

Statement presented on behalf of Chile in reply to the Argentine Report submitted to the Tribunal, constituted by H.B. Majesty's government acting as arbitrator in pursuance of the agreement dated April 17, 1896.

Chile.

London [Butler & Tanner] 1901-1902

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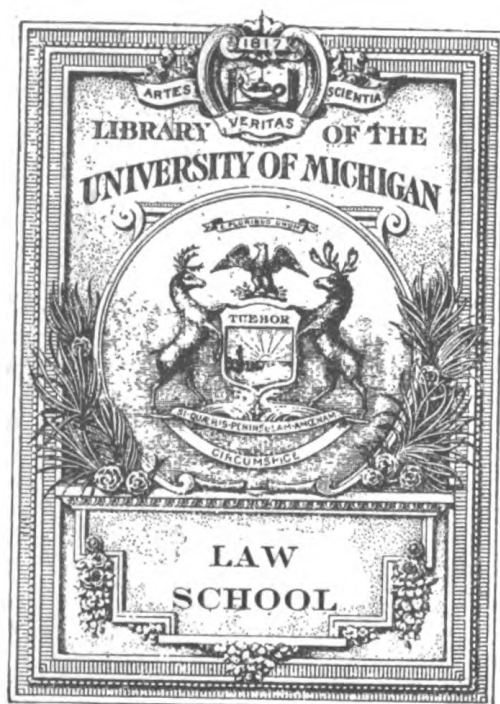


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ELLERY C. STOWELL

WASHINGTON, D. C.



ELLERY C. STOWELL

WASHINGTON, D. C.

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CHILEAN STATEMENT

STATEMENT

~~presented~~ presented on behalf of

CHILE

in reply to the

ARGENTINE REPORT

submitted to the

TRIBUNAL constituted by H. B. MAJESTY'S GOVERNMENT

acting as

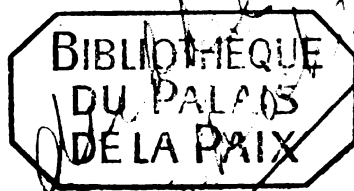
ARBITRATOR

in pursuance of the Agreement dated

April 17, 1896

LONDON

1901



BUTLER & TANNER,
THE SELWOOD PRINTING WORKS,
FROME, AND LONDON.

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Introduction

MY LORD AND GENTLEMEN,--

At the session of the 27th of March, 1899, the Tribunal decided that, at their first subsequent meeting, they would hear any verbal statement which the Representatives of the Governments of Chile and the Argentine Republic might wish to make in support of their respective claims. In virtue of this decision, the Representatives of both countries submitted to the Tribunal, at their sessions of the 8th, 9th, and 11th of May, the fundamental considerations which they deemed it advisable to bring forward on behalf of the interests which they are upholding in the present dispute. The Tribunal, after having heard them, stated that they would consider the matter previous to summoning them to another session.

A few days afterwards, those entrusted with the Argentine defence expressed a desire to amplify these considerations by making a further Statement; and thereupon the Right Honourable Lord Macnaghten declared that the Tribunal desired to be put in possession of all the information and all the arguments which either party might think material for their guidance, and that they were prepared to

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hear and consider everything which either party had to say and to give the opposite party an opportunity of answering it if they so desired.

At the end of May 1900, the Tribunal received and forwarded to the Legation of Chile the first printed part of the new Argentine Statement. The second part was presented at the beginning of the month of August. The cartographical documents complementary to, and explanatory of, the text of the Statement were delivered between the 17th of December 1900 and the 20th of April of the present year.

Only, therefore, at this latter date was the Legation of Chile, to which the Tribunal had from time to time sent these documents, in possession of all the evidence which the Argentine Legation has considered it advisable to issue in defence of the claims of their country.

The first Chilean Statement was drawn up on a plan of less extensive scope and strictly limited to the subject of the arbitral suit. As the question submitted to the decision of H. B. Majesty's Government deals with the practical application of the Treaties which fix the frontier line between the two nations—Treaties upon which both put different constructions—this statement of facts was confined to expressing the meaning ascribed to those covenants by Chile, together with the reasons and circumstances on which this interpretation was based. With this object it briefly recalled the facts which gave rise to the boundary question; it enumerated the sources of the fundamental stipulation of the Treaty of 1881 during the diplomatic negotiations which preceded it; and

examined this same Treaty and other supplementary covenants of a subsequent date so as to show the principle or rule of demarcation stipulated in them.

The new Argentine Statement has considerably enlarged the scope of this debate. Commencing by stating (page ii.) that the frontier between the two Republics from north to south as far as parallel 52° "is constituted by the Cordillera de los Andes upon the summit of which nature and history, geographical science and political considerations have designated the divisional line," a chain of evidence has been thus traced, the development of which has complicated the simple question submitted to the decision of H. B. Majesty's Government. The main question of the Arbitration is the solution of the difficulties which have arisen between the Experts entrusted with the demarcation of the frontier line between Chile and the Argentine Republic in conformity with the provisions of Treaties in force, and which are due to the circumstance that the Experts and their Governments differed as to the meaning of the said Treaties respecting the stipulated principle of the demarcation. Therefore, to remove the question from this standpoint and to consider it from that of nature, of history, or of geographical science and politics, is to alter its tenor and to complicate it with the development of considerations unconnected with it.

A consideration which must be dealt with in the first place is that the Treaty of 1881 must not be regarded simply as a covenant stipulated to give a frontier line to two neighbouring countries, since, as is acknowledged, it was the result

of a compromise. The statesman who negotiated it on the part of the Argentine Republic, said, in explaining it before Congress: "I am now about to give an account of the reasons which may be called the determinants of this negotiation. *It has been effected on the ground of a compromise.*" For these reasons, in order to interpret it in that part which might seem obscure and the application of which has given rise to the divergencies submitted to arbitration, it must be considered principally in its character of a conventional arrangement, involving mutual concessions to which the Treaty owes its existence. Consequently the antecedents which will be of most use in helping to determine its true meaning will be those expressing the intentions which the parties had in view when negotiating it.

From this point of view, many of the facts which the Argentine Statement has collected as elements of interpretation do not seem to be very conclusive. Thus, for instance, the abundant quotations from works of historians and travellers—especially of the Colonial Epoch, and of the early days of the Independence, in which the Cordillera de los Andes is described with its colossal structure, with its majestic aspect, with its eternal snows, etc., and in which it also appears sometimes designated as the eastern boundary of Chile—afford no useful data for the solution of the main questions submitted to the Arbitrator: questions which turn upon the interpretation of Treaties concluded as the result of a compromise. They have, however, an object, viz., to draw from the assumption that the Cordillera de los Andes possesses

special conditions for a natural frontier, the conclusion that those conditions determined or should have determined its adoption as the boundary between the Spanish colonies, and to deduce therefrom that these colonies preserved that delimitation when they constituted themselves as independent nations.

But, as the historical truth is that the Kings of Spain, when making the original partition of their extensive South American dominions, did not take into account, for that purpose, the Cordillera de los Andes—which always remained included *within* some of the political districts created in order that they might be included in the administrative units entrusted to faithful public servants; and as, respecting Chile, the writers who said that this Kingdom stretched from the Pacific or Southern Sea as far as the Cordillera, referred exclusively to that part of its territory in which the nucleus of the Spanish population existed, expressly acknowledging that its legal boundaries reached the other side of the same Cordillera—it has been indispensable to re-establish these truths so as to guard against the possibility that an incomplete knowledge of them might damage the interests of Chile. This new Statement will, therefore, be more voluminous than might have been wished, but this is inevitable, since the Argentine Representative has thought fit to introduce so many new elements into this discussion.

Nevertheless, the Argentine Representative himself states that this discussion should be confined within very narrow limits.

"The terms in which the Chilean Representative has stated the controversy," he says in the Introduction of his Statement, "are not those which in reality apply to it.

"It might apparently be surmised from those terms that the question on which Her Britannic Majesty's Government are requested to give a decision, is a doctrinarian question—that is to say, the meaning of the treaties in force. However, this is not the case" (pp. i. and ii.).

He then establishes that the frontier is determined by the Treaties ; that

"in marking it out differences might, nevertheless, arise between the functionaries entrusted with its tracing, and that these differences—*only these*—are submitted to Her Britannic Majesty's Government in the Agreement of 1896" (p. ii.). "This same Agreement," he says further on (p. xi.) "reduced the possible difficulties, and consequently the cases in which Arbitration might be necessary, to simple divergences respecting the topography of the Cordillera." He also says (pp. iii. and iv.): "The Treaties have ordered that the boundary shall run along the main chain of the Cordillera de los Andes, i.e. along the most elevated crests that may divide the waters of the said Cordillera. This rule cannot be discussed, as the Treaties cannot be disregarded. To terminate the discussion it is only necessary to determine which of the landmarks proposed by each of the Experts harmonize with these stipulations. Her Britannic Majesty's Government will decide the Experts' differences on these points."

It may here be observed, in the first place, that all these restrictive ideas as to the matter of the question submitted to H. B. Majesty's Government are openly contradicted by the Argentine Representative himself. In fact, after having established that the present question is confined to the fact that H. B. Majesty's Government shall decide which of the landmarks proposed by the respective Experts answer to the stipulations of the Treaties, he considerably amplifies the controversy by viewing it in the light of history, of politics, of

administration and of strategy, without perceiving that any discussion upon these grounds would appear useless if, as he himself says, the question is confined to deciding which of the landmarks proposed by the Experts are placed where they should be.

But it will be more useful to examine these views of the Argentine Statement in the light of the Treaties.

Among the quotations which have just been made there is one in which the Argentine Representative lays it down (Statement, p. iii.) that “ The Treaties *have ordered that the boundary line shall run along the main chain of the Cordillera de los Andes*, i.e. along the most elevated crests that may divide the waters of the said Cordillera ”; adding that the rule thus formulated cannot be discussed. It is, however, open not only to discussion, but also to objection : it is even inadmissible because the Treaties *have not ordered* what the Argentine Representative says. If he affirms that such a thing is ordered by the Treaty, it is because he arrives at this conclusion by extracting texts from various covenants, by cleverly connecting them with one another, by explaining them in his own fashion, and even by completing them with the addition of words which do not belong to the Treaty. The Argentine Representative, by thus exercising his right, undoubtedly performs a complicated hermeneutical operation, the deductions of which are open to contradiction, or, in other words, open to discussion.

The arbitrary character of the definition of the boundary line as given by the Argentine Representative is clearly seen

by comparing it with that given by the first article of the Treaty of 1881, the only Treaty which has defined it. This reads as follows :

“The boundary between Chile and the Argentine Republic is, from north to south, as far as the 52° parallel of latitude, the Cordillera de los Andes. The boundary line shall run in that extent over the highest summits of the said Cordilleras which divide the waters, and shall pass between the sources flowing down to either side.”

Such is the text of the Treaty into which the Argentine Representative, in order to formulate rules which he calls incontrovertible, introduces the following alterations by way of explanation, of translation, or of interpretation :

Where the Treaty says : “*highest summits of the Cordillera*,” the Argentine Representative translates : “*main chain of the Cordillera de los Andes*,” taking this last expression from a covenant drawn up twelve years later—the Protocol of 1893, one of the Articles of which, not intended as a definition of the frontier line, employed it purely with the object of referring to the same frontier line that had been defined in a previous Article.

Where the Treaty says : “highest summits of the said Cordilleras *which divide the waters*,” the Argentine Representative makes it say : “The most elevated crests that *may divide the waters of the said Cordillera*,” thus attempting by the addition of the last three words, which do not belong to the Treaty, to replace the idea of a positive and general division of the waters to be found in the phrase of the Treaty by that of a hypothetical and partial division of the waters in the Cordillera.

Whereas the Treaty says : " shall pass between the sources flowing down to either side," the rule of the Argentine Representative omits this most important stipulation, and further on he claims that "*vertientes*" (sources or headstreams) are not the flowing waters but the slopes of a mountain.

Now, whether the two expressions " highest summits of the Cordillera which divide the waters " and " main chain of the Andes " do or do not correspond to the same geographical feature ; whether the waters, the division of which is mentioned by the Treaties, are the waters of the continent or those peculiar to some chain of the Cordillera ; whether the word " vertiente " is employed in its hydrographical sense or in its orographical meaning : all these are questions which cannot be decided by dogmatic and positive assertions, but which require examination, or, in other words, discussion. The Experts and their Governments discussed them without result and their failure to come to an agreement was what brought about the appeal to the present Arbitration. Therefore this discussion must necessarily be renewed before the Tribunal, for it is not enough that they should be acquainted with the results of the divergencies submitted to their decision, but they should also be acquainted with their immediate causes. The Government of Chile maintain that their Expert has demarcated the frontier line following the interoceanic water-divide, because they understand that it is so prescribed by the Treaties. The Argentine Republic alleges, in her turn, that her Expert has traced the same line following the main chain of the Andes because she also believes that it is

so prescribed by the Treaties. Which of these two interpretations is the true one? That is the whole question, and where there are doubtful points there is necessarily matter for discussion or for examination.

It cannot, in fact, be conceived how the Arbitrator could decide the geographical differences of the Experts without taking into consideration their causes ; nor how he could decide that one of the two lines was according to the Treaties while the other was not, without previously forming an opinion as to what the Treaties prescribed. The Argentine Representative says that this is not a case of discussing doctrines and, in a certain sense, he is right ; this is not a case of discussing doctrines or principles of demarcation in order to select one which it may be advisable to apply for the determination of a frontier line between Chile and the Argentine Republic ; but it is a case of finding out which principle was preferred by the negotiators of the Treaty of 1881 in order to determine the dividing line.

From the documents with which the Tribunal is acquainted, it appears that in 1876, the Chilean and Argentine negotiators entrusted with the solution of the boundary question in Patagonia by means of a Treaty of Arbitration or by a direct agreement, were agreed that it was advisable to fix definitely the frontiers of both Republics all along their extent, adopting for that purpose a general principle of demarcation, which would be applied to the territory not included in the Patagonian question. In their conferences it was said that a selection could be made between these two

principles : the highest summits of the Cordillera and the water-divide. The point having been left under consideration, they decided it in 1877, during later conferences resulting in an agreement upon the matter, which was that incorporated later on in the definite Treaty of 1881. There is no doubt whatsoever that in that Agreement one of the two principles was preferred to serve as the basis to a rule of demarcation ; but the Argentine Republic maintains that the first of these was chosen, whilst Chile asserts that the second was selected. The Tribunal require to know which was in point of fact the one adopted ; and Chile, in order to enlighten them upon a point which cannot be elucidated save by the information of the parties, appeals to documents, recalls the questions pending, examines the text of the Agreements, etc., endeavouring to show that the negotiators were in favour of the principle of the water-divide, because they considered it the more scientific and easier of application, the only one deserving the name of principle of demarcation, and likewise the only one which could settle effectively the questions which it was desired to eliminate. Chile does not thereby contend that this doctrine or principle of demarcation should now be preferred, owing to the advantages which it presents in itself, but because it was the one adopted by the negotiators on account of its aforesaid favourable conditions. Acknowledging, therefore, that this is not a suitable moment for the theoretical discussion of principles of demarcation, she maintains that in the Treaty of 1881 there is a principle stipulated, and that

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according to it the divergencies submitted to the decision of the Arbitrator must be settled.

On her side, the Argentine Republic puts forward certain demands which are irreconcilable with the nature of the present dispute. What she claims, in brief, is that H.B. Majesty's Government should accept as an established fact that the boundary line stipulated is a so-called main chain of the Andes, and that they should confine themselves, in the discharge of their high office, to condemning the line proposed by Chile if they do not find it situated within the said chain. These are, according to the Argentine Statement (page x.), the rules which they must observe :

"1. The wall of the Cordillera de los Andes constitutes the natural and conventional frontier between the two countries, from the extreme north 'to the proximities of parallel 52°.'

"2. Within this Cordillera the line should be traced on a chain, and not in isolated peaks.

"3. The chain to be chosen is the main one, i.e. the most elevated, the most continuous, having the most uniform general trend, and its flanks shedding the largest volume of water.

"4. In the main chain thus circumscribed, the line should run along its watershed, i.e. along the edge of the intersection of its slopes.

"5. The frontier line should cut all watercourses which traverse the main chain."

In order to formulate these rules the Argentine Representative has been compelled to do everything which, according to his own declarations, ought not to be done in the present state of the question. In some of them he interprets the Treaties with considerable licence, thus giving ground

for discussing the consistency of his interpretations. In others he lays it down that the frontier line must be subject to, and characterized by, certain conditions not mentioned in the Treaties, thus opening up a discussion regarding points which properly belong to theoretical doctrines of demarcation.

Thus, for instance, the Treaties have nowhere "ordered" that the frontier line should be traced "along a chain and not over isolated peaks." The Boundary Treaty merely says that it shall run along "the highest summits of the Cordilleras which divide the waters." It is true that the boundary line so defined is alluded to in a subsequent Protocol as the "main chain of the Andes"; hence it may be deduced that, in the intention of the negotiators of the latter Agreement, the "highest summits of the Cordilleras which divide the waters" constitute a chain; but this assumption of theirs cannot be construed as constituting a rule, much less one opposed to the formal order of a Treaty the spirit of which is declared to be preserved intact.

The frontier chain, says another of the Argentine rules, is that which possesses these distinctive conditions: continuity, uniformity of general trend, and shedding down its flanks the largest volume of water. However, as the Treaties do not mention any of these conditions, it is obvious that they answer better to a theoretical doctrine of demarcation.

Neither do the Treaties prescribe that the frontier line should cut rivers; and this rule can only have been deduced from the Protocol of 1893 by means of an interpretation that

destroys the whole system of delimitation upon which they were shaped and sanctioned, and which can be legitimately controverted.

Accordingly the assertions of the Argentine Statement upon these and many other points call for examination and admit of contradiction. This Statement puts forward counter assertions, which, it is hoped, will be proved.

Thus there will ensue a debate which is necessary for the elucidation of the questions submitted to the Arbitrator and without which the latter could not conceivably solve difficulties which appear in a material form but which have arisen from a disagreement of the parties respecting a point of law, such as is the interpretation to which the Treaties are open. The Argentine Republic, for instance, presents a line traced, not without cases of exception, over a so-called, and in its greater part unexplored, main chain of the Andes, declaring that she has traced it there because it is thus prescribed by the Treaty. Since this line has been objected to by Chile and the decision of the Arbitrator requested, the latter will assuredly inquire, first, whether it is true that the Treaties enjoin that the line should run along the main chain of the Andes, and then, should the said chain be proved to exist and be recognizable, whether the line presented is really to be found on it. To form an opinion on the first point, His Britannic Majesty's Government will examine the Treaties; to be convinced of the latter, they will order a survey of the ground; and these two successive operations will place them in a position to settle the question. This,

moreover, is the procedure clearly indicated by the Agreement of the 17th of April, 1896, which entrusts to them the settlement of the differences of the Experts, by applying the stipulations of the Treaty of 1881 and Protocol of 1893, after a survey of the ground by a Commission appointed by the Arbitrator.

When it is claimed by the Argentine Republic that the present question turns exclusively upon "geographical differences respecting the topography of the Cordillera," thus excluding the interpretation of the Treaties, it is overlooked that, if it were so, such question would not have been submitted to the decision of H. B. Majesty's Government. The Treaty of 1881 admits that its application may give rise to substantial difficulties of a geographical character, and to questions of another kind to which it only refers generally and among these that of its own interpretation may be strictly included. In order to decide both these classes of difficulties, it appointed different judges.

In Article 1 it contemplated the case of "difficulties that might arise owing to the existence of certain valleys formed by the bifurcation of the Cordillera and where the water-divide should not be clear." To deal with these difficulties it stipulated that two Experts be appointed, one by each party, who would settle them amicably, and, in case of disagreement between them, that a third Expert appointed by both Governments should be called in to decide them.

In Article 6 it stipulated the following :

"Any question which may unhappily arise between the two countries, be

it on account of the present arrangement, *or be it from any other cause whatsoever*, shall be submitted to the decision of a friendly Power."

No doubt whatsoever is possible in this respect. The solution of the difficulties of a geographical character was entrusted by the Treaty to Experts ; and if it did not refer to others than those which might arise from the existence of valleys of the Cordillera where the water-divide should not be clear, this was due to the fact that its authors believed the latter only to be possible, in view of the nature of the hydrographical principle of the demarcation which they had adopted. The solution of all other questions of any nature which might unfortunately arise was entrusted to an Arbitrator. Nor was it doubtful that these other questions which were to be submitted to the decision of a friendly Power would be of greater importance and transcendancy than geographical difficulties, for this is shown by the high rank of the Judge called in to decide them. The decision of a man of professional ability, of a geographer, of an expert, in one case ; the award of a Power in the other : this is the arbitral mechanism of the Treaty.

Therefore, from the fact that as far back as 1896 the Governments agreed to request the decision of a friendly Power—to which Article 6 of the Treaty of 1881 refers—for the solution of their divergencies, it is logically inferred that they understood that these divergencies gave rise to questions which could only be decided by an Arbitrator ; and had they understood, in 1898, that what they were submitting to arbitration merely consisted of geographical disagreements

regarding the topography of the Cordillera, they would not have declared, as they expressly did, that the question was a matter devolving upon the Arbitrator, nor would they have requested the latter to exercise his powers by strictly applying provisions of the Treaties, but to do so by examining the topography mentioned.

The official documents submitted to the Tribunal testify to the accuracy of these remarks. In the Act or Minute of September 22, 1898, it is recorded that the Minister Plenipotentiary of the Argentine Republic, when discussing with the Minister for Foreign Affairs of Chile the frontier lines presented by the Experts, stated that the Argentine Experts affirmed to him that certain points and stretches of the Chilean Expert's line were not situated within the Cordillera de los Andes as is provided by the Treaties, and in the form that they prescribe. To this the Minister for Foreign Affairs of Chile replied that the Chilean Expert had informed him that those points and stretches were found to be situated in the Cordillera de los Andes as provided by the Treaties and in the form that they prescribe. The Act continues as follows :

"In view of the foregoing contradictory declarations, which *raise a question that the Arbitrator alone can decide*, and it not having been possible to arrive at any direct arrangement, the Minister for Foreign Affairs of Chile and the Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic agreed, in the name of their respective Governments, to transmit to that of Her Britannic Majesty a copy of the present Minutes, of the Minutes read of the Commissioners, and of the International Treaties and Agreements existing, so that, in accordance with the second basis of the Agreement of April 17, 1896, they may decide the differences above recorded."

The evidence offered by this Act is conclusive. The

Plenipotentiaries of both countries took into consideration the divergencies of the Experts and their contradictory declarations, and agreed, without any difficulty, that they *raised a question which the Arbitrator alone could decide*. Therefore, the final agreement reached by the Plenipotentiaries of both countries in September, 1898, established : that the geographical differences of the Experts did not of themselves constitute the question which should be submitted to Arbitration, but that they raised a question which was of such a nature that the Arbitrator alone could decide it. The Plenipotentiary thus concluded that this was not a case of appealing to the decision of a third Expert to whom should be submitted (according to Article 1 of the Treaty of 1881 and the sixth of the Agreement of 1888) the decision of questions of a purely technical or geographical character to which the demarcation of the frontier should give rise.

The nature of the *question* which it was agreed to submit to the Arbitrator is determined by antecedents which are recorded in the Act. On examining the lines presented by the Experts, it was found that they did not coincide at certain points and stretches ; and nevertheless, both declared that they were situated within the Cordillera de los Andes, "*as is provided by the Treaties and in the form that they prescribe*." The divergency, therefore, was evidently caused by the fact that, as already explained, the Experts put a different construction on *how it was provided* and in what form *it was prescribed* in the Treaties that the Boundary should be located in the Cordillera.

The Argentine Plenipotentiary, however, overlooking the nature of the Experts' disagreement, suggested that fresh surveys should be made on the ground in order to solve the difficulty. The Minister for Foreign Affairs of Chile, realizing that nothing would be gained by acting in this way, because the difficulty did not arise from geographical errors subject to rectification, but from the different meaning given to the Treaties by both parties, obtained from the Argentine Plenipotentiary the withdrawal of his request, and it was decided that the question should be placed before the Arbitrator as the only judge who could decide it.

It is evident, moreover, and it is proved by their controversies during over six years, that the Experts always put a different interpretation on what, for the purposes of the demarcation of the frontier line, the Treaties call "Cordillera de los Andes," and the contradiction of their declarations in 1898 arises therefrom. This difference is easily explicable. It is admitted on both sides that Article 1 of the Boundary Treaty of 1881, faithfully reproduced, with mere verbal modifications, an agreement upon the subject, at which the Chilean and Argentine negotiators had arrived in 1877. The said agreement was reached on the basis of the adoption of a general principle of demarcation applicable to the whole of the Andean frontier, the southern extremity of which was determined on parallel 52° by the compromise of 1881. That a principle of demarcation was adopted, was never questioned on either side; but in 1892 its nature began to be controverted. The Expert of Chile, Señor Barros Arana, who had

been the negotiator in 1877, maintained that the principle of demarcation adopted at that time, and reproduced in the Treaty of 1881, was that of the main water-parting. On behalf of the Argentine Republic it was maintained that the boundary agreed to was that determined by a line of summits of the Cordillera; of the highest summits, as was said before 1893: of the summits of the main chain, as was said later. Evidently, what was fundamental and predominant in the context of Article 1 of the Treaty, was the principle of demarcation, and that all the geographical or topographical features mentioned therein are to be selected subject to it.

According to this idea, and to the belief invariably maintained by him since 1877, that the principle of demarcation stipulated was that of the general water-divide, Señor Barros Arana, as Chilean Expert, made on the Record of the 1st of January, 1894, the declaration that by the words—

“main chain of the Andes he understood the uninterrupted line of summits which divide the waters, and which form the separation of the hydrographical basins or regions tributary to the Atlantic on the east and the Pacific on the west, thus defining the boundary between the two countries in conformity with the principles of geography, the *Boundary Treaty* and the opinion of the most distinguished geographers of both countries.”

