

faction with the reply of that republic to the effect that *it referred only to the territory of Burica*; and that, consequently, in the region comprised between the Changuinola and the Sixaola, *the status of things remained as left in 1870 and 1871* when they were described by Señor Correo and Pradilla from the viewpoint of Colombia's interests.

Attention must also be drawn to the importance given to the matter of *possession* by the Conclusions of the Senate of Plenipotentiaries. The First Conclusion asserts that Colombia has a perfect right of ownership and that she is in *possession* of the territory bounded by the Culebras River; whereas, it speaks only of her "*right*," without including possession, when reference is made to the *littoral* situated between the mouth of that river and Cape Gracias a Dios. The third declares that Colombia "*has been in uninterrupted possession of the territory included within the limits indicated in Conclusion 1.*" The fifth states that the Colombian Government, with the consent of the Senate has exacted respect for the *status quo* with which the First Conclusion deals "until the boundary question is decided by arbitration or in some other friendly method."

According to the First Conclusion the divisional line is the one which has been frequently mentioned—"from the mouth of the *Culebras* River, in the Atlantic, going upstream to its source; thence a line along the crest of the ridge of *Las Cruces* to the origin of the River Golfito
* * *"

The river, then, which Colombia claimed under the name of *Culebras* was the one that bounded the territory of which she asserted to *be in possession*, and not a river foreign to that possession.

Therefore the *Culebras* River, the subject of such possession, could be none other than the Changuinola, according to the antecedents particularly set forth in Señor Pradilla's above-mentioned note of 1871, relating to the controversy over the village of Changuinola—or at most the Sixaola.

But in this last case, it must be understood by Sixaola the right bank of this river in its lower course near the coast, where was the nucleus of a Colombian village named "Sixaola," without going beyond the mouth of the Yorquín, from which river the lands possessed by some Colombians were far distant; that is to say, the *Sixaola* as then understood in Colombia, according to her official documents and her own maps—not the *Tarire* in its ascendant course from *east to west* as far as its sources, according to the description in the report of William M. Gabb (Doc. No. 582); *not the Tarire* going up-stream from the mouth of the Yorquín, where Colombia never had *possession* in any form whatever.

It should be noted that Gabb, who wrote in 1874 and 1875, never alludes, in either of his valuable works (Docs. Nos. 582, 583) to the *possession, occupation, or even a claim* of any kind, on the part of Colombia, in any part of the territory *between the Changuinola and the Sixaola* which that savant surveyed and investigated by order of the government of Costa Rica and under the protection of the local political and military Costa Rican authorities. Nor is it conceivable that in the course of four or five years events would have occurred that would have transformed the quiet possession enjoyed by Costa Rica in that vast region into clear, undisputed possession on the part of Colombia from the mouth of the Sixaola to its source, if by that river the *Tarire* or *Telire* is to be understood. The status of things in 1874 and 1875 was the same as that

existing in 1880, when the arbitration treaty was signed.

In September, 1888, Señor Don Joaquín B. Calvo, the present Minister of Costa Rica at Washington, was commissioned by his government to visit the region of the Sixaola and the canton of Talamanca in order to make a report concerning certain surveys carried on in that part of the country by engineers of the Compagnie Universelle du Canal de Panama.

In the important report (Doc. No. 551) which Señor Calvo prepared as a result of his investigation, he states that Colombia *never possessed*, on the Atlantic Coast any part of the territory situated to the west of Punta "Sorocta," or "Soróbeta," opposite Boca del Drago, except toward the end of 1869, when a Colombian functionary was in fact established in the small hamlet located on the right bank of the Sixaola's mouth. Señor Calvo adds that the Political Chief (Jefe Político) of Moín, Señor Fábrega, re-established the authority of Costa Rica at that point, but that by reason of the change of government which took place in Costa Rica in 1870, Colombia had no difficulty in again establishing her functionary at the mouth of the Sixaola.

The author of the report goes on to state that by virtue of the occupation consummated by Colombia, that republic took possession of the entire coast as far as the said hamlet, which was called "Sixaola;" but that, in spite of all his most careful investigations, he had been unable to find the slightest proof to show that Colombia had established her authority in the interior at any point between Boca del Drago and the southern bank of the Sixaola River; that at one time, however, it appeared that the place called "Guabito"—and even "Halobita," a little farther into the interior—had been looked upon

as the divisional point; that as Colombia had not exercised any jurisdiction away from the coast, it was not easy to determine what was the divisional line in the interior; but that it was nevertheless a fact that on the date of the report (September 19, 1888), the agents of the Costa Rican Government maintained the sovereignty of their country over the entire course of the Sixaola River and the authority of Colombia was exclusively confined to the point occupied by the hamlet of Sixaola.

Señor Calvo further states that in January, 1888, the Political Chief of Talamanca established as the jurisdiction of the Justice of Peace of "Guali," territory extending to the mouth of the Sixaola River and all of the waters of that stream.

He asserts in his report that this had been the status of things since 1870, and adds that he had never heard that the Colombian functionary located on the right bank of the Sixaola's mouth had ever pretended to exercise authority over the river, or over any point along its southern bank—much less to obstruct the free exercise of Costa Rica's sovereignty over the entire territory traversed by the Sixaola River.

(3) THE FACT OF POSSESSION FROM 1880 TO THE LOUBET AWARD.

The boundary question having been submitted to the arbitrament of Spain, and the Government of Costa Rica having proposed to that of Colombia the establishment, by mutual agreement, of a provisional frontier line pending the arbitral decision of the Spanish Government, the Sub-secretary of State in charge of the Colombian foreign office, Don Marco Fidel Suárez, addressed to the Minister of Foreign Relations of Costa Rica, the note of

the 16th of March, 1891 (Doc. No. 381), in which he declares the following:

“The provisional and transitory boundary cannot be to the east of the Sixaola, for that would be to disturb the actual possession that Costa Rica acknowledges in Colombia, and lose sight in the act of settlement of the purposes which impose that settlement. As to the part west of the Sixaola, although Colombia insists, in accord with the Additional Convention signed in Madrid by the Plenipotentiaries of this Republic and of Costa Rica of January 20, 1886 (Doc. No. 369), that its rights on the Atlantic extend to Cape Gracias a Dios, it does not complain if its actual possession be restricted, fixing the transitory limit nearer than that terminal. The Republic, then being guided by special sentiments of conciliation PROPOSES that the provisional frontier shall be the River Doracés, from its outlet in the Atlantic to its sources, thence following the *Cordillera de las Cruces* to the River *Golfito* and thence along the River *Golfito* to its outlet in *Dulce Gulf*.”

It is needless to say that if, in March, 1891, Colombia PROPOSED a provisional frontier line constituted by the course of the Doracés (Sixaola) River, as far as its source, it was precisely because the Colombian occupation of 1880 did not reach that point. Neither is it necessary to say that the PROPOSITION was rejected by Costa Rica.

It is quite evident that in describing the line proposed the Colombian government had before it, or recalled to mind the details of, the official map of the State of Panama prepared by Señor Ponce de León and his associate. In order that two sections of territory separated by a river (in this case the Doracés or Sixaola) may lie the one to the east and the other to the west, it is essential that such river should run from north to south, or from south to north,

for if its course lay, for example, from east to west, or vice versa, the said sections would lie the one to the north and the other to the south.

Now, supposing that in his note, Señor Suárez had taken the Sixaola instead of the Changuinola for the Doraces River, it is clearly stated that Colombia claimed nothing on the *western* side of the Sixaola, for that would have amounted to a disturbance of the then "*actual possession*" and an ignoring of the issues in the pending question, which were those already mentioned as involving the region comprised between the Sixaola and the Changuinola.

It may be further concluded that what Costa Rica and Colombia proposed in that exchange of notes was the establishment of a line that should coincide "in so far as possible, with the line separating the *actual possessions* of Colombia and Costa Rica * * * so that upon the determining of the same (line) the present condition of things will not be disturbed," as Señor Suárez frankly explained in his note. In connection with the fact of the possession which did not extend beyond that part of the eastern region near the sea, that note referred to the upper waters nearest the sea—that is, the first waters that may be met with on the way up the side of a mountain and those upper waters cannot be other than the course of the *Yorquín*.

The distinguished geographer, Monsieur Pittier, in his notes on geography of Costa Rica as published in the review "*Tour du Monde*," of 1892, stated:

Costa Rica claims goes up the River Golfito, a small

tributary of the Dulce Gulf, thence follows the hills of *Las Cruces*, between the basins of the River Coto de Térraba and the Chiriquí Viejo, until it reaches the summit of the Main Cordillera, and thence goes down the northern watershed by the Rivers *Yorquín* (Zhorquín) and *Sixaola*."

In a note addressed by Don Julio Rengifo, the Colombian Minister at Washington to the Honorable Walter Q. Gresham, Secretary of State of the United States, on the 22d of February, 1894 (Doc. No. 401), there is a paragraph which reads:

"Both nations should respect the *status quo* established in 1881 [1880], which, for Colombia is law, and for Costa Rica a dead letter. As a recent practical case, I may cite, in proof of the foregoing statement, the course pursued by the present Costa Rican Minister of Foreign Affairs, Mr. Jiménez, who, four years ago, when he filled the same office, admitted that the *River Sixaola was the dividing line between the possessions of Colombia and Costa Rica; so that the eastern bank of that river belongs, incontestably, to Colombia, notwithstanding which, and in spite of the protests of the latter country, the Government of Costa Rica continues to place authorities in that region, thereby abusing the patient and upright attitude of my Government.*"

If by the *Sixaola*, the *Yorquín* is to be understood, the

1894, several small nuclei of Colombian villages, whilst to the west of that river lay the capital of the Costa Rican Canton of Talamanca which was the center of several important settlements, ruled by the Government of Costa Rica without opposition from any source whatsoever.

In the report on the Foreign Relations of the Colombian Government, for the year 1894 (Doc. No. 402), the following paragraph appears:

“On the Atlantic side, the Costa Rican Government has definitively admitted that *the boundary of present possessions is formed by the Sixaola River*, so that it has no right to exercise acts of jurisdiction on the *right bank* of that river; but notwithstanding this, Costa Rican agents or individuals have recently made surveys and drawn up maps on this side of the Sixaola.”

Colombia would not have complained of the making of topographical studies and drawing of plans of the territory on the *right bank* of the Sixaola by order of the Costa Rican Government unless that river had been taken to be the Yorquín, for Costa Rica's possession was public and incontestable to the west and left bank of said river (the Yorquín), having installed in that region civil, military and ecclesiastical authorities in full and peaceful exercise of their respective functions.

(4) THE FACT OF POSSESSION FROM THE AWARD OF 1900
DOWN TO THE PRESENT DAY.

After the publication of the Award of President Loubet, several plantations were established, under the color of concessions by, or under the authority of, the laws of Colombia, at a place called “Gandokin,” between Punta Mona and the left bank of the Sixaola River's mouth.

Concerning this act of possession, the Panamanian Department of Government and Foreign Relations issued an order under date of August 2, 1904, and published in the Official Gazette of the Republic on the 23d of the same month (Doc. No. 430), in which the following appeared:

“Although by the arbitral award pronounced by the President of the French Republic, Gandokin (in the Sixaola region) forms part of the Panama territory, this award has not been executed yet, and, while this is not the case, the Government of this Republic *does not exercise jurisdiction at that place*, because it is situated within the limits of the disputed territory which originated the arbitration,¹ and because the agreed *status quo* thus demands. In this manner the Costa Rican Government is the actual possessor of the place in reference, in the same way as that of Panama is the actual possessor of part of the Costa Rican territory on the Pacific. The execution of the Award will give each sovereign the possession of the territory which belongs to it, and the *status quo* will then terminate. But meanwhile, as such is not the case, Gandokin will remain under the jurisdictional action of Costa Rica.”

