia was left without any support, it was thought to enlarge the Colombian pretensions by invoking a previous landmark, purely historical, and no more existent at the time of the political emancipation of the two rival republics than was the apostolic brief of Julius II, in 1514, which extended the jurisdiction of the first Bishop of Darién to Cape Gracias a Dios.

(4) The Treaty of 1856; the Calvo-Herrán line.

In pursuance of the consent of the Senate, approving the said opinion, the neo-Granadian Government, represented by its minister plenipotentiary at Washington, General Herrán, opened negotiations with the Government of Costa Rica, represented by its chargé d'affaires, Don Luis Molina, and several conferences were held in October of 1855 (Doc. Nos. 303, 304).

General Herrán at once asked for a line that began at the mouth of the Doraces River and ended at the outlet of the Golfito River, invoking the uti possidetis recognized by the Treaty of Bogotá of 1825, and bringing forward the Royal order of 1803. Notwithstanding it had been nullified, he used it, as Señor Fernández Madrid had counselled, as a
weapon in the contest. Don Luis Molina opposed this effort by demonstrating that the rights of Costa Rica extended as far as the Escudo de Veragua and by setting up the nullity of the Royal order; but he found it impossible to reach an agreement with the representative of New Granada.

The question was then taken to the capital of Costa Rica, and there it was settled by its Minister of Foreign Relations, Don Joaquín Bernardo Calvo, and General Herrán, who signed the "Treaty of Friendship, Commerce and Limits," between the two republics, on the 11th of June, 1856 (Doc. No. 307), by Art. 41 of which the two signatories established the following divisional line, known as the Calvo-Herrán Line:

"* * * a line which, beginning on the coast of the Pacific Ocean, at Punta Burica, at 83° 13' longitude west of the meridian of Greenwich, proceeds in a straight line to the source of the River Agua Clara, at the highest place where its waters have their origin; thence continuing by another straight line to the northwest quarter north, until the summit of the Cordillera de las Cruces is reached, which is found in this direction; thence continuing by the crest of the same Cordillera to the source of the River Doraces, and from thence down stream by the middle of principal channel of this river until it empties into the Atlantic."

Costa Rica was at the time engaged in a foreign war and was devastated by cholera; so she yielded to the gallant General Herrán, who was one of the great personages of the independence of Colombia, and who personally offered his sword in Costa Rica's emergency and succored the widows of her soldiers with a much-appreciated donation.

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7 This is an evident error, the true position of Punta Burica being 82° 53'.
(5) Rejection of the Treaty; Various Interpretations of That Line.

The Congress of New Granada, still not satisfied with the great success of its clever plenipotentiary, sought to do even better, by approving the treaty on April 21, 1857 (Doc. No. 309), but with three "explanations." The first of these stated:

"That the River Doraces, Dorces or Dorados, designated by Art. 41 of the foregoing treaty as the terminus of the divisional line * * * is the first river which is found at a short distance to the southeast of Punta Careta (that is, the river of Talamanca); and that the questions arising at any time upon this point shall be determined in accordance with this declaration and what is shown by the Hydrographic Chart which was used during the negotiation of said treaty, the title of which is: Carta esférica del mar de las Antillas y de la Costa de Tierra Firme (Spherical Chart of the Sea of the Antilles and of the Coast of Tierra Firme), prepared in the Hydrographic Bureau and published by official order at Madrid, year 1805; corrected in 1809."

The Government of Costa Rica laid these "explanations" before the Congress of that Republic on September 30, 1857 (Doc. No. 310), with its objections thereto, and especially to the first, as essentially changing the treaty and leaving the demarcation of the boundaries in that part ambiguous. Thereupon the congress rejected these "explanations" entirely, and the treaty failed of ratification.

The "Spherical Chart" referred to by the neo-Granadian Congress (Map XVII), is a simple outline of the coast, without any indications as to the interior, and on such a small scale that it could not be used as a guide.
for a demarcation requiring any degree of detail; and it is deemed more than probable that for the purpose of fixing the line the representative of New Granada exhibited the map of Chiriqui by Colonel Codazzi, as he was the one who invented the crest of the Cordillera de las Cruces in the concept of a frontier line.