This declaration made by the Expert of Chile in 1894 determines and clearly specifies the sense of his other declaration in 1898. In saying, according to this last declaration, that the frontier line presented by him was found to be situated in the Cordillera de los Andes *as is provided by the Treaties and in the form that they prescribe*, he did not need to repeat that,

in his opinion, the Treaty prescribed and established that the boundary should run along the uninterrupted line of summits which divide the waters and which form the separation of the hydrographical basins tributary to the Atlantic and to the Pacific, because his interpretation of the Treaties was stated in an official record of the conferences between the Experts.

It is advisable to observe in connexion with this point that the Argentine Expert used the same method as the Chilean Expert, though in a contrary direction. The latter, taking the water-divide as the only principle and invariable rule of demarcation established by the Treaties, understood that, for the purposes of these Treaties, the meaning of the expression "Cordillera de los Andes" was subordinate to the application of the said principle, and refused to take into consideration any feature of the Cordillera which might not comply with the condition of dividing the waters. The Argentine Expert, on his part, adopting as the only principle the delimitation along an undefined "main chain of the Andes," refused to take into account all such sections of the main water-divide as did not conform to his orographical desideratum and endeavoured to substitute subordinate watersheds and fragmentary ridges which he selected for the formation of his main chain.

The Argentine Statement says with respect to this (page ix.): "For the Expert of the Argentine Republic, *the water-parting line is nothing more than the detail which serves him as a secondary rule to designate in the main chain*

of the Cordillera de los Andes the topographical boundary between the two countries."

The Experts were in accord in this respect at least: in acknowledging that Article 1 of the Treaty of 1881 contained a principal rule and secondary rules, or rules of detail for the demarcation of the frontier line. Is the Cordillera, regarded as an orographical feature, the principal rule, or is the water-parting the principal rule? The Experts and their Governments were in constant and radical disagreement in this respect. Whenever the question arose, all their efforts were directed towards preventing it, by means of temporary arrangements, from developing into a conflict, in order that the demarcation of the frontier should be carried out, at least in part. "Even if such a disagreement should occur," says Clause 3 of the Protocol of the 6th of September, 1895, "the Sub-Commissions shall continue to mark out the frontier from the point next to that where the difficulty arose, and in the same direction as before." Meanwhile, the main question, which was that of the interpretation of the Treaties, remained outstanding; and, once the expedients for delaying the inevitable final disagreement were exhausted, the question would necessarily reappear and then only to be submitted for solution by the Arbitrator, who would determine what, in point of fact, was the principle of demarcation stipulated in the Treaties.

But the Argentine Representative alleges that the Government of Chile agreed to submit to the Arbitrator simply the geographical differences to which several allusions have

already been made, and he thinks the expression of his views in this respect is found in the Agreement of April 17, 1896. In his Statement the following may be read (page xi.) :

“The two Governments, when stipulating the terms of Article 2 of the Agreement of April 17, 1896, confirmed once more the boundary on the summit line of the Cordillera, and reduced the possible difficulties, and consequently the cases in which Arbitration might be necessary, to simple divergences respecting the topography of the Cordillera, divergences which might arise between the views of the Experts as to the situation of the main chain which contains the traditional high-summit ridge, and the ‘arcifinious’ boundary. The fact of an agreement having been entered into to the effect that the said divergences were only to be decided by the Arbitration, after a survey of the ground that gave rise to them, by a Commission of Technical Experts, throws still more light, if possible, upon the intention of the Governments.”

The Article of the Agreement of 1896 to which the previous commentary refers is as follows :

“2. If differences should occur between the Experts in fixing the boundary marks in the Cordillera de los Andes to the south of parallel $26^{\circ} 52' 45''$, and should it not be possible to remove such differences by friendly arrangements between the Governments, they shall be submitted to the decision of Her Britannic Majesty's Government, which is hereby appointed by the Contracting Parties *in the capacity of Arbitrator intrusted with the strict application in such cases of the provisions of said Treaty (1881) and Protocol (1893)* after a survey of the ground has been made by a Commission appointed by the Arbitrator.”

The Agreement of the Governments of Chile and the Argentine Republic contained in this clause refers exclusively to these two points : to designating H. B. Majesty's Government as Arbitrator for the solution of the differences which might be eventually submitted to them ; and to establishing

that the Arbitrator must previously order a survey of the ground by a Commission and must pronounce judgment by strictly applying the provisions of the Treaty of 1881 and Protocol of 1893. The Agreement of the Contracting Parties includes no other matter, and only by means of a most arbitrary interpretation of the clause quoted is it possible to affirm that it further provided that the difficulties to be submitted to the Arbitrator should be exclusively those of a geographical character. The Argentine Representative *deduces* the existence of an Agreement in this sense from the words with which the Article begins, viz., "If differences should occur between the Experts in *fixing the boundary marks in the Cordillera de los Andes* to the south of parallel $26^{\circ} 52' 45''$. . ."

Before showing that these words, even as understood by the Argentine Representative, do not exclude from the scope of the Arbitration differences which might not be of a geographical character, it is advisable to observe that they lend themselves to another interpretation. According to the Treaties preceding the Agreement of 1896 and in conformity with the first Clause of the latter, the line to be demarcated was divided into five sections: 1. From parallel 23° S. as far as $26^{\circ} 52' 45''$ S.; 2. From the latter parallel as far as the proximity 52° S.; 3. The neighbourhood of this parallel; 4. From the intersection of this same parallel with the *divortium aquarum* of the Andes as far as Point Dungeness; 5. Tierra del Fuego. In the first four sections there were pending works of demarcation, and the second embraces

almost the whole of the vast extent of territory in which the general boundary is the Cordillera de los Andes. Therefore, it is not at all surprising that, as the second clause of the Agreement of 1896 must refer to this section, the words "in the Cordillera de los Andes" should have been employed, without any need of greater precision, as a sufficient indication of the section of the boundary in which the differences it alludes to might occur. This stipulation appears all the more natural and logical when it is observed that, though strictly determining one of the extreme points, it leaves the other undetermined, simply stating . . . "In fixing the boundary marks in the Cordillera de los Andes to the south of parallel $26^{\circ} 52' 45''$. . ." that is to say, in the Andean zone.

But, even on the hypothesis that the phrase "in fixing the boundary mark in the Cordillera de los Andes" was intended to signify precisely that the differences of the Experts could occur in the Cordillera and nowhere else, it is impossible to deduce from this as a logical consequence that these differences could only be of a geographical character in the sense given to this term by the Argentine Representative. And the reason is obvious. Suppose that the Experts were attempting within the Cordillera to effect the demarcation in a section of the territory in which the water-parting line and what, from an exclusively orographical point of view, might be called the main chain of the Andes, do not coincide. Each would attempt to apply the Treaties according to his own interpretation of the principle of demarcation, and a difficulty would necessarily arise. This would not be geographical in its

origin, because previous to its becoming such, it would be a difficulty due in the first instance to the different interpretations given to the Treaties by the Experts. Notwithstanding this, even judged by the restricted criterion of the Argentine Representative, such difficulty would have to be submitted to arbitration because it would have arisen "in fixing the boundary marks in the Cordillera de los Andes."

Moreover, it is mere labour lost to attempt to prove that, in signing the Agreement of 1896, the Governments of Chile and the Argentine Republic were agreed on points upon which, as is shown by facts both previous and subsequent to it, they always differed radically. The Argentine Republic alleges that whenever the Treaties or other official documents mentioned the Cordillera de los Andes, it should be understood that both parties had attributed to this expression the meaning which she gives to it. Thus, in the case of the second clause of the Agreement of 1896, where it reads : " If differences should occur between the Experts in fixing the boundary marks in the Cordillera de los Andes," the Argentine Statement declares this phrase to mean that the differences between the Experts were confined to those occurring within the Cordillera, or even more strictly, " as to the situation of the main chain," and it adds that " the intention of *the Governments* " was to stipulate this.

As regards the Government of Chile there is no precedent whatsoever for warranting the attribution to them of any such intention, and there are strong reasons emphatically contradicting the idea that they ever entertained it. Their Expert

stated in January, 1894, officially and in writing, that the frontier line was, in his opinion, defined in the Treaties by "the uninterrupted line of summits which divide the waters and which form the separation of the hydrographical basins tributary to the Atlantic on the east and to the Pacific on the west"; and their Minister for Foreign Affairs, whom the Experts informed of this declaration, asserted, as may be seen in the course of this Statement, that it coincided entirely with the ideas which the Government had always maintained upon the matter and which they had expressed before Congress when requesting the approval of the Protocol of 1893. The Argentine Republic may object to this definition, but cannot say that the Government of Chile gave to the Treaties on this point the same interpretation which she herself put upon them.

It appears from the foregoing that the Government of Chile never admitted any restrictions in the submission to Arbitration of the differences arising out of the demarcation of the frontier. They referred them all to arbitral decision and especially those which related to the interpretation of the Treaty respecting the nature of the principle of demarcation. Indeed no others ever existed because, as a matter of fact, difficulties or divergences of an exclusively geographical nature never arose between the Experts. Between them there was never any contradiction or disagreement regarding the configuration of the ground, and their differences began only whenever it was attempted to decide whether a certain point of the ground was or was not a point of the frontier line defined by the Treaties. When seeking for the characteristic

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conditions of the dividing line, one of the Experts said that a certain point formed part of the frontier because the general water-divide occurred there ; the other Expert rejected that point because it did not form part of what he considered to be the main chain of the Andes. Thus, the difference of the Experts was doctrinal in its origin, inasmuch as it was due to the different construction they gave to the Treaties, and it became geographical only in its final phase. When the Tribunal became acquainted with the whole development of the question they will see that the difficulties occurred precisely in this order, the earliest (which occurred in 1890, before any work of demarcation whatsoever was carried out) arising from the interpretation of the Treaty of 1881.

Now, where must the Arbitrator look for the solution of those difficulties ? Evidently in the Treaties which gave rise to them, and this is clearly indicated in the Agreement of 1896. The second clause of this Agreement entrusts to H.B. Majesty's Government *the duty of strictly applying in their capacity of Arbitrator, the provisions of the Treaty of 1881 and of the Protocol of 1893.* In conformity with this same clause, the Governments later on declared, as appears from the Act of the 22nd of September, 1898, that the Arbitrator shall decide the differences which are now submitted to him. Therefore, outside the said Treaty or Protocol, the Arbitrator can nowhere seek for reasons determining his decision. The Acts subscribed to by the Plenipotentiaries and Experts which it was agreed to transmit to the Arbitrator merely serve to illustrate the circumstances which rendered his intervention neces-

sary. And when it is alleged that they should rule his line of action, supply him with a ready-made opinion on the nature of the difficulties submitted to his decision, and forbid him to pronounce judgment upon the cardinal point as to which is the principle of demarcation applicable to the tracing of the frontier, the fact is overlooked that the Parties have placed in his hands, as the sole law to guide him, two Treaties : the fundamental one of 1881 and the regulative one of 1893, to be applied as his wisdom and impartiality may direct.

In this condition the Argentine Republic expresses fears which are as unfounded as they are significant. Her Representative, when insisting that the functions of the Arbitrator are purely technical, and limited to certain determined points, says (page iii.) :

“They are not going to lay down general rules applicable to the whole extent of the frontier, particularly when in the greater part thereof the divisional line is already demarcated. They are not going to lay down principles, nor consider *new doctrines* which might clash with the line already fixed on the maps and located on the ground itself.”

This remark reveals, in the first place, a dread on the part of the Argentine Republic that the application of her own doctrines might appear to be in opposition to the demarcation already made by mutual agreement. But, as to the fear that the decision of the Arbitrator might clash with the lines already traced on the maps, and on the ground itself, it may be affirmed that such fear is unfounded, for the very simple reason that this demarcation will constitute a precedent which must be taken into account in pronouncing a decision. In fact, if the Treaties are to be interpreted for the purpose

of application, in no part whatsoever will better precedent for an accurate hermeneutical rule be found than where the parties themselves have traced one identical frontier line without any discrepancy whatsoever. There at least the provisions of the Treaties have not been applied in two different ways, and to this common application their true interpretation must correspond. For, be it noted, the frontier sections demarcated without any differences between the Experts comprise the considerable extent of fifteen geographical degrees ; hence it cannot be said that the agreement has occurred only at isolated points or in exceptional cases which go to prove nothing : it has resulted from the application in that region of a principle of demarcation.

Now, what is the principle of demarcation which appears rigorously applied where there is a frontier line traced with the approval of both parties ? This question will be easily decided, and then it will be logical to settle the differences between the Experts at other points in conformity with the same rule which they observed where they were in accord. To facilitate this decision it has been thought advisable to submit a detailed description of the Andean region in which the frontier line is already fixed, and to illustrate it with the aid of maps.

Moreover, Chile merely asks that the same geographical principle, which appears to have been followed where the demarcation is already made, be equally applied to the demarcation of the frontier line in that section of the territory in which the Experts have disagreed, because

she believes this is required for the consistency of the divisional line with the uniform application of the said geographical principle between parallel $26^{\circ} 52' 45''$ and parallel 52° , since one of the Treaties, the provisions of which have to be strictly applied, enjoins that the line must be traced according to a single principle and "invariable rule."

This rule for the interpretation of the Treaties, derived from the cases in which the Parties have agreed as to such interpretation, may be added, in the character of a principal one, to those which the Argentine Representative has quoted as having been observed on similar occasions by H.B. Majesty's Government and which Chile also accepts. It may be affirmed, without fear of contradiction, that this rule must be, in this case, paramount, for an obvious reason. The rules which the Argentine Republic quotes refer to the manner of interpreting and applying Treaties before they have been put into practice, but this is not the case in the present instance. The Treaties which determine the boundary between Chile and the Argentine Republic have already been applied in the greater part of the said boundary and therefore a practical interpretation has already been given to them which should prevail over any other that may be derived from theoretical rules.

With reference to one of these rules, which says that "the interpretation should be suitable to the reason of the Treaty," it is necessary to repeat that the basis of the Treaty of 1881 was a compromise, and to add that by it Chile made considerable sacrifices.

By the Treaty of Peace and Friendship of 1856, Chile and the Argentine Republic had agreed that the boundaries of their respective territories should be those which they had possessed at the time of their severance from Spanish rule in the year 1810. Chile, in virtue thereof, believed herself to have a right to the ownership of Patagonia, of Tierra del Fuego and of the Straits of Magellan. The Argentine Republic likewise claimed those territories, especially Patagonia, and on this account a discussion took place between them which lasted many years. Chile produced, in support of her claim, colonial titles, in the strength and validity of which she had so much confidence that she did not hesitate to submit them to the decision of an Arbitrator. The Argentine Republic did not express the same confidence in hers, strenuously refusing to accept this solution.

Such was the situation when Chile, for reasons superior to the interest of territorial expansion, consented to sign the compromise contained in the Treaty of 1881. By this she relinquished her rights to a large portion of the vast Patagonian region; she acquiesced in the partition of Tierra del Fuego; of the lands adjacent to her colony in Magallanes she retained the minimum requisite for its preservation; and she restricted the exercise of her sovereignty in the Straits by neutralizing them and by securing their free navigation to the flags of all nations.

As regards the territory stretching to the north of parallel 52°, Chile and the Argentine Republic adopted in the same Agreement, and as a part thereof, a boundary line conforming

to a uniform principle of demarcation which was defined as clearly as was then deemed sufficient. This principle, which is that of the general water-divide, was accepted by the Argentine Republic when it was proposed in 1877; it served as the basis of a draft Treaty signed by the Plenipotentiaries of both countries in 1878; it was not objected to in 1881 when it was incorporated in the definitive Treaty of that date; nor was it officially repudiated by the Argentine Republic during the first ten years following the adjustment of that compromise. The latter began to object to it when the survey of the southern regions, which were unexplored in 1881, revealed that its application there would be favourable to Chile; and openly resisted it only after it had already secured to her considerable advantages in the north and in the centre.

One of the facts just alluded to is worthy of special mention. When in 1877 the Chilean Plenipotentiary proposed a general principle of demarcation which would be applicable throughout the Andean zone, he expressly stated that this principle was that of the *divortium aquarum* of the Cordillera de los Andes. The Minister for Foreign Affairs for the Argentine Republic expressly assented to the Chilean Plenipotentiary's proposition, and confined himself to suggesting a certain wording. Yet it is upon this very wording that the Argentine Republic now relies in order to maintain that she withheld her approval of that principle, and that the principle agreed upon was a different one. The Chilean assertion in this respect is amply confirmed by official documents, and the point to be discussed now is this: whether

in the interpretation of an international agreement a misconception which one party professes to have placed upon it without giving any expression to such at the time, should be allowed to outweigh the definite sense in which the negotiators expressly approved of it. Because (and it is necessary to insist upon this) when the principle of the *divortium aquarum* was proposed by the Chilean Plenipotentiary, the Argentine Minister stated in writing that such principle of delimitation was agreed to in the form of a "reciprocal declaration," it being furthermore understood that the terms suggested by him and taken from a South American authority on International Law represented the principle accepted. This principle, therefore, such as it was understood by both negotiators when they agreed to it, must prevail over any other in the interpretation of the Treaties.

Chile maintains that it is only the barest justice that she should not be deprived of the favourable results secured to her in determined regions by the compromise of 1881, the signing of which involved so many sacrifices on her part. This is a case of the rule of the interpretation of Treaties quoted by the Argentine Representative: "Treaties are to be interpreted in a favourable rather than in an odious sense."

Now it is impossible to deny that in all human transactions, whether between individuals or nations, there exist unwritten rules of absolute equity which are assumed in the drawing up of covenants, and which are none the less respected by those called upon to administer justice; nor is it possible to deny that it would be giving an odious inter-

pretation to Treaties in which a compromise has been stipulated, if they were interpreted so as to give one of the parties all the advantages and inflict all the sacrifices on the other. This would happen were the demarcation of the frontier in the disputed zone to be effected—not in conformity with the principle which was applied where there is already a boundary line definitively traced and which has favoured the Argentine Republic—but in conformity with a different principle which also favoured the latter and which would leave Chile in a notoriously disadvantageous position. In point of fact, the line of the Argentine Expert not only secures to the Argentine Republic the integral possession of all her rivers, from their source in the Cordillera, but it also makes her the owner of the headwaters of many important Chilean rivers without offering a single case of reciprocity. Moreover, this same line attempts to reduce the Chilean coast at several points to so narrow a strip that it would be absurd to speak of a “territory” to the west of the dividing line, over which Chile is entitled, according to the Protocol of 1893, to retain her dominion. At three or four points the Argentine Republic would acquire fluvial ports whence the seashore is reached in a few hours by steam navigation, and no space would be left even for a small Chilean colony to develop on the floors of the valleys of the large rivers Puelo, Yelcho, Palena, Aisen, Baker, etc., the only parts of the Western Patagonian coast where settlements and colonization are possible. In fact, the admission of the proposed Argentine line would mean the most unjustifiable break in the continuity of the

valley territories which—if it is intended that the Treaties of Limits should assign her a real western or Pacific “territory” and not an almost valueless strip of inaccessible rocky coast line without any “hinterland” whatever—it is necessary that Chile should possess as far up as the headwaters of her large rivers. Such results are absolutely inadmissible upon any natural interpretation of the Treaties, since Chile could not have proposed the adoption of a principle for the demarcation of the frontier which would give these results. It is true that the regions in which the Argentine line gives some of these results were totally, or almost totally, unknown in 1877, when the general principle of demarcation was adopted; but it is also true that the principle proposed by the Chilean Plenipotentiary absolutely obviated all these drawbacks in every section of the territory, however unknown it might be. The adoption of the *divortium aquarum* as a boundary line would certainly leave Chile and the Argentine Republic in possession of all their respective fluvial waters, and would also secure to Chile the possession of a sufficiently extensive littoral, since all the territory irrigated by the rivers of the Pacific from source to mouth would in any case belong to her.

The Argentine Republic alleges that she has acquired a right to many of the zones which Chile claims in the southern region by occupying them, populating them, opening them to civilization, and by establishing therein her laws, her officials and her capitals.

In the first place, the occupation of territories to which the Argentine Representative refers must be reduced to its

true proportions—which are really exceedingly modest. At some points they have not gone beyond the temporary settlement of small detachments of troops from some military garrison established in the vicinity of the disputed zone; whilst at others, the so-called occupation has been made by a handful of colonists who are chiefly foreigners, most of them being Chileans. Where attempts at organized occupation have been made, it has been impossible to overlook the fact that this occupation was wholly artificial and absolutely foreign to any need of natural expansion on the part of the Argentine population. The points which are mentioned as “opened up to foreign commerce” (page xvii.) are separated from the coast—and even from the nearest populated centres on the Argentine side—by immense deserts, the crossing of which entails arduous journeys extending over a month or so. These same points would, however, be at only three days’ distance from the coast of Chile if paths were opened for traffic through the intervening forests. The artificial character of these settlements, therefore, clearly reveals their object. Effected in regions isolated from the rest of the world and unprovided with means of communication, their sole object has been simply to create titles of ownership to be brought forward in the suit before the Arbitrator. By the mere fact of having sought for such titles, the Argentine Republic expresses little faith in those which she says the Treaties confer upon her.

However, even supposing that the occupations referred to were effected in due order and with *bona fides*, they would

always be legally invalid as a title of possession inasmuch as they have been carried out in territory notoriously disputed, subsequently to the Treaty of 1881, and in open contradiction to it. Chile, as has been recalled in the previous Statement, protested in 1889 against some of these settlements and obtained from the Argentine Government the declaration therein reproduced—

“that all acts from one or the other Government which might extend its jurisdiction over that part of the Cordillera of doubtful dominion, on account of not having been yet traced therein by the Experts the definite boundary, would not affect the results of the demarcation which was about to be made in accordance with the Treaty of 1881 . . . and that the line which might be laid down from the execution of the Treaty would be accepted and maintained in spite of any other fact arising from ignorance of the situation of the boundary.”

The Argentine Representative says (page xvii.) that Chile “consented to the quiet and overt Argentine occupation without protest or objection,” and that “only at the eleventh hour, on the eve of the Experts’ divergencies being submitted to arbitral decision, did the Chilean Minister in Buenos Aires represent against open and proclaimed acts of sovereignty accomplished by the Argentine Government.” The above-named protest of 1889 bears witness against this : and it should be added that even those protests of “the eleventh hour” might have been omitted without any inconvenience, in view of the declaration of the Argentine Government that so long as the definitive boundary should not be traced by the Experts, no act of jurisdiction, whether open or disguised, could in any way affect the results of the

application of the Treaty of 1881. Therefore, not one of the occupations carried out with the manifest object of influencing the arbitral decision is efficacious in this respect.

The Argentine Republic also attempts to place her territorial pretensions in the southern region under the protection of her rights of sovereignty, adding that "sovereignty is not under discussion." In this respect it need scarcely be observed that sovereignty, properly so called, has no connexion with the issue of the present question. What is not under discussion is the sovereignty which consists in the right inherent to an independent country to draw up such laws as it may deem advisable, and to govern itself in whatever form it pleases. But this sovereignty, which is called national, and which is equivalent to independence itself, need not be considered here. The Argentine Representative undoubtedly meant to allude to territorial sovereignty; but he forgot that upon this matter discussions, compromises and agreements may arise, as is shown by the almost every-day example of all nations. A Boundary Treaty such as that of 1881 only affects territorial sovereignty. The other can only be freely exercised by either country over the territories at present under dispute, once the frontier line is demarcated in a definitive manner.

The idea herein briefly expressed will be further developed in the course of this new Statement which is mainly a reply to the remarks made by the Argentine Republic. It will, therefore, be confined to re-establishing the truth of the facts and the sense of the documents and, to a great extent, to

examining the frontier lines submitted to the decision of H.B. Majesty's Government. Of the remarks made on the other side, only those will be dealt with which are strictly connected with the subject under Arbitration and which may help to mould the opinion of the Tribunal upon the obscure points of the controversy. All that has been brought forward in the Argentine Statement as having been uttered in this connexion in poetical works such as the National Anthem of Chile, in toasts at festive banquets, in conventional speeches, or in documents of an analogous character, is absolutely devoid of all value as evidence. Thus the ideas and opinions of persons not competent in the matter, or even of competent persons when their opinions do not appear to have any bearing on the boundary question, will not be taken into account.

The subjects contained in this Statement are arranged as follows :

A historical account of facts and opinions referring to the eastern boundary of Chile during the Colonial Epoch, made with the object of refuting the repeated assertions of the Argentine Statement as to the said boundary having been located, during the epoch mentioned, on the crests of the Cordillera de los Andes.

A history of the diplomatic boundary negotiations from 1846 to 1898, as well as of the facts and opinions referring to the boundary questions during this period ; an account of what was considered in both countries as the traditional boundary, of the circumstances which rendered it desirable

that a *general principle of demarcation* to be applied to the whole Andean frontier, should be agreed upon, and of the preliminaries of the Treaties, Covenants and Agreements which have been concluded by the High Contracting Parties.

An analytical study and interpretation of the texts of the said Treaties, Covenants and Agreements, based on their literal context and on the acknowledged opinions of writers on International Law.

A statement of facts and opinions showing the advantages of the principle of the water-divide for the delimitation of frontiers in unexplored territories and the purely conventional character of arcifinious boundaries, followed by a study of international precedents which clearly show the manner in which the principle of the water-divide has always been understood in its application.

A descriptive account of the Andean line of demarcation, in the sections in which it has been accepted and demarcated, as well as in those in which divergencies have arisen, the solution of which has been entrusted to H.B. Majesty's Government. This descriptive account will show that there exists no "orographical unit" which can be characterized as the edge or "divortium aquarum of a main chain of the Andes," and that the Argentine line which claims to follow such edge is but an artificially constructed line which fails to conform to the "invariable rule" prescribed by the Treaties, an invariable rule which can only be maintained by following the principle of demarcation to which the Chilean line conforms throughout its entire length.