The foregoing order is an explicit recognition by Panama of the *de facto* line respected by Colombia and Costa Rica.

The status quo as defined by the United States in 1909.— In the months of January and February, 1906 (Doc. No. 432), the Government of the United States transmitted to the Government of Costa Rica the complaints which had been brought before it by Mr. McConnell, in the name of the American Banana Company, against certain supposed abuses by Costa Rican authorities on the plantation

¹This last assertion is an evident error, as already stated, p. 198.

which that company had established, on the left bank of the Sixaola, under the laws of Colombia relating to undeveloped lands; that government, protesting against those facts, called on the Governments of Costa Rica and Panama to place themselves in accord concerning the jurisdictional *status quo*.

The Costa Rican Minister of Foreign Relations, Señor Don Luis Anderson, replied by notes of the 3d and 26th of May (Doc. Nos. 433, 435), stating that McConnell had unlawfully occupied lands pertaining to the Costa Rican domain, and had fraudulently introduced merchandise through the unauthorized port of Gandoca. And discussing the incident in the light of the Loubet Award he asserted that the territory about Gandoca and the Sixaola River, on the left banks of that river and of the *Yorquín* had been always, and was at that time dependent upon the jurisdiction of Costa Rica, according to the *status quo* recognized by Colombia and Panama, and cited, in support of this assertion, the note of March 16, 1891 (Doc. No. 381), and the order of August 2, 1904 (Doc. No. 430), from which quotation has just been made.

Señor Anderson came afterwards to Washington as envoy extraordinary on special mission to treat concerning the pending boundary question, and secured the friendly mediation of the United States.

Having accepted the task, the mediating government defined its understanding of the *status quo* for the purpose of protecting the citizens of its country and exacting the corresponding responsibilities; whereupon the Secretary of State, Honorable Robert Bacon, addressed to the Government of Costa Rica the note of February 16, 1909 (Doc. No. 455), in which he said:

“Should, however, an adjustment of the controversy be delayed or no adjustment made in the near future, the Government of the United States will be constrained to the conclusion that the conditions existing for years and still existing are such that they force the United States in justice to its own citizens to treat the *de facto* line as the line to the north of which Costa Rica has jurisdiction and to the south of which Panama jurisdiction is recognized; in other words, to hold that, inasmuch as the territory north of the *de facto* line is left by Panama within the actual jurisdiction of Costa Rica, the United States must in the interest of its citizens treat it as Costa Rican territory and look to Costa Rica to remedy the annoying and embarrassing situation caused to the United States and its citizens by the absence of responsible jurisdiction in that quarter.”

A similar note had been addressed to the Government of Panama by the Secretary of State, Mr. Elihu Root, on January 23, 1909 (Doc. No. 454).

Subsequent Controversy Between Panama and Costa Rica Over the "Status Quo."—The Minister of Panama, Don Belisario Porras, in his note of the 29th of May, 1909, addressed to the Costa Rican Minister of Foreign Relations (Doc. No. 458) asks for an explanation of the news he had received concerning the appointment of an inspector and commandant at arms in the Sixaola Valley which, “although occupied by Costa Rica,” was adjudicated by the Award to Panama; and in connection with his protest the Minister makes the following important statement:

“Panama has *on the right bank of the Sixaola*, from its mouth where its first village is located, UP TO THE YORQUÍN, in fourteen others which existed before the Arbitral decision was pronounced, a popu-

lation which has not room enough and which it would have been possible to establish and spread out, with officials, political, administrative, judicial and fiscal on the left bank * * * AND IT HAS NOT DONE SO.”

The Minister of Foreign Relations, Señor Fernández Guardia, replied on June 5 (Doc. No. 459), stating that the functionary in question was a subinspector of the treasury installed at the customs post of Guabito on the *left* bank of the Sixaola and accompanied by the necessary force to insure obedience to his orders; and that the object of this appointment was to prevent smuggling and oversee the activities of the United Fruit Company under its contract with his government, which had authorized that concern to establish depositories on the left bank of the Sixaola and to introduce merchandise through that point only.

This post is located opposite another post bearing the same name of Guabito on the right bank of the Sixaola, under the jurisdiction of Panama. They are connected by a railway bridge over that river which was then in course of construction by that company. These two places are to-day the seats of customs authorities with guard houses located at either end of the now completed bridge—a very evident proof of the presence of an international divisional line.

Señor Fernández Guardia reminded the Minister, in that note, of the Panamanian Government's resolution of August 2, 1904 (Doc. No. 430), favorable to Costa Rica, on the subject of the *status quo* in Gandokin or Gandoca, and said that a similar situation was then under discussion; that is, one involving “the *left* bank of the River Sixaola, which separates us from the Republic of Panama up to the intersection with the Yurquín or Zhorquín.”

On this theory, and by the questions and assertions of Señor Porras concerning the frontier line of fact and law, the interesting controversy, which is reviewed in another section of this Argument, was maintained, dealing with the boundary question without, however, reverting to a discussion of the post of Guabito, but the Representative of Panama going so far as to put forth the strange theory that Costa Rica could not dispose of territory involved in the Loubet arbitration—a territory which, according to the pretensions of Colombia, had for extreme limits the Golfito River on the Pacific and Cape Gracias a Dios on the Atlantic—holding that Costa Rica's sovereignty thereover, that is, over all of her national domain, was in suspense whilst the demarcation remained undetermined.

The controversy was brought to an end by the note of Señor Fernández Guardia, dated the 22d of September, 1909 (Doc. No. 467), in which he recalled attention to the note of February 16 of the same year, from the United States Government, defining the *status quo*, and also quoted from the decision of the Supreme Court of the United States in the case of the United Fruit Company *vs.* the American Banana Company (Doc. No. 441) as follows: "The fact, if it be one, that *de jure* the estate is in Panama does not matter in the least; *sovereignty is a pure fact. The fact has been recognized by the United States, and, by the implications of the bill, is assented to by Panama.*"

From the foregoing it is quite apparent that Colombia and Panama have never had *possession* or exercised *jurisdiction* beyond the right bank of the Sixaola, upstream, to the Yorquín, even under an interpretation of the *status quo* most favorable to them.

(5) ESTABLISHMENT OF THE SIXAOALA-YORQUÍN LINE BY THE POSSESSORY JURISDICTION HELD BY COSTA RICA IN TALAMANCA.

Costa Rica, as a Spanish Province, discovered, colonized and evangelized the region known as Talamanca, and with that region was eventually recognized as an independent state. She retained the region in its entirety as far as its boundary on the Culebras River (taking the pristine and true acceptance of that name—the Chiriquí or Calobébora), but has, by a succession of events that began in 1837, gradually lost a large part of it. In that year Colombia commenced her gradual expansion over Costa Rican territory making use of the equivoque relating to the *Culebras*, and of a jurisdictional *status quo* which was not well defined and which has never been sanctioned by Costa Rica as covering the Atlantic watershed to the east and on the right bank of the Yorquín River.

The inaccuracies, deficiencies and general vagueness of the Loubet Award placed Costa Rica in grave danger of losing the part of the Talamanca region which still remains to her and has been respected by that *status quo*. But she has confidence in the belief that since the Honorable Chief Justice has undertaken to decide the boundary question with full knowledge of the case, he will bear in mind, among other considerations, the fact that whilst Colombia and Panama have never performed a single act of possession or jurisdiction beyond the right bank of the Sixaola River down stream from the mouth of the Yorquín, or beyond any part of the right bank of the Yorquín throughout its entire course, Costa Rica always had and still has possession and jurisdiction not only on the left

bank of the Sixaola from its mouth to its source, but over all of the right bank of the Tarire from its source to the Yorquín and, following the course of the latter up stream, over all of the territory situated to the left of the Yorquín itself as far up as the Main Cordillera.

To-day this section of the ancient Province of Talamanca constitutes a canton, bearing the name of *Talamanca* which forms part of the Province of Limón. This canton, which has been organized for more than half a century, is administered by a political chief who maintains his residence at *Sipurio*, its capital, and forms an electoral district, the inhabitants of which participate in the election of members of the council of the Province of Limón, of deputies from that province to the national congress, and of the president of the republic.

The Canton of Talamanca comprises villages such as *Sipurio* and Indian hamlets located on the banks not only of the *Urén* but of the *Lari* and *Coén*, which lie to the south of the Tarire and to the west of the Yorquín, and which have always been under the Government of Costa Rica.

(6) LEGAL PRINCIPLES FAVORABLE TO POSSESSION AND APPLICABLE TO THE PRESENT CASE.

The importance in which possession is held by international law—and possession is conclusive when secular as has already been shown to be the case with Costa Rica—likewise maintains generally in the litigation of doubtful cases. This examination of the fact of possession will, therefore, be concluded by calling attention to the following principles of law enunciated in Title 170 of Book 50 of the Digest, which are applicable to the present case.

“Where cases are otherwise of equal strength, the party in possession is the stronger.” (*In pari causam possessor potior haberi debet.* No. 128.)

“Where the claims of two litigants are based on acquisition, the party showing priority of acquisition is preferred. (*Quo tiens utriusque cause lucri ratio vertitur, is praeferendus est, cuius in lucrum causa tempore praecedit.* No. 98).

“In a doubtful case, it is better to favor the party who seeks to retain what he holds than the party who seeks to acquire it.” (*In re obscura melius est favere repetitione, quam adventitio lucro.* No. 41.)

CHAPTER IX.

COSTA RICA IN THE FULL, UNRESTRICTED AND CONTINUOUS POSSESSION AND SOVEREIGNTY OVER THE CANTON OF TALAMANCA FROM THE DATE OF INDEPENDENCE TO THE PRESENT DAY.

- (1) ACCOUNT OF THE DISCOVERY, CONQUEST AND EVANGELIZATION OF TALAMANCA BETWEEN THE 16TH AND 19TH CENTURIES.
- (2) SUSPENSION OF THIS TASK DURING THE FIRST DECADES SUBSEQUENT TO THE DATE OF INDEPENDENCE.
- (3) EXPEDITIONS IN SEARCH OF GOLD MINES. MR. J. H. LYON.
- (4) TALAMANCA IS ANNEXED TO THE JURISDICTION OF PORT OF MOIN. VISITS BY THE COMMANDANTS FROM THAT PORT.
- (5) ORGANIC LAW OF THE CANTON OF TALAMANCA.
- (6) THE CACIQUES OF TALAMANCA CONVERTED INTO FAITHFUL SERVANTS OF THE STATE.
- (7) ENUMERATION OF ACTS OF VARIOUS STATE OFFICIALS IN THE EXERCISE OF THEIR AUTHORITY OVER TALAMANCA.

FROM 1821 TO 1913.

- (1) ACCOUNT OF THE DISCOVERY, CONQUEST AND EVANGELIZATION OF TALAMANCA BETWEEN THE 16TH AND 19TH CENTURIES.

As Annex I of this Argument there is given a brief historical account of the Talamanca region, from the end of the 16th Century to the beginning of the 19th,

which brings out very clearly the fact that this province was discovered, conquered and evangelized with the full authority and the approval of the Spanish Crown, under the immediate care and exclusively dependent upon the Royal Audiencia of Guatemala, by various *Alcaldes mayores*, several governors and captains-general, and an Adelantado, all of Costa Rica, and very materially assisted by the self-denying friars who, like the Venerable Padre Fray Antonio Margil, known as the Apostle of Guatemala, always collaborated in that task so costly in money and blood.