(6) **General Codazzi the Author of the Golfito—Cordillera de las Cruces—Culebras River Line.**

This allegation that Codazzi was the inventor of the frontier line above mentioned is evidenced by the note in the handwriting of that engineer on the margin of the original copy of the chorographic map prepared by him in person, in 1854, a note which is quoted literally by Señor Borda on pages 326 and 327 of his work above cited, as follows:

"The yellow line starts from the points decided upon on the coasts of the two oceans and runs in search of a third point on the way from Bugaba to the village of Boruca. That road, which is a poor trail, passes by the summit of the ridge of Las Cruces, which has always been recognized by the Indians of Boruca and the residents of Bugaba as the divisional line between the two provinces, and they recognize and respect it even to this day; so it is that in the pastures of Cañas Gordas the inhabitants of Bugaba, a district of the Province of Chiriqui, have had cattle, and in the pastures of the Limón the Indians of Boruca, of the State of Costa Rica; and it is noticeable that the unpopulated region extends in each case very nearly the same distance, from the summits of the Cordillera de la Cruz, to the two localities inhabited, Bugaba settled by Granadian Creoles and Boruca by Indians of Costa Rica."
“From the Cordillera de las Cruces, to reach the summit of the Andes and then the headwaters and course of the Dorados or Culebras River, is a very natural and permanent line; but such is not the case in proceeding from the Cordillera de las Cruces to reach Punta Burica, since it is difficult to lay out a permanent line in a mountain region with quite an even configuration of hills and elevations until the chain of peaks is reached that terminates at Punta Burica. A more natural boundary and one easier of recognition at all times ought to be sought for, so as to avoid controversies later, which will be brought up by the residents who may inhabit what is now deserted. Therefore, I would suggest the line marked in red which starts from the Golfito, by the river of that name, to its source, which is in the Cordillera de las Cruces. This line has the advantage of not requiring engineers to recognize it.”

The entire note of General Codazzi has been reproduced as it was copied by Señor Borda, because it serves to prove two points of great interest in this discussion, to wit (a) the identity or individuality of the range of Las Cruces, and (b) the fact that that engineer was the first to propose as a frontier for Costa Rica and Colombia the Golfito-Cruces-Summit of the Andes-Culebras line.

Codazzi asserts that the road from Bugaba to Boruca passes by the range of Las Cruces, which is situated almost equidistant from the inhabited places of Boruca and of Bugaba. Both of these points are on the Pacific slope, and the trail that connected them when Codazzi wrote was the same that connects them to-day. It is also the same trail that has connected them ever since the year 1601, when

“Note on the chorographic map of the Isthmus of Panama prepared by the Engineer Colonel Codazzi in 1854 and inserted by the author on the margin of the original chart.” (Note of Borda).
Don Gonzalo Vázquez de Coronado, by order of the Audiencia of Guatemala, opened such a path to the village of Jarijaba, which was situated on the southern flank of the last mountain that is passed in going down into the valley of the Chiriquí Viejo River, where he came in touch with the Veraguan frontier authority stationed in the village of Chiriquí, six leagues away. It is therefore evident that the said Cordillera de las Cruces is not the Cordillera de los Andes, which separates the waters that flow into the two oceans, but one of its ramifications, separating waters that flow into the Pacific.

This fact is confirmed by the differentiation which Codazzi himself makes between the crest of the range of Las Cruces and the top of the Andes, and also by the statement Codazzi makes that the origin of the Golfito River is in the Cordillera de las Cruces. It is furthermore a geographical fact, of which there is absolute evidence, that said Golfito does not take its rise in the Andean or Main Cordillera, for between the latter and the range on the southern flank of which the said river has its origin, there intervenes the broad and rich valley of the Coto or Brus River, a tributary of the General River or Río Grande de Térraba. This valley has been examined scientifically and was very thoroughly described by the Engineer Wm. F. Shunk, as a route for the International Pan-American Railway. To this valley belong the pasture lands of Limón and Cañas Gordas, referred to by Codazzi and appearing on all the modern maps, particularly that of Pittier, prepared in 1903 (Map B).

It is worthy of note that the author of the proposed Golfito-Cruces-Andes-Culebras frontier line, while he asked for the entire course of the two rivers in order to form a

1León Fernández, documentos, vol. V. p. 104.
part of the frontier line, did not in any way adopt the backbone of the range of Las Cruces, or that of the Cordillera of the Andes, to form a part of said line; he simply crossed them both at an angle in order to connect the sources of the two streams, which really are the lines he proposed as a basis for the frontier. This makes a connecting line which would naturally be understood as a straight one, inasmuch as there are no points specified that would convert it into an irregular one. This was the way the said frontier continued to be spoken of, from the time of Codazzi until the signing of the arbitration treaty by Colombia with the notice that, according to the Codazzi map, the Golfito and Culebras Rivers flowed, the former in a north to south direction and the latter south to north, which gave to the frontier line, between its two extremes, a general north to south course, from one sea to the other.