Chapter I.

AS TO HOW THE SPANISH SOVEREIGNS DIVIDED THEIR
POSSESSIONS IN THE SOUTHERN HALF OF SOUTH
AMERICA AND ESPECIALLY AS TO THE
BOUNDARIES WHICH THEY ASSIGNED TO THE CAPTAINCY
GENERAL OR KINGDOM OF CHILE.

IN the first chapters of his Statement, the Argentine Representative has compiled a great number of quotations, accompanied by some general conclusions, with the object of showing that Chile from her discovery by the Spaniards had as her eastern frontier the Cordillera de los Andes. He asserts that during all the Colonial Period the Spanish Sovereigns fixed as her eastern boundary the barrier of the Andes; that this state of affairs subsisted after the declaration of the national independence, and that whenever Chile has claimed any territories to the east of the said Cordillera she has placed herself in open contradiction with the declarations of the Spanish Sovereigns, with history and with nature itself, which fixed on the most elevated crest of the Andes the boundary between the two countries. These assertions are repeated incessantly, though care has been taken not to enter into a systematic study or to give even an orderly exposition of the historical facts relative to this question.

Although this retrospective investigation is not strictly relevant to the question which the Tribunal is called upon to consider, and while its examination may perhaps cast upon it unnecessary labour, it is not possible—since unfounded assertions have been advanced with so much persistency—to abstain from opposing to them a complete and decisive series of declarations in a contrary sense which were made by the Spanish Monarchs and by their official representatives in America.

And these rectifications are all the more necessary since without them it might perhaps be thought that the attitude of Chile was not justifiable when maintaining for almost half a century her rights to territories situated to the east of the Andes. It was only a conciliatory spirit, and the ardent and natural desire of removing all motive of disagreement in her relations with the Argentine Republic, that induced Chile to accept in the Treaty of 1881 terms of arrangement representing a sacrifice of what she considered her right.

It would be entirely out of place to develop now the titles on which that right was based. The only object in view is to show that the assertions made by the Argentine Representative are not on the whole in conformity with historical truth, and to that end the circumstances and observations to be recorded here are directed.

The Emperor Charles V. issued in Toledo on May 21, 1534, four Orders (*Cédulas*) by which the vast territories of the South American Continent belonging to the Crown of Spain and lying south of the Equator, were divided into four strips or zones lying successively from north to south and extending parallel to each other from east to west,

**Charles V.
divides the
southern
part of the
Continent
into four
Gobernaci-
ones by the
Royal
Orders of
May 21,
1534.**

CHAP. I.

each one of which was to form a separate Gobernacion.¹

The first of these, called Nueva Castilla, including a concession previously made to Don Francisco Pizarro, was enlarged by a fresh grant of 70 leagues south of the 200 which had been ceded to Pizarro by the Capitulation of 1529, and which were reckoned southwards from the town of Santiago (or Tenumpuela) situated, according to Prescott,² in latitude $1^{\circ} 20' N$.

The second Gobernacion, to be called Nueva Toledo, and to be entrusted to Don Diego de Almagro, was to extend 200 leagues from north to south, reckoning from the southern extremity of Nueva Castilla.

The third Gobernacion, afterwards called Rio de la Plata, also of 200 leagues from north to south, reckoning from the southern extremity of Almagro's Gobernacion, was granted to Don Pedro de Mendoza, who was authorized to discover and conquer those territories, entering by the Rio de la Plata, with powers to reach the Pacific Ocean by this route.

Lastly, the fourth Gobernacion, likewise 200 leagues in length, was entrusted to Don Simon de Alcazaba. It was measured from the southern boundary of the third Gobernacion and was known later as Nueva Leon.

Their longitudinal extents. The ancient Spanish league used by the King in determining the length of each Gobernacion from north to south, allowed $17\frac{1}{2}$ leagues to each degree, according to the unanimous testimony of all Spanish cosmographers during the last three centuries.

¹ The word Gobernacion has been retained in the original Spanish owing to the difficulty of finding a satisfactory equivalent.

² *History of the Conquest of Peru*, iv. chap. i.

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There exists abundant testimony, and from writers who are authorities on the matter, to prove that the ancient Spanish leagues spoken of in the documents which we have quoted allowed $17\frac{1}{2}$ leagues to each degree of the meridian. Don Miguel Luis Amunátegui has collected in volume i. of his book entitled *Cuestion de límites entre Chile i la República Argentina* (pp. 47-48, and 221-228), a great number of quotations taken from works of cosmographers, pilots, geographers and Spanish historians of the sixteenth, seventeenth and eighteenth centuries, which leave not the slightest doubt regarding the accuracy of this statement. Among others there appears the very important testimony of Don Tomas Lopez, Geographer of His Majesty's dominions, and Member of the Royal Academies of History of San Fernando, etc., who in his work entitled *Principios jeográficos aplicados al uso de los mapas* (Madrid 1783) makes the following statement:¹ "What has been said by our geographers and cosmographers ever since we have any record of the navigation of our nation, convinces us that '*the geographical degree of $17\frac{1}{2}$ leagues is authorized by the laws as a fixed measurement of the manner in which the Spaniards divided the degree.*'"

Moreover, President La Gasca in a note addressed to the Council of the Indies in 1549, of which we copy a paragraph in the text, applied the same measurement of $17\frac{1}{2}$ leagues to the degree when investigating the exact delimitation of the Gobernaciones of Pizarro and Almagro.

Señor Don Luis L. Dominguez says in a note added by him to the book published by the Hakluyt Society under the title *The Conquest of the River Plate 1535-55* (London 1891), when referring to the distance given by the traveller, Ulrich Schmidt, in his diary (p. 4, note 4): "All distances given by Schmidt are erroneous . . . Schmidt's miles are more properly *Castilian leagues of $17\frac{1}{2}$ in a geographical degree, the legal measure of distance in his time.*"

Applying, therefore, this geographical measurement in order to mark out on the map the boundaries of the several gubernatorial zones, the result is as follows:

¹ Vol. ii, paragraph 13, No. 22, p. 282.

The Gobernacion of Nueva Castilla extended from the town of Santiago, in lat. $1^{\circ} 20' N.$, to the neighbourhood of the Peruvian town Ica in lat. $14^{\circ} 05' 43'' S.$

The Gobernacion of Nueva Toledo stretched from this latitude for 200 leagues or for $11^{\circ} 25' 43''$ southwards, that is to say, to a point near the present Chilean town of Taltal in lat. $25^{\circ} 31' 26'' S.$

The Gobernacion of Don Pedro de Mendoza in the part corresponding to the coast of the Southern Sea, extended from this point to lat. $36^{\circ} 57' 09'' S.$; that is to say, down to the parallel of Punta Coronel.

During the diplomatic controversy which preceded the negotiations of the Chilo-Argentine Boundary Treaty of 1881, several distinguished Argentine statesmen maintained that the Capitulation made with Don Pedro de Mendoza gave the Governors of the Rio de la Plata, from the beginning, titles of possession over all the southern extremity of the continent; including therefore all Patagonia and the Straits of Magellan within the boundaries of the present Argentine provinces. Señor Don Manuel Ricardo Trelles in a pamphlet published in Buenos Aires in 1865, under the title of *Cuestion de límites entre la República Argentina i el Gobierno de Chile. Refutacion al fondo de las dos Memorias publicadas por el escritor chileno Don Miguel Luis Amundéguí, discutiendo la soberanía i dominio de la República Argentina sobre la estremidad austral del continente americano*, says on page 16: "... The primitive demarcation of the Gobernacion del Rio de la Plata, constantly confirmed from the time of Don Pedro de Mendoza, had for its boundary the North and South Seas in the southern part of the American continent. It included therefore not only all Patagonia but also the whole of the Straits of Magellan and Tierra del Fuego, which are the regions enclosed between the seas mentioned." Don Felix Frias, Argentine Minister to Chile, says in an extensive Report dated at Santiago on September 20, 1873 (p. 22): "Therefore, in whatever official docu-

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ment may be consulted from the earliest times of the Colony to the latest, that southern extremity always appears within the boundaries of the provinces which are to-day Argentine"; and Don Vicente G. Quesada, former Director of the Library of Buenos Aires, has explained more fully than Señores Trelles and Frias, in a large volume entitled *La Patagonia i las tierras australes del continente americano* (Buenos Aires, 1875), the conclusions which, in his opinion, are to be drawn from the Capitulation made with Pedro de Mendoza in favour of the claims maintained by the Argentine Republic to all the southern extremity of America. We find in this work among others the following declaration (p. 55): "Clear and well defined is the territory which the King grants as the Gobernacion del Rio de la Plata; all the coast of the North Sea, that is to say, Patagonia, the Straits of Magellan inclusive, and 200 leagues of coast in the South Sea, as far as Almagro's Gobernacion, consequently including Tierra del Fuego. So that the first authentic document emanating from the only sovereign of those territories, demarcates and defines them in a manner as precise as it is conclusive. It may therefore be said that the southern boundary of the Gobernacion del Rio de la Plata in 1534 included the coasts of both seas, the Atlantic and the Pacific, or, as they then were called, North and South Seas, down to the Straits of Magellan, which is equivalent to including them in the territory assigned to the Gobernacion with which we are dealing."

We deem it useless to enter into a refutation of the palpable error into which the defenders of the Argentine claim have fallen, since there exists an official document of a later date published by the Government of the Argentine Republic themselves, in which it is acknowledged beyond all possible doubt that the Gobernacion granted to Don Pedro de Mendoza in 1534 had for its boundary on the north parallel $25^{\circ} 31' 26''$, and on the south parallel $36^{\circ} 57' 09''$, and stretching between these two parallels from the Atlantic to the Pacific, precisely as we have said above. This document is the "*Argument of the Argentine Republic on the boundary question with Brazil regarding the territory of Misiones submitted to the President of the United States in conformity with the Treaty of Arbitration of 7th of September, 1889, Presented by Estanislao S. Zeballos, Envoy Extraordinary and Minister Plenipotentiary of the Argentine Republic.*"

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*Washington, D.C., 1894.*¹ Annexed to this document there appears a map entitled "*South America in the sixteenth century. An ethnographical map showing also the boundary line between the colonies of Spain and Portugal, in accordance with the Treaty signed at Tordesillas in 1494, the route of Alvar Nuñez Cabeza de Vaca and the places inhabited by the Guarani tribes mentioned by Ulrich Schmidt in his voyage. Drawn by Luis L. Dominguez, London 1890.* Besides the meridian of demarcation between the Spanish and Portuguese colonies, there are traced on this map, with red ink, the boundaries from north to south of the Province of Rio de la Plata, coinciding with parallels $25^{\circ} 31' 26''$ and $36^{\circ} 57' 09''$ respectively, and passing along the entire breadth of the continent from the Atlantic to the Pacific. The map is a copy of that published by Señor Don Luis L. Dominguez, Minister Plenipotentiary of the Argentine Republic in Great Britain in the year 1891, in order to illustrate volume lxxx. of the works of the Hakluyt Society entitled *The Conquest of the River Plate (1535-55), with Notes and an Introduction by Luis L. Dominguez* (London 1891). And in the text of the Argument Señor Zeballos says with reference to the Capitulation of 1534, and as to the tracing of the boundaries in the map which we have just quoted (p. 24): "The Emperor Charles V. being resolved to hasten the settlement of Rio de la Plata, and to oppose his forces to those of the Portuguese Governors of Brazil, entered into an agreement with Don Pedro de Mendoza on the 21st of May, 1534, appointing him Adelantado and Captain General of Rio de la Plata and charged him with the discovery of new lands and the establishment of colonies in this temperate region of South America from the coast of the Atlantic to the Pacific Ocean or South Sea as it was then called. *The boundaries given in this contract have been traced in red by the Hakluyt Society upon its map, which is universally accepted as authoritative.*"

It is advisable to take note of this fact. In 1894 the Argentine Representative in his Argument presented to the Arbitrator in defence of the rights of his country in the boundary question with

¹ Alegato de la República Argentina sobre la Cuestion de Límites con el Brasil en el Territorio de Misiones, sometida al Presidente de los Estados Unidos de acuerdo con el Tratado de Arbitraje de 7 de Setiembre de 1889. Presentado por Estanislao S. Zeballos, Enviado Extraordinario i Ministro Plenipotenciario de la República Argentina. Washington, D.C. 1894.

Brazil, accepts for the primitive Gobernacion of Rio de la Plata *the boundaries which coincide exactly—even in minutes and seconds—with those which had been traced in 1879, after a conscientious examination of the documents, by the Chilean historian Don Miguel Luis Amunátegui in the first volume of his work entitled *La Cuestion de límites entre Chile i la República Argentina*. [See the annexed facsimile of the map on Plate I.] The map accompanying the book of the Hakluyt Society was made, as has been said, by the Argentine Minister, Señor Luis L. Dominguez, who writes as follows in the "Introduction" to the same volume (p. xx.)—"It has seemed to me interesting and necessary to add to this volume an ethnographical map. . . . This map also shows, for the first time in the history of cartography, the demarcation of this same province [Rio de la Plata] entrusted by the King of Spain to his Adelantados or Governors, and the route opened by Alvar Nuñez Cabeza de Vaca on his journey from the Island of Santa Catalina to Asunción on the Paraguay. . . . *The name of Rio de la Plata, given by the King of Spain to a territory so vast, and differing so widely now from what it was at the time of the conquest, creates some confusion and uncertainty in the mind of the reader of the events of that period. This can only be removed by a map which shows clearly what territories were held by the Spanish and Portuguese by virtue of the Treaty of Tordesillas,*" etc.*

How do the words that we have italicised conform with the affirmation which the Argentine Representative in the boundary question with Chile now attempts to maintain before the Arbitrator by continually repeating that the *traditional boundary "of the territories of the Rio de la Plata ran, from the first days of the conquest, over the summit of the Cordillera de los Andes down to the Straits of Magellan"*?

Finally, the Gobernacion of Alcazaba reached from parallel $36^{\circ} 57' 09''$ down to lat. $48^{\circ} 22' 52''$ S., its southern boundary passing through the centre of Campana Island.¹

¹ Such is the calculation which has been carefully made respecting the bordering parallels between the various Gobernaciones by the Chilean historian Don Miguel Luis Amunátegui, aided by the then Director of the Hydrographic Office, Don Francisco Vidal Gormaz. See vol. i. of Amunátegui's work, entitled



Original from
UNIVERSITY OF MICHIGAN

Their extent from East to West. Respecting the breadth of the four Gobernaciones there is no doubt that from west to east it was reckoned from the coast-line of the Pacific Ocean to the Atlantic, or, rather, to the meridian which formed the line of separation between the colonial dominions of Spain and Portugal. This is confirmed as regards the first two Gobernaciones in a note which the Licenciado Don Pedro de la Gasca, President Pacificator of Peru, addressed in 1549 to the Council of the Indies, embodying the result of a special investigation upon the partition of South America made by the Emperor Charles V. The authority of President La Gasca, who, as is known, was invested with full royal powers in those colonies, gives to his declaration a value as great as if it emanated from the Crown itself. Amongst other things he says :

“I wished to understand how far the Gobernaciones of Don Francisco Pizarro and Don Diego de Almagro reached. . . . I found a communication, a copy of which I herewith enclose, addressed to Friar Tomas de Berlanga, Bishop of Tierra Firme, in which it is stated that ‘the Gobernacion of Don Francisco Pizarro includes all the land stretching from west to east from parallel 2° N. of the Equator for two hundred and seventy leagues southwards along the meridian ; and that the Gobernacion of Almagro comprises all the land stretching from west to east from this second parallel and running southwards along the meridian for two hundred leagues.’ And in order to understand this better, I summoned, on the 19th of December, Antonio de Rodas and Francisco Guasino, formerly pilots of this sea,

Cuestion de Lmites entre Chile i la República Argentina (Santiago 1879), pp. 45-50.

The delimitation as given by Amunátegui differs by less than half a degree of latitude for each “Gobernacion” from that given in a communication from the Licenciado La Gasca, which we publish in the text, but it is readily seen that this small difference is due to the erroneous location given by La Gasca to the starting point of his calculation. He took as the northern boundary of the Gobernacion of Pizarro the parallel corresponding to 2° north lat., whilst the Royal Order of 1529 establishes as a starting point of this Gobernacion the town of Tenumpuela, which is situated on 1° 20' latitude : that is to say, forty minutes south of parallel 2°.

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who had taken part in the demarcation of these two Gobernaciones, and in view of what they said and of what appeared concerning the latitude given in the latest almanacks of these regions, as well as from the records drawn up respecting the boundaries of these Gobernaciones, the conclusion was—

“That the Gobernacion of Don Francisco Pizarro in the north commenced two degrees more or less north of the Equator, and starting therefrom in a southerly direction along the meridian, barely reached the fourteenth degree south of the Equator. *And that from west to east it included all the land between the two parallels and from the Southern Sea to the Great Sea, commonly called the Northern Sea.* Allowing to each degree of the meridian $17\frac{1}{2}$ leagues, it appears that such territories extend for sixteen degrees, two north of the Equator and fourteen south of the Equator (that is to say, ten more than the 270 which His Majesty gave to the said Gobernacion in a southerly direction) along the meridian; and owing to this excess of ten leagues the boundary is designated barely on the fourteenth degree.

“And also that the Gobernacion of the Adelantado Almagro commenced at the said fourteenth parallel running down to barely the 25th degree which lies one degree and a few minutes south of the tropic of Capricorn. *And that thus Almagro's Gobernacion comprised all the land situated from west to east, and from sea to sea, between the two parallels, the first one being barely fourteen degrees from the Equator and the other barely twenty-five.*”¹

As to the extent from east to west of the third Gobernacion, the inference from the very text of the Royal Order, given in 1534, in favour of Don Pedro de Mendoza, is that the King prescribed the same rule as in the Gobernaciones of Pizarro and Almagro, since he authorized Mendoza to take possession of the two hundred leagues granted to him on the coast of the Southern Sea, starting from Rio de la Plata, i.e., crossing the entire breadth of the continent from sea to sea in the latitude corresponding to his Gobernacion.

In order to obtain a correct idea of the extent of the territories included in the fourth and most southernly of the

¹ *Coleccion de documentos inéditos para la Historia de España*, Tom. L. Madrid, 1867, pp. 9-11.

Gobernaciones, established in 1534, the following facts must be borne in mind.

A Portuguese navigator, Simon de Alcazaba, was authorised by the King to "conquer, pacify, and settle the lands and provinces along the coast of the Southern Sea in the said two hundred leagues nearest to the boundaries of the Gobernacion, which we have entrusted to Don Pedro de Mendoza," or which, as may be read in another part of the same Order, "begin precisely at the boundaries of the Gobernacion which we have entrusted to Don Pedro de Mendoza towards the Straits of Magellan."

Alcazaba started to take possession of his Gobernacion in 1535. He anchored in a bay off the eastern shores of Patagonia on the 45th degree of South latitude, which was called "Puerto de los Leones," and there, producing his powers from Charles V., caused himself to be sworn in as Governor and Captain General of the Province of Nueva Leon, the name assigned to his projected Gobernacion. The chronicler Oviedo, who was informed of this act by some surviving members of that ill-fated expedition, relates that Alcazaba "presented the power and royal dispositions which he carried from the Emperor for that purpose, because he said that this land was situated in the region of his Gobernacion, and within its boundaries." Shortly afterwards the Governor started on an expedition to the interior, and, although he soon returned, being unable to endure the fatigue of the journey, he ordered his captains to push forward, and they succeeded in going inland for "over 100 leagues,"¹ until at

¹ Vargas i Ponce, *Relacion del Último Viaje al Estrecho de Magallanes*, p. 214.

the end of a twenty-two days' march scarcity of food compelled them to return.

It is proved, therefore, that Alcazaba himself understood that his Gobernacion included within its boundaries not only the coast of the Pacific for an extent of 200 leagues south of the Gobernacion of Pedro de Mendoza, but also the corresponding part of the coast of the Northern Sea, where he established the base of his operations in order to take possession of his dominions.

Besides, that the Sovereign himself intended an extension in width of the Gobernacion of Nueva Leon from the shores of the Pacific to the Atlantic, is conclusively proved by the Royal Order issued at Valladolid on December 8, 1536, in favour of Francisco de Camargo who offered his services for the conquest and settlement of the lands which, after Alcazaba's assassination, had remained vacant in the southern extremity of the continent.

In this document, which contains a very precise and detailed demarcation of the boundaries, the following may be read :

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"We promise to appoint you for life our Governor and Captain General of the lands, provinces and people to be found on the said coast of the Southern Sea from the point of termination of the two hundred leagues which are given as a Gobernacion to Don Pedro de Mendoza down to the Straits of Magellan *and then following up the entire coast and land of the said Straits as far as the other sea to the degree corresponding to that degree in the said South Sea where the Gobernacion of Don Pedro de Mendoza ends and where yours begins.*"

These words of the Sovereign are thrice textually repeated in the Order, and conclusively prove that the Monarch formed a separate Gobernacion of all the territory which extends south of the southern boundary of the

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Gobernacion of Don Pedro de Mendoza : that is to say, from parallel $36^{\circ} 57' 09''$, and throughout the width of the continent, from the Pacific Ocean to the Atlantic, ending at the Straits of Magellan. At the same time the Capitulation of 1536 gave a considerable extension southwards to the Gobernacion of Nueva Leon, adding to it all the territory which remained unallotted from the former southern boundary of the Gobernacion of Simon de Alcazaba, or in other words, from parallel $48^{\circ} 22' 52''$ down to the Straits of Magellan.

Moreover, in a document dated in this same year of 1536 the King incidentally confirms the assignment which he had made of his dominions in South America. In the Royal Order granting to Juan de Samano the General Notaryship of the Indies, there occurs an enumeration of all the provinces and Gobernaciones established in this continent, and especially of those included within the ancient Province, afterwards the Viceroyalty, of Peru.

"The Provinces of Peru," it says, "which are, from the Province of Castilla del Oro, called Tierra Firme, exclusive, down to the Straits of Magellan on the Southern Sea in which are included the Provinces of Nueva Castilla, which we have entrusted as a Gobernacion to the Adelantado Don Francisco Pizarro, and the Provinces of Nueva Toledo, which we have given as a Gobernacion to Marshal Don Diego de Almagro, and the Gobernacion of 200 leagues which we have given to Don Pedro de Mendoza on the said southern coast, and the Gobernacion which we have entrusted to Simon de Alcazaba and which on his death we have entrusted to Don Francisco de Camargo . . . and likewise the Rio de Solis called de la Plata, the discovery and settlement of which are due to Diego Garcia, a pilot, the conquest and government of the same is now entrusted to the said Don Pedro de Mendoza, with all the lands and provinces thereto pertaining. . . ." ¹

¹ The Chilean Legation in London possesses an authenticated copy of this document, the original of which exists in the Archivo de Indias.

Further, in 1539, the King made a concession to Don Pedro Sancho de Hoz, a rival later on of Don Pedro de Valdivia, whereby he was permitted to navigate with his own ships and at his own expense the littoral of the Southern Sea: "where," as the Order says, "lie the said Gobernaciones belonging to the Marquis Don Francisco Pizarro, to the Adelantado Don Diego de Almagro, to Don Pedro de Mendoza and to Francisco de Camargo, down to the Straits of Magellan." At the same time the Sovereign promised Don Pedro Sancho de Hoz that, "when the discovery is made of the other part of the said Straits or of some island not situated within extraneous boundaries, We shall reward your services; and until We are informed of what you shall thus discover, you shall be our Governor thereof."¹ In this manner the Sovereign completed the distribution of his dominions in the southern extremity of the continent, granting to Sancho de Hoz the Gobernacion of Tierra del Fuego and the adjacent islands.

Such is the first and fundamental territorial division of the southern countries of South America in which, as may be seen, the King of Spain did not take into account any geographical feature which might serve as an "arcifinious" boundary in order to separate from each other the extensive Gobernaciones created by Royal decree.

Let us now briefly review the development and territorial modifications introduced by the Crown of Spain in the three southern Gobernaciones which include the greater part of the present Republics of Chile and Argentina.

¹ *Coleccion de doc. inéditos del Archivo de Indias*, vol. xxiii. p. 5.

Almagro, Mendoza, and Alcazaba, try to take effective possession of their Gobernaciones. In 1535, a year after the issue of the above-mentioned Royal Capitulations, Almagro, Mendoza, and Alcazaba are found engaged in attempts to make the occupation of their Gobernaciones effective. None of them, however, succeeded in establishing a permanent ownership, and their operations were limited to short visits and more or less unsuccessful expeditions on the extreme borders of their territories.

Almagro's Expedition. When Don Diego de Almagro, in his difficult campaign, initiated in 1535, passed over the Chilean valleys from Copiapó down to the neighbourhood of River Maule, he went in fact beyond the boundaries of his jurisdiction. His anxiety to occupy the country of "Chile," of whose wealth he had heard from the Cuzco Indians, took him far south of his own Gobernacion, the territory of which he had crossed in his march from north to south over the valleys and plateaus of the Cordillera. The so-called "Province of Chile," which had been subdued earlier by the powerful Incas of Peru, was at that time but a vague geographical expression which included the densely populated regions of the central zone of the present Republic, and had for its centre the rich valley of the River Aconcagua, to which the name of "Chile" was originally applied—a name extended later to the whole country.

The Argentine Representative, when speaking (p. 3) of Almagro's expedition, says :

What is said of this expedition on p. 3 of the Argentine Statement. "The Chilean historian, Don Miguel Luis Amunátegui,¹ referring to the expedition of Diego de Almagro in A.D. 1535, states that the principal goal of his expedition was the country which extends to the western side of the Andes, and which should receive the name of Chile. The Inca

¹ Miguel Luis Amunátegui, *La Cuestion de Límites entre Chile i la República Argentina*, Santiago, 1879, vol. i. p. 81 et seq.