(2) SUSPENSION OF THIS TASK DURING THE FIRST DECADES SUBSEQUENT TO THE DATE OF INDEPENDENCE.

After the proclamation of the independence of Costa Rica, it was but natural that the organization of the new State should wholly absorb its attention and the available resources, so that the situation of the natives of Talamanca necessarily remained for several decades in the same unsatisfactory state in which it was left at the time of the extinction of the Spanish sovereignty.

(3) EXPEDITIONS IN SEARCH OF GOLD MINES. MR. J. H. LYON.

Under the formal permission that was granted by the superior Costa Rican authorities, during these decades, expeditions made up of residents of the country, and even of foreigners, penetrated into the territory of Talamanca in search of gold mines, as the erudite Doctor von Frantzius has related in one of his admirable works.¹ But in

¹“The Mines of Tisingal and of Estrella,” in León Fernández, *Documentos*, Vol. II, pp. 35-38.

1859 the Government of Costa Rica roused itself from its dormant condition and made effective provision for the political administration of that to a certain degree neglected territory—a task that was greatly facilitated by the fact that an American citizen and ex-officer of his country's navy, Mr. John H. Lyon, had located among the aborigines for the purpose of trade. He lived there for more than thirty years, was treated by the natives with respect and affection, and became a great help to the government of the republic, of which he was the loyal and zealous agent for the work of civilization. The valuable services of Mr. Lyon were duly remunerated and there was conferred upon him, as a further reward, the rank of colonel in the militia of the republic (Doc. No. 548).

(4) TALAMANCA IS ANNEXED TO THE JURISDICTION OF PORT OF MOÍN. VISITS OF THE COMMANDANTS FROM THAT PORT.

By the Circular of March 10, 1859 (Doc. No. 314), it was ordered that there should be annexed to the jurisdiction of the Port of Moín, on the Atlantic Coast, the whole of the territory embraced between "*El Tortuguero*" on the north and "*Bocas del Toro*" on the south; and the military commandant of the port named was authorized to appoint and remove military and police judges in the settled localities, as well as to expel any evil-doers or any who were likely to wrong the natives.

Under that authorization the Governor Commandant, Señor F. J. Alvarado, visited the Canton of Talamanca in 1861 (Doc. No. 526), and traversing the greater part of it, by friendly measures, brought the caciques or native tribal chiefs under subjection. He instituted the office

of military *alcalde* and appointed Señor Iglesias to discharge its duties; whereupon the evil-doers who had infested the district fled therefrom and left the authority and the laws of the republic in full force and effect in that region (Doc. No. 526).

At the beginning of 1862 (Doc. No. 527), in order to complete the work of Commandant Alvarado, the Government of Costa Rica appointed Captain Don José Antonio Angulo as the Military and Civil Superior Chief of the Atlantic Coast, who was located for some time at Talamanca at the head of a substantial garrison, so that the territorial dominion of the State should be thoroughly established and consolidated—an object that was fully accomplished, as will be shown by the report of Captain Angulo (Doc. No. 529).

(5) ORGANIC LAW OF THE CANTON OF TALAMANCA.

In 1867 the Congress of the Republic passed a decree (Doc. No. 530) by which the executive power was authorized to appoint as political chiefs (*Jefes Políticos*) subordinate to the Governor of the Province of Cartago, such of the caciques of Talamanca as might be deemed desirable; these were to be compensated for their services out of the public treasury, with salaries in that law determined upon. The executive was also empowered to name one capable and well deserving person, under the title of "Director of the Reductions of Talamanca," who was to counsel and assist the caciques in the administration of those settlements, to propose measures most desirable for their civilization and to make such reports as might be asked for by the supreme government or by the Governor of Cartago; the allowance for such director was also fixed.

By this decree, which was called the "Organic Law of Talamanca," all the civil, military, police and penal regulations, as well as those relating to legal proceedings and of a religious or special character, were made that were required by the condition of those inchoate settlements; and, as it was very natural should have been the case, Mr. Lyon was named as the "Director of the Tribes," a position which, sometimes under that name and sometimes under that of "Political Chief," and again as secretary of the *jefatura* (office of the political chief) or as military commandant, he discharged to the entire satisfaction of his superiors until his death. Document No. 548 contains a brief autobiography of this civilizer of Talamanca, whose memory will always be cherished.

(6) THE CACIQUES OF TALAMANCA CONVERTED INTO FAITHFUL SERVANTS OF THE STATE.

Dr. William M. Gabb, in his two valuable papers entitled, "Exploration of Talamanca" (Doc No. 582), and "The Indian Tribes and Languages of Talamanca"¹ (Doc. No. 583), which are elsewhere referred to in this Argument, vividly narrates the interesting transformation by which the Caciques of Talamanca—called "Kings" who were at one time the lords over the lives and property of their subjects, while preserving the appearance of the inherited

authority they had received from their ancestors, in reality lost their power and became entirely subject to the authority and laws of the republic. This work was

tains engaged in the scientific explorations entrusted to him by the Government of Costa Rica.

The domination of the Costa Rican Government, therefore, was from that time, and is to-day, as effective and complete in Talamanca as it ever was in the interior of the republic. This is positively stated by Dr. Gabb in his writings, and is shown by the numerous documents briefly referred to below, the detailed examination of which would be as inopportune as it would be tiresome.

(7) ENUMERATION OF ACTS OF VARIOUS STATE OFFICIALS
IN THE EXERCISE OF THEIR AUTHORITY OVER
TALAMANCA.

Official visits were made to the territory of Talamanca by Commandant Alvarado, by Commandant Angulo and by the Governors of the Province of Limón, for various purposes connected with their duties, as may be seen in Documents Nos. 526 and 561.¹

Table No. 4 contains a list of the persons who served in the office of Political Chief (*Jefatura Política*) of Talamanca, under appointment by the Government of Costa Rica, with a reference to the paper in which the respective appointment appears, and its date.

Some of the reports—many of them full of details of all kinds—made by the Governors of the Province of Limón, by the Political Chiefs and the Commandants of the Canton of Talamanca, by inspectors under special commissions, and by other officials, may be consulted by reference to the documents annexed to this Argument.² The report of Captain Angulo, of Señor

¹ Documents Annexed to the Argument of Costa Rica, Vol. 3, pp. 133, 294, 295, 306, 307, 316, and 352.

² Docs. No. 539, 540, 542, 543, 547, 549, 550, 552-556, 568, 569 and Vol. 3, pp. 330-333, 337, 351-358, 361, 370, 372, 378, 394, 395, 407, 410.

Corrales, of Padre Blessing and of Señor Calvo, are of special interest, the first named as being one of the oldest documents after independence. In this document (Doc. No. 529) the author recorded a great many details concerning the topography of the region, the number and the location of the Indian tribes, their industries and the condition of their agriculture, their habits and customs, a list of foreigners, and other information no less useful. The report of Señor Corrales (Doc. No. 557) was invaluable for the topographical data it contained as to the territory situated to the left of the Sixaola River, which had been investigated by him in order to ascertain whether or not it was possible to build a road overland between the Sixaola River near Suretca and Cahuita; it was also important for the information it contained regarding navigation of the said river and concerning many other points of no less moment. The report of the Padre Blessing (Doc. No. 558) was interesting on account of the facts he had gathered concerning the topography of the Upper Telire, which had not before been reconnoitred by any man of science or letters; nor has it been since. And the report of Señor Calvo (Doc. No. 551) was

Visitations that were made between 1881 and 1892 by the wise and valiant pastor of the flock in Costa Rica, the Illustrious and Most Reverend Dr. Don Bernardo Augusto Thiel, of beloved memory. A detailed account of these canonical visits will be found in the Documents Nos. 534 and 541; and they are important not only for the pious purpose especially sought by the self-denying pastor, but in the field of the many sciences which he cultivated at the same time with laudable zeal. Many of the most valuable historical facts gathered by Doctor Thiel in that region were afterwards made use of by him in his celebrated work entitled, "Monograph on the Population of the Republic of Costa Rica in the 19th Century," in which the census of Costa Rica appears for the years 1522, 1569, 1611, 1700, 1720, 1741, 1751, 1778 and 1801, taking into account the indigenous population of Talamanca as a dependency of Costa Rica.¹

There is filed herewith (Doc. No. 564), a list of the Catholic clergymen who, since 1881, by appointment from the *Costa Rican Ecclesiastical Curia*, held and exercised the post of pastor of the flocks in Talamanca, for whom the state, under the organic law of 1867, appropriated a suitable compensation in the national budget.

Repeatedly, for different reasons connected with the welfare of the residents of Talamanca, the Government of Costa Rica has deemed it necessary to send military expeditions into that region, and no obstacle was ever placed in the way of the satisfactory discharge of their mission. Beside those entrusted to Commandants Alvarado and Angulo, to which reference has been made, there may be

¹*Revista de Costa Rica en el Siglo XIX* (Review of Costa Rica in the Nineteenth Century) Vol. 1, pp. 6, 7, 8, 13, 16, 17, 19, 21, 23, 26, and 49.

noted: (1), the expedition of 1884, headed by General Don Federico Fernández (Docs. Nos. 538 and 545), as to which a report was made (Doc. No. 546); and (2), the one commanded by General Don Rafael Villegas in 1888 (Vol. 3, Doc. No. 561, pp. 287 and 288).

It was also needful to send out parties of a medical character, to combat various epidemics. This will be noted in the resolutions found in Vol. 3 of Documents, pp. 185, 186, 367, 368, 369, 370, 372, 382, 414.

In 1881 some Costa Ricans of the highest social position were confined to the district of Talamanca as political offenders, and the same thing occurred in 1884, as set forth in the government resolutions inserted in Doc. No. 538, Vol. 3, pp. 182 and 184.

Numerous resolutions affecting the postal service were issued and are to be found in the volume cited, at pp. 289, 297, 298, 302, 303, 304, 305, 306, 320, 322, 323, 327, 360, 372, 412.

Between Limón and Talamanca a service for freight and passengers was established, by means of a small national steamer, as appears by the resolution in Doc. No. 533, Vol. 3, p. 167.

With regard to the execution of the concessions granted by the state to railway corporations (Vol. 3, Doc. No. 533, p. 166), all the public lands situated to the left of the Telire River were declared inalienable. This declaration was subsequently revoked and, as a consequence, a considerable quantity of such lands on both sides of said river were appropriated by private individuals, as shown by Doc. No. 566.

Numerous resolutions for the opening, maintenance and repair of roads were passed at the instance of the local political authorities, for which work considerable sums of

money were expended from the national treasury, and to this end the labor of a part of the natives also contributed. The documents referring to this will be found in Vol. 3 at pp. 331, 332, 333, 337, 372, 375, 406, 407, 409.

The establishment of schools for primary instruction was also encouraged, the account of which service is set out in Doc. No. 563. A scholarship for Talamanca was founded in the Lyceum of Costa Rica located at the capital, and it was awarded on one occasion to a native youth by the name of Guillermo Gabb Lyon.

The administration of justice in Talamanca was under complete control, and provision was made for subjecting the higher local authorities to criminal proceedings in case of abuses committed in the discharge of their functions (Doc. No. 533, pp. 188, 189, 190; Doc. No. 544; Doc. No. 562, pp. 381, 415-416).