Coming back again to the “Spherical Chart,” it appears that there is indicated thereon, under the name of the Dorados River, the first stream that is met with to the southeast of Punta Careta, at a short distance therefrom. And as the first river is the Sixaola, there can be no doubt that, according to the first explanation of the Congress of New Granada, the limit to which that republic aspired in the Atlantic Ocean could not under any interpretation extend beyond that selfsame Sixaola River.

Costa Rica had a very good reason for refusing to admit that the Doraces River of this treaty was intended to be or could fairly be identified with the Sixaola and Tarire; this is shown by the following observations.

(7) The Doraces River.

The denomination of Doraces, and its variants, Dorados, Dorces, was entirely unknown in the history, the cartog-
raphy and the documents relating to Costa Rica of the 16th and 17th centuries. All the chroniclers of that epoch may be minutely scanned, the contemporaneous geographical charts examined, and one by one the multitude of documents may be read over that recount the discovery, the pacification, the settlement and the vicissitudes of Costa Rica down to 1748, and not even the remotest reference will be found to the existence of a territory, a village, a river, a tribe, or even a chieftain, bearing the name of "Doraces," or one resembling it, within the territory of Talamanca, or what may be embraced therein according to the definition of Gabb; that is, between the Main Cordillera, the shore of the sea, the Tarire River and the Changuinola. The tribe of the Doraces Indians really did exist; but they were a long way from the Tarire River and even from the Changuinola. They had their villages to the south, between the Chiriquí Lagoon, and the cordillera of the same name, and their eastern boundary lay along the San Diego or Cricamaula River, with their western limit at the Buirra or Chiriquí River; so that if any river bore the name of Doraces it must naturally have been one of those that bounded the territory of that tribe or ran through the midst of it.

But in 1748 Señor Don Antonio de Ulloa CREATED THE DORACES RIVER and thought it proper to locate it immediately to the west of the Bay of Almirante; that is to say, he baptized with the name of "Doraces" the old Estrella River, which other contemporary mapmakers entitled, with better success—if no less arbitrarily—the Culebras River.

In various English and Spanish hydrographic and geographic charts, Chánguenes and Dorados were taken to
be synonymous, as, for example, on the map of Wyld in 1850 (Map XXIX).

Other cartographers, however, have disregarded the synonymity, therefore the Changuinola of the present day, situated immediately to the west of the Bay of Almirante, bears the name of Culebras; and they locate the **Doraces River** thereafter, but without confusing it in any way with the *Tarire*, to which another more appropriate name was applied in order that its identity might be free from all doubt—that of the *Río de los Talamancas*. So also, among many others, the chart of D’Anville, 1746 (Map VIII); that of Tomás López and Juan de la Cruz, of 1755 (Map IX), in which the name is written “*Bocaces*;” that of Bonne, of 1780 (Map X); another in the National Historical Archives of Madrid (Map XIX); that of Lapie, in 1806 (Map XVI); etc.

Costa Rica, therefore, was abundantly justified by the facts in refusing to accept any definition of the *Doraces River* which would identify it with the Sixaola, and rejected Colombia’s proposed interpretation of the treaty as changing its true meaning.
CHAPTER V.

CONFLICTS AND TREATIES ARISING OUT OF THE QUESTION OF BOUNDARIES.

I. TREATY OF 1865 BETWEEN COSTA RICA AND COLOMBIA.

(1) Assertions of authority by Costa Rica.
(2) Negotiations for the settlement of boundaries.
(3) The Treaty of 1865; the Castro-Valenzuela Line.

II. TREATY OF 1873 BETWEEN COSTA RICA AND COLOMBIA.

(1) Jurisdictional conflicts on Dulce Gulf and on the eastern side of the Lower Sixaola.
(2) Claim of Doctor Pradilla, Colombian Minister to Costa Rica.
(3) Treaty of 1873; the Montúfar-Correoso Line.

I. TREATY OF 1865, BETWEEN COSTA RICA AND COLOMBIA.

(1) Assertions of authority by Costa Rica.