Manco Capac, who was preparing his great rising against the Spanish conquerors, being desirous that Almagro's forces should undertake this expedition, and in order to induce him to do so, furnished him with the most exaggerated notions concerning the wealth which could be acquired on the western side of the Cordillera.

"Almagro, having arrived at the 'Provincia de Chile,' after crossing the Cordillera de los Andes in the neighbourhood of Copiapó and undergoing the greatest privations on the journey enquired of the 'lords of the country' on the western side of the 'Cordillera of the Snow (Cordillera de la Nieve) which continues to the Straits,' and which he had now crossed, whether he would be able to find land suitable for settlements extending to the sea.

"Thus, since the very first days of the discovery of Chile by the Spaniards, the eastern boundary of the country, first as a Province of Spain and afterwards as a Republic, has been the 'Cordillera of the Snow,' or the 'Cordillera de los Andes.'"

The Province of Chile visited by Almagro does not include all the Captaincy General of Chile.

It must be observed that in this strange conclusion the Argentine Representative confuses two perfectly distinct things. The "Provincia de Chile" which Almagro reached, and the "Caciques" of which gave him the information required, must not be confounded with what the Argentine Representative calls "Chile as a Province of Spain": that is to say, the Gobernacion or Captaincy General of Chile, upon whose territorial extent the Republic was afterwards formed, and the boundaries of which were fixed later on, as we shall see, by the King of Spain in a very precise manner, without taking into consideration the crests and snows of the Cordillera de los Andes.

Almagro abandons the conquest of Chile.

Diego de Almagro had boldly entered territories which were included in Pedro de Mendoza's concession, and, consequently, could exercise no authority over those lands of "Chile" save by virtue of a new and express Royal authorisation. But the actual development of the facts themselves precluded the complications that might

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have arisen therefrom; for Almagro, seeing that the country which he had just explored did not answer to his hopes, and following other plans tending to secure for himself the possession of the town of Cuzco, abandoned the conquest of "Chile" and returned to Peru, where he met his death in the war against the brothers Pizarro.

**Almagro's
Gobernacion
given to Don
Pedro de
Valdivia.**

The Gobernacion assigned to Almagro by the Royal Order of 1534, was given to Don Pedro de Valdivia after the former had abandoned it. This appears from a letter which Don Pedro de Valdivia wrote to the Emperor Charles V. from Concepcion under date of the 15th of October, 1550. In it he said that the Marquis Pizarro, "being in possession of an Order and Grant which he had from Your Majesty, given at Monzon in the year 1537, countersigned by the Secretary Francisco Cobos, of the Secret Council of Your Majesty, in which he was commanded to direct the conquest and settlement of the Gobernacion de Nueva Toledo and Province of Chile by reason of their having been abandoned by Don Diego de Almagro, who went there with that object," had appointed him (Valdivia) "that he might execute the Order and govern them (the Provinces) as well as the rest which he might discover, conquer or settle, so long as it should be the wish of Your Majesty."¹

It therefore appears that the Marquis Francisco Pizarro was authorised by the Monarch to dispose of the Gobernacion de Nueva Toledo, and to carry out the conquest and settlement of Chile after their abandonment by Almagro. It also appears that at this time a precise distinction was

¹ Gay, *Historia Fisica i Política de Chile. Documentos*, vol. i. p. 86.

made between the Gobernacion de Nueva Toledo and the Province of Chile which had been invaded by the expedition of Almagro and which, on the return of the said conqueror, had fallen into discredit, it being considered as the poorest corner of the New World. Nobody aspired to continue Almagro's work in that far-off province until the arrival of Pedro de Valdivia, to whose actions and titles we shall refer later.

Mendoza's expedition. Don Pedro de Mendoza, the chief of the third Gobernacion, had set out at the head of an elaborate expedition to Rio de la Plata in the estuary of which he founded the first city of Buenos Aires in February of 1535. But a few months afterwards the neighbouring Indians attacked and set fire to the new settlement, and famine and illness soon disposed of the majority of the men who had accompanied the Governor. Compelled by ill-health to remain in a small fort which he had constructed, Mendoza directed his lieutenant Juan de Ayolas to continue the exploration of the rivers Paraná and Paraguay in search of a communication with Peru; but in 1537, tired of awaiting the result of this expedition, he determined to return to Spain, and died during the voyage.

Before starting, Mendoza wrote instructions for his lieutenant Ayolas, authorising him "to cross in a straight line to the other sea:" that is to say, to the Southern Sea, on the coast of which there belonged to him, by virtue of the Royal Concession, 200 leagues reckoned from the southern boundary of Almagro's Gobernacion. In exchange for a certain sum of money he also authorised his lieutenant to cede eventually the said 200 leagues on the

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Southern Sea to Almagro, with whose Gobernacion they were conterminous.¹

By the death of Mendoza his Gobernacion is given to Cabeza de Vaca. After the death of Don Pedro Mendoza, the Court of Spain being unaware of the result of lieutenant Ayolas' expedition to the interior, the King made on March 18, 1540,² a new Capitulation with Alvar Nuñez Cabeza de Vaca for the conquest and settlement of the territories of Mendoza's Gobernacion. It suffices to read this document to be convinced that the King granted to Cabeza de Vaca precisely the same Gobernacion which he had entrusted in 1534 to Don Pedro de Mendoza.

Deposition of Cabeza de Vaca and election of Martinez de Irala. The new Governor showed great zeal in the service of the Crown, devoting himself with indefatigable activity to new discoveries and to the reduction of the natives by means of religion and the sword. But a mutiny of his subalterns put an end to his work, and in April 1544 he was deposed and imprisoned by the mutineers, who elected in his stead the Maestre de Campo Domingo Martinez de Irala.

Like all the primitive conquerors of Rio de la Plata, Irala tried first and principally to discover the easiest and most accessible road connecting his Gobernacion with the rich and coveted dominions of Peru, and in one of his expeditions, in 1548, reached the extremity of that territory, where he thought it prudent to halt and send messengers to present his respects to the Licenciado Don Pedro de la Gasca, who then administered the Colony with the

¹ *Coleccion de documentos inéditos del Archivo de Indias*, vol. x. p. 536.

² *Ibid.* vol. xxiii. p. 8.

comparatively modest title of President of the Royal Audience of Lima, but with the amplest powers from the Crown. Martinez de Irala was perfectly aware that his title of Governor of Rio de la Plata, arising only from an election by some conquerors, was very precarious unless ratified by the King or by some of his agents duly authorised to grant lands and Gobernaciones, and consequently he appealed to La Gasca to confirm him in his post.

The President Pacificator, however, disregarded this desire of Irala, but formed a new Gobernacion, which according to the testimony of the chronicler Herrera¹ extended west to east "from the confines of Cuzco de las Charcas down to the boundaries of Brazil," and north to south, from parallel 14° down to 23° 33'. The person favoured by this Capitulation was Diego de Centeno, but La Gasca's resolution took no effect owing to the death of the former before he had any opportunity of enjoying it.

On his return to the town of La Asuncion, the seat of his Government, Martinez de Irala heard that the Sovereign had meanwhile made a Capitulation with another Captain called Juan de Sanabria, who had offered his services to conquer and settle the Province of Rio de la Plata.

In the preamble to this important document² signed in Madrid on the 22nd of July, 1547, by the Prince (afterwards King Philip II.) who at the time governed Spain in his father's name, the Monarch expressly says that the Capitulation previously made with Alvar Nuñez Cabeza

The Gobernacion of Rio de la Plata is given to Juan de Sanabria.

¹ *Historia General de la Indias*, Decade 8, Book v. Chap. 1.

² *Coleccion de documentos inéditos del Archivo de Indias*, vol. xxiii. p. 118.

de Vaca had expired, and that "he (Cabeza de Vaca) shall not return to the said Province, as it would not be advisable, and, therefore, the Government of the said Province remains vacant."

He then proceeds to trace explicitly the boundaries of the Gobernacion in the following words :

"First, I give permission and authority to you, the said Juan de Sanabria, on behalf of His Majesty and in his name, and in the name of the Royal Crown of Castilla and Leon, to discover and settle, by virtue of your contract, *two hundred leagues upon the coast, from the mouth of the Rio de la Plata, but not of Brazil, beginning in latitude 31° S., and thence towards the Equator* ; that you may settle a space of land from the mouth of the entrance of the said river on the right hand side to the said 31° latitude, upon which you will build a town ; and you may take the entrance through the said river, as well as all those with whom His Majesty may make contracts for the discovery of all that remains undiscovered on the 31°, as well as everything lying on the left hand side, to the point which is stipulated with the Bishop of Plasencia ; *thus the said two hundred leagues are to extend in breadth to the South Sea* ; which discovery and settlement you may make, provided that in case you meet with other Governors or Captains who may have already discovered or settled the said land and reside there at the time of your arrival, you do nothing to the injury of whatever you may find in the same land, nor interfere with nor enter into anything which may have been discovered or settled, even though you find it within the boundaries of your Gobernacion, thus avoiding such difficulties as have already occurred in similar circumstances," etc.

**Modification
of the bound-
aries of the
Gobernacion
of Rio de la
Plata.**

As may be seen, in the Capitulation made with Juan de Sanabria, the Monarch assigns to the Gobernacion of Rio de la Plata boundaries differing from those which he had established in the previous Capitulations made with Don Pedro de Mendoza and Don Alvar Nuñez Cabeza de Vaca. The southern boundary of the Gobernacion was fixed at parallel 31°, which represents a diminution amounting to almost six degrees of latitude compared with the corresponding

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boundary of Mendoza's Gobernacion, which, as we have stated, reached latitude $36^{\circ} 57' 09''$. Only, as an exception, there was added the stretch of land situated on the right hand side of the mouth of the Rio de la Plata (i.e. to the east of that river) down to parallel 31° , where at the present day exist the Republic of Uruguay and the greater part of the Argentine Province of Entre-Rios. On the other hand the territory of the Gobernacion was enlarged towards the north, for, if we reckon 200 leagues of $17\frac{1}{2}$ leagues per degree, that is to say, $11^{\circ} 25' 45''$, from parallel 31° to the Equator, we reach nearly parallel $19\frac{1}{2}^{\circ}$ —i.e. six degrees further north than the former northern boundary of the Gobernacion del Rio de la Plata.

The King did not take into account the Cordillera de los Andes although he was familiar with it.

For the rest the breadth of the territory remained unchanged, because, according to the text of the Capitulation, the 200 leagues were to extend "in breadth as far as the South Sea," thus clearly showing that the only "arcifinous boundary" which the King established was the coasts of the two opposite oceans, without the least reference to the formidable "summit of the Cordillera of the Snow" which rises between them.

It must be observed that the King's omission of all reference to the Cordillera de los Andes in the delimitations to which we have just alluded, was certainly not due to ignorance of the geographical features of those countries. There are proofs that, although many details were obscure, the general topographical conformation of the central and southern part of South America, and especially the existence of the prolonged chains of mountains called the Cordillera de los Andes, were then perfectly well known.

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The Chief Chronicler of the Indies, Don Gonzalo Fernandez de Oviedo i Valdés, mentions in Book 47, Chap. 5 of his *Historia Jeneral i Natural de las Indias* the fact that Diego de Almagro had sent the Emperor Charles V. an account of his deeds identical with that which he used in his *Historia* when describing the expedition of this Captain to Chile, in the years 1535-6.

In that account Almagro several times mentions the Cordillera and makes statements as to its vast extent. He says, for instance :

*"And it must be known that from the confines of Collao and Paria, and Aulaga, Tupisa and Xibixuy down to the Straits of Magellan, there is (or at least there lies in that direction) a Cordillera of very rough ranges, the starting point of which is not known, uninhabitable, and in some parts of which (especially in the said provinces) thieves and highwaymen began to assemble, whose children grew up there and multiplied."*¹

He also describes the difficulties in crossing *the passes* (called "*puertos*") of the Cordillera in the part that he had traversed, as may be seen in the following quotation :

*"They agreed to return with all haste because there were no means of staying in the said Province of Chile, in Pocayapo (Copiapó) or further on . . . On the one hand they had no supplies and on the other they had to choose between the less dangerous of two difficult roads, and both were such that human brain could not choose without the help of God, nor decide whether it should be that of the gap (puerto), which was snow-bound, and where for thirty leagues not a grain of corn could be found. . . . The rivers were very wide and deep," etc.*²

The King and the members of the Council of the Indies, whom he always consulted upon matters referring to the Colonies, were not, therefore, ignorant of the general topography of those distant regions, and the very Capitulation made with Juan de Sanabria, shows that in issuing his delimitation decrees, the Sovereign took into account

¹ Oviedo, *Historia*, lib. 47, chap. 3.

² *Ibid.* chap. 4. See also chap. 3, p. 264.

the progress of the geographical discoveries which naturally accompanied the conquest, and that, in forming his colonial states and fixing their boundaries, he bore in mind the practical necessities to which those discoveries gave rise.

The conquerors of Rio de la Plata, Juan de Ayolas, Alvar Nuñez, Martinez de Irala and several other captains under their command, had *de facto* enlarged the Gobernacion towards the north, profiting by the excellent waterway afforded by the rivers Paraná and Paraguay. The fluvial port of Candelaria, which served them as the starting point for their expeditions inland and westward to Peru, was situated, according to calculations made by the pilots of Alvar Nuñez's expedition, in latitude $20^{\circ} 40'$ S., that is to say, on the boundary between the present Brazilian State of Matto Grosso and the Republic of Bolivia; and one of Alvar Nuñez's Captains went as far as the region of the Xarayes in latitude 17° , where later on Irala ordered the formation of a settlement so that he might secure open communication with the neighbouring province of Peru.

The Sovereign being duly informed of these discoveries and conquests, took them into account when assigning in the northern part of the Gobernacion of Rio de la Plata a new boundary which added to it the greater part of the vast river basin of the Paraguay, the main artery of life of the first settlers in those provinces.

It is now necessary to draw attention to a clause of the Capitulation made in favour of Juan de Sanabria, in which he is forbidden to "interfere with or to enter into anything which should have been discovered or settled" by another Captain, even though such territory should be

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within the boundaries assigned to his Gobernacion. The King's foresight, thus clearly expressed, was highly opportune, since there was in fact a Captain who, with legal titles from the Governor of Peru, had begun in 1541 the conquest and settlement of territories which fell partly within the Gobernacion of Juan de Sanabria. This Captain was Don Pedro de Valdivia, in whose favour there had been established for the first time and in a formal manner a "*Gobernacion de Chile*."

We shall now summarize the facts leading up to the legal establishment of this new Gobernacion.

The Gobernacion de Chile or Nueva Estremadura is given to Don Pedro de Valdivia. We have already said that Pedro de Valdivia was sent by the Marquis Don Francisco Pizarro to conquer and settle the "Gobernacion de Nueva Toledo and Province of Chile" by virtue of a Royal Order given at Monzon in 1537.

"Taking my commission from the Marquis," says Valdivia in his letter addressed to the Emperor in 1550,¹ "I started from Cuzco in the month of January, 1540; I marched, passing the great desert of Atacama, up to the valley of Copiapó, which is the commencement of this land, and onwards for 100 leagues to the valley called Chile, which Almagro reached and where he turned back—wherefore this land bore such a bad reputation; and on this account, and in order that this name should be forgotten, I called the land which he had discovered, and the one which I might discover down to the Straits of Magellan, '*Nueva Estremadura*.'"

Valdivia's wishes of extending his power down to the Straits of Magellan and Atlantic Ocean. In fact, from the beginning of his campaign, Valdivia expressed a desire to extend his jurisdiction south as far as the Straits of Magellan and on the east up to the Northern Sea or Atlantic Ocean, and explicitly communicated his projects to the Sovereign, who did not alter or reject them.

¹ Gay, *Historia Física i Política de Chile. Documentos*, vol. i. p. 129.

"I beg to inform your Majesty," he says in a letter dated 1545,¹ "that when the Marquis, Don Francisco Pizarro, gave me this commission there was no man who wished to come to this country, and those who most avoided it were the people brought here by the Adelantado Don Diego de Almagro, who, having abandoned it, left the land with such a bad name that people fled from it as if from pest. . . . And as I saw that it would be a service to your Majesty to extol, settle and uphold it, exploring it down to the *Straits of Magellan and the Northern Sea*, I took great pains," etc.

The only person who might possibly have competed with Valdivia in the conquest and settlement of the southern regions, by virtue of an official authorization, was Francisco de Camargo, whose titles we have already mentioned. It is worthy of note, however, that at the same date that Valdivia initiated his expedition to Chile, the concession granted by the King to Camargo expired by reason of the unfortunate result of the expedition to those regions under one of Camargo's substitutes. When Valdivia, in 1541, was within a few days' march of the Valley of the Mapocho, he received news that a Spanish ship was sailing along the neighbouring coast. This ship, commanded by Alonso de Camargo, a relative of Francisco, formed part of a flotilla which had left Spain two years earlier with the object of conquering and settling the regions of the Straits, and was the only vessel which, after the rest of the squadron had perished in the storms of the southern seas, had succeeded in reaching the Pacific and in continuing her voyage up to a Peruvian port.

"The troubles of the civil war in that country engulfed her captain and many of his companions, and thus deprived us of an exact account of the voyage. The storms of the southern seas, while de-

¹ Gay, *Historia Física i Política de Chile. Documentos*, vol. i. p. 49.

stroying those projects of settling the territories neighbouring the Straits, gave an impetus to the ambitions of the conqueror of Chile."¹

In fact, as Don Francisco de Camargo did not fulfil the conditions of his contract, the Monarch found himself free to grant others the right of discovering and conquering the regions ceded to Camargo by the Order of 1536.

Meanwhile Pedro de Valdivia, dissatisfied with his former title of "Lieutenant-Governor representing the Governor Don Francisco Pizarro," caused himself to be appointed "Governor and Captain-General in the name of His Majesty" by the Cabildo (City Council) of the City of Santiago, the capital of his Province, which had been recently founded in 1541. From this date he assumed the independent government of Chile and began applying to the Crown for confirmation of his new title.

In 1547, having returned to Peru and contributed essentially to the satisfactory result of La Gasca's campaign against the rebels under Gonzalo Pizarro, Valdivia obtained from the President Pacificator the confirmation of his commission as Governor of Chile or of Nueva Estremadura by a Royal Decree dated at Cuzco on April 18, 1548. The relevant part of this document reads as follows :

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"I hereby give and assign as your Gobernacion, and empower you to conquer from Copiapó, situated on the 27th degree of latitude from the Equator southwards to the 41st degree on the same side, running from north to south along the meridian, and extending in breadth from the sea inland; that is, from west to east 100 leagues; and in the said Gobernacion and stretch of land I nominate and constitute you Governor and Captain-General of His Majesty, that you may subdue and bring under

¹ Diego Barros Arana, *Historia Jeneral de Chile*, vol. i. p. 227.

allegiance to His Majesty the said land, which you may occupy, endeavouring to implant therein our holy Catholic faith," etc.

And in a report sent by the same Don Pedro de la Gasca to the Council of the Indies¹ from Cuzco under date of May 7, 1548, the following may be read :

"Pedro de Valdivia was sent as Governor and Captain-General of the Province of Chile, called Nuevo Estremo, *which Gobernacion is delimited from Copiapó, on the 27th degree south of the Equator, down to the 41st degree, along the meridian, and in width from the sea inland, from west to east for 100 leagues. This Gobernacion was given him by virtue of the power that I have from His Majesty*, because it was advisable to diminish the number of people of this Kingdom (Peru) and employ those who assisted in defeating Gonzalo Pizarro, all of whom could not be provided for on this land ; and it was given him (Valdivia) in preference to any one else because of the services which he has rendered His Majesty on this occasion, and on account of the knowledge which he has of Chile, and for the work he has performed in the discovery and conquest of the said land."

Moreover, Pedro de Valdivia, in a letter written at Lima on June 15, 1548,² communicated as follows to the Prince ruling the Monarchy, afterwards King Philip II., the appointment which he had lately obtained from the President :

"Once the disturbances in this kingdom (Peru) had ceased, and the President having a true knowledge of what I had done in the service of Your Highness, and of what I had spent in developing and settling that land (Chile) and in the discovery of the territory situated beyond, amounting to over 300,000 pesos ; and knowing my desire to serve Your Highness, *he appointed me in Your Royal name, Governor and Captain-General of that Gobernacion of Nuevo Estremo, for the term of my life, by virtue of the power and commission he had from our King for that purpose, assigning as boundaries of the said Gobernacion from the 27th degree to the 41st degree, from north to south along the meridian, and from east to west for a stretch of 100 leagues, as is more fully stated in the Decree which by reason of his power he gave me, and of which he sent me an authorised copy, together with instructions from the Audience of His Majesty, residing in that Kingdom.*"

¹ Barros Arana, *Proceso de Pedro Valdivia*, p. 219.

² Gay, *Historia Física i Política de Chile. Documentos*, vol. i. p. 79.

**Royal Order
of May 31,
1552, con-
firming
Valdivia's
appoint-
ment.**

Finally the Sovereign approved the concession made by President la Gasca to Valdivia by a Royal Order dated in Madrid on May 31, 1552. It says :

"Whereas the Licenciado La Gasca, our former President of the Royal Audience of the Provinces of Peru, and at present Bishop of Palencia, when in the said Provinces of Peru, by virtue of the special power which he had from us to establish new Gobernaciones and direct conquests, appointed you, Pedro de Valdivia, to be Governor and Captain-General of Nuevo Estremo and Provinces of Chile, as appears from the document he gave you, and on our part, we, accepting the aforesaid acts and taking into consideration the services you have rendered us, and thinking it conducive to the good service and government of the said land, and the administration and execution of justice there, we deem it advisable that so long as it shall seem good to us and so long as no new decree is issued, *you shall hold the Governorship of the said Province of Chile within the boundaries which have been assigned to you by the said Bishop of Palencia, and you shall be Captain-General of it,*" etc.¹

The documents just quoted prove that the Crown of Spain created in favour of Pedro de Valdivia a new Gobernacion, that of Chile or Nuevo Estremo, which did not overlap any other then existing, since the concession previously granted to Juan de Sanabria contained, as we have seen, the express order that he should respect the jurisdiction of any other independent Captain who might have discovered land and settled within the boundaries of the territory granted him. And in the year 1547, the very date of the Capitulation with Sanabria, Valdivia had not only held in military occupation for seven years the zone comprised between 27° and 31° which fell with Sanabria's concession, but had also founded there, in 1544, the town of La Serena, and had carried out the allotment of the Indians.

¹ This document is published in the *Historia General del Reyno de Chile* of Father Rosales, Book III., chapter 18, vol. i. p. 274.

Thus, the establishment of the Gobernacion de Chile by President La Gasca, confirmed afterwards by the Sovereign himself, is the first separation of western territories of the former Gobernacion of Rio de la Plata, and it is most important to note that *the eastern boundary of those segregated territories was not traced over the Cordillera de los Andes or determined by any other "arcifinious" features, but was a line which ran from north to south at a distance of 100 leagues from the coast-line of the Pacific Ocean.*

**Boundaries
of the
Gobernacion
de Chile
given to
Valdivia.**

The fundamental delimitation of the Gobernacion de Chile, established by President La Gasca in 1548, and confirmed by the King in 1552, is extremely simple and clear. North to south from parallel 27° down to 41° , and west to east *from the coast of the Pacific 100 leagues "inland."*

Bearing in mind that each degree of the meridian contained $17\frac{1}{2}$ ancient Spanish leagues, and tracing on the map, according to this measurement, the width of the Gobernacion de Chile, it follows that the eastern boundary of this Province reached in its entire length from the 27° down to the 41° , to a considerable distance east of the Cordillera de los Andes. It would be out of place here to investigate minutely and determine with precision on the map the exact line of the eastern frontier of Chile as established by the quoted documents; it is sufficient to note that the zone of 100 ancient Spanish leagues in breadth included at least 343 miles or 630 kilometres from west to east, and, therefore, comprised vast territories to the east of the Cordilleras, containing in their entirety the present Argentine provinces of Tucuman, Catamarca, La Rioja, San Juan, San Luis, and Mendoza, as well as part of the Province of Córdoba and

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of the Gobernaciones of La Pampa, Neuquen, and Rio Negro.

All along this tract of land the legitimate jurisdiction of the first Governor of Chile extended, and we shall shortly see that the political unity of the regions on both sides of the Cordilleras was not a mere creation of the Sovereign's will without any practical consequences, but that Pedro de Valdivia and his successors in the government of Chile actually succeeded in establishing their authority over the eastern as well as over the western parts of their Gobernacion.

The facts relating to this point belong to history, and we shall here give a brief summary of them.