As occasion required the police force was frequently changed for the military, and *vice versa* (Docs. Nos. 538, 561).

To prevent exportations from the district without payment of the regular customs duty levied on rubber, the resolutions found in Docs. No. 533 (p. 164) and No. 561 (pp. 284, 285) were enacted. Exemption was granted from payment of customs duties in aid of religious purposes for that region, as per resolution in Doc. No. 561 (pp. 286, 287). As to contraband trade, especially in rubber exports, details will be found in Doc. 562, pp. 355, 372 and 373.

As to the regulations adopted for the sale of liquors, see Doc. No. 533, pp. 165-169.

A branch of the custom house at Limón was established later at a place called "Guabito," on the left bank of the Sixaola. (See resolution in Doc No. 561, p. 328).

The fines imposed by local authorities for offenses against police regulations were always administered by the municipal treasury of the city of Limón and invested for the benefit and improvement of the district from which they were derived. This will be seen by Doc. No 562, at pp. 389, 391, 393, 401 and 402.

In the elections held for higher officials, such as the president of the republic and deputies to congress, and also for the provincial officers, such as members of council or district syndics, Talamanca took part in conformity to law. This is shown by Doc. No. 562 at pp. 349, 350, 366, 384, 385, 391, 402, and by Doc. No. 565.

It would be tedious to continue the narration of the administrative measures taken by the supreme authorities of Costa Rica in the territory referred to, under the protection of the flag of the republic, and governed by its laws in the same way as every other portion of the national domain. Nor is it necessary to recapitulate here the facts presented in the present chapter, which show in the most conclusive way that could be wished the entire, full, public, unquestioned and indisputable exercise of the sovereignty of the Republic of Costa Rica over Talamanca, both prior and subsequent to the date of the arbitration conventions of 1880, 1886 and 1896.

CHAPTER X.

FINAL CONSIDERATIONS.

I. CONSIDERATIONS RESPECTING THE DEFECTS OF THE LOUBET AWARD WHICH SHOULD MAKE IT INVALID.

II. CONSIDERATIONS RESPECTING THE CONDITIONS WHICH SHOULD BE FULFILLED BY THE DIVISIONAL LINE AND THE CHARACTERISTICS OF THE LINES ACTUALLY ASKED FOR.

- (1) CONDITIONS REQUIRED FOR THE DIVISIONAL LINE, ACCORDING TO THE INTENT OF PRESIDENT LOUBET.
- (2) THE LINE OF THE PUNTA MONA SPUR FAILS TO MEET SUCH CONDITIONS, ESPECIALLY THAT WHICH REQUIRES IT TO BE A NATURAL LINE; CAUSES OF CONTRADICTIONS IN THE AWARD.
- (3) THE LINE OF THE TILORIO OR CHANGUINOLA UNITES ALL THE CONDITIONS REQUIRED; EQUITY.
- (4) THE SIXAOLA-YORQUIN LINE AS THE MAXIMUM ASPIRATION OF COLOMBIA AND ITS CONFORMITY WITH THE STATUS QUO.
- (5) THE DIVISIONAL POINT ON THE ATLANTIC.

I. CONSIDERATIONS RESPECTING THE DEFECTS OF THE LOUBET AWARD WHICH SHOULD MAKE IT INVALID.

The present Argument will be brought to a close by some final considerations deduced from what has been stated regarding the two following points: first, the defects of the Loubet Award which would invalidate it; and second, the conditions to which the divisional line ought to conform and the characteristics of the lines actually asked for. A mere outline will be given so as not to repeat what has been fully set forth in the corresponding chapters; and these can be readily found by reference to the respective headings, which taken together, constitute a summary of the Argument.

The result of the latter is that the Award of President Loubet was defective on account of: (1) *ultra-petita* and inconsistencies in the decision; (2) errors and deficiencies therein and (3) inequality of treatment in the proceedings prior thereto.

Although the first two defects have been repeatedly discussed the second must be dwelt on at some further length. The third has been referred to merely, and then only in explaining the history of the arbitration; it must be taken up now because of its importance in connection with a full understanding of the Award.

The acceptance of the arbitration by the President of the French Republic took place on June 16, 1897. With that date began the term agreed on during which the respective demands and answers of the parties were to be submitted. On September 16, 1899, the discussion *was closed*, under the provisions fixed in the arbitral compact. Notwithstanding this, however, on April 19, 1900, M. Poincaré, the counsel for Colombia, signed his Second

Memorandum—the third on behalf of Colombia—to which the decision makes reference. In addition to this, there was an opinion dated March 25, 1900, by the learned Spanish lawyer, Señor Don Antonio Maura, a Deputy in the Spanish Cortes, former Minister of the Colonies, and President of the Royal Academy of jurisprudence at Madrid, which opinion *was cited in the decision*. Another opinion was presented, which was written by Don Federico de Castro, Dr. Don Antonio Mejías and Dr. Don Francisco Pagés and approved by the illustrious College of Advocates of Seville, as appears by the certificate attached by the Dean of the College, Don Nicolás Gómez de Orozco, on April 13, 1900; this one, however, was not cited in the Award.

Apart from these, there was submitted on behalf of Colombia a *Fourth Memorandum*, dated July 20, 1900, and signed by Monsieur Poincaré; this bore the title of a "*Résumé des Conclusions de la Colombie*," and begins after the following fashion:

"Au moment de voir expirer les délais fixés pour la préparation de la sentence, nous croyons devoir résumer, en quelques mots, les conclusions de la Colombie."¹

A further volume, entitled *Résumé Chronologique des Titres Territoriaux de la République de Colombie* made its appearance; but the date of its submission, however, is unknown. It bore no signature, but from a reference made by Señor Silvela in his Memorandum at page 59, it appears to have been the work of the Minister of Colombia in Paris, Señor Betancourt. *The volume was cited in the*

¹At the moment when the delays allowed for the preparation of the decision are about to terminate we think that we should sum up, in a few words, the conclusions of Colombia.

decision and was in itself an extended argument in favor of Colombia. It contained a letter addressed to Señor Betancourt by Don Marcos Jiménez de la Espada in praise of the documentary showing made by Colombia in the litigation, the author claiming to be an expert in this field by virtue of investigations, made a long time before, as a member of the Royal commission appointed by the Spanish Government to examine this very question. It also included two certificates by Don Rafael Torres Campos—one concerning the *capitulación* of Diego Gutiérrez, and another relating to the *cédula* of July 18, 1560—and the opinion of Dr. Don Simón de la Rosa y López and his collaborators, which was *cited in the Award*.

This work entitled "Territorial Titles of Colombia," enumerated a great many documents, part of which were known to the Representative of Costa Rica, having been published by himself or his predecessor, Don León Fernández; on the other hand, however, it embraced documents *absolutely unknown* to the Representative of Costa Rica and which he had no opportunity to examine—not even after the rendition of the Award—inasmuch as they consisted of originals and copies that were withdrawn by the party who produced them. To these documents Señor Peralta referred on page 175 of his work, entitled: *La Géographie Historique et les Droits Territoriaux de la République de Costa Rica* when he said:

"* * * and the advocate of Colombia had no ground for questioning them (the veracity and the good faith of the Republic of Costa Rica), by the use of incorrect translations of mutilated documents, of which he placed before the eye of the reader no original or complete text, contenting himself with a reference to a documentary collection which, at the present moment (July 24, 1900), IS STILL A SECRET."

It has been stated elsewhere in this Argument that on July 24, 1900, in a note addressed by the Representative of Costa Rica to the Chairman of the Examining Commission, Ambassador Roustan, the former said (Doc. No. 410):

“I also take this occasion to observe to Your Excellency that *up to this date the Representative of Costa Rica has not received any communication, official or otherwise, of the printed volume of documents translated and annotated by Colombia, neither a list of those documents, nor the expert reports or documents ordered by the Republic of Colombia and consequently prejudiced.*”

A few weeks later the decision was rendered without paying the slightest attention to the respectful observation (really in its essence a severe criticism and protest) by the Representative of Costa Rica. The numerous geographical and historical mistakes in the Third and Fourth Memoranda of Colombia by Monsieur Poincaré; in the Opinions by Señor Maura and Señores Castro and de la Rosa, and colleagues; in the certificates given by Señor Torres Lanzas; in the letter by Señor Jiménez de la Espada; and, above all, in the enormous number of documents commented upon by Señor Betancourt, were left without correction and naturally had an important influence on the mind of the Arbitrator.

It therefore follows that the arbitral decision was defective because there was *no opportunity for answer or defense*; and not only was there a violation of the legal principle of equal opportunity for defense by both parties litigant, but it broke the rule established in Article 4 of the Arbitral Convention of 1896, to which the arbitration was subject. That rule being:

“The Arbitrator SHALL COMMUNICATE to the representative of each government the allegations of the opposite party, within three months after their presentation, IN ORDER THAT HE MAY REBUT THEM within the course of the six months following.”

It is evident that the case was closed when the respective replies were submitted; and, furthermore, that if memoranda, opinions, documents and other proofs were taken into consideration and cited in disregard of the rule referred to, it was not proper to proceed in that manner, to the advantage of one of the parties (the party producing the paper) and to the manifest detriment of the other, who was afforded no opportunity to examine nor to answer it.

Any one of the defects pointed out, whether of “*ultra petita*” or inconsistency in the decision, mistakes or deficiencies in the same, or lack of opportunity to make defense in the course of the proceedings, in violation of what was agreed upon for the arbitration, would be enough to invalidate the Award—still more so if there was a combination of these three classes of defects, as happened in this case.

The formula suggested by the Secretary of State, Mr. Knox, and accepted by both parties, set forth that the Honorable Chief Justice was to come to a decision “under the established principles of International Law.” And although the Convention of Washington in that same year substituted for that phrase the generic one of taking “into account all the facts, circumstances and considerations which may have a bearing upon the case,” there can be no doubt that the principles established by international law were embraced, not only by the general character of this latter expression, but also by the fact

that it was expressly declared by the representatives of both republics, at the time the treaty was formulated, that it was equivalent to the formula of Mr. Knox (Doc. No. 471).

The established principles of international law in regard to the nullity of awards, in cases where they are tainted with the defects that characterize President Loubet's Award, are so well known and conspicuous that time need not be taken to cite the legal doctrines laid down in such case.

II. CONSIDERATIONS RESPECTING THE CONDITIONS WHICH SHOULD BE FULFILLED BY THE DIVISIONAL LINE AND THE CHARACTERISTICS OF THE LINES ACTUALLY ASKED FOR.

(I) CONDITIONS REQUIRED FOR THE DIVISIONAL LINE, ACCORDING TO THE INTENT OF PRESIDENT LOUBET.

The obvious understanding of the frontier line, as intended by President Loubet, is that it ought to have followed, and must conform to, the following conditions:

- (1) It must not go outside the disputed territory;
- (2) It must be based upon the principle of the *colonial uti possidetis*;
- (3) It must be in accord with the historical antecedents;
- (4) It must be determined by the spirit of conciliation and good understanding shown by both of the parties;
- (5) It must be adapted as far as possible to the possessory and jurisdictional situation;
- (6) It must be clear, natural and without any incumbrance;
- (7) And, therefore, it must be just and convenient.

The first five of these conditions are derived from what has been shown at length in the discussion of the territory in dispute, and from the opinion and intent of President Loubet in the settlement of the questions agreed to before him, and the note by Minister Delcassé in answer to that of Señor Peralta.