The Calvo-Herrán Convention having failed of ratification, the Government of Costa Rica decided to regain possession of the territorial rights of the Republic, and provided, on March 10, 1859 (Doc. No. 314), for the
accession of the Archipelago of Bocas del Toro to the jurisdiction of Moin, the governor and commander of which was authorized to appoint military and police judges and to expel wrongdoers.

In the exercise of her sovereignty, and by the Law of July 9, 1860 (Doc. No. 317), Costa Rica authorized the construction of a railroad between Bocas del Toro and the Gulf of Dulce, under a contract made by the Executive Power with Mr. Ambrose W. Thompson, a citizen of the United States. The Commission officially appointed by the President of the United States to report upon the practicability of the railroad between Bocas del Toro and the Gulf of Dulce, submitted the result of its investigations to the Secretary of the Navy of the United States, in January, 1861 (Doc. No. 318).

(2) NECESSITIES FOR THE SETTLEMENT OF BOUNDARIES.

The Colombians having occupied the shores of Burica (1862) and the Government of Panama having arranged for the leasing of the cocoanut groves on that coast, the Minister of Foreign Relations of Costa Rica directed the representative of the last-named republic at Washington (Docs. Nos. 320, 321), to take up with the new Granadian minister the settlement of the question of boundaries, since by the mere use of protests no progress had been made toward putting an end to the constant efforts of the latter "* * * to appropriate the valuable ports of Bocas del Toro and Dulce Gulf * * *." As a matter of fact the two countries did start the negotiation of a treaty in March, 1865 (Doc. No. 322), in the city of Bogotá, Dr. Don José María Castro representing Costa Rica and Dr. Don Teodoro Valenzuela appearing on behalf of Colombia.
At the first conference, on March 6, Señor Castro proposed as a boundary, a straight line starting from Punta Burica, on the Pacific Coast, and terminating at the most advanced point on the eastern shore of the Island of Escudo de Veragua, in the Atlantic.

At the second conference, on March 15, Señor Valenzuela substituted the Calvo-Herrán line of 1856; but with the additions made by the neo-Granadian Congress of 1857, which Costa Rica had rejected.


Notwithstanding the suggestions formulated by the representatives of the two republics were so widely apart, they were able in three more conferences to end the discussion and to come to an agreement whereby Señores Castro and Valenzuela, at Bogotá, on March 30, 1865 (Doc. No. 323), signed the "Treaty of Friendship, Commerce, Navigation and Boundaries, between the Republic of Costa Rica and the United States of Colombia," which treaty, as well as the divisional line embodied in it bears the names of its authors.

That line began at Punta Burica on the Pacific, and ran along the hills from that point toward the peak of Limoncito; thence, in a straight line to the sources of the Chiriquí Viejo River, at the highest part, where its waters have their origin; thence in an easterly direction along the crest of the Cordillera which separates the waters of the two oceans, passing by the peaks of El Pica chito, La Horqueta, La Playita, El Hornito and Santiago, to the source of the Cañaveral River; and thence by the main channel of this river to its outlet in the Atlantic Ocean.
The line of connection, therefore, between Punta Burica and the point next to the Island of Escudo de Veragua, coincided with the line claimed by the Plenipotentiary of Costa Rica, except that it was not straight, being broken by the Main Cordillera, and it will be observed that it left within Costa Rica the Bay of Almirante and the Chiriquí Lagoon on the north and the Gulf of Dulce on the south; that is to say, it followed the line which among all those claimed by Colombia, most nearly conformed legally and historically to the truth.

That treaty was approved by the Executive Power and by the Senate of Colombia, and also, on its first reading, by the House of Representatives; but the Session of 1865 came to an end and left its second reading for the legislature of 1866, by which it was rejected for reasons entirely unrelated to the boundary question.

II. TREATY OF 1873 BETWEEN COSTA RICA AND COLOMBIA.

(1) JURISDICTIONAL CONFLICTS IN DULCE GULF AND ON THE EASTERN SIDE OF THE LOWER SIGAOLA.