**Valdivia
makes effective his
authority to
the east of
the Cordil-
leras.**

Francisco de Villagran, a lieutenant of Governor Valdivia, on his return from Peru in 1550 with the fresh reinforcements he had been directed to enlist, brought within the sway of his chief the Tucuman region, thus annulling the authority of another Captain, called Juan Nuñez de Prado, who had founded the town of Barco, which, according to Valdivia, fell within the boundaries of his Gobernacion.¹

¹ Letter from Valdivia addressed from Concepcion to the Emperor Charles V. under date of September 25, 1551: "After having amended this, Juan Nuñez de Prado, of his own will and without being forced to it, resigned the authority he had, and which the President had given him, saying that he could not support that town (Barco), and the City Council, natives and residents of it requested Francisco de Villagran to take it under his charge, *since it was situated within the boundaries of this my 'Gobernacion,'* and to give it aid in my name that it might support and perpetuate itself; and he (Villagran), *seeing that it could not be succoured from any other part but from this part of the South Sea,* placed it in the name of Your Majesty under my protection and support" (Gay, *Historia Física i Política de Chile, Documentos*, vol. i.). There exists also in the Archivo de Indias a letter dated September 27, 1551, in which the Royal officials of the City of Concepcion inform the Emperor of the occurrences mentioned. Alluding to Villagran's expedition, they say: "There will be facilities for it by reason of the arrival in this land of a Captain who had been sent to Peru for men

In the summer of 1552, three expeditions were sent east of the Cordilleras, and of these Valdivia gives an account to the Emperor in his letter written at Santiago on October 26 of that year. He says :

"I am now ordering Captain Francisco de Villagran, a true and loyal subject of Your Majesty . . . to cross from Villarica, situated on the fortieth degree, to the Northern Sea, because the natives employed in that town say that they are about 100 leagues from it. . . . From here I have sent two captains, directing one to cross the Cordillera to the rear of this City of Santiago, in order to bring under allegiance the natives found on the other side of it. And I have sent from the town of La Serena, Captain Francisco de Aguirre, a very true and loyal subject of Your Majesty, whom I have placed there in the capacity of Lieutenant, that he may diligently and prudently subdue the rest of the natives as well, because that land has been visited by Captain Francisco de Villagran, and it was by this route that he brought me the reinforcements when I sent him to Peru, as I have already written, and now repeat to Your Majesty. That is a land partly settled and partly uninhabited. I shall do my utmost to bring all those natives into subjection to Your Majesty."¹

One of the earliest historians of Rio de la Plata, Ruy Diaz de Guzman, a grandson of the conqueror Martínez de Irala, says in his *Historia Argentina*, with reference to the expedition of Francisco de Aguirre :

"Entering this land (Tucuman) he (Aguirre) took possession of it in the name of Valdivia, as was done thenceforward by the others who were sent to govern it, the land being for many years closely connected by this road. Juan Nuñez de Prado, by reason of what he had done, was sent for trial to Chile, wherefrom he went to Reyes (Lima) and opened negotiations to return to this province, although without success. Thus, at that period, Francisco de Aguirre held the post of Lieutenant General, conferred upon him by Valdivia, and for reasons of his own, he was moved to change the location of the town of Barco de la Sierra to the Rio

and who brings two hundred men and four hundred horses on which he has spent a great deal of money, and who leaves settled a village called 'el Barco,' which falls inland within the boundaries of this 'Gobernacion,' as Your Majesty may see from the papers regarding the matter which are sent by the Governor to your Majesty." An authenticated copy of this document is kept in the Chilean Legation in London.

¹ Gay, *Historia Física de Chile. Documentos*, vol. i. pp. 155, et seq.

del Estero, in the region of the Juris, giving it the name of the city of Santiago, which it now bears, and where it still stands. . . . Francisco de Aguirre distributed the Indians of this jurisdiction among fifty-six 'encomenderos.' 47,000 Juris and Tonocotes Indians were registered in the Estero district as well as in that of the River Salado, and in la Sierra,"¹

Of the expedition sent to the other side of the Cordilleras "to the rear of the City of Santiago," little information is procurable, but of that commanded by Captain Francisco de Villagran, who had been directed to cross the Cordilleras in front of the town of Valdivia, a summary account is found in the *Historia General del Reyno de Chile*, of Father Rosales. From this it appears that Villagran crossed the Cordilleras by the Villarica Gap without any great difficulty, reaching "the Pampas and extensive plains leading to Córdoba and Buenos Aires." He then advanced over the land of the Puelche Indians, but was stopped in his march by a great river; this forced him to continue southwards, and, after marching seventy leagues, he reached "the rapid Limacau river, which appears at the back of the town of Osorno," and, being unable to ford it, again ascended the Cordilleras by another gap and returned to Valdivia.

In this manner the first governor of Chile extended his authority over the eastern regions included in the territory which had been granted him, directing his captains to traverse them, to combat the savage tribes, and to lay the foundation of cities which served as a starting point for the future civilization of those countries.

In acting thus, Pedro de Valdivia considered, as did his comrades in the conquest of Chile, that the summits of the Cordilleras did *not* constitute a barrier to the extension of his

¹ Rui Diaz de Guzman, *Historia Argentina del Descubrimiento, Poblacion i Conquista de las Provincias del Rio de la Plata*, Book II., chapter 10.

territorial jurisdiction towards the eastern side of them, and, consequently, made no account of such a "formidable barrier" when allotting the Indians for service to the inhabitants of the early cities of his Gobernacion.

So it appears from a paragraph of a letter written by the Governor to the Sovereign under date of September 4, 1545,¹ in which he expresses his idea of assigning to the inhabitants of La Serena for their service the Indians "behind the Cordillera of the snow"; and it appears still more clearly from some documents referring to the allotment of the Indians, and to the territorial jurisdiction of the City of Santiago. As the allotting of Indians for service was equivalent to assigning to each respective city the territory inhabited by such Indians, the "Procurador" of Santiago asked Valdivia to extend the boundaries assigned to the City in the Book of Allotment of Indians, "*from the river Itata as far as Choapa, and from this Sea to the Northern Sea,*" and the Governor in reply decided the following:

"The answer to your query about the boundaries assigned to the City of Santiago, is that from north to south they extend from the valley of Choapa down to the river Maule, *and from east to west as far as His Majesty has graciously granted, beginning at the sea, one hundred leagues inland, and at the back of the Cordillera from the Valley of Tucuman and Carea down to Diamante.*"²

To this it must be added that Valdivia followed the same rule employed by him in the cities of the northern and central portions of his Gobernacion, in the town of Villarica, which had been founded near the lake of the same name in latitude 39° 15'. Father Rosales, describing the neighbouring region of this ancient town, says:—

¹ Gay, *Documentos*, vol. i. p. 66.

² *Colección de Historiadores de Chile*, vol. i. p. 313.

"I have traversed all the roads of the Cordillera, and this of Villarica seemed to me a path of flowers. *By means of it the inhabitants of the town communicated with the Peguenches, and the Puelche Indians who were also allotted them by Valdivia, and who were induced to work by means of their foremen, and as they were simple, humble, and unsuspecting people, they blindly obeyed any orders given to them.*"¹

The documents quoted prove that in the north, as in the centre and south, of his Gobernacion, Pedro de Valdivia and the rest of the conquerors of Chile, did not at the time fix the boundaries of the new cities and of their respective allotments on the summit of the Cordillera. We find the strongest confirmation of what we have said in the following words of the well known historian and defender of the Argentine claim to Patagonia, Don Pedro de Angelis :

"When Don Pedro de Valdivia," he says, "*laid the foundation of the city, destined to be the capital of the new Kingdom of Chile, he assigned to it 100 leagues to the east of its site without taking into consideration the obstacle which the Andes offered.*"²

We have seen that La Gasca's Decree and the Royal Order of 1552 delimited the primitive Gobernacion de Chile to the south at parallel 41°. This was a disappointment to Pedro de Valdivia, who had aspired from the outset to extend his rule over the southern extremity of the continent down to the Straits of Magellan. But the intrepid conqueror did not on that account desist from his plans, and anticipating the decisions of the Sovereign, which he expected would be favourable to him, as in fact they afterwards were, he continued his

¹ Rosales, *Historia General del Reyno de Chile*. Book III., chapter 27.

² "Discurso Preliminar al Diario de Sourryère de Souillac," en la "*Coleccion de Obras i Documentos relativos a la Historia antigua i moderna de las provincias del Rio de la Plata,*" vol. vi. (Buenos Aires, 1837).

enterprises of discovery and conquest towards the south while, at the same time, he directed them eastwards.

Pastene's expedition. Previously, in 1544, he had commissioned the Genoese navigator, Juan Bautista Pastene, to explore the coast of the South Sea as far as the Straits and to take possession of it, and in his instructions he writes as follows :

"Instructions for you, Juan Bautista Pastene, my Lieutenant Captain-General on the sea, as to what you have to do with the help of God and of His blessed Mother and the Apostle Santiago, patron of our Spain and leader of Christendom, and as to how you shall act in the voyage on which *I now send you to discover the coast of the South Sea towards the Straits of Magellan, and to take possession of the country wherever you may land, in the name of His Majesty and in my own*, and to do everything which may be profitable to His royal service," etc.¹

Pastene made his voyage and took formal possession of the coast to a little further south of the 41°, or, if we may credit the account of the Jesuit Father Rosales, down to the Straits themselves.

Ulloa's expedition. Later on, in 1553, Valdivia ordered another maritime expedition to sail under the command of Captain Francisco de Ulloa with the object of "*reconnoitring the Straits of Magellan as far as the Northern Sea*, as well as all that might be explored of the archipelago and southernmost extremity of the coast of Chile."² Although we cannot exactly determine how far Ulloa reached in his expedition, it is known that he sailed along the coast and took possession of it at least down to parallel 51°. Don Claudio Gay has published a document according to which

¹ Gay, *Documentos*, vol. i. p. 39.

² Cordoba i Figueroa, *Historia de Chile*, Book II. chap. 6. (*Coleccion de Historiadores de Chile*, vol. i.)

the expeditionary forces reached the Straits and entered into them, sailing upwards for over thirty leagues.¹

Valdivia
pleads be-
fore the King
the approval
of his acts. In the same year, 1553, Valdivia sent his Captain, Jerónimo de Alderete, to Spain, commissioning him to give an account to the Sovereign of the deeds of his chief, and to request the extension of the Gobernacion de Chile as far as the Straits of Magellan. On reaching Spain, Alderete most zealously devoted himself to accomplishing his mission, and, after lengthy negotiations, succeeded in obtaining from the Emperor the enlargement of Valdivia's Gobernacion in the manner solicited by the Conqueror. Pedro de Valdivia had not the good fortune to see his aspirations confirmed by the Crown of Spain, for he perished by the hands of the Araucanian Indians after the disastrous battle of Tucapel at the beginning of 1554. But the death of the Governor did not affect the good results of Alderete's negotiations in Spain, since the King shortly afterwards conferred the titles of the deceased, with the extension which he had been negotiating, upon Alderete himself whom he appointed to succeed Valdivia in the government of the colony.

Royal Order
of May 29,
1555, extend-
ing the Go-
bernacion de
Chile down
to the Straits
of Magellan. On the 29th of May, 1555, there was issued at Valladolid the Royal Order which completed and amplified the fundamental concession of the year 1552 in the following manner :

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No. 3.

"And we hereby are pleased to extend and amplify the said Gobernacion de Chile as held by the said Pedro de Valdivia for another one hundred and seventy leagues more or less, which run from the confines of the Gobernacion held by the said Pedro de Valdivia as far as the Straits of Magellan, provided it does not prejudice the boundaries of any

¹ Gay, *Documentos*, vol. i. p. 176 ; *Anuario Hidrográfico de la Marina de Chile*, vi. 1880, p. 435.

other Gobernacion, in order that you, the Adelantado Don Jerónimo de Alderete, and the people and priests accompanying you, may settle the said land and live on it and make engagements in it, persuading the natives, without the use of pressure or force, to adopt our faith and Christian religion, submitting in spiritual matters to the Roman Church, and in temporal matters to our Royal power and domination by the means and ways which by right we possess . . . that you may perform the duties of our Governor and Captain-General in the said lands and provinces of Chile held in government by said Pedro de Valdivia *which we now give you to govern as far as the Straits of Magellan*, and by this our letter we confer on you power to exercise and administer our justice," etc.

Which, then, were the new territories added to Valdivia's Gobernacion by virtue of the Royal Decree alluded to ?

**Extent of the
Gobernacion
de Chile ac-
cording to
the Royal
Order of 1555**

We have seen that the primitive Gobernacion of Valdivia ended south at parallel 41° , and that it measured in breadth 100 leagues "inland," reckoned from the coast-line of the South Sea. It must be borne in mind that the Order of 1555 contains no alteration regarding the breadth of 100 leagues from west to east, nor does it introduce any new boundary or any "arcifinious" feature for the eastern delimitation. It simply enlarges "the Gobernacion de Chile, as held by the said Pedro de Valdivia, for another 170 leagues more or less which stretch from the confines of the Gobernacion held by the said Pedro de Valdivia as far as the Straits of Magellan." The Monarch therefore enlarged the Gobernacion in a southerly direction, adding to it the territories which stretch, with a breadth of 100 leagues west to east, from parallel 41° down to the Straits of Magellan. Tracing on the map the eastern boundary of these territories, it is seen that the line penetrates into the Atlantic more or less in latitude $48^{\circ} 30'$, thus including in the Gobernacion de Chile all the Patagonian plateau with the exception of

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a narrow strip which extends in its north-eastern part along the littoral of the Atlantic.

What is commonly called the "Reyno de Chile" (called by the Argentine Representative "Chile as a Province of Spain") comprised, therefore, from the year 1555, the region of Chile proper, which was that then inhabited by Spaniards, and corresponded to the central provinces of the present Republic; and the wide zone of the present Argentine provinces and "Gobernaciones," which stretch along the Cordilleras from Tucuman down to the River Negro and almost all Patagonia as far as the Straits of Magellan.

The Gobernacion de Chile is given with the same boundaries to Don Garcia Hurtado de Mendoza, who makes his domination effective.

These boundaries were not modified when, after the death of Alderete, the Viceroy of Peru, Don Andres Hurtado de Mendoza, Marquis of Cañete, appointed in 1557 his son Don Garcia Hurtado de Mendoza as Governor of Chile. The Marquis, who had been expressly empowered by a Royal Order of 1556 to appoint new Governors and to authorize new discoveries, textually reproduced in the document by which he appointed Don Garcia the words of the Royal Order containing the appointment of Alderete, extending the Gobernacion de Chile, as in that document, as far as the Straits of Magellan.¹

In every historical manual of Chile and Argentina are to be found the facts showing Don Garcia Hurtado de Mendoza's endeavour to make his dominion effective over the extreme eastern and southern provinces of his Gobernacion.

¹ This document is printed in the *Coleccion de Historiadores de Chile*, vol. i. p. 587.

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Zurita's expedition to Tucuman, where he founded three settlements.

No sooner had the new Governor reached Chile than he sent from La Serena to Tucuman a detachment of troops under the orders of Captain Juan Perez de Zurita in order to establish his authority in that province, which, as has been said, had been subdued by Captain Aguirre, being a part of Valdivia's Gobernacion. Zurita reached Tucuman in 1558 and undertook several expeditions in order to subdue the Indians and found three new settlements: that of Londres, in the territory of the Diaguitas, thus called in honour of the Queen of England, wife of Philip II.; that of Córdoba in the valley of Calchaqui; and that of Cañete in the place where the town of Barco had previously existed.

Don Pedro del Castillo's expedition to Cuyo and foundation of Mendoza in 1561.

From the time of General Francisco de Villagran's campaign in 1551 the extensive regions known by the name of Cuyo, which extend to the south of the country where Zurita operated, enjoyed the reputation of being well populated and especially rich in natural wealth. In 1559 Don Garcia Hurtado de Mendoza sent his companion in arms, Captain Pedro del Castillo, to reconnoitre and settle them, appointing him "Lieutenant-Governor of the Provinces of Cuyo" and giving him precise instructions as to the conversion of the Indians, the foundation of cities, and the administration of justice in the name of the Crown and of himself. Pedro del Castillo started by the well known road of Uspallata, marched through the country without finding any resistance on the part of the natives, and on the 2nd of March, 1561, founded the city which he called "*Mendoza, Nuevo Valle de Rioja*," giving for its boundary and jurisdiction "*from the Great Snowy Cordillera whence the waters flow to the*

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Northern Sea," as is recorded in the Official Deed of Foundation.

**Remarks up-
on the Deed
of Foun-
dation of
Mendoza, in
answer to
those of the
Argentine
Statement,
pages 1 to 3.**

At this point we must interrupt our historical narrative in order to deal with a commentary made on pages 1-3 of the Argentine Statement regarding the words quoted from the Deed of Foundation of the City of Mendoza which were reproduced in our previous Statement in order to demonstrate that, in the first document of the Colonial Period referring to the Andean boundary, the inter-oceanic water parting is mentioned as such.

The Argentine Representative says that such an interpretation of the passage in question is inadmissible, first because "it is impossible to contend that if it is spoken of the 'Great Snowy Cordillera' as a primary boundary, the standard of demarcation allows of departing from the snowy crests in pursuit of a variable and movable frontier in the valleys or in the plains, or in pursuit of any other than the great and snow-capped Cordillera"; and secondly, because in other documents or in another part of the same document which has been quoted, simply the "Great Snowy Cordillera" or the "slope of the Snowy Cordillera" are spoken of when determining the boundaries of the City of Mendoza. He afterwards arrives at the conclusion that "the Deed of Foundation of Mendoza does not support the Chilean thesis, but on the contrary rejects it in the most formal and categorical manner." And he adds that "even did that document refer to the continental water-divide and allude to rivers flowing to the two oceans and to the divide of their water basins, it would be hazardous to infer from a few words taken from one single document the criterion followed throughout a long period of almost three centuries."

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What the Argentine Representative wishes to be believed in this instance is that when the founder of the City of Mendoza assigned to it as its western boundary "the Great Snowy Cordillera whence the waters flow to the Northern Sea," he simply intended that as regards demarcation the snowy crest of the mountain should alone be taken into consideration, and that the other words of the phrase—"whence the waters flow to the Northern Sea"—should be looked upon merely as a superfluous decoration or as a meaningless addition. On our part we beg to observe that literary superfluities are out of all keeping with the spirit of the documents emanating from the unpolished captains of the Spanish conquest, and moreover the phrase as it stands has a perfectly clear meaning to whomsoever reads it without prejudice. As expressed by it, the idea of the founder of the City of Mendoza is that the territory of Mendoza commenced westwards at the place where the waters begin to flow to the Atlantic side within the wide and elevated mass of mountains constituting the Great Snowy Cordillera. In virtue of its clearness and simplicity this delimitation, determined by the course of the waters, must have seemed the most natural one to the first Spanish conquerors who crossed the Cordillera in those latitudes, just as it appears today to the ignorant cowboys or "arrieros," who show where the boundary ("la linea" or "la raya" as they commonly call it) lies by pointing out the place where the waters begin to flow towards one and the other country. It is therefore quite impossible to accept the fanciful distinction found by the Argentine Representative in the phrase quoted from the Deed of Foundation of Mendoza: namely, between a "primary boundary" such as the Snowy

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Cordillera, and "a variable and movable frontier in the valleys or in the plains" such as the watershed which is by no means movable or variable.

The Deed of the second foundation of Mendoza does not alter the principle of demarcation as established by the first. Nor is this principle of demarcation, which is clearly established in the Deed of the first foundation of Mendoza, altered, as is alleged, by expressions found in other parts of the same document or in the Deed of the second foundation of the city made shortly afterwards by Captain Juan Jufré.

The part of the first Deed referred to by the Argentine Representative is the heading of the document, and reads thus :

"In the name of God, in the *site and valley of Guentata, Provinces of Cuyo, on the other side of the Great Snowy Cordillera*, on the second of March, in the year of our Saviour Jesus Christ One Thousand Five Hundred and Sixty-one," etc.

In somewhat similar terms Don Garcia Hurtado de Mendoza expresses himself in the appointment of Captain Pedro del Castillo :

"*And I am informed that behind the Cordillera of the snow to the back of the City of Santiago from east to west, a province called Cuyo is discovered, as well as others adjoining it which have a quantity of Indians,*" etc.

It appears, therefore, that in the phrases we have just quoted, nothing is said of any rule of demarcation ; they merely indicate the situation of the Province of Cuyo in a general way without any attempt to define its boundaries, and it is altogether inadmissible, therefore, to quote those paragraphs, as the Argentine Representative quotes them, to prove that "*the streams have not been taken into account and that chief importance has been given to the imposing mass of the Cordillera.*" He almost borders on the absurd when,

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in order to discredit the principle of demarcation established by the Deed of Foundation, he adds that "the Captain-General does not say that Cuyo is situated behind the continental divide," but only "behind the Cordillera of the Snow."

Let us now examine the rest of the documents relating to this point, which have been cited by the Argentine Representative. In 1561 the Governor of Chile, Don Francisco Villagran, appointed Juan Jufré as his Lieutenant-General of Cuyo, and, addressing him concerning the settlements which existed there, said :

"And as to the districts and places which may fall, and be comprised within the demarcation of the boundaries of the two cities which I thus indicate to you, by the slope of the Snowy Cordillera towards the Northern Sea, in crossing it you are free to explore and occupy and pacify the provinces which may come within your knowledge."

Juan Jufré changed the site of the City of Mendoza (calling it at the time "Resurreccion") and in the Deed of the new foundation he fixes its boundaries, according to the determination of his superior officer, Governor Villagran, as follows :

" . . . to which city of Resurreccion he (Villagran) determined as boundaries from north to south : on the north side up to the valley called Guanacache and through the region of the said valley downwards ; on the south side as far as Valley Diamante, and on the east up to the hill near the land of Cayocanta, and on the west as far as the Snowy Cordillera," etc.

The Argentine Representative asserts that these documents must be consulted "*in order to discover the true spirit*" of the Deed of the first foundation of Mendoza. We believe, on the contrary, that the words of the first Deed designating as the boundary the "*Great Snowy Cordillera whence the waters flow to the Northern Sea,*" are so explicit that they do not need to be "explained and completed"

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by other documents which speak of "*the slope of the Snowy Cordillera*," or, still more vaguely, simply of "*the Snowy Cordillera*." There is nothing in these last phrases explaining or completing the rule of demarcation contained in the first Deed. On the contrary, their *true spirit* is made clear if we bear in mind the first delimitation according to which that part of "*the Snowy Cordillera*," or its "slopes," included in the territory of Mendoza, began "*whence the waters flow to the Northern Sea*"; that is to say, on the line of the actual international frontier between Chile and the Argentine Republic. The assertion of the Argentine Representative that the Deed of the first foundation of Mendoza does not allow of "*departing from the snowy crests*" is entirely fantastic, for in none of the documents quoted is the slightest reference made to such crests. Reference is there made to "*the waters flowing to the Northern Sea*," and "*the slope of the Snowy Cordillera towards the Northern Sea*" and to "*the Snowy Cordillera*" in general, but there is not a single word by which a line of crests is indicated as the "primary boundary" or "the standard of demarcation." The Argentine Representative eventually admits that the words of the Deed refer to the inter-oceanic water-parting which, in truth, is the sole interpretation which can possibly be given them, and adds that even in this case it would be hazardous to quote an unique document of this kind in proof of the criterion of delimitation followed for nearly 300 years.

In our previous Statement it has already been said that, for long after the Spanish conquest, there was no occasion or necessity to establish precisely and concretely the true sense of such more or less indefinite expressions as "Cor-

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dillera Nevada," "Cordillera de Nieve," etc., which are used to designate the boundary between that part of Chile settled by the Spanish and called "Chile" in its strict sense, and the Province of Cuyo. Such expressions contain no rule of demarcation according to which the boundary line could have been traced on the ground, but they sufficed for the necessities of the Colonial Epoch and even during the first period of the Independence. The true "standard" of demarcation, established in the Deed of Foundation of Mendoza and tacitly acknowledged by the authorities and people on both sides of the Cordilleras, continued to be the separation of the rivers which flow to the opposite seas, that is to say, the "*divortium aquarum*."

When in the middle of the nineteenth century the necessity first arose for applying, in a section of the frontier between the central provinces of Chile and Mendoza, a "standard" permitting the tracing of the boundary line on the Andean region, the rule of the "*divortium aquarum*" was put into practice. A Commission entrusted by the Government of Mendoza with the survey of the land ascended the rivers and brooks forming the River Grande, an affluent of the Colorado which discharges into the Atlantic, and following them up to their sources, they declared that the valleys and pasture-grounds, the ownership of which had been called in question, were Argentine possessions because they were irrigated by waters flowing towards the Atlantic.¹

We see, therefore, that on the first occasion which arose for practically tracing in any region the line of territorial division between the former colonies of the Kingdom of

¹ See the detailed account of these facts in chapter viii. of this Statement.
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Chile and the Viceroyalty of Buenos Aires, the criterion followed was that established in the Deed of Foundation of Mendoza, and the same which appears later in the treaties in force as "the geographical principle of the demarcation."

The phrase "*whence the waters flow to the Northern Sea*" (aguas vertientes a la Mar del Norte) is an expression which is repeated in a more or less identical form in several documents of the sixteenth century, and it is a point of special interest that it is employed precisely with reference to the region which stretches immediately north of Cuyo, i.e. Tucuman, the province which was separated from the Gobernacion de Chile in the year 1563. The Council of the Indies—in a letter addressed to His Majesty from Valladolid on the 27th of February, 1559—says that "on the part of Captain Francisco de Aguirre, a resident of the town of La Serena, it has been requested that as a favour there should be given him the Gobernacion of La Serena and its territory, *besides what he has discovered and settled behind the Cordilleras, what he may settle and discover whence the waters flow to the Northern Sea behind the said Cordillera*, for it is something different and distant from that of 'Chile.'"¹ It follows from this that what is behind the Cordillera, apart and different from that which was properly called "Chile," is the region whose waters flow to the Northern Sea or Atlantic Ocean. In truth the phrases "*Cordillera Nevada aguas vertientes a la Mar del Norte*"; "*Aguas vertientes a la Mar del Norte tras las Cordilleras*"; "*la falda de la Cordillera Nevada hasta la Mar del Norte*";

¹ The document exists in the Archivo General de Indias. An authenticated copy is kept in the Chilean Legation in London.

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"Desde las vertientes de la gran Cordillera Nevada hasta la Mar del Norte" ; "las vertientes de esta parte (oriental) de la Cordillera de Chile" are all equivalent to and have no other natural significance than that of "eastern side of the inter-oceanic divortium aquarum" which is effected on the Cordilleras.

We now return to the development of historical facts relating to the territorial extension of the Gobernacion de Chile during the Colonial Period.

Ladrillero's expedition to the Straits of Magellan and occupation to the east of the Cordillera de los Andes.