The sixth condition is a result of what was expressly agreed upon for the arbitration and the purpose of President Loubet as revealed in his decision.

Article I of the Arbitral Convention of 1880, declared to be still in force by that of 1896 when it submitted the litigation to the decision of the President of the French Republic, provided for

“* * * the designation of a line which shall divide for all time and *with entire clearness* the territory of the former (Costa Rica) from the territory of the latter (Colombia), each one remaining in the full, quiet and peaceful dominion, so far as respects the same between themselves, of *all* the land which is left on its side of the aforesaid line, upon which there is not to remain any *charge* or special burden in favor of the other.”

For the frontier line to be clear and leave all the land of one party well differentiated from that of the other, and to prevent questions arising from an artificial division of a common ground, such a line must be a *natural one*; that is to say, it should follow directions indicated by natural characteristics, such as the courses of rivers and mountain ranges. It was in this way that Colombia and Costa Rica, in all the amicable arrangements which they undertook, always understood their frontier must be located; and so President Loubet understood it when he designated a natural boundary fixed by the supposed spur or cordillera from Punta

Mona and the range of the watershed between the Atlantic and Pacific, and it was just because he sought for a boundary that should be a natural one, and because the mountain line presented itself as clearer than that of the river in this case, that he committed the fundamental error of his decision.

President Loubet's intent that the frontier line should be *a natural one*, has been recognized by both of the parties to the litigation. Señor Peralta, in his note of September 29, 1900, to Minister Delcassé (Doc. No. 418), when he submitted to the Arbitrator the Costa Rica's interpretation of the Award, said that: "It responds perfectly to the desire to establish with certainty and stability a natural frontier." Colombia's diplomatic representative in Costa Rica, Señor Marroquín, in a communication addressed to the Minister of Foreign Relations of the latter republic on February 12, 1901 (Doc. No. 424), suggested to him that the execution of the decision could be proceeded with at once, without the need of prior arrangements, by reason of the fact that the demarcation indicated by the Arbitrator was a natural one, "* * * as it is formed by the summit of ranges and cordilleras." And in another communication of the 27th of the same month (Doc. No. 425), he announced that his government was about to take possession of the lands adjudicated (a proof that it had not held them theretofore), as the executory character of the Award offered no difficulties, "* * * especially when the frontier is marked by boundaries or natural objects, such as mountains, rivers or the like."

As a result of all this the sixth condition has been formulated to the effect that the frontier line ought to be clear, natural and without any incumbrance.

With regard to the seventh condition—providing that this line ought, therefore, to be just and convenient—it may be deduced from the fulfilment of all the preceding conditions, from the declaration made by President Loubet in the caption of the Award—that he had sought to rely upon “the principles of law”—and also from the statement made in the Washington Convention of 1910, by the representatives of both republics, that they were “* * * prompted by the desire to adjust in an adequate manner the differences on account of their boundary * * *.”

The seventh condition, moreover, is supported by the lofty considerations expressed in the preamble of the Pacheco-Guardia Treaty of 1905 (Doc. No. 431), in the following terms:

“The Governments of the Republics of Panama and Costa Rica * * * animated by the desire of binding and strengthening the fraternal relations that happily exist between the two, and considering that one of the most expeditious and efficacious means for securing the end desired is that of fixing in a definitive and solemn manner the frontiers that bound their respective territories, *consulting in doing this not only their reciprocal sentiments of friendship, but also the convenience of both countries*; that by virtue of the separation of the Isthmus, which took place November 3, 1903, *circumstances have profoundly changed*, since the period when the arbitral judgment was delivered hereinbefore mentioned, to those of to-day; that these circumstances *constrain* the two Republics to establish a *frontier line that shall better accord with their present and future interests*; that the cordial sentiments that animate the signatory Nations and the common desire that their development, prosperity and progress *may be continued without any hindrances*, rather with the support and collaboration of each, show the desirability of *consulting in the new tracing*

the desires, aspiration and needs of both countries; that being inspired by a criterion of conciliation and good understanding in order to establish the basis to which the tracing of the frontiers must be adjusted, the Republics of Costa Rica and Panama submit as is due to the revered opinion of the High Judge who tried the arbitral proceeding; by reason of all which the parties mentioned have resolved to celebrate the following treaty * * *."

(2) THE LINE OF THE PUNTA MONA SPUR FAILS TO MEET SUCH CONDITIONS, ESPECIALLY THAT WHICH REQUIRES IT TO BE A NATURAL LINE. CAUSES OF CONTRADICTION IN THE AWARD.

The physical impossibility of the line along the counterfort or mountain range from Punta Mona was easily demonstrated, for the very simple reason that no such counterfort or mountain range existed. But even supposing they had existed, it would still have been impossible to accept that divisional line, since it did not conform to any of the conditions above set forth, except that requiring it to be a natural boundary—provided such a counterfort has existed.

It was entirely outside of the disputed territory, being beyond the farthest limit claimed by Colombia; it was located at a very great distance from the line of the colonial *uti possidetis*, which Colombia acknowledged to Costa Rica in the Treaty of Bogotá, in 1825; it did not respond to any historical antecedent, either before or subsequent to independence; it was never cited thereafter in the negotiations to secure an amicable settlement, nor did it conform, in the slightest degree, to the possessory and jurisdictional situation. Moreover, it was obviously unjust, and seriously objectionable from the viewpoint of good international relations, to strip Costa Rica of her sovereignty over the

territory embraced within the angle fixed by the supposed counterfort, and the crest of the Main Cordillera, to the line of the *status quo*, and to change the nationality of the people who lived therein without any legal title or any act of possession to give an appearance of fairness to such spoliation.

The result, therefore, was a manifest contradiction between the conditions to which the divisional line should conform, (according to the intent of President Loubet) and that which it appears he indicated in his decision. Now, how shall this contradiction be explained?

It has been proved that the purpose of the decision was to establish as a divisional line the mythical *Culebras* River, the mouth of which Colombia has sought most tenaciously, ever since 1836, to maintain as the common boundary of the two contending republics; and that this boundary met several favorable considerations in the mind of the Arbitrator to wit:

(1) The tradition of the geographical charts of the second half of the 18th century, beginning with that of D'Anville, in 1746.

(2) The acceptance of a Doraces River as a boundary by the Treaty of 1856—a stream that for many Colombian writers, though rather equivocally, was synonymous with *Culebras*.

(3) The assertion by the Senate of Plenipotentiaries, in its Conclusions of July 13, 1880, that Colombia held *dominion* and *possession* over the territory that extended to the *Culebras* River.

(4) The possessory and jurisdictional *status quo* mutually recognized by the two countries as the basis of the Arbitration Treaty of 1880. It is probable that the Arbitrator took the *Culebras*, *Doraces* and *Sixaola* Rivers

to be a single stream, as the Colombian authorities maintained during the latter part of the discussion.

It is natural to suppose that as a guide for his action the Arbitrator must have consulted geographical maps of the frontier region and, more especially, the *official* charts submitted as proofs by one or other of the governments. Among those shown by the Colombian Government it was natural there should be found the *Carta Corográfica del Estado de Panama* (Chorographic Chart of the State of Panama), by Ponce de León and Paz (Bogotá, 1864); and also the *Atlas Geográfico e Histórico de la Republica de Colombia* (Geographical and Historical Atlas of the Republic of Colombia), by Señores Paz and Pérez (Paris, 1889.) These charts then had, and still have, an official character.

Not only in the first named, but also in those contained in the Atlas filed herewith, the frontier line between Costa Rica and Colombia appears to have its starting point on the Atlantic ocean, at the outlet of a river called "*Culebras or Doraces*," to the south of Punta Careta. This stream takes its rise on the heights of the Main Cordillera which divide the waters of the two oceans, and its course follows a direction approximately SOUTH-NORTH. The outlet of the river is found at $82^{\circ} 50'$ west of Greenwich and $9^{\circ} 41'$ north latitude.

As the river referred to forms the frontier between Panama and Costa Rica, according to the official map of Panama cited above, and conforms to the other maps mentioned, the Panamanian territory extended as far as the right bank of the stream indicated; but the left bank, from the source of the river to its outlet into the

sea, with all its tributaries on that side, appears upon said map in blank, with a legend in very distinct letters reading: "LIMITE CON COSTA RICA" (Boundary with Costa Rica).

The place where this Culebras River has its origin is one of the summits of the Main Cordillera, according to the official map of Panama, and is distinguished as follows:

9° 06' North Latitude and 82° 58' 30'' Longitude West of Greenwich. This place is situated at 4' 30'' northwest of Cerro Pando.

It will, therefore, be seen that the geographical meridian of the sources and that of the outlet of the Culebras River, are not very far apart, inasmuch as the river runs, in a general way, from south to north—or nearly so.

On the Pacific slope the Arbitrator was led by cogent reasons to select, as the extremity of the frontier Punta Burica, which connected with the rest of the frontier, not by an air line, but by the divisions of the waters flowing into the Chiriquí Viejo from those that flow into the Gulf of Dulce. If it had been an air line, the crest of the Main Cordillera would have been a straight line with a direction almost *north-south*; and the natural line selected—that of the division of the waters—varies but little from that course, if it be taken into account that the farthest branch of the Chiriquí Viejo rises in the Pacific watershed of the very summit on the Atlantic slope of which the Culebras River takes its rise, as it is represented upon the official map so frequently mentioned.

Adopting, then, as the extremities of the general frontier line on the Atlantic and the Pacific, respectively, the outlet of the Culebras River and Punta de Burica, the result would be a general course for the frontier of nearly *north-south*, a direction which was given to it from the most

remote times in the colony—when for instance, the Dukedom of Veragua was assigned as its boundary *upon the west* a geographical meridian and when, on the creation of the Royal Audiencias of Guatemala and Tierra Firme, there was fixed for the territory of the former, as its eastern boundary, that of the Audiencia of Tierra Firme; and to that of the latter there was given for its *western boundary* the territory of the Audiencia of Guatemala.

It is clear that the line of separation of the two territories which were reciprocally bounded upon the *east* and *west* had to run from *north* to *south*.

With these antecedents fully confirmed by the maps that have been cited from the Geographical and Historical Atlas of the Republic of Colombia, it was perfectly natural and easy of explanation that the Arbitrator, intent on doing justice, and without going in the least beyond the territory submitted to his jurisdiction, should take as a guide in fixing the frontier between Costa Rica and Colombia, in the Atlantic portion, the stream indicated on the official Colombian maps as the territorial limit of the portion over which Colombia seemed to be exercising *dominion* and *possession* and on the Pacific side, the line separating the waters of the Chiriquí Viejo from those of the Gulf of Dulce, and between the two watersheds the division of their respective waters.

With what seems to be a slight difference, which will be considered directly, it was in this way that the Arbitrator made up his Award; he thought to satisfy the aspirations of Colombia upon the Atlantic without at the same time disregarding the possession of Costa Rica, and the just territorial rights of Costa Rica on the Pacific without detriment to Colombia in that region.

But here two serious and unforeseen difficulties present themselves:

(1) The first arises out of the fact that the decision did not take as a guide or the frontier line on the Atlantic slope (as it was intended) the channel of the Culebras or Dorados River, which, on the Chorographic Map of the Republic of Panama, separated the territories of Panama and Costa Rica, but, instead of such channel adopted as the basis for the frontier an imaginary counterfort closing the valley of the river on its left side; this counterfort unquestionably would have belonged to Costa Rica in the character of undisputed territory had it existed, and would have been consequently excluded from the jurisdictional power of the judge—but surveys subsequent to the decision have shown that its supposed existence was not in accord with the truth. So that, to show that the judgment was defective because it went *beyond the power granted*, no other proof is needed further than the chorographic map mentioned, on which existence of this defect is clearly demonstrated.