On January 25, 1870 (Doc. No. 324), the Minister of Foreign Relations of Costa Rica addressed himself to the Secretary of the State of Panama, complaining that, as he had been informed by the Political Chief of Dulce Gulf, a commission composed of four persons sent by the authorities of Chiriquí, had appeared at the little hamlet of La Esperanza, and had stated that thenceforth not only that hamlet but the territory as far as the middle of the Gulf was to be embraced within the territory of Panama, that State having so provided. The commission thereupon proceeded to take a list of the cattle for the
purpose of levying the corresponding tax upon the residents. The Minister further complained that, as he had also been advised by the Captain of the Port of Móin, officials coming from Bocas del Toro had been stationed at the mouth of the Sixaola River; "* * * a territory, like that of the Dulce Gulf, not disputed to Costa Rica in any of the negotiations concerning boundaries * * *

The President of the State of Panama, Don Buenaventura Correoso, replied on the 21st of May following (Doc. No. 325), stating that although this was a matter pertaining to the Government of the Colombian Union, he had undertaken to inform himself thereon, and regretted to state that grave events had occurred, consisting of forcible acts committed by the emissaries of the Costa Rican officials, who had improperly sought to exercise jurisdiction in those territories which were Colombian. On account of these acts the President of the State of Panama asserted that: "* * * the River Culebras, called also Doraces or Dorces * * *

The Minister of Foreign Relations of Costa Rica, Señor Montúfar, in a note addressed to the Minister of the United States of Colombia, on June 11, 1870 (Doc. No. 326), brought to his knowledge what had occurred and explained the historical reasons and the legitimate possession upon which his government relied. He further asked that the status quo be maintained and denounced the reported purpose of certain persons from Panama to make an attack on Costa Rican officials "* * * at a point which has always belonged and does belong to Costa Rica: the RIVER SIXAOLA."
(2) **Claim of Doctor Pradilla, Colombian Minister to Costa Rica.**

The distinguished statesman, Don Antonio M. Pradilla, having been appointed by the Government of Colombia as Minister Plenipotentiary to Costa Rica, with instructions to settle the pending differences as to the boundary question, presented to the Minister of Foreign Relations of the latter country a diplomatic note, dated at San José on October 20, 1871 (Doc. No. 329), in which he reproduced the claim made by his government in its note of August 10, 1870, arising out of certain acts which had been committed in Sixaola, during April and May of that year, by some persons in the employ of the Government of Costa Rica or acting under its authorization. He made the further claim, which is copied in full because essential to a proper understanding of the status quo and the view held by Colombia as to the boundary question:

"A person called Santiago Mallas or Mayay,1 entitling himself the agent of the Government of Costa Rica, has pretended to exercise acts of jurisdiction in the settlement of Changuinola, which, as H. E. knows, is located on the west of the River Doraces, the boundary between this Republic and that of Colombia as the Government of the latter maintains. Colombia has at all times been in the possession of Changuinola; and although Costa Rica also thinks it has a right to the territory in which this settlement is situated, such possession ought to be respected, not only because by Art. 7 of the treaty celebrated between the former Colombia and Central

1This person was the cacique or chieftain of that name, the political chief of the Government of Costa Rica in the territory of Talamanca, to whom the Minister of Foreign Relations of Costa Rica referred, in the note addressed to the Colombian Minister dated June 11, 1870 (Doc. No. 326).
America on March 15, 1825, the two Republics were obligated to respect their boundaries, as they then were, but also because it is in the interest of both, in order to avoid complaints and reciprocal claims, to recognize their respective possessions in the condition in which they are, so long as their boundaries are not definitively fixed."

Señor Pradilla, in his note to the Government of Costa Rica, asked that a reprimand be administered in consequence of these acts, and sent supporting documents.

One of these documents is the official communication which Señor Iglesias, the Political Judge of Bocas del Toro, sent to the Prefect of the Department of Colón, on June 27, 1871 (Doc. No. 329), directing him to bring it to the knowledge of the President; in this he gave a detailed account of the acts committed in the settlement of Changuinola by the so-called agent of the Government of Costa Rica. Señor Iglesias thereupon, in order to show that Costa Rica had no jurisdiction in the settlement of Changuinola, says:

"That the River Changuinola belongs to the Sovereign State of Panama there is no doubt, its mouth being situated only eight miles to the west of that of the Dragó and thirteen [not thirteen, but seven and a half] to the east of that of the Sixaola, where the controversy was last year with Costa Rica; so that if the latter does not belong to it further than the western slope of its mouth, since the Sixaola is the same river Culebra, which marked the boundaries of Costa Rica in the time of the former Colombia, with much less reason the one called Changuinola, which is distant from the latter thirteen miles to the east, as has been stated * * * ."