Don Garcia Hurtado de Mendoza, yielding to a desire to make his power effective over the vast southern territories of the continent which the Royal Order had assigned to his dominions, not only personally led a memorable land expedition which took him, at the beginning of the year 1558, down to the region opposite the island of Chiloé, but also fitted out a maritime expedition under the command of Captain Juan Ladrillero with the object of surveying and of taking possession of the Straits of Magellan and neighbouring lands. The documents and historical narratives which have reached us of the voyage of Ladrillero and his companions, Captain Cortes Ojea and Pilot Hernan Gallego, give an account of the successful result of that enterprise. They explored the channels¹ of the western coast of Patagonia, penetrated the Straits, and sailed up to its entrance on the Atlantic Ocean, taking possession of all that land with all the customary formalities in the name of the King

¹ Ladrillero explored particularly Last Hope Inlet, Disappointment Bay, and Obstruction Sound, where he landed at several places and took formal possession. More details will be given when dealing with the boundary near the 52nd parallel.

and of the Governor of Chile, as may be seen from the records kept of their proceedings. The protocol drawn up when the navigators were near the entrance to the Atlantic reads as follows :

"I, Luis Mora, Notary of the Royal Squadron of the Straits of Magellan, hereby attest and certify to whomsoever these presents may come, that on the ninth day of the month of August, 1558, Captain Juan Ladrillero, Commander of the said Squadron, having anchored off Possession Point, the said Commander went ashore, and drawing his sword cut some branches of the trees and said *that he took possession of the said land within sight of the Northern Sea in the name of His Majesty and of His Excellency* (the Viceroy of Peru) *and of his very beloved and dear son Don Garcia Hurtado de Mendoza, Governor and Captain-General of His Majesty in the Provinces of Chile*, without being contradicted by anybody ; and on the same day the said Commander with his pilot, Hernan Gallego, took the latitude in fully $52\frac{1}{2}$ degrees, and the said Commander administered the oath to the said pilot, who declared that he had taken the latitude as stated," etc.¹

As may be seen from the account of the voyage written by himself, Ladrillero was quite aware that Possession Point and the adjacent regions of which he took possession in the name and at the request of the Governor of Chile were situated east of the Cordilleras.² His action, therefore, completes in the southern extremity the acts of sovereignty and dominion executed east of the mountains by the Governors of Chile in more northerly latitudes within the territorial region which the Crown of Spain had assigned to them.

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Don Francisco de Villagran succeeds Hurtado de Mendoza in the Government of Chile.

The successor of Don Garcia Hurtado de Mendoza in the Government of Chile was Don Francisco de Villagran, in whose favour King Philip II. issued in 1561 a Royal Order directing him among other things to do the following :

¹ An authenticated copy of this document which exists in the Archivo General de Indias, is kept in the Chilean Legation in London.

² Extract from Ladrillero's account (Amunátegui, *Cuestion de Límites*, vol. i. pp. 445-448).

"We hereby give permission and authority to you the said Marshal Francisco de Villagran, our Governor, in order that notwithstanding your not having been received as such in the said Provinces of Chile and by their 'Cabildos' or in the rest of the Provinces subject to the same Gobernacion, and notwithstanding that you have not gone through the solemnity of taking the oath . . . you may appoint and name the person who may seem suitable in order to journey for you and in your name and with your power and commission to the said Provinces of the Juris, Tucuman, and Diaguitas, as your Lieutenant to administer justice to the inhabitants and natives of those Provinces."¹

**Castañeda's
expedition
to Tucuman.**

The person entrusted to execute the commission to which this Royal Order refers was Captain Gregorio de Castañeda, who started by Villagran's order for the region of Tucuman to take command of that province. Unfortunately a conflict arose between him and his predecessor, Captain Juan Perez de Zurita, and the Indians, profiting by the dissension between the Spaniards, rebelled and attacked some of the cities recently founded. With a view to terminating a situation so difficult and uncertain, the Province of Tucuman petitioned from the Crown that it might be established as an independent Gobernacion subject in matters of justice to the jurisdiction of the Royal Audience of Charcas in Peru. Finally, in 1563, King Philip II. issued a Royal Order in which he said: "We have agreed to separate the said Gobernacion of Tucuman, Juris, and Diaguitas from the said Gobernacion de Chile and to include it within the district of the said Audience of Charcas."²

**Separation
of Tucuman
from the
Gobernacion
de Chile.**

Thus Tucuman was separated from the Gobernacion de Chile, and this was the first time that the 100 leagues of breadth assigned to this Kingdom by the decrees of the Crown were in any manner restricted.

¹ The document belongs to the Archivo General de Indias. An authenticated copy is kept in the Chilean Legation in London.

² *Coleccion de documentos inéditos del Archivo de Indias*, vol. xviii. p. 28.

The territories to the south of Tucuman as far as the Straits of Magellan remained incorporated to the Gobernacion de Chile.

This was not the case, however, in the territories which stretched from the W.S.W., S.W. and southern boundaries of Tucuman down to the Straits of Magellan. With a view to fixing in the directions mentioned the boundary which separated the Province of Tucuman from the Gobernacion de Chile, we may quote the authority of the Jesuit Father Pedro Lozano, who, when completing in the year 1745 his important work entitled *Historia de la Conquista del Paraguay, Rio de la Plata i Tucuman*, had already resided for twenty-eight years in that province, which he had explored in his frequent journeys. In chapter vii. of book i. of the said work he gives a detailed topographical description of the Gobernacion de Tucuman which included (as he says) the provinces of the Juris and Diaguitas, Chaco, Calchaqui, and Comechingones ; and, when speaking of its frontier to the west, he states :

"In the ranges at the back of the Cordillera of Chile, in latitude 29° 40' and 30° of longitude, the lofty and famous Mount Famatina is situated, from the interior of which the ministers of the Incas drew great riches of gold and silver. . . . Its circumference is many leagues in extent, and its very high summit appears always snow-capped. From its slope on its southern part stretches the valley of Famatina, where the jurisdiction of the Gobernacion de Tucuman ends and borders with the province of Cuyo, which belongs to the Gobernacion of the Kingdom of Chile."¹

In another chapter, when speaking of the territory of Córdoba, which was the southernmost of the ancient Provinces of Tucuman, he says :

"This town (Córdoba) was founded by Governor Don Jerónimo Luis de Cabrera in the year 1573 in the province which was called de los

¹ *Biblioteca del Rio de la Plat*" . . . Published under the direction of Andres Lamas. Buenos Aires, 1873-1874, vol. i. p. 184.

Comechingones, which stretched on the north from Sumampa at a distance of fifty leagues from the town, *until bordering on the south with the jurisdiction of the town of La Punta (i.e. San Luis) in the Province of Cuyo* where the range begins, which is three leagues distant to the west from Córdoba, and which, being a branch of the Cordillera of Peru, stretches until it joins that huge mass forming valleys, which if tilled would be very fertile. *It also delimitates on the south with the jurisdiction of Santa Fé and Buenos Aires* over an extent of sixty leagues and on the east thirty leagues, with the same Santa Fé, and on the west on the other side of its ranges with the jurisdiction of Rioja at a distance of forty leagues."

Elsewhere in the same chapter the following may be read :

"On its southern part it (Tucuman) stretches down to the jurisdiction of Buenos Aires, which to-day ends in Cruz Alta and even extends until it reaches the lands of the Patagones over the boundless, uninhabited Pampas which belong to it."¹

The description of the boundaries of Tucuman given by Father Lozano agrees with that of the Professor of Mathematics and Chief Cosmographer of Peru, Don Cosme Bueno, who was commissioned by the Viceroy Don José Manso to write the geographical reports upon the provinces of his jurisdiction which the Sovereign had requisitioned and which were published from 1764 in the *Almanaque del Peru* :

"The Bishopric of Tucuman," it says, "established in Santiago del Estero in the year 1570 only comprises the province of this name. It borders on the north with the provinces of Chichas and of Lipas ; from the north-west to the west with that of Atacama ; *from the west and south-west with that of Cuyo belonging to the Kingdom of Chile*. The land from the south-west to the south-east is deserted. Its plains are visited by the savage Indians, Aucaes, Huarpes or Pampas, Pehuenches, Puelches, Uncos, and other races which inhabit the ranges near the *Cordillera of Chile*, stretching down to the Straits of Magellan. Following to the south-east, this province delimitates with the jurisdiction of

¹ Book I. chapter vii. pp. 172-189. The site of Cruz Alta, the southern extreme of the jurisdiction of Buenos Aires according to Father Lozano, is marked on the maps of that time on the banks of River Carcarañal, a small western affluent of the River Paraná, more or less on the 33° lat.

Santa Fé belonging to the Government of Rio de la Plata or Buenos Aires. . . . *Tucuman extends from the 22° to the 33½°*, but it comprises in length from the Quiaca brook, which divides it from the bishopric of Chichas, down to Melinque towards Buenos Aires, almost 370 leagues which are traversed on waggons. In breadth in its greater part it is 190 leagues from east to west.”¹

Therefore, the territories that in 1563 were separated from the ancient Gobernacion de Chile and which became subordinate to the Audience of Charcas comprised the present Argentine provinces of Jujuy, Salta, Catamarca, a part of La Rioja, Tucuman, Santiago del Estero, the greater part of Córdoba, and of the Gobernacion del Chaco, but the Royal Grants, which in all the rest of the southern part of the continent constituted the Gobernaciones of Chile and Rio de la Plata, remained unchanged.

**Juan Jufré's
expedition
to Cuyo.**

We have already mentioned that Captain Juan Jufré was commissioned by the Governor Villagran to go over to the other side of the Cordilleras. His destination was the Province of Cuyo, whence he was to discover and settle the neighbouring regions to the south then known by the names of Conlara, Trapananda (Trapalanda) or Los Césares.

**Jufré
changes the
site of the
City of
Mendoza
and lays the
foundation
of San Juan.**

On his return from this commission Captain Juan Jufré changed the site of the City of Mendoza and founded the village of San Juan, the capital of the present Argentine Province of that name, giving those who followed him, as was the custom of the conquerors, many grants of lands belonging to the Indians. We publish in the Appendix the text of one of these grants, which is a sample of all of them and which clearly proves that the Governors of Chile exercised through

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¹ Odriozola, *Documentos Literarios del Perú*, vol. iii. p. 177.

their Commissioners full and formal jurisdiction throughout the territories which belonged to them east of the Cordilleras.

Expedition of Villagran and Pardo Maldonado to the south of 41°.

To Francisco de Villagran's period belongs another expedition to the southern regions in which the son of the Governor, Don Pedro de Villagran, and his son-in-law, Arias Pardo Maldonado, were engaged. They landed to the south of the 41° and took possession of that region in the name of the King and the Governor of Chile. We are not acquainted with the details of that expedition, but we do know that a petition resulted from it, which in 1563, after the death of Governor Villagran, was addressed to the Crown by Arias Pardo requesting that the Gobernacion of the provinces of "Chiloé and Trapananda" should be given him, "which are depopulated from the town of Osorno as far as the Straits of Magellan and have a breadth of 150 leagues from west to east." Such application, however, which would have involved the separation of the extensive southern regions from the Gobernacion de Chile, was not approved by the Sovereign, nor were others which followed and which contained the same request. Chile, therefore, "as a Province of Spain," continued to include within its jurisdiction the whole region stretching to the south of its Province of Cuyo, down to the Straits of Magellan, there being no other legal

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The Royal Order of 1569 appointing Ortiz de Zárate Governor of Rio de la Plata does not modify the boundaries of Chile.

boundary to the east save that corresponding to the 100 leagues in breadth from west to east.

Nor was this state of things altered by the fact that the Sovereign, in the Royal Order of 1569 appointing Don Juan Ortiz de Zárate Governor of Rio de la Plata, included within the

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area of that Gobernacion, as in the appointments of Pedro de Mendoza and his successors, the 200 leagues stretching on the coast of the South Sea; because neither Ortiz de Zárate nor any other of his Commissioners ever dreamed of making their authority effective over that zone of 200 leagues, which would have comprised a good deal of the already established Gobernacion de Chile.¹

In 1573 the Sovereign, disregarding the arrangement contained in the Royal Order of 1569 respecting the 200 leagues on the coast of the South Sea, appointed the new Governor of Chile, Don Rodrigo de Quiroga, without making the slightest alteration in the boundaries of the Gobernacion de Chile, as already established in the appointments of Don Garcia Hurtado de Mendoza and Don Francisco de Villagran.² He also said in the Royal Order of March 19, 1581, appointing Don Alonso de Sotomayor Governor of Chile :

¹ At the same time a boundary question arose over the ownership of the town of Santa Fé, founded in 1573 on the banks of the River Paraná by Juan de Garai, one of the officers of the Government of Rio de la Plata. Don Jerónimo Luis de Cabrera, Governor of the Province of Tucuman, which, as has been said, was then separate from the Kingdom of Chile, had in that same year laid the foundation of the town of Córdoba and claimed that the settlement founded by Garai was within his Gobernacion. On the other hand, Governor Ortiz de Zárate, who at this very time arrived in Rio de la Plata, sent Juan de Garai, as Father Lozano says, "the Decrees and Royal Orders in which His Majesty granted him that Gobernacion, *including within its territory all the settlements which any other captains whatsoever might have founded in a district of two hundred leagues from the banks of Rio de la Plata to the south as far as the Gobernacion of the Kingdom of Chile.*" * The passage quoted proves that Ortiz de Zárate acknowledged and respected the boundaries of the Gobernacion de Chile, although according to the text of the Royal Order of 1569 he could have claimed the extension of his domination over a great portion of that Gobernacion.

² The Royal Order, dated the 5th of August, 1573, contains the following passages : "Don Felipe, by the grace of God, King of Castile, etc. . . . We deem it advisable, and as long as may be Our pleasure and will, and so long as nothing else is decided, *that you may hold the Gobernacion and Captaincy-General of the said Provinces of Chile according as and in the manner in which they were held by Don Garcia de Mendoza and the Adelantado Francisco de Villagran.*

* *Historia de la Conquista del Paraguay*, etc., book iii. chapter vi.

"We have thus agreed . . . that as our Governor and Captain General of the said provinces (Chile), you and no other person may exercise the said powers in all cases and circumstances related thereto, and in the proper manner, and like our other Governors and Captain-Generals of similar provinces, *and within the boundaries and districts where the said Rodrigo de Quiroga used and exercised them, and could and ought to have used and exercised them by virtue of the title and Order which he had from us.*"¹

The same phrase is also repeated in the Order of September 18, 1591, issued in favour of the Governor Don Martin Garcia de Loyola, substituting only the name of Quiroga for that of Sotomayor.²

We must observe here that in none of the subsequent documents proceeding from the Sovereign himself, or from his highest representative in South America, the Viceroy of Peru, by which Governors by right and acting Governors of Chile were appointed, is there any sign of a modification of the boundaries of this Gobernacion as fixed in 1548 and 1555. An alteration was introduced only in 1776, when the Vice-royalty of Buenos Aires was founded, to which the Province of Cuyo was annexed.

The same boundaries are confirmed when establishing in 1609 the Royal Audience of Chile. Neither was there any modification of boundaries made when, in 1609, the Audience of Chile was re-established with a seat at the capital, Santiago. The King ordered that the President of the Audi-

and other Governors who have been in the said provinces; and by these presents it is Our pleasure that now and in the future so long as may be Our wish and until, as We have said, something else be provided, you may be Our Governor and Captain-General of the said Provinces of Chile. . . . And moreover we think it advisable to extend the said Gobernacion de Chile as held by Pedro de Valdivia for another one hundred and seventy leagues, more or less, to be counted from the extremity of the Gobernacion, held by Pedro de Valdivia as far as the Straits of Magellan as long as it be not to the prejudice of the limits of another Gobernacion," etc. (Amunátegui, *Cuestion de Límites*, vol. ii. pp. 79-83).

¹ Amunátegui, *Cuestion de Límites*, vol. ii. p. 140.

² Amunátegui, *l.c.* p. 173.

ence should be the Governor and Captain-General of Chile, and declared :

*"And We further wish, and it is Our will, that the said Audience should have for its district all the cities, villages, hamlets, and land included within the jurisdiction of the said Provinces of Chile, all the district which is now pacified and settled, as well as all that which may hereafter be subdued, pacified, and settled."*¹

As a general rule the Royal Orders and Decrees referring to the appointment of the Governors of Chile contain the same comprehensive declaration respecting the boundaries as the one reproduced above, which was issued in favour of Don Alonso de Sotomayor. The entire text of those corresponding to the sixteenth and seventeenth centuries has been given by Don Miguel Luis Amunátegui in the three volumes of his work already quoted on the Chilo-Argentine boundary question.

¹ Original to be found in the Archives of the Municipality of Santiago. Reproduced by Amunátegui, *Cuestion de Límites*, vol. ii. pp. 278, 279.

Chapter II.

TWO MEANINGS OF THE WORD "CHILE."

AFTER having shown by authentic official documents which territories were comprised within the jurisdiction of the Captaincy-General of Chile, it is easy to demonstrate to the Tribunal the real scope of the quotations made by the Argentine Representative for the purpose of proving that the eastern boundary of Chile "as a Province of Spain" was always, from the earliest period of the Conquest, the Cordillera de los Andes.

Captaincy-General of Chile and populated part of Chile. In the first place, we must clearly indicate the confusion created by the Argentine Representative in not making the necessary distinction between the general and the special meaning of the word "Chile"; that is to say, between the meaning of Chile as applied to a whole Gobernacion, and of Chile as a given and determined portion of the same Gobernacion. There is not, however, the slightest doubt that, when speaking of the boundaries of the Spanish Province of Chile, account should be taken not merely of the territory to which the name of Chile was applied in its restricted sense, but of the whole territory submitted by the will of the Sovereign, and the laws given by him, to the jurisdiction of the Governors of Chile.

In chapter i. of this Statement it has been said that the name of "Chile" was first applied only to the region of the valley of the Aconcagua; it was afterwards extended, as the Spanish conquest advanced, to the neighbouring territories, and ended by replacing the name of Nueva Estremadura, or Nuevo Estremo, which was at first given to the Gobernacion and which afterwards fell into disuse.

In the narrative given by the chronicler Oviedo of Almagro's expedition, which, according to the testimony of the author, is identical with that sent by the Conqueror himself to the Emperor Charles V., some indications are found enabling one to see with more or less precision which were the regions represented at the time by the name of "Province of Chile."

While Almagro was in the valley of Copiapó, he received, according to that narrative,¹ an embassy from the "Lords of Chile," who offered him their friendship, and immediately "he started with his army for Chile, leaving in peace the valleys of Copayapo, and as lord of them an Indian, called Montriri, the legitimate successor and heir of that state and vassal of their Majesties, who was accepted by the natives. *In the boundary (raya) of the Province of Chile*, the Adelantado found two caciques, who received him peacefully . . . and he continued his march towards a village called La Ramada, where he found its residents in their houses. And being there on the day of the Assumption, . . . there arrived a Spaniard at the said village who came from a ship with letters and with the report that in a port twenty leagues farther on from the centre of Chile there was at anchor one of the Adelantado's small ships called *Sanctiago*."

The village of Ramada, or Ramadilla, and the neighbouring port, which in all probability is that of los Vilos, are to be found in the present department of Petorca, more or less in latitude 32° south, which is, therefore, the one which corresponds approximately to the "raya" or northern boundary of the primitive "Province of Chile."

Further on Oviedo says that Almagro "personally visited the

¹ Oviedo, *Historia General i Natural de las Indias*, book xlvii. chapter iv. p. 269. (Edition published by the Royal Academy of History, Madrid, 1855.)

Province of Chile and its neighbouring one, that of Picones, both of which were 160 leagues in length more or less." Applying this measurement to the land, we see that the extent of the two provinces from north to south, as was understood by their first conquerors, reached almost the 41° , but what was properly called "Chile" was merely the vicinity of the valley of Aconcagua, for the name of the Picones refers to the region of the River Maipo and its northern affluents; that is to say, to the part where the capital, Santiago, now lies. (Barros Arana, *Historia Jeneral del Chile*, vol. i. p. 187.)

In its restricted sense the name "Chile" was commonly given to the part of the country inhabited by the Spaniards. It was, besides, most natural that, apart from the general and official application given to the word "Chile" in the sense of comprising all the territories within the Gobernacion of this name, this same word "Chile" should be applied in common speech to those parts of the vast Gobernacion where the mass of the Spanish population was to be found, where its capital was situated, and where the most important events of colonial life occurred.

Similar examples are frequent in the ancient and modern geography of the Spanish Colonies in South America. The name of "Buenos Aires" or "Rio de la Plata" was given in the eighteenth century not only to the provinces to which the names more particularly belonged, but also to the whole territory included within the jurisdiction of the Viceroyalty; that is to say, besides the Province of Buenos Aires or Rio de la Plata properly speaking, to those of Paraguay, Tucuman, Potosí, Santa Cruz de la Sierra, Charcas and Cuyo.

What was commonly called "Chile" was the territory stretching north to south from Atacama down to Chacao Channel, which separates the island of Chiloé from the mainland, and from east to west between the Cordilleras

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and the Pacific Ocean; but the "Gobernacion" or "Captaincy-General of Chile," the jurisdiction of the President-Governors and of the Royal Audience of Chile, comprised much more both in length and in breadth, for it included, besides the Province of Chile proper, the greater part of Patagonia or "Magellanic lands," together with the Straits and Tierra del Fuego and, up to 1776, the Province of Cuyo : that is to say, the territories of Mendoza, San Juan, and San Luis.

**Historians
of the time
established
a distinction
between the
two appli-
cations.**

Among the historians and geographers of the Colonial Period quoted in the Argentine Statement, the most trustworthy clearly establish the distinction between the two applications of the word "Chile."

**Father
Rosales in-
completely
quoted in
Argentine
Statement.**

The Argentine Representative has quoted on page 4 of his Statement a fragment from the *Historia General del Reyno de Chile* by Father Rosales, but has omitted the very paragraph in which that author establishes most convincingly the distinction drawn by him between "the Kingdom of Chile according to the district and jurisdiction of its Government and Royal Chancery," and that which "is called Chile proper and is populated." On page 15, it is true, he reproduces the quotation in full when dealing with the "meaning of the Cordillera de los Andes in the Colonial Epoch." It is, however, indispensable to consider the whole sentence when the author's opinion concerning the extent of "Chile" is in question, and the Tribunal cannot fail to see the importance of those very fragments of the sentence omitted on page 4 of the Argentine Statement. Father Rosales says :

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"The Kingdom of Chile is the southern extremity of the extensive Empire of Peru, on the coast of the South Sea. It extends beyond the tropic of Capricorn, in latitude for six hundred and eighty-two and a half leagues because its polar graduation is measured from north to south from the 26° to the 55° towards the South Pole. *In width it stretches from east to west for a space of one hundred and fifty leagues comprising the ultramontane Province of Cuyo.* It borders on the north with the desert of Atacama and the country of the Diaguitas Indians, not very far from the mines of Potosí. On the south with the Strait of San Vincent or Le Maire, beyond the Straits of Magellan. *On the east with the plains of Tucuman*, which extend for nearly three hundred leagues *until reaching that point where with the mighty Rio de la Plata it meets the Atlantic Ocean.* On the west with the immense South Sea, which extends for unknown distances.

"*This is the site and demarcation of the Kingdom of Chile according to the district of its Government and Royal Chancery*; but what is properly called Chile, and is populated, begins from the valley of Copiapó on the 26° down to the town of Castro in the Chiloé archipelago on the 43° , no Spanish settlement existing further on, but several tribes of heathen Indians who live roughly and barbarously; on its eastern side the Great Snowy Cordillera de los Andes girds it, and between it and the sea its greatest breadth is of thirty leagues and its average is twenty."¹

Father Rosales who, according to the Argentine Representative, is one of the highest authorities of the Colonial Period of Chile, explicitly says that there are two different meanings of the word "Chile": the one applied to the "Kingdom of Chile according to the district of its Government and Royal Chancery"; that is to say, to the Gobernacion and Captaincy-General of Chile which extended in length from parallel 26° down to 55° , and in breadth from east to west for a distance of 150 leagues, including the Province of Cuyo, and reaching the Atlantic at the point where the Rio de la Plata desembogues; and the other more restricted one, which was applied to that portion of the Kingdom enclosed between the Cordilleras and the South Sea from Atacama down to the Island of Chiloé.

¹ *Historia General del Reyno de Chile*, vol. i. book ii. chap. i. page 183.

A good proof of the word Chile being used in this double sense is afforded by Father Rosales in chapter i. of his *Conquista Espiritual del Reyno de Chile*.¹ Speaking of the city of the Césares, and of its inhabitants, he says that "the Césares was *the first city founded in the Kingdom of Chile* towards the Straits of Magellan." A little further on he adds: "*And it is no wonder that these Césares knew nothing of the settlements made by the Spaniards in Chile, although both are in the same Kingdom.*" Almost immediately afterwards he says that the Spaniards of the city of the Césares "*entered Chile by the Oceanic Sea (i.e. the Atlantic) and settled where the South Sea begins and where the whole of the land of Chile ends.*" According to this, the two entrances of the Straits are included within the boundaries of Chile, as had been actually determined by the Royal Orders to which we have referred. Another part of the same chapter reads: "*On reaching Osorno and Carelmapu, which are within Chile proper, and thence to the sea, crossing the land, continent of Chile, one enters the Chiloé archipelago,*" etc. In this sentence Rosales clearly distinguishes between the restricted application of the word *Chile* which refers solely to the narrow strip of land ending at Chiloé, and the wider and general sense of it which comprises the entire *Kingdom of Chile*, where there are to be found among others the city of the Césares, both entrances of the Straits, and "the land, continent of Chile," i.e. the mainland facing the archipelago of Chiloé.

Moreover, Father Rosales could not possibly hold that the jurisdiction of Chile ended at the Andes, since he him-

¹ Reproduced by Amunátegui, *Cuestion de Límites*, vol. iii. p. 76 et seq.
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self accompanied the Comptroller-General of the Army of Chile in his expeditions to the eastern side of the Cordilleras, and materially contributed to the pacification of the Puelche and Poyas Indians.

Antonio de Herrera. The first Chronicler of the Indies, Don Antonio de Herrera, says in his *Descripcion de las Indias Occidentales*," chapter xxii.¹ :

"Concerning the district of the Kingdom of Chile. . . . This Gobernacion extends lengthwise down to the Straits from north to south from the valley of Copiapó, where it begins on the 27°, for 500 leagues and in breadth from east to west from the South Sea to the Northern Sea, for between 400 and 500 leagues of land to be pacified, which gradually narrows until, upon reaching the Straits, it is from 90 to 100 leagues in breadth; the populated part of the Gobernacion must be some 300 leagues in length along the coast of the Northern Sea (*sic*) and in width some 20 leagues and even less as far as the Cordillera de los Andes which ends near the Straits and which runs through this Kingdom, rising to a great height, and is almost entirely covered with snow. All this is level ground, or at least without any remarkable ruggedness, except in those parts where the Cordillera of Peru is to be found coming to an end at two or three leagues from the coast."

And further on he adds² :

"The town of Castro, settled while the Licenciado Lope Garcia de Castro was Governor of Peru, called in the Indian language 'Chilhué,' which is the extremity of the inhabited part of Chile, is situated on one of the islands to be found in the lake of Ancud or Chilhué," etc.

It is important to note the distinction made by the chronicler Herrera, whose book was written by order of the King, and who had access, as he tell us, "to the papers of the Royal Chamber and Royal Archives, to the books, registers and accounts, and other documents of the Royal and Supreme Council of the Indies." The Gobernacion, or Kingdom of Chile, according to Herrera, comprised in

¹ Edition published at Madrid (1601), chap. xxii. p. 64.

² *Loc. cit.* p. 66.

length the whole country *extending from the valley of Copiapó (Atacama) down to the Straits of Magellan, and in breadth from the South Sea to the Atlantic Ocean*, including, as had been understood by Pedro de Valdivia and his successors in the Government of Chile, "*the lands to be pacified*": that is to say, the territory occupied by the savage Indians of the Pampas and Patagonia. Within these boundaries "the populated part of the Gobernacion" is found, between the South Sea and the Cordillera de los Andes, and the southern extremity of this part is the town of Castro on the island of Chiloé. This last portion of the Gobernacion de Chile is exactly what Rosales and other authors of the Colonial Period called "Chile proper."

In order to be convinced that the distinction between the two applications of the word "Chile" was common and acknowledged by the authors most worthy of credit in the Colonial Period, it suffices to examine the quotations from historians which have been collected in paragraph 2 of chapter ii. of the Argentine Statement.

Alonso de Ovalle.

Father Alonso de Ovalle expressly says :¹

"Its jurisdiction (that of the Kingdom of Chile) extends over a breadth of 150 leagues from east to west, although the broadest part of what is properly called 'Chile' does not exceed the 20 to 30 leagues, which exist between the sea and the famous snowy Cordillera, of which we shall speak in the proper place; yet in establishing the limits and jurisdiction of the governments of the western Indies, the King included in it (the Kingdom) the extensive Provinces of Cuyo, which, though similar in length to those of Chile, are double their width. This is the site and place of the Kingdom of Chile, whose neighbours on the north are the Provinces of Atacama, and the rich silver mines of Potosí, where the Kingdom of Peru begins, and on the south side with the seas nearing the pole. . . . To the east its neighbours are Tucuman and Buenos Aires, at the northeast of which Paraguay and Brazil are situated."

¹ *Histórica Relacion del Reyno de Chile*, Roma, 1646, chap. i.

Solórzano i Velasco. The description of the Kingdom of Chile given by Alonzo de Solórzano i Velasco (quoted on page 16 of the Argentine Statement) coincides almost textually with that of Father Ovalle which we have just reproduced.

Jorge Juan and Antonio de Ulloa. On page 17 of the same Statement is an abbreviated quotation of the *Relacion Histórica* of Don Jorge Juan and Don Antonio de Ulloa, proving that these travellers drew the same distinction that Rosales, Herrera, Ovalle, and others made between the Kingdom of Chile and "Chile proper," which latter was, according to them, that part of the Kingdom inhabited by Spaniards. In view of the official character of the authors, who were commissioned by the King of Spain to furnish information on all matters concerning the South American Colonies, it is well to reproduce here the whole of the paragraph relating to the boundaries of Chile.¹

"The extensive Kingdom of Chile occupies that part of South America which runs from the extremity or boundaries of Peru towards the South Pole down to the Straits of Magellan for a distance of 530 maritime leagues, the desert of Atacama separating both Kingdoms. . . . On the east this Kingdom extends in part up to the boundaries of Paraguay, although between one and the other there are some deserts; and in the rest it reaches the boundaries of the Government of Buenos Aires; between them are situated the Pampas, a name which is given to them on account of the great monotony of the country stretching over very extensive plains. On the west its boundaries are the shores of the South Sea, from the latitude 27° of the Southern Pole . . . down to the 53° 30'; but what should strictly be considered the extent of this Kingdom, taking into account *that part which is inhabited by Spaniards*, is from Copiapó to the large island of Chiloé . . . and from west to east the distance for which the high Cordillera retires from the shores of the South Sea, which is about 30 leagues."

¹ Jorge Juan and Antonio de Ulloa, *Relacion Histórica del viaje a la América Meridional hecho por orden de Su Majestad* (Madrid, 1748), vol. iii. paj. 335.

Further on, speaking of the "Correjimientos (jurisdictions) del Reyno de Chile," they say :

"*X. Mendoza.* The city bearing this name is situated on the eastern part of the Cordillera at a distance of 50 leagues from Santiago. . . . This jurisdiction of the city includes besides two more cities which are San Juan de la Frontera . . . and San Luis de Loyola . . . *In this city the Presidents of that Kingdom (Chile) are acknowledged as Governors of it when they pass on their voyage from Buenos Aires to take command of the Government, by reason of this city being the first of the whole Kingdom.*"

Olivares. The extracts from the works of Fathers Lozano and Olivares reproduced on pages 17 and 18 of the Argentine Statement, give additional proof of the distinction which was made between the "Gobernacion de Chile" and "Chile" in a restricted sense. Father Olivares says, after the paragraph quoted by the Argentine Representative :

"Although it seems that the Author of Nature separated this Kingdom from other provinces of the same continent by the immense barrier of its great mountains, as though wishing to distinguish it in its boundaries as in its qualities, yet the *jurisdiction which the Spanish dominion has over it (the Kingdom), extends as far as the cities of the Province of Cuyo, which are three,*" etc.

And soon afterwards, speaking of the boundaries between the provinces of Cuyo and Tucuman, he says :

"From Jachari eastwards are found Valle Hermoso and the hill called Olape . . . as well as the region called Quini adjoining a range which *delimitates the jurisdiction of La Punta (i.e. San Luis) that belongs to Chile, from that of Tucuman, as far as Punta del Agua.*"¹

Abbé Molina. The Abbé Molina, in his description of the boundaries of Chile quoted in the Argentine Statement, says that the geographers assign Cuyo, Patagonia, and the Magellanic lands to that Kingdom (Chile), thus giving it an

¹ *Coleccion de Historiadores de Chile*, vol. iv. p. 14 et seq.

extension far larger than that which he considers corresponds to the country by reason of the natural conditions and races inhabiting it. Thus, consequently, Molina speaks of "Chile" in the restricted sense, but acknowledges that the political boundaries of "the Kingdom" reached further than the narrow natural barriers in which the country called "Chile proper" was enclosed.

Miguel de Olavarria. We deem it useless to prolong the analysis of the quotations from historians and chroniclers comprised in chapter ii. of the Argentine Statement. Many are of trifling importance, and whoever reads them with an unprejudiced mind will immediately see that when the Kingdom of Chile is described as a country enclosed between the sea and the Cordillera, reference is made not to the Gobernacion but to Chile in a restricted sense : to the part already settled and subdued. Don Miguel de Olavarria, for instance, quoted (p. 13) by the Argentine Representative as an authority determining the boundaries of Chile in that restricted form, says in another Memorial that it behoved the Governor of Chile to extend his power to the regions settled by Indians and situated between the Cordillera and the Atlantic Ocean from the 36° to the Straits of Magellan. In an application to the Royal Audience and Viceroy at Lima, made by Olavarria in the name of the Governor of Chile, Don Martin Garcia de Loyola, the following may be read :¹

"Peru will not be more important to His Majesty [than Chile], and especially if, after that Kingdom has been pacified, the Spaniards should enter and populate all that expanse of land stretching from the snowy Cordillera to the North Sea, which has a breadth of two hundred leagues and a length from Cape Blanco of Rio de la Plata, situated on the 36°, as far as the Straits, whence the settlement and safety of that

¹ The document exists in the Archivo General de Indias. An authenticated copy is kept in the Chilean Legation in London.

place could be continued by making use of the settlements of lesser latitude and collecting the abundant and good artillery that Pedro Sarmiento left buried there ; of which said land thus to be discovered, and the number of its inhabitants, enterprising men have abundant and exact information."

We shall add some further extracts from geographical works of foreign authors of the Colonial Period, whose opinions, although not based on a knowledge of the land, are worth taking into consideration, because of the fame of their literary and cartographic works.

**Mercator
and
Hondius.** In the description accompanying the map of Chile in the Atlas of Mercator and Hondius¹ the following paragraph is found :

"*The Province of Chile* taketh its denomination from the vehemencie of the cold and chilnes thereof, and lieth betweene the tropicke of Capricorne, Peru, and the countrie of the Patagones. . . . This region extendeth 500 miles from north to south and *reacheth as farre as the Straits of Magellanes, and 400 miles from east to west, or from Mar Pacificum to the Atlanticke*, and 500 miles beyond it. *Nevertheless if ye take the Province of Chile more restrictly and as it is now inhabited and manured by the Spaniards, it is not above 300 miles in length and only twentie in bredth, and some times lesse, but principally towards the mountains called Cordillera de los Andes, it is of a large extent and almost all waies covered with snow.*"

**Jean de
Laet.** In the *Histoire du Nouveau Monde ou Description des Indes occidentales*, by Jean de Laet,² the following may be read :

"*The Gobernacion de Chile*, taken somewhat broadly (almost as Herrera takes it), stretches from the southern boundaries of Peru down to the Straits of Magellan, and its length is north to south, from the valley of Copiapó, or from the 27° of south latitude, down to the entrance of the Straits of some 500 leagues, *and its width, east to west, from the South Sea to the Atlantic, is four to five hundred leagues in its broadest part, and in its narrowest part some ninety more or less, within which boundaries extensive regions and provinces are found, many of which have not yet been subdued by the Spaniards, and many not even discovered.*

¹ Last edition, Amsterdam, 1636-38 (translated by Henry Hexham), p. 459.

² Leyden, 1640. Book XII. chap. i.

But if it be taken more strictly as being that region which has been inhabited by the Spaniards for several years and where they have some small towns, it will be enclosed within more contracted boundaries, for its length, following the sea coast, is no more than three hundred leagues, and its breadth only twenty, and in some places less; that is to say, from the coast of the South Sea to the extensive mountains of the Andes," etc.

In *Le Monde ou la Description Générale de ses Parties*, by Pierre d'Avity Sieur de Mont-Martin, it is said, speaking of the "Province of Chile":¹

"The Spaniards give to its *Gobernacion* a length of five hundred leagues, extending north to south from the valley of Copiapó, on the 27th degree of latitude, down to the Lake of Ancud near the Straits of Magellan, and assign to it from east to west an area of four to five hundred leagues from the South Sea to the Northern Sea, an extent which, on nearing the straits, narrows to between ninety and one hundred leagues. But the inhabited part of this *Gobernacion* is in length some three hundred leagues between the 27° to the 44°. It is true that other Spaniards, when particularly speaking of this province and not of its *Gobernacion*, gives it a breadth of only one hundred miles, or thirty-three of our leagues. But thus measuring they do not make it cross the Andes, on the other side of which there are some places like Mendoza and San Juan."

In the *Grand Dictionnaire Géographique et Critique* of M. Bruzen la Martinière, Geographer of King Philip V., the extent of Chile is defined in the following manner:²

"Chile, great country and Kingdom of South America, along the South Sea. It is delimited on the north by the Rio Salado which separates it from Peru. To the east the Andes separate it from Tucuman as far as the source of River Chile, where, beginning to enlarge considerably, along an imaginary line stretching to the south-east, it extends to the Magellanic Lands, which bound it to the south-east down to the South Sea. The Spaniards designate the Magellanic Lands under the general name of Chile but we speak here only of Chile properly so called."

¹ Paris, 1643. Vol. iv. p. 174. ² The Hague, 1730. Article "Chile."

Coletti. The *Dizionario Storico-geografico dell' America Meridionale*, by Giovanni Domenico Coletti, gives the following in its article on "Chile":¹

"'Chile' or 'Chili' or 'Chille,' which is the name taken from the river traversing the great plain from east to west, is one of the largest and richest Kingdoms of South America. It is divided into eastern Chile or Cuyo, and into western Chile or Chile proper. It extends from north to south and comprises the Magellanic Lands down to the Straits; it has a length of 472 leagues, starting from the plain or desert of Copiapó, which is its northern boundary. To the east, where Cuyo is situated, it delimitates with the lands of Buenos Aires and the Pampas, on the west with the Pacific Ocean, on the south with the Straits of Magellan, and on the north with the Desert of Atacama or Copiapó."

According to the same Dictionary, the so-called "Guanacache Lake," where the River Desaguadero rises, is a "*great lake in the Kingdom of Chile, to the east of San Juan de la Frontera*"; "Nahuelhuapi" is a "*small village of Chile in the Province of Chiloé to the east*." And in the catalogue of the barbarian tribes inhabiting the Kingdom of Chile not only do we find the Pehuenches who inhabit "the mountains of the Andes in the Kingdom of Chile to the east of the city of Concepcion," but also the Pevingues, Puelches, and Poyas who are located east of the southern Cordilleras.

Thomas Salmon. In the work entitled *Modern History, or the Present State of all Nations*, Thomas Salmon describes the situation and extent of Chile in the following manner:²

"Chili, in which I shall take the liberty of comprehending Patagonia, the Terra Magellanica and Terra del Fogo is bounded by Peru on the north, by La Plata and the Atlantic Ocean on the east, and by the Great South Sea on the south and west, extending in length from north to

¹ Venice, 1771. Articles "Chile," "Nahuelhuapi," "Cuyo," etc.

² London, 1746. Vol. iii. p. 343.

south 27 degrees 30 minutes, viz. from 25 to 57 degrees 30 minutes south latitude ; *but the breadth is very unequal, being about 400 leagues broad in the north, and lessening gradually till it is not 100 broad in the south, and is consequently of a pyramidal form, the northern boundary being the base, and Cape Horn the summit of the pyramid.*"

In another chapter he adds :

" *The three grand divisions of Chili are : 1st, That of Chili proper, which lies between 25 and 45 degrees of south latitude, and between the mountains of Andes and the South Sea ; 2nd, The Province of Cuyo or Cuito, which lies between the Andes on the west and La Plata on the east ; and 3rd, Terra Magellanica, comprehending Patagonia and Terra de Fogo and extending from 45 degrees south latitude to Cape Horn in 57 degrees 30 minutes, bounded by the Atlantic Ocean on the east and the South Sea on the south and west.*"

Gomez de
Vidaurre.

In the *Compendio della Storia Geografica, Naturale e Civile, del Reyno del Chile*, by Felipe Gomez de Vidaurre, may be read :

" Chile, a Kingdom of South America, is situated on the coast of the Pacific Ocean or South Sea, between the 24° and 45° of south latitude, and between the 304° and the 308° of longitude, placing the first meridian on the Island of Ferro. Its length from north to south is over 400 leagues, and its breadth of about 80 leagues from west to east comprises the mountains of the Andes."

And in a note it is added :

" *No other region or country is here described than that known by the natives under the name of Chile. The General Government, called by the Spaniards 'Gobernacion de Chile,' includes also the Province of Cuyo, Patagonia, and the Magellanic Lands.*"

We deem it useless to multiply these quotations from historians and geographers of the Colonial Period, since those already given, containing paragraphs of authors writing independent of each other, suffice to confirm the double application of the name of Chile found among all who, with more or less judgment and knowledge, wrote regarding the country. This having been demonstrated, we shall merely

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add that the Kingdom of Chile, to which reference is made in this boundary question, is that which the Spanish Sovereigns created and delimited, and not the less extensive region to which the name of "Chile" was generally given when the most populous part of its territory was taken into consideration. It is, therefore, of very slight importance in the discussion before the Tribunal whether certain writers of the Colonial Period have said that Chile reached to the east as far as the Cordillera de los Andes. These and other similar expressions referring to its breadth do not constitute a legal title; and if it be desired to establish the boundary of the Colony which in 1810 became the Republic of Chile, it is necessary to consider simply the sovereign decisions of the Spanish Monarchs who fixed it.

Chapter III.

JURISDICTIONAL ACTS OF THE GOVERNORS OF CHILE TO THE EAST OF THE CORDILLERAS.

DURING the controversy originated by the boundary question previous to the year 1881, several Argentine writers had endeavoured to demonstrate that the territories to the east of the Cordilleras were never comprised under the name of Chile, and this same erroneous assertion appears now in the Argentine Statement, repeated several times and in different forms. Aided, however, by the testimony of the very writers quoted by the Argentine Representative and from others, we have seen that the name of Chile in the sense of Gobernacion or Province of Spain comprised "*de jure*" and "*de facto*" vast territories to the eastern side of the Andes.

And, omitting individual testimonies, is not the Argentine thesis refuted with still greater clearness by the long series of Royal Orders granting titles in favour of the Governors of Chile from Pedro de Valdivia onwards? In none of them is there even the slightest evidence that the "Gobernacion de Chile" was divided by the Andes into two portions, essentially and legally distinct and separate.

**Indivisible
unity of
Chile.** On the contrary, there are official documents which prove the complete and indivisible unity of

the Kingdom or Gobernacion de Chile during the Colonial Period. In 1610 the "Oidor" of the Audience of Santiago, Don Gabriel de Celada, sent to the Sovereign a report in which he says :

"The settlements of Spaniards which this Kingdom numbers in all the parts where peace exists are only eight towns, as poor as they are thinly populated: *four on this part of the snowy Cordillera, three on the other part, and the remaining one in the Province of Chiloé, which is situated at the extreme end of this Kingdom,* and owing to the war one cannot go there by land." ¹

In the *Recopilacion de Leyes de las Indias*, Title 16, Book VI. under the heading "De los Indios de Chile," there are to be found certain laws referring to the subdued Indians on both parts of the Cordilleras, as well as others referring to the Indians of "Chile proper," and others referring exclusively to the Indians of Mendoza, San Juan and San Luis.

In a Royal Order dated October 11, 1608, the King says :

"My Governor, President, and members of my Royal Audience of the City of Santiago, of the *Provinces of Chile*. I have been informed that the cities of Mendoza, San Juan de la Frontera and San Luis of that *district* are being depopulated," etc.²

The Governors of Chile, with the title of Governor-Presidents *of Chile only*, exercised full jurisdiction over Cuyo and sent subalterns there to govern that region in their names. This may be seen, to quote but one example, in the concession issued on December 20, 1668, by the Governor of Chile, Marquis of Navamorquende, in favour of his Lieutenant-Governor in the Province of Cuyo, Don Pedro Morales Negrete.

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¹ Gay, *Historia Física i Política de Chile. Documentos*, vol. ii. p. 195.

² Amunátegui, *Cuestion de Límites*, vol. ii. pp. 369 et seq.

But the most irrefutable confirmation of the fact that the Spanish Province of Chile was not, as the Argentine Representative wishes to persuade the Tribunal, enclosed between the Pacific Ocean and the Cordilleras, is the following law, which establishes the District of the Royal Audience and Chancery of Santiago de Chile, and which is to be found in the *Recopilacion de Leyes de las Indias*, sanctioned by King Charles II., and promulgated in 1681 :

**District of
the Royal
Audience of
Chile.**

(Law 12, Title 15, Book ii.) "*Royal Audience and Chancery of Santiago de Chile.* In the City of Santiago de Chile let there be established another Royal Audience and Chancery with President, Governor and Captain General ; four members who may also be Criminal Judges, etc. . . . and this Audience may have for its district all the said Kingdom of Chile, with the cities, villages, hamlets and lands included within the Government of the said provinces, all that now is pacified and settled, as well as all that may be subdued, settled and pacified within and outside the Straits of Magellan and the country 'inland' up to the Provinces of Cuyo inclusive. And we hereby ordain that the said President, Governor and Captain General shall govern and administer the said Gobernacion in all and for all ; and the said Audience, and no other Minister, may take cognizance of this matter unless it be our Viceroy of Peru, and *only in such cases as according to the laws of this Book and according to our Orders may be permitted* ; and the said President shall not interfere in matters of justice, and shall leave the members of the Tribunal to act freely, and all of them shall sign everything they may grant, decide, and decree." ¹

The law quoted, therefore, establishes most explicitly the district of "all the said Kingdom of Chile," which is declared identical with that of the Royal Audience of Santiago. It expressly includes within this district the Straits of Magellan, "within and without" and "the country inland up to the Province of Cuyo inclusive," i.e. the Patagonian region to the east of the Andes and the territory of the three cities

¹ *Recopilacion de Leyes de los Reynos de las Indias*. Printed and published by order of His Catholic Majesty, King Charles II., Madrid, 1681.

of Mendoza, San Juan and San Luis. All these countries formed part, according to the law, of the *Kingdom of Chile*, there being absolutely no reference, as may be seen, to the "Cordillera," on the "snowy crest" of which, according to the Argentine Representative, the "historical boundary" ran between the colonies of the Crown in the southern part of the Continent.

In comparison with a document so clear and of such decisive authority, what value attaches to the confused mass of quotations made by the Argentine Representative, on the strength of which, and by skilfully using in its double historical sense the word "Chile," he tries to demonstrate to the Tribunal that the kings of Spain, in their purely imaginary effort to establish natural boundaries between their American colonies, traced the boundary of Chile on the "crest of the Cordillera de los Andes"?

**Scope of the
Royal
Order, with
which an
argument is
made on
page 4
of the
Argentine
Statement
in favour
of the
"traditional
boundary"
in the
Cordillera
de los
Andes.**

With regard to the question under discussion, let us now examine the weight of the only two Royal Orders issued previous to the establishment of the Viceroyalty of Buenos Aires, which the Argentine Representative has quoted in support of his "traditional boundary" in the "Cordillera de los Andes."

On page 4 of the Argentine Statement the following may be read :

"King Carlos III., in 1776, confirmed by said decree that of Charles II. (dated 1684), which stated that 'the Cordillera Nevada was to divide the Kingdom of Chile from the provinces of the Rio de la Plata and Tucuman,' and also confirmed the Royal Order of 1693, addressed to Sotomayor, Governor of Buenos Aires, instructing him to settle towns in Patagonia, 'in the parts furthest inland and in the lands in the interior.' He also confirmed the Royal Order of 1766, in which

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Bucareli, the Governor of Buenos Aires, was informed that the whole southern region was under his supervision."

The decree of Charles III. appointing Don Pedro de Ceballos as Viceroy of Buenos Aires in 1776, will be examined later on; but it is advisable to remark in advance that it contains nothing permitting one to connect it, as has been done by the Argentine Representative, with the Royal Orders of 1684 and 1766, which refer to matters entirely foreign to the delimitation of territories of the Crown of Spain.

In order that the Tribunal may be able to form a correct opinion as to the value of the text of the Order of 1684 quoted in the Argentine Statement, we publish it *in extenso* among the documents of the Appendix.

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No. 8

In 1682 the Jesuit Father Altamirano had proposed that missionaries from Paraguay should evangelize among the barbarous tribes of Indians who marauded the regions between Rio de la Plata and the Straits of Magellan; and in a Memorial presented to the King had offered, as mentioned in the same Royal Order, to

"undertake this mission, giving him an escort of some fifty soldiers, or of whatever number may seem requisite to defend those missionaries from the most fierce heathens—*who were those nearest that city (Buenos Aires) whence they could easily return to it, without adding any burden to my treasury.*"

He had also called attention, as stated in the same Order, to the fact that in those regions there existed hundreds of leagues

"populated by pagan races. . . . in spite of the fact that about the year 1673 Nicolas Mascardi of the Order of Jesuits, travelling over the mountains of Chile and the coast of the South Sea in order to convert the many infidels inhabiting them, went round the snowy Cordillera which divides that Kingdom from these provinces (Rio de la Plata) and that of

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Tucuman, and on the plains which stretch toward the said river, he found nations who eagerly demanded the baptism which would have been administered them, had not the Poyas . . . put them to a violent death before they had been catechised."

The Argentine Representative has informed the Tribunal that the Decree of Charles II. of the year 1684 "*stated that the Cordillera Nevada was to divide the Kingdom of Chile from the Provinces of Rio de la Plata and Tucuman,*" but an examination of the document itself plainly shows that the italicised phrase does not proceed from the Monarch, but from the Memorial of Father Altamirano which is inserted in the extract of his application reproduced in the Order. The expression "*Cordillera Nevada, which divides that Kingdom from these provinces and that of Tucuman,*" which the Argentine Representative reproduces in a misleading form, which alters its sense, is a mere incidental phrase referring—not to the dispositive part of the Order, but—to the *résumé* of Father Altamirano's Memorial contained in it.

It is wholly unjustifiable to attribute the value of a legal instrument upon boundaries, to an expression hidden away in the extract from a Memorial, especially when a precise and categorical authority exists such as that of Law XII. chapter 15, Book II. of the *Recopilacion de Leyes de las Indias*, which was sanctioned by King Charles II., himself, and was a concise repetition of a long series of dispositions from the Crown concerning the extent of the district of the Kingdom of Chile.

The Argentine Representative has also called attention to another paragraph contained in the same Order, which he has but partially quoted. The King says :

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"It is my will . . . that the settlements of subdued Indians which may be founded should be made in the more central part and in the interior of the said regions, avoiding the foundation of settlements on the coast save at a distance inland of at least thirty leagues, for it is advisable that the said coast should remain uninhabited, so that foreign enemies may never find shelter therein, since it is not possible to fortify it with Royal armaments."