(2) The other very serious difficulty arises from the inaccuracy of the official chorographic map of the State of Panama, by Señores Ponce de León and Paz, as well as all the other official maps included in the Geographical and Historical Atlas by Señores Paz and Pérez. All of them attribute to the Culebras or Dorados River a *south-north* course, as already explained. But the Arbitrator did not designate the frontier river by giving it the name of *Culebras* or *Dorados*—a name unanimously bestowed upon the river separating the territories and jurisdictions of Costa Rica and Colombia, by the Colombian geographers—particularly Codazzi, Mosquera and Pérez—by the Colombian cartographers, Ponce de León and Paz, by the Senate of Plenipotentiaries of Colombia, by the Colombian Minister of Foreign Affairs, Señor Rico,

in the instructions given to Señor Holguín for the Treaty of 1880, by the President of Colombia, Doctor Núñez, in his historic manifesto, and, finally, by a multitude of official documents of that republic, prior and subsequent to the said treaty. The Arbitrator did give that river the most modern of its synonyms (according to the Colombian nomenclature) of *Sixaola* or *Tarive*. This latter river, for the greater part of its course—or at least from the junction with the Yorquín going upstream—never has received the name of *Doraces* or *Culebras*, and as a matter of fact has a course absolutely distinct from the Culebras River, since it runs from *west* to *east* and has its sources in the Main Cordillera, within territory exclusively Costa Rican, to the east of the Peak of Chirripó Grande and about fifty-nine minutes to the westward of its outlet, which as before stated was the point of departure for the frontier on the official maps of Panama with a direction north-south.

Now, the result of all this is that while the intention of the Award was to lay down a *north-south* frontier, its wording really designates an *east-west* frontier, exactly at right angles to the direction intended, thereby invading territories obviously excluded from the contest. Diagram L will explain better than any words the very great mistake incurred by reason of the imperfection of the maps relied upon by the Arbitrator as guides for his decision. All of the area included within the quadrant of the rectangle which, having its apex at the mouth of the *Culebras* River, is formed by (a) the line that represents the course of that river in conformity with the official Colombian maps, and (b) the line that represents the real course of the *Tarive* River on the ground, was and is the exclusive property of Costa Rica, and never was submitted to the hazard of litigation. And yet, in order to take in the entire region

west of the vast basin of the Tarire River, it is now sought by the Panamanian interpretation of the Award to wrest from Costa Rica not only all of the area embraced within the quadrant mentioned, but the adjacent drainage area upon the north of the Tarire River.

When, after the Award was pronounced, the Arbitrator had an opportunity to recognize the enormous mistake committed, he thought it best not to indicate on a map the course the frontier line ought to pursue; for if official maps, prepared by commissions of celebrated chorographers had led him into this momentous error, it was but natural he should have still less confidence in maps that were not official and much more modest in appearance. He contented himself with being the first to proclaim that it had never in any way entered his mind to concede to Colombia land not embraced within the dispute, and the first to call upon the parties to get together in an equitable arrangement that would rectify the injustice of the decision.

In concluding, with respect to the identification between the *Culebras* and *Tarire*, or *Sixaola* Rivers, attention is called to Doc. No. 639, as evidence that the synonymous appellation of the rivers mentioned is absolutely erroneous. If the table contained therein is analyzed it will show that to the *Tarire*, or *Sixaola* River of the present day, the mapmakers of the 17th and 18th centuries almost invariably gave the name of "*Rio de los Talamancas*;" and even in the 19th century, at the middle and toward its close, the same denomination appears to have been used, the total number of the maps upon which it appears numbering twenty. In eight of the maps mentioned in this table—six of them belonging to the 19th and two to the present century—the river referred to received the

name of *Sixola*, *Sicsaula* or *Sixaola*. It was called *Telire* or *Sixaola*, on seven maps bearing dates near the close of the 19th century, and *Rio Sics* (the root of *Sixola*) on five maps of the middle of the same century. It was given the name of *Telire*, *Tarire*, or *Sixola* upon three maps of the beginning of the present century and the name of *Bananos* on two maps of the beginning and middle of the 19th century. It was also called *Tiribi* or *Tiribee* on four maps dated at the middle of the last century; and, lastly, the river was called *Tiriri*, *Estrella*, *Telire* and *Tarire*, in charts dated in 1620, 1775, 1886 and 1911, respectively. All of which shows that the designations of the "*Rio de los Talamancas*" derivated from the name that Don Diego de Sojo gave to the city of *Santiago de Talamanca*, founded by him on one of the margins of said river in the year 1605—and the denominations of *Telire*, *Tiribi*, *Tarire* and *Tiriri*, as well as *Sics*, *Sixola* and *Sixaola* were synonymous—the most remarkable fact of all being that the river aforesaid does not appear on any map of non-Colombian origin under the name of *Culebras*, which the exigencies of this case have led the Colombian authorities to officially attach to the *Tarire* or *Sixola*.

(3) THE LINE OF THE TILORIO OR CHANGUINOLA UNITES ALL THE CONDITIONS REQUIRED; EQUITY.

The Changuinola line is embraced within the disputed territory. If this river is not the true *Culebras* or *Chiriquí* of the colonial *uti possidetis*, it was nevertheless called the *Culebras* River, although mistakenly, by D'Anville in the 18th century, and by his copyists down to the beginning of the 19th century; so that this must be understood as the one to which the usurpatory neo-Granadian Decree

of 1836 referred, when the latter extended the boundary of the territory of Bocas del Toro northward to its outlet.

The history of the nomenclature of the *Changuinola* River of the present day, starting from the 16th century, is summed up in a table contained in Doc. No. 637. This table shows that this river was given the name of "*Estrella*" by its discoverer, Juan Vázquez de Coronado; and that this was the name exclusively employed from 1564 down to 1676. The *Ingeniero Visitador* (inspecting engineer), Díez Navarro, gave it that name in an official report in 1771 (Doc. No. 240). In four geographical maps of 1715 and 1733, the river was designated by the name of "Quemados;" but in 1746 the celebrated geographer D'Anville gave to it by mistake the name of "*Culebras*," and it happened that this appellation was followed in new maps subsequently published, down to 1816. From that time forward no one undertook to apply the name of "*Culebras*" to the ancient *Estrella* (the present *Changuinola*), which was sometimes called the *Tiribi* and *Tilorio*, or *Tararia*, or *Dorados*; the related names of "*Chánguene*," or "*Changuinola*" finally prevailing. Between 1816, the date of the last map that applied to it the name of "*Culebras*," and 1836, the date of the decree issued for the occupation of Bocas del Toro, the table shows only the name of "*Tiribi*" (*Tiribee*), a very suitable one, since the tribe of Indians which lived upon its banks were thus known. The designations of "*Chánguene*" and "*Changuinola*," derived from the Indian tribes which inhabited the region covered by the principal tributary on the right bank of the river, were subsequent to 1836. From all of which it appears that the *Culebras* River of the 1836 Decree is the very same *Culebras* of D'Anville and his imitators.

The fact that the name of Culebras fell into disuse immediately thereafter and was replaced by the appellations "*Chánguene*" and "*Changuinola*" (which at times alternated with the names of "*Tilorio*" and "*Tararia*" and even "*Dorados*"), facilitated the application of the forgotten name to that other river, situated to the westward, WHICH NEVER ONCE BEFORE 1836 HAD BEEN CALLED BY THE NAME OF "CULEBRAS, RIVER;" that is the *Sixaola*, or *Tarire* River, which until that year was generally designated by the name that fits it best and which fixes its identity with perfect precision—that of the "*Río de los TALAMANCAS*."

It is, therefore, entirely proper to go back and see what was the status of things in 1836, so that the neo-Granadian decree for the occupation of the territory of Bocas del Toro may be confined within the limits that were then fixed for it.

With the *Culebras* River, as then understood, to wit, the *Changuinola* of the present day, or the *Estrella* of the earliest colonial period, the territorial aspirations of Colombia were satisfied, their primary object having been directed to legitimizing the occupation of the very rich region of Bocas del Toro; all else was held to be but secondary, according to the declarations made by that distinguished statesman, Señor Fernández Madrid.

In 1870 there was some jurisdictional conflict concerning possession of lands comprised between the *Sixaola* and the *Changuinola*. Costa Rica took a firm stand in defence of the *Punta Burica-Escudo de Veragua* line; and succeeded in putting aside the question as to possession in order to take up the entire question of dominion, through the medium of a definitive boundary treaty which was signed in 1873, and by which the divisional line was located considerably to the east of the

Culebras River of 1836 (the Changuinola of the present day).

In 1880 there were also some jurisdictional difficulties; but these were confined exclusively to the Pacific slope, the state of things upon the Atlantic side remaining as before. Between 1870 and 1880 Costa Rica exercised fully all of her rights of sovereignty over the lands embraced between the right bank of the Sixaola and the left bank of the Changuinola, as unimpeachable documents attest, more especially the geographical, topographical and geological report of the learned American, Professor William M. Gabb (Doc. No. 582) and his extensive ethnological investigation of the three tribes of Talamanca, presented to the Philosophical Society of Philadelphia (Doc. No. 583), and his report to the President of Costa Rica (Doc. No. 581), all of these documents showing in clear, precise and unquestionable terms the peaceable and effective possession by Costa Rica over the entire territory of Talamanca embraced between the two rivers mentioned, the sea and the Main Cordillera.

The Changuinola line accords with the historical antecedents of the present boundary question, since the latter grew out of the forcible occupation of Bocas del Toro in 1836, which canton received this river as a boundary under the name of *Culebras*; out of the neo-Granadian aspirations of 1835, which were satisfied with the Changuinola, so as to be able to legalize such occupation; and out of the jurisdictional conflicts of 1870 and 1871 over the little hamlet of Changuinola, solved by the Treaty of 1873 (Montúfar-Correoso) which located the boundary line at the Bananos River emptying into the Bay of Almirante, to the east of the Changuinola.

Nevertheless, the Changuinola (previously the Culebras) line did not result from the history of the treaties, for out of the five that were signed, four located it to the east of that river; but it may be presumed that there was a mutual consent with respect thereto, under the name of Doraces, when the Treaty of 1856 was signed (before the neo-Granadian Senate, in 1857, sought to push it further westward), if it be understood that Costa Rica was referring, as she did refer, to the *Changuinola* River—and still more definitely to the *Chánguene* River which is a tributary of the latter and the western frontier of the country of the Chánguene Indians.

While not the same, the Changuinola line came close enough to the jurisdictional *status quo* to also admit of the application of the names of "*Culebras*" and "*Doraces*," to that river—names inapplicable to the Sixaola.

The Changuinola line is a natural one; it is also the clearest and most convenient, inasmuch as it connects by a single course, in almost a straight line, the border point on the Atlantic with *Cerro Pando*, and it is supported by a cartographical tradition worthy of respect, in view of the fact that such frontier cannot be established by formal titles exhibited on behalf of Colombia, since she declares that she is not possessed of such titles but relies on considerations of another nature to supply the deficiency.

As a proof of the truth of this a brief summary will now be given of the maps which trace the *Estrella*, or *Culebras*, or *Changuinola* River—all one and the same—as the common boundary of the adjacent territories of Costa Rica and Colombia.

Among the documents which, according to the Award of September 11, 1900, the Arbitrator had before him in pre-

paring his decision, there were, it says, “* * * numerous geographical charts * * * sent to Us by the Representative of Colombia, specially accredited to Us for the present litigation;” these were geographical maps of which no copy was given to the Representative of Costa Rica, nor was any list of them prepared or delivered that could be used as a guide for their consultation elsewhere.

It must be presumed that in such a collection there were to be found the official maps of Colombia, the map known under the title of *Carta Corográfica del Estado de Panamá*, by Señores Ponce de León and Paz (Bogotá, 1864), and the Atlas of the Republic of Colombia, by Señores Codazzi, Paz and Pérez (Paris 1889). It must also be supposed that in the collection mentioned in the Award there were the maps cited by Don Pedro Fernández Madrid in his reports of 1852 and 1855, those referred to by Don Victoriano de D. Paredes, Chargé d’Affaires of New Granada in Washington, in his work entitled, *La cuestión de límites con Costa Rica* (published by him in the year 1855), those noted by General Correoso, Minister of Colombia in Costa Rica, in his “Memorandum” of 1873 (Doc. No. 335) and by Don Francisco de Paula Borda in his basic investigation of the same question (printed, but not published, in Bogotá between 1896 and 1898).

Inasmuch as Colombia cited the maps referred to in support of her case—stating in various passages in the writings published in defense of its claims that those maps fully showed the justice of those claims—an effort has been made to examine them with some care and from such investigation the following results have been obtained;

1. It has been demonstrated that the *Culebras* is the first river that flows and empties into the Atlantic Ocean

at the left and a short distance from the Bay of Almirante; this cannot be confused with the *Río de los Talamancas*, which is sometimes called the *Bananos* River, but has been known latterly under the names of the *Sixaola*, *Telire*, or *Tarire* River, which, in most of the maps invoked by Colombia, occupies the third place to the west of the Bay of Almirante.

The *Culebras* River is set down in the above location in the following maps, which have been found among those cited by Columbia:

(a) *Tomás López and Juande la Cruz* (Map IX). Immediately to the northwest of the Bay of Almirante, this map traces two insignificant streams without names, and then one of a much greater size, to which is given the name of "CULEBRAS." Then it shows the *Bocaces* River and, lastly, the *Río de los Talamancas*. Between the *Bocaces* and the *Talamancas* River appears the name of "Carthago." This map does not mark a divisional line; but it clearly shows the difference existing between the first and the third river cited; that is to say, between the *Culebras* and the *Talamancas*. The latter being evidently the *Sixaola*, the "*Culebras*" must be the *Changuinola*.

(b) *Thomas Jefferys* (Map XIV). The *Culebras* River according to this author, disembogues to the west of *Punta Chica* or "Monkey Point" (*Punta Terri*), a short distance from the Bay of Almirante. It corresponds as to situation with the *Changuinola* River of the present day. After the *Culebras* there appear, toward the northwest, the *Quemados*, *Doraces*, *de Dios* and *Bananos* Rivers. This map does not mark any frontier.

(c) *Juan López* (Map XI). The *Culebras* River occupies the first place immediately to the west of the Bay of Almirante; then come the *Quemados* and the *Doraces*. Consequently, the *Culebras* of Juan López is the *Changuinola*.

(d) *Robert de Vaugondy* (Map XII). The *Culebras* is situated as in the previous one, a long way to the south of the *Rio de los Talamancas* (Sixaola).

(e) *Barnett* (Map XXV). On this map the name of *Changuene* (*Changuinola*) is applied to the river situated immediately to the west of the Bocas del Drago; that is to say, the same river designated by the name of "*Culebras*", in the preceding maps.

2. While, however, some of the maps mentioned by Colombia carry the boundary line between Costa Rica and Veragua to a considerable distance from the Bay of Almirante, nevertheless with the exception of two, those maps had a biased origin, that is to say, a neo-Granadian or Colombian origin, and were subsequent not only to 1836, the date of the neo-Granadian occupation of the territory of Bocas del Toro, but subsequent moreover to the date of the first opinion by Señor Fernández Madrid. Such are the charts of the State of Panama by Señor Codazzi, 1854; of the same state by Señores Ponce de León and Paz, 1864; and those embraced in the Atlas of Colombia, 1889. Those maps, strictly speaking, have no authority and should be dismissed from the discussion so far as they favor the interests of the party who prepared or directed their preparation as was found to be convenient.

This conclusion is all the more certain, if the maps of neo-Granadian origin prior to those dates are examined, such as those of Señores Acosta (Map XXVIII) and Restrepo (Map XXII). The former is silent in respect to the frontier line, while the second shows the line as starting immediately to the west of the Bay of Boca Toro, or from a point located on the right of the outlet of the Changuinola River.

3. The division line appears on the maps examined to be traced in the following manner.

On the Vaugondy map it was the *Culebras* which served as the frontier.

On that of Juan López the frontier runs from *Punta Careta* to *Punta Burica*.

On the Kitchin map (Map XIII) it runs from the River *Culebras* (*Changuinola*) to the Cape of *Boruca*.

On the *Carta Esférica del Mar de las Antillas y de la Tierra Firme* (Spherical Chart of the Sea of the Antilles and the Main Land [Map XVII]) it starts from *Punta Careta* and ends at *Punta Burica*.

On the map by H. Brué, 1825 (Map XX), it starts from an unnamed point to the west of *Boca del Drago* and terminates at *Punta Burica*.

On the map of Arrowsmith, 1826 (Map XXI), it begins in the estuary of *Chiriquí* and runs to a point to the east of *Punta Burica*.

On Restrepo map, 1827 (Map XXII), it starts from *Boca del Drago* and proceeds to the Gulf of Dulce.

On another map by Arrowsmith, 1832 (Map XXIII), it commences at the *Dorados* River and terminates at *Punta Burica*.

On the Wyld map, 1852 (Map XXX), it starts at the *Chiriquí* River and ends at *Punta Burica*.

Summing up the foregoing, it will be noted that out of the maps invoked by Colombia in support of her course only ten mark the frontier now under discussion. These latter locate it as follows: two in the *Culebras* or the *Changuinola* (really the same) river; one in the *Dorados* River, and one in the *Chiriquí* River; two at *Punta Careta*; one in the Lagoon of *Chiriquí*, and two at the *Boca del*

Drago, or its immediate vicinity. Therefore, there are four maps which carry the frontier either to the Changuinola (or Culebras or Dorados), or to Punta Careta; whereas all the rest locate it at the Boca del Drago, or close by, and at the Chiriquí Lagoon and Chiriquí River. A result much more unfavorable to Colombia would be obtained if, instead of merely the maps invoked by her, a complete and independent collection of maps should be taken for examination.

The following Colombian authorities resolutely defend the *Culebràs* River as the boundary:

The ex-President Don Tomás C. Mosquera, the Senator Don Pedro Fernández Madrid, Dr. Don Felipe Pérez, Don Jerónimo García, Don Victoriano de D. Paredes, Diplomatic Agent of New Granada in Washington, Senator and Minister of State, and many others; none of them, with the exception of the first named, fixes the location of the river Culebras. Señor Mosquera gives it by saying that its outlet is $81^{\circ} 31'$ west of Greenwich, which is equivalent to full *recognition of the territorial rights of Costa Rica, for that is the location of the Chiriquí or Calobébora River.*

The Culebras River is also asserted to be the boundary by the distinguished Colombian, the translator and editor of Eliséé Reclus' "Geography of Colombia," Señor Vergara y Velasco, who declares that river to be the *Changuinola* of the present day.

General Mosquera, President of New Granada, and, later, of the United States of Colombia, a great general of the Colombian Union and its Minister Plenipotentiary in London, published in 1866 a work entitled, "*Compendio de Geografía General, Política, Física y Especial de los Estados Unidos de Colombia* (Compendium of Geography, Gen-

eral, Political, Physical and Special, of the United States of Colombia), in which the following passages occur:

“*Modern Boundaries.*—The general boundaries of the Colombian Union are: on the north the Atlantic Ocean, from the mouth of the Paijana to the mouth of the RIVER CULEBRAS; TO THE NORTHWEST THE REPUBLIC OF COSTA RICA, FROM THE MOUTH OF THE CULEBRAS RIVER TO THAT OF THE GOLFITO RIVER IN DULCE GULF; to the west, the Pacific Ocean, from the Golfito River to the Mataje ravine * * *.”

“The particular boundaries are as follows: with COSTA RICA, THE BOUNDARY LINE WITH THIS REPUBLIC STARTS IN THE ATLANTIC AT THE EAST OF PUNTA CARRETA, AT THE OUTLET OF THE CULEBRAS RIVER; IT THEN FOLLOWS THIS LATTER RIVER TO ITS SOURCE, WHICH IS IN THE MAIN CORDILLERA, IN A SOUTH DIRECTION. It then seeks the line of the summits of a branch that runs toward the Gulf of Dulce (also almost in a SOUTH DIRECTION), which range they call the “*Cordillera de las Cruces,*” and at the middle of which the path or trail crosses that leads from the village of Bugaba to the native settlement of Boruca.

“From Las Cruces beyond Golfito to Punta Burica in the Pacific, by an uneven country which is found there, full of little hills and hammocks, ramifying in different directions and all covered with dense thickets, until the range of hills is reached which forms the said point.”

The Changuinola line, if not absolutely just to Costa Rica—because not founded upon the principle of the colonial *uti possidetis*, or on immemorial possession, without interruption or protest, as required by international law—is relatively just, if others nearer to the Escudo de Veragua are excluded and as compared with that of the Sixaola.

This Changuinola line, therefore, combines all the characteristics the divisional line should have, and besides, it may be said in its behalf that it is an equitable line.

When Costa Rica, confronted by the Award of President Loubet, notwithstanding the mistakes with which it was permeated, is placed in a position requiring her to desist from her claim to the immense territory she legitimately held as far as the line of the Escudo de Veragua, it is at least equitable that she be conceded the Changuinola line, in view of the fact of her right to the whole of the territory, the fact that the treaties placed the boundary farther to the east than that, and of the other circumstances mentioned herein elsewhere.

However explicit the Award of President Loubet may be, and however rigorous is the obligation which it entails, still more binding and decisive are the legal precepts, and yet they are tempered by equity when there are doubts or there is actual injustice in their practical application. The Law Digest, in title 17 of book 50, above cited, says: "In doubtful cases that which most nearly conforms to equity is to be preferred (*Semper in dubiis benigniora praeferenda sunt.* No. 56)." "In all things, and especially in law, equity is to be done (*In omnibus quidem, maxime tamen in jure aequitas spectanda est.* No. 90)."

(4) THE SIXAOLA-YORQUÍN LINE AS THE MAXIMUM ASPIRATION OF COLOMBIA AND ITS CONFORMITY WITH THE STATUS QUO.

The *Sixaola-Yorquín* line does not go beyond the territory disputed, and differs in this respect from the *Sixaola-Tarive* line, which does go outside of that line to a considerable distance.

It cannot be based on the colonial *uti possidetis*, except under the erroneous presumption that the Culebras River, claimed by Colombia under the name of "Culebras" or "Calobébora" and spoken of in the Spanish documents, is the Sixaola.

It does not accord with other historical antecedents, save the maximum claim of Colombia for reaching out to that line by successive acts of invasion and her declarations that the Sixaola is the Culebras, or Doraces River.