According to the Argentine Representative these words contain an instruction given to the Governor of Buenos Aires "*to settle towns in Patagonia* in the parts furthest inland and in the lands in the interior." But on examining the Order attentively, we see that the territory, the evangelization of whose natives was attempted, was that stretching in the neighbourhood of the Atlantic immediately to the south of Rio de la Plata, whence the soldiers serving as an escort to the missionaries "*could easily return to Buenos Aires.*" It had thus been proposed by Father Altamirano, and it is solely to this proposal that reference is made in the permission of the Sovereign, whose desire was to make settlements of Indians "at least thirty leagues distant from the coast," simply because of the fear that such settlements, if made on the coast, might be exposed to attack by foreign pirates. But, be that as it may, no value can attach to the disposition referred to in the Order of 1684, as a proof that the jurisdiction of Chile never extended up to the eastern side of the Cordillera de los Andes. On the contrary, there exists a large number not only of official documents, but also of records of historical events before and after the year 1684, proving irrefragably that the Colonial Government of Chile exercised its jurisdiction over territories to the east of the Southern Andes and within the boundaries officially assigned to it from the earliest period of the Conquest.

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**The Govern-
ors of Chile
exercised
an effective
jurisdiction
to the east
of the
Cordilleras.**

Without again recurring to the journeys already mentioned, made to the other side of the Andes by direction of the first Governors of Chile, we must recall the several expeditions which were sent by the President-Governors of Chile to relieve the stranded companions of Sarmiento de Gamboa, or the Spanish survivors of wrecks who were believed to have established themselves in some place east of the Southern Cordilleras; to the expeditions in search of the fabulous city of the "Césares"; and to the voyages of the missionaries made by order of the same authority. Prominent among these are the enterprise of Captain Diego Flores de Leon in 1621; the expedition sent in 1619 by the Governor of Chile, Don Lope Ulloa i Lemos, for the discovery of the "Césares"; that made with the same object in 1640 by the Governor of Chiloé, Dionisio de Rueda; the voyage of Father Rosales in 1650 to pacify the Puelche Indians by direction of the President-Governor Don Antonio Acuña i Cabrera; the appointment of Captain Luis de las Cuevas as a Lieutenant-General of the seas and land in the transandean regions by the same Governor in 1651; the expedition sent to discover the "Césares" in the time of President Meneses, by the Governor of Chiloé, Don Cosme Cisternas Carrillo; and the explorations conducted throughout Patagonia by Father Nicolas Mascardi, under the direction and with the help of the President-Governor, Don Juan Henriquez.

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No. 9.

**Father
Mascardi's
Mission.**

Father Mascardi, starting from Chiloé in 1670, crossed to Nahuelhuapi, where he preached the Gospel to the Indians, and erected a house for the mission on the north shore of that lake.

"If the Father," says the historian Rosales, "alone and without the

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G

cost or disturbance of war, should discover them (i.e. the Césares), preaching the Gospel of Peace to so many barbarous nations, it will be of great glory to God, *and redound to the honour of the Governor, in whose time and by whose order and assistance this discovery would be made and so many souls converted to their Creator*, for the Father is always spreading the net on all sides in order to gain souls for his Creator and vassals for his King.”¹

Father Mascardi crossed to the Patagonian plains on several expeditions, once reaching the coast of the Atlantic at one of its southern ports. In 1673, during his fourth expedition, he was assassinated by the Indians in a region situated on the 47° lat. When the Governor of Chile received the news he sent out troops, who returned with some of the Indians as prisoners. Having received their evidence, a second expedition set forth, and, securing the body of the missionary, carried it across the Cordilleras to Concepcion, where it was buried.

**Father
Lopez de
Zúñiga's
Mission.**

The Jesuits again requested the Governor of Chile and the Viceroy of Peru for aid in re-establishing formally the mission initiated by Mascardi. Father José Lopez de Zúñiga went over to Nahuelhuapi, visited the entire region on the other side of the mountain and made a detailed report concerning it. All the papers were sent to the Viceroy, the Duke de la Palata, who submitted it to his Council. The “Fiscal,” in view of the letters of Father Mascardi and Father Lopez de Zúñiga, which spoke of “*all the southern extremity down to the Straits and Northern Sea*,” said that the evangelization of this region deserved encouragement, *but that the country being included within the jurisdiction of the Governor and of the Royal Audience of Chile*, all the antecedent circumstances and the

¹ Rosales, *Conquista Espiritual del Reyno de Chile*. (Amunátegui, *Cuestion de Límites*, vol. iii. p. 99.)

documents of the Council of Peru should be communicated to those authorities. Accordingly the Viceroy, the Duke de la Palata, made a grant of 4,000 pesos, and in 1684 transmitted the history of the case accompanied by a communication to the Governor of Chile, Don José de Garro.

The King himself, in a Royal Order of July 2, 1684, entrusted this same matter to the Governor of Chile as appertaining to him.¹

There exists a large number of documents to prove that, even after 1684, the date of the Royal Order of Charles II. quoted by the Argentine Representative, the King and the authorities of Chile included within the jurisdiction of this Kingdom the missions among the Indians of Patagonia east of the Andes.

Mission of Father Laguna and others. In fulfilment of the Royal Orders addressed in 1683 and 1684 to Don José de Garro, on July 3, 1703, the "Junta de Misiones" of Santiago, presided over by the Governor, ordered the foundation anew of the mission of Nahuelhuapi, with directions to evangelize the Patagonian Indians east of the Andes as far as the Straits. In execution of this Order Fathers Laguna, Guillermo and afterwards Father Elguea, went to Nahuelhuapi, established the mission, and continued the work of Mascardi.

The Treasury of Chile pays for the missions. By Royal Order dated Madrid, February 23, 1713, the Monarch confirmed what had been done by the "Junta" of Santiago, i.e. the establishment of the mission among the Puelche and Poyas Indians in the Patagonian plains, and the granting of an escort to the missionaries.¹ By Royal Order of July 6, 1716, he deter-

¹ Authenticated copies of the corresponding documents of the Archivo de Indias are kept in the Chilean Legation in London.

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mined the method by which the allowance to the missionaries should be paid, always deducting it from the Royal Treasury of Chile. He also granted to the same mission a sum of money to be used in opening and maintaining a road across the Cordilleras, called the "Road of Buriloche," by which traffic might pass from the west to the eastern side of the Andes. At the same time a number of peaceful Indians of Calbuco were ordered to join in these works, and the Governor of Chile carried out all these arrangements, commissioning for that purpose Captain Tellez Barriento, whose services he rewarded by grants of land in Chiloé. In 1722, five years after the mission of Nahuelhuapi had been destroyed by Indians from the other side of the Cordilleras, the King still ordered that the allowance due to the missionaries should be paid from the Treasury of Chile.

In 1719 the Governor of Chile, Don Gabriel Cano de Aponte, informed the King of the destruction of the mission by the Indians, adding that he had not crossed the Cordilleras to punish the rebels because proper equipment for his army was lacking; and the King answered that he was duly informed of the cause preventing him from going to the east of the Andes for the heads of the culprits.

These, and many other supplementary proofs too numerous to be mentioned here, place it beyond doubt that the mission of Nahuelhuapi, situated in a region which the King in his Orders calls "*Province of our Kingdom of Chile*," was a mission of Chilean foundation, maintained by the Treasury of Chile, escorted by soldiers of the army of Chile, and served by a troop of Indians from the Chilean town, Calbuco; this mission being indeed the starting point

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for the evangelization of all the southern extremity of the Continent.¹

The undertakings to establish missions among the Indians and to reduce them to settlements, as carried out in the first half of the eighteenth century, offer several proofs that the native tribes of the Pampas and Patagonian plateaus to the east of the Cordilleras were considered as belonging officially to the Kingdom of Chile.

**Proposals
of mission
by Father
Macé.**

It will be sufficient to cite here the following facts : the French priest, Julien Macé, proposed to carry out a mission from Cape Horn to the interior of Tierra del Fuego, of the Straits of Magellan, and of the continent up to the latitude of the City of Concepcion by the eastern side of the Andes. In the Council of the Indies this point was extensively treated, and in the official records the region alluded to is called "*lands of the Kingdom of Chile to one and the other sides of the Cordilleras from Coquimbo, the beginning of the populated part of Chile, down to Cape Horn, the furthest point discovered in those provinces.*" This particular mission was not authorized, however, as the Jesuits claimed that it had been entrusted to them. This occurred in 1718.

¹ Father Laguna, when speaking of the territory of the Mission of Nahuelhuapi, says in a letter : "*I intend to go over all the country in order to explore it more carefully and establish missions in the places I may think suitable; this country extends to the Straits called of Magellan, and it has on that side more than one hundred leagues, and on the side of the North Sea it has much more.*" The same missionary says in the *Relacion*, where this letter is to be found : "That he could do nothing without the consent of the Governor of Chile," "that he would go to Valdivia to request the protection of the Governor in favour of the neophytes." It is convenient to take note of this last communication from Father Laguna, because it proves that not only was the mission of Nahuelhuapi in the territory of the Kingdom of Chile, but also that it was not subjected to the jurisdiction of the Province of Cuyo, the Governor of Valdivia being the nearest authority empowered to intervene in matters concerning it. The *Relacion* is published in Amunátegui, *Cuestion de Límites*, vol. iii. pp. 420-425.

Indians of the Jurisdiction of Chile according to official reports. During those same years the Governor of Chile, Cano de Aponte, commissioned the Maestre de Campo Don Jerónimo Pietas to draw up a detailed report upon the Indians under the jurisdiction of the Kingdom. The Maestre de Campo presented it, dated in Concepcion on December 19, 1719, including therein the Araucanos, Pehuenches, Puelches, Poyas, Guillipoyas, Chonos and Caucahues. The first he located between the River Bio-Bio and Reloncaví Bay; the second in the valleys of the Cordilleras from the "Volcan de la Laja" down to Nahuelhuapi; the third to the east of the Andes opposite the Province of Chiloé and as far as the Pampas, making them adjoin the region of the "Césares"; the fourth from the centre of the Pampas as far as the Northern Sea or Atlantic; the fifth from the limits of the Poyas and Guillipoyas throughout the entire angle formed by the Atlantic and the Straits of Magellan; and finally he locates the Chonos on the western side of the Cordilleras on the coast of the sea as far as the Straits.

This report was examined and approved by the "Junta de Poblaciones" and by another special "Junta," formed by the Governor, of persons acquainted with the Indians, and on being sent to the King was approved by him in the Council of the Indies in 1723. This document, which is of great importance, assigns to the Kingdom of Chile the whole extremity of the continent and its inhabitants duly classified. App. Doc. No. 11.

Father Villareal's Report. After the government of Cano de Aponte and during the administration of Don José de Manso, effect was given to one of his predecessor's projects for the distribution into settlements of the Spaniards and Indians of

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the Kingdom. Before the execution of this measure several persons acquainted with the Kingdom presented extensive reports upon the subject to the Council of the Indies ; among them is the Memorial of the Jesuit Father Joaquin de Villareal. Villareal, when writing his first work, paid especial attention to "Chile proper," and describes it as being bound on the east by the Andes and on the west by the sea. Therefore he could not have borne in mind, when thus delimitating Chile, what was then *the Kingdom or Gobernacion de Chile*, since in those days the Province of Cuyo to the east of the Andes indisputably belonged to this Gobernacion.

The Argentine Representative, profiting, as is his wont in similar cases, by the two-fold application of the name of "Chile," has produced (on page 20 of the Argentine Statement) paragraphs of Villareal's report with the object of constructing upon them an argument in favour of his "traditional boundary" on the crest of the "Cordillera de los Andes." But in order to dispel all doubt as to the value of this quotation, it must be remembered that Father Villareal shortly afterwards presented another Memorial, which is entirely devoted to a study of the means for assembling the Chilean Indians into settlements. In this second project the author deals with the submission and conversion of the Patagones and of the Indians in the region of the Straits, of the expedition to the city of the "Césares," and of the exploration of the entire Atlantic coast up to the point where it reached the jurisdictional boundary of Buenos Aires. This last project was precisely that accepted and ratified by the Council of the Indies, with a view of serving as an instruction to be followed by the authorities, when settling towns of

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Indians. From this document it is clear that although Father Villareal says in his first Memorial that Chile extends from the sea to the Cordilleras, referring only to the part settled by Spaniards, he was nevertheless well aware that Nahuelhuapi, as well as the Puelches, Poyas and other tribes east of the Andes, belonged to the jurisdiction of the Kingdom of Chile, in the name of which he presented his second Memorial.¹

Scope of the Order given to the Governors of Rio de la Plata to supervise the eastern coast of Patagonia.

The second of the official documents, previous to the year 1776, to which the Argentine Representative alludes with the object of proving that Chile had no jurisdiction east of the Cordilleras, contains certain instructions sent, on December 29, 1766, to the Governor of Buenos Aires, Don Francisco Bucareli, by which, as alleged by the Argentine Representative, "he was informed that the whole southern region was under his supervision." (Argentine Statement, p. 4.)

It is first advisable to establish by means of the actual text of the document itself (which we publish in the Appendix) the true sense and scope of the sentence quoted in the Argentine Statement.

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No. 12.

The wording of the Order says :

"In view of the reiterated confirmation of the Report which Your Excellency must have received on the arrival at Montevideo of the frigates *Liebre* and *Esmeralda*, regarding the contemplated settlement (already made) by the English on some island of those seas, or in the South Sea, and perhaps off its coast, and in the absence of information regarding its precise position, it becomes daily more urgent to carry

¹ The Chilean Legation in London has copies of the corresponding documents which exist in the Archivo General de Indias and in the Library of the Real Academia de la Historia in Madrid.

out the discovery which has been commanded, and, consequently, to inform the Presidencies with this object that, *as regards that coast as far as the Straits of Magellan inclusive and continuously down to Cape Horn, it falls under the supervision of Your Excellency*, associating yourself with the Governor of Malvinas, Don Felipe Ruiz Puente. *Your Excellency should direct . . . that the region between that river and the Straits of Magellan be reconnoitred from coast to coast with the aid of proper ships, as well as that part of the latter which they may be able to reconnoitre; and that in the remainder, down to Cape Horn, similar explorations should be made."*

Evidently the command of the King, contained in the phrase quoted, absolutely fails to prove that the Sovereign included "all the southern region" within the jurisdiction of the Governor of Buenos Aires. In fact it only refers to a *temporary commission* entrusted to Bucareli to make a careful inspection of the coast with suitable ships, from the mouth of the Rio de la Plata down to the Straits, and the adjacent islands down to Cape Horn.

The news received by the Crown of Spain that a settlement had been made by the English in the Falkland Islands, which had been given over to the Spanish Government in the very year 1766, was the incidental and temporary reason which led to the King's entrusting Bucareli with a commission *ad hoc*, i.e. the inspection of the neighbouring coasts, by reason of the seat of the Government of La Plata being the nearest, and having the required ships at their command. It is impossible to deduce from a special and incidental commission to inspect part of the coast, islands, and the Straits, a title of sovereignty over all the corresponding country; more particularly when all that territory had already been included by the will of the same sovereign, as expressed in documents drawn up with special reference to boundaries, in another of his American colonies. Neither in the order of 1776 nor

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in other orders of the same type is there a single word, taken its natural sense, to indicate that the Monarch had the slightest intention of altering the territorial demarcations as laid down in the manner we already know.

Moreover, there exist in the archives of Chile several Royal Orders by which commissions identical with those entrusted to the Viceroys of La Plata were given to the Governors of the former country. The Minister of Spain, Count Aranda, believing that one of the most effective ways of discouraging all foreign enterprise in the region of the Straits of Magellan and neighbouring islands, was that Spain should hasten to lay the foundation of missions and a port in the Magellanic Lands, wrote as follows to the Governors of Chile and Rio de la Plata. To the Governor of *Chile* :

“The Council has agreed that you, *with the co-operation of Don Francisco Bucareli*, should most strenuously promote for the present the missions to the Magellanic Lands and Tierra del Fuego ” ;

and to the Governor of *Buenos Aires* :

“The Council has agreed that you, with the *co-operation of the President of the Audience of Chile*, to whom the proper order has been sent, should most strenuously promote the missions to the Magellanic Lands and Tierra del Fuego.”

Now, if such special commissions were intended to fix the respective jurisdictions of Chile and Buenos Aires, to which of the two countries did those regions belong ?

Chapter IV.

THE CORDILLERA DE LOS ANDES WAS NEVER ADOPTED AS THE GENERAL BOUNDARY BETWEEN THEIR COLONIES BY THE SPANISH SOVEREIGNS, NOR CONSIDERED AS A STRATEGIC FRONTIER.

The principles of demarcation attributed to the Spanish Monarchs on page 487 of the Argentine Statement are not based on any document.

THE Argentine Representative, doubtless in default of official documents and historical facts upon which to base his assertions regarding the boundary of Chile in the Colonial Period, has thought it advisable to inform the Tribunal, in a few general statements to be found on page 487 of his Statement, as to the intentions and principles which—as he alleges—guided the Kings of Spain in the demarcation of their American colonies. He says :

“ In the old colonial times the Kings of Spain, in apportioning political jurisdictions, were careful in settling upon boundaries which should serve as barriers to contentions among the representatives of their authority. Epochs of conquest and military expeditions demanded bulwarks difficult to scale and adequate to restrain the ambition of explorers and soldiers. America was looked upon as an inexhaustible source of wealth, and those who went forth to seek it had to be confined within circumscribed areas, so that in their desire to attain their object they should not encroach upon contiguous territories where other expeditions were striving after the same ends. The sea, the great rivers, the mountains were the practical embodiment of the design of monarchs ;

they represented the barrier sought for against attempts at territorial expansion."

All these considerations may be very ingenious ; but, as a matter of fact, there is absolutely no foundation for them. Indeed the historical facts flatly contradict them. Respecting the Spanish colonies of the southern part of South America, which are of interest to us here, it suffices to go through the long series of Royal Orders from 1534 onwards, granting powers for "discoveries, conquests and settlements" and determining the limits of those concessions, to be convinced that the sovereigns, when fixing the areas of the several jurisdictions, only took into account imaginary lines, traced at a certain number of leagues distance, or parallels of geographical latitudes. They so acted and maintained their decisions, though the existence of natural barriers, the most formidable being the Cordillera de los Andes, was already known to them, for the same conquering Captains described it in their letters and referred in detail to all the horrors and dangers of the journey from one side of it to the other.

Had the Kings of Spain followed the principle ascribed to them by the Argentine Representative—of looking for natural barriers by which to restrict the ambitious projects of their Captains and discoverers—would they not have interfered, either directly or indirectly, through their chief representatives in South America, when Pedro de Valdivia, Garcia Hurtado de Mendoza and their successors in the Government of Chile sent their Captains and armies to the eastern side of the Cordilleras "to discover, conquer and settle" in the name of their superiors, regions whose eastern boundary was considered by them the "Northern Sea," although, in spite of this, they were to a certain extent

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exceeding the stretch of 100 leagues east-west which the Crown had assigned to the district of their Gobernacion ?

**Valdivia
extends his
domination
with the
approval of
the Sovereign
down to the
Straits of
Magellan
and the
Atlantic.**

If ever there was one among the Spanish conquerors in South America animated by the most ardent desire of bringing under his authority vast tracts of land, it was Pedro de Valdivia, who, from the first moment of his expedition to Chile, purposed extending his rule over the entire southern extremity of the continent down to the Straits of Magellan on the south and as far as the Atlantic on the east. His plans were known to the Court of Spain and to the Council of the Indies, not only through his letters and reports, but also through the special commissioner sent by him to Spain for the purpose of obtaining his titles and the enlargement of his province. And what did the Sovereign then do? Did he limit Valdivia's expeditions to "circumscribed areas" as he ought to have done, had the principle suggested by the Argentine Representative guided the policy of the Crown respecting the powers of its conquerors in that part of America? On the contrary: Valdivia was granted all the extension of the Gobernacion requested by him; permission was given to his commissioner Alderete to conquer "the land on the other side of the Straits of Magellan," i.e. Tierra del Fuego, explicitly revoking a previous disposition forbidding new conquests; and the services of both conquerors were rewarded, by conferring on Valdivia the title of, "Adelantado" and on Alderete the Order of Santiago with the title of Marshal of the Provinces of Chile, to "encourage," says the Royal Order of 29th September, 1554, "other persons to serve us with even better will."

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The Kings of Spain never searched for natural barriers to serve as boundaries. Whenever the King wished to prevent his conquerors from operating in territories where they might possibly come across expeditions of other captains who were endeavouring to accomplish the same object, he simply added to his decree such general phrases as "provided that you do nothing to interfere with, nor enter into, anything which may have been discovered and settled by another Governor and Captain"; but he never "sought," as alleged by the Argentine Representative, for natural barriers which might serve them as bulwarks. The fundamental demarcation assigning to the Colonial jurisdictions so many leagues and degrees of latitude was never altered in order to restrain the ambitious desires of the conquerors.

The Argentine Representative further says :

"Whilst South America was subjected to the Spanish Crown, the same political view was put in force, although in some cases its application suffered by reason of geographical ignorance. The conquerors of Chile crossed over the high barrier of the Andes, and had jurisdiction over the Province of Cuyo, but at that period supreme authority over the southern half of South America was exercised by the Viceroy of Peru, whose official seat was at Lima. His rule extended over all the Spanish colonies mentioned, and neither seas nor rivers nor mountains limited it. But in the inland subdivisions the above indicated principle held good, and in spite of its being subject to Chile and Peru, the Province of Cuyo (Mendoza, San Juan and San Luis) in its character as province was confined on the west by the upper crest of the Cordillera."

The Kings did not act in connection with boundaries through "geographical ignorance." Evidently the Argentine Representative has felt the difficulty of maintaining the imaginary "principle" attributed to the policy of the Spanish Kings in delimitating their colonies, and in order to explain to the Tribunal the fact that an absolutely contradictory principle was applied in delimitating the Province of Chile, he appeals to the "geographical

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ignorance" which sometimes prevented its application. Happily the antecedents of the foundation of the Gobernacion de Chile, of which we have already given a summary account, conclusively demonstrate that there was no "geographical ignorance," and that the great bulwark of nature, the Cordillera de los Andes, which might have been taken into account when fixing the boundaries of the jurisdiction of Chile, was in its course and general lines well known to the authorities who took part in this act. The person who traced the fundamental boundaries of this Gobernacion in the year 1548 was the President and Governor of Peru, La Gasca, the authorized representative of the King, with full power to act on behalf of the Sovereign. We repeat here the very words of an account given by this high official to the King and the Council of Indies, of Pedro de Valdivia's appointment :

" Pedro de Valdivia was sent as Governor and Captain-General of the Province of Chile, called Nuevo Estremo, which is delimited from north to south from Copiapó . . . *along the meridian down to 41° and in width from the sea inland, from west to east for 100 leagues. This Gobernacion was given him by virtue of the power that I hold from His Majesty*, because it was advisable to diminish the number of people in this Kingdom, and employ those who assisted in defeating Gonzalo Pizarro, and who could not be rewarded on this land ; and it was given to him (Valdivia) rather than to any one else, because of the services which he had rendered His Majesty on this occasion and *on account of the knowledge which he has of Chile and the work he has performed in the discovery and conquest of the said country.*"

La Gasca might well say that it was not an unknown country which was given to Valdivia to administer, since the latter had worked for seven years in the subjugation of the part which was then "Chile" in the restricted sense of the word, of all of which he had informed the Monarch by letters and reports. Is it possible to suppose that President

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La Gasca, who resided in Peru, who knew the Cordilleras of those regions through his own campaigns, who was very well aware from the reports of Almagro's companions that these same Cordilleras continued to the south through the territory of Chile and that they presented passes of great difficulty, acted through "geographical ignorance" when assigning to Valdivia the Gobernacion de Chile with a width of 100 leagues from west to east instead of enclosing it—as he should have done had he followed the theory ascribed to him *a posteriori* by the Argentine Representative—between the natural barriers of the sea and the Cordilleras? President La Gasca was not ignorant as to the geography of the countries under his control, nor was he hasty in assigning boundaries to new Gobernaciones. The *Coleccion de documentos inéditos para la historia de España* (vol. 1.) contains a long report from La Gasca to the Council of the Indies dated the 28th of January, 1549, in which is shown the extreme prudence and foresight of that official in the delicate matter of delimitating territorial grants. We have reproduced in chapter i. a paragraph of this document which refers to the investigations of La Gasca as to the boundaries between the Gobernaciones given to Pizarro, Almagro and Mendoza, for which purpose he consulted the most competent persons, who at that time were the "pilots of the sea." Moreover the same document gives us further proof of the great care taken by La Gasca to avoid conflicts between the different conquerors, which might arise from a defective demarcation of their concessions. This may be seen, for instance, in his dispositions respecting the new Gobernacion which he created for Diego Centeno, in which he was careful to assign it outside the

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boundaries of the Gobernacion del Rio de la Plata. In all these dispositions, however, there never appears a "natural bulwark" as indicating a boundary. Instead of separating the Gobernaciones by mountains or great rivers—although these geographical features were very well known to him—he was satisfied with assigning to them a certain number of degrees of latitude and so many leagues "along the meridian."

At the time when the King of Spain completed the delimitation of the Gobernacion de Chile, including within it all the southern extremity of the continent, he was perfectly acquainted with the general geographical conformation of those regions and possessed data respecting their prominent features which would have placed him in a position to use them in the demarcation, had such been the intention of the Crown.

In 1534, when the Sovereign made the four fundamental capitulations to which we have referred in chapter i., there might have been a certain confusion in the definition of the boundaries as contained in those documents, because up to that time there was no information respecting the exact configuration of the littoral of the Pacific in the latitudes corresponding to the Gobernacion of Don Pedro de Mendoza. But from this date on, knowledge increased with greater rapidity. Between 1535 and 1536 there occurred the expeditions of Don Pedro de Mendoza to the Rio de la Plata, of