It is not supported by any of the treaties that were made, for all of them put the boundary to the east of the Changuinola—except the Treaty of 1856, which fixed it at the Doraces—and under the "explanation" of the neo-Granadian Congress, the latter was the Sixaola, which explanation Costa Rica did not accept.

It agrees exactly with the *status quo* established in 1880 and confirmed in 1891, wherein by the Culebras, or Doraces, referred to therein, respectively, the *Sixaola-Yorquín* was understood by this boundary, and the possessory and jurisdictional situation was preserved when the Loubet decision was rendered, and it is so preserved to-day.

The Sixaola-Yorquín line, as it has been explained, is a clear and natural line, "without any charge or special servitude."

Thus considered it is a convenient one, but it can have no other legal value than that of a *status quo* dating from 1880, being provisional in character and without prejudice to the rights of either party.

President Loubet, however, ought to have taken the agreement of the parties in respect to their possessory and jurisdictional situation as a surer guide for the decision of the question; but believing, as has been stated, that the Culebras and Doraces were one and the same river, that the latter was

the Sixaola and that the Sixaola was the Tarire, throughout its entire length, he thought that he was confirming the possessory and jurisdictional situation when he traced the frontier line by "the Tarire or Sixaola," as he stated, although he ran it along the spur which he supposed was backed against the river, the consequence being that the frontier was marked by a mountain range (spur) notwithstanding the fact that no one had claimed or asked for that supposititious spur.

The basic mistake made by President Loubet consisted in taking the *Tarire* to be equivalent to the *Sixaola* River. Indeed, not even Colombia herself ever maintained that it was equivalent except in its lower portion.

But it cannot be believed that President Loubet ever thought or desired to take away from Costa Rica the territory embraced within the two lines of the supposititious spur and the Main Cordillera, which constitute what the Costa Ricans call the "*Dagger of the Award*," traced upon the modern maps that accord with the real course of the *Tarire*, from west to east, and indicate its first sources as formed in the apex of the angle of those two lines.

To understand the intent of President Loubet one must look at the same map that he did, and that could have been none other than the map of Ponce de León and Paz of 1864, because of the coincidences pointed out and other facts resulting from the Colombian antecedents in the historical development of the boundary question.

Now, then, on that map the *Sigsola* River appears under that name alone, and as a single straight line running from north to south, but rather inclined to the right at its sources. These are characteristics that correspond to the Sixaola-Yorquín line and are supplemented by those that

very nearly connect the supposed spur running from Punta Mona along the range of Las Cruces, without more than barely touching the Main Cordillera; that is to say, there is no appearance of that penetrating angle which results when it is sought to interpret the idea of President Loubet on the modern maps, where the Tarire River is traced as such with the true east to west course.

It may be supposed, then, that President Loubet, thinking that such was the direction of the Sixaola, may have believed that this river responded to the possessory and jurisdictional situation and was suitable for a frontier. Consequently it follows that the purpose of President Loubet was erroneously interpreted when it was translated by the *Sixaola-Tarire* line, in the light of the present maps, instead of being represented by the *Sixaola-Yorquin* line, to which he undoubtedly referred under the inspiration of the official maps of Colombia—mainly that of 1864.

(5) THE DIVISIONAL POINT IN THE ATLANTIC.

The foregoing defense of the line of the Sixaola River from its outlet is also a defense of that outlet as the extreme divisional point in the Atlantic. The characteristics pertaining to this line as a whole pertain equally to its extreme point, although just because it is only a point in the line, they are presented with greater clearness as to the facts and are better defined in the discussion of the boundary controversy as a whole.

The aspirations of Colombia, save as to the Mosquito Coast, never went beyond the right bank of the Sixaola, to which, it may be, she sometimes gave the name of "Culebras," or "Doraces." The outlets of the rivers were the points agreed on in all the treaties as the divisional points

on the Atlantic: the mouth of the Culebras or Chiriquí in the Treaty of 1825; that of the Doraces, in the Treaty of 1856 (Calvo-Herrán); that of the Cañaveral, in the 1865 (Castro-Valenzuela) treaty; and that of the Bananos River, in the treaty of 1873 (Montúfar-Correoso).

The Conclusions of the Senate of Plenipotentiaries of Colombia, of 1880, in virtue of which instructions were given to the representative of that republic to sign the arbitral convention of that year, fixed as the extreme point in the Atlantic, the mouth of the CULEBRAS River, from which the line of the interior frontier must start as a *maximum claim*.

The outlet of the *Sixaola* is the extreme point of the possessory and jurisdictional *status quo* established in 1880 (according to the note of Señor Rico of April 20) under the name of *Culebras* River, and, as appears by the note of Señor Suárez of March 16, confirmed in 1891, under the name of the *Doraces* River.

The outlet of the *Sixaola* constitutes a perfectly clear and natural extreme divisional point, "without any charge or special servitude."

This point is, therefore, the most just and convenient one, if the outlet of the Chiriquí, Cañaveral, or the Bananos is not accepted, as provided in the treaties referred to; or if the mouth of the Tilorio or Changuinola is not accepted as asked for by Costa Rica in the first instance.

Punta Mona, on the contrary, lacks all the conditions it should possess in order to constitute the extremity of a divisional line, according to the intent of the Award.

Punta Mona is clearly located quite outside the territory in dispute. It does not appear in any act of possession or jurisdiction on the part of Colombia; nor did Colombia ever claim it as a maximum limit; nor did she ever men-

tion it in the suit; neither was it ever spoken of in the treaties, or in the diplomatic controversies.

The fact that the name of *Punta Mona* appears in the Award can not be urged as a valid reason against suppressing it in a correct interpretation of the true intent with which that decision was pronounced. Without undertaking to repeat what has been already stated concerning the meaning of this expression, or to recall the authority given by the same Arbitrator to correct his possible errors, it is sufficient for the present to consider the explanation of these errors already submitted and the contradiction resulting between the letter of the Award—read in the light of the geographical facts—and the purpose by which it was inspired.

Even adhering to the letter of the decision, it is clearly to be seen that President Loubet did not speak of *Punta Mona* as the extremity of the frontier by reason of its character as such and the special conditions surrounding it, but he did refer to “the *contrefort* of the *Cordillera* which starts from *Punta Mona* * * * and closes the valley,” etc. So that he did not think of *Punta Mona* as being *Punta Mona*, except for the spur by which, he believed, it was connected with the chain of division of the waters flowing to the Atlantic and the Pacific.

It being demonstrated that no such spur exists and that *Punta Mona* is lacking in the geographical conditions requisite to make it a natural and well defined line—such as the outlet of a river possesses in that respect—there should be no hesitation in rejecting *Punta Mona* as the divisional point. The mouth of the *Sixaola* would be justified by the reasons stated, and its close proximity to *Punta Mona* brings it within the intention of even President Loubet himself.

In any event it is absolutely necessary to carry the line east of the Tarire, otherwise the people of Costa Rica, who are established on both sides of the Tarire, would be entitled to claim a right of passage, thus constituting burdensome easements which would occasion continual conflicts; and, further, there would be a failure to comply with the stipulation in the first Article of the Arbitral Convention of 1880, according to which the frontier must separate the respective territories of the two republics in such manner that each shall be left in the full, quiet and peaceful dominion of its own, "without any charge or special servitude" in favor of the other.

It follows from the situation and conditions above shown that Costa Ricá has a valid title to all the territory under consideration to the west of the Changuinola River, which title should be sustained not only on the principle of *uti possidetis* in 1821, but also on the ground of undisturbed and unchallenged possession from time immemorial up to 1821, when that principle was adopted in recognition of such possession, and also the uninterrupted continuance of such possession since 1821 down to the present time, there never having been any adverse holding of any part of the above mentioned territory, until a very few years before arbitration was agreed upon under the treaty of 1880, since which time, and pending arbitration, the occupation of a portion of that territory must be regarded as without prejudice to the rights of Costa Rica, which had already been established.

In other words, Costa Rica expressly invokes the right of prescription as well as the principle of *uti possidetis* in 1821 in sustaining its title to this territory.

DECISION REQUESTED.

For the reasons set forth in this Argument and in consideration of the powers conferred upon the Arbitrator,

The Honorable the Chief Justice of the United States is asked to decide the present arbitration by declaring that the frontier line between the Republics of Costa Rica and Panama shall be the following:

A LINE WHICH, STARTING AT THE OUTLET OF THE TILORIO, OR CHANGUINOLA RIVER ON THE ATLANTIC, FOLLOWS THE CHANNEL OF THAT RIVER, UP STREAM, TO THAT ONE OF ITS HEADWATERS WHICH IS THE NEAREST TO CERRO PANDO; THENCE PROCEEDING BY THE SHORTEST LINE TO THE MAIN CORDILLERA, AND ALONG THE SUMMITS OF SAID CORDILLERA TO THE POINT NEAR THE NINTH DEGREE OF NORTH LATITUDE IN THE PROXIMITY OF CERRO PANDO, WHICH IS THE POINT MENTIONED IN ARTICLE I OF THE TREATY OF MARCH 17, 1910, AS THE END OF THAT PART OF THE BOUNDARY LINE ON THE PACIFIC SIDE UPON WHICH THE PARTIES ARE IN AGREEMENT.

If, however, the Honorable the Chief Justice does not adopt the line above asked for substantially as described, as the most just and equitable boundary after taking into account all the facts, circumstances and considerations

which have a bearing upon the case, then in the alternative Costa Rica requests that he will adopt as the boundary a line substantially as follows:

A LINE WHICH, STARTING AT THE OUTLET OF THE SIXAOLA RIVER IN THE ATLANTIC, FOLLOWS THE CHANNEL OF THAT RIVER, UP STREAM, UNTIL IT REACHES THE YORQUIN, OR ZHORQUIN RIVER (ALSO CALLED THE SIXAOLA, CULÉBRAS AND DORADOS); THENCE ALONG THE CHANNEL OF THE YORQUIN RIVER TO THAT ONE OF ITS HEADWATERS WHICH IS THE NEAREST TO THE DIVIDE BETWEEN THE WATERS OF THE SAID YORQUIN, OR ZHORQUIN RIVER, ON THE NORTH, AND THE TILORIO, OR CHANGUINOLA RIVER, ON THE SOUTH; THENCE PROCEEDING BY THE SHORTEST LINE TO SAID DIVIDE AND CONTINUING ALONG THE SUMMIT OF THE SAME, IN A WESTERLY DIRECTION AND THEN SOUTHWESTERLY ALONG THE DIVIDE BETWEEN THE WATERS OF THE UREN AND OTHER RIVERS TRIBUTARY TO THE TARIRE ON THE NORTH AND THE WATERS TRIBUTARY TO THE TILORIO, OR CHANGUINOLA RIVER ON THE SOUTH, FOLLOWING THE SUMMIT OF THAT DIVIDE TO THE MAIN CORDILLERA AND ALONG THE SAME TO THE POINT NEAR THE NINTH DEGREE OF NORTH LATITUDE IN THE PROXIMITY OF CERRO PANDO,

WHICH IS THE POINT MENTIONED IN ARTICLE I OF THE TREATY OF MARCH 17, 1910, AS THE END OF THAT PART OF THE BOUNDARY LINE ON THE PACIFIC SIDE UPON WHICH THE PARTIES ARE IN AGREEMENT.

These, then, are the principal and secondary frontier lines which on behalf of Costa Rica the Honorable Arbitrator is asked to adopt in the award which is to bring this litigation to an end.

Respectfully submitted,

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Representative of Costa Rica.

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Washington, D. C.,
November 18, 1913.

APPENDIX.

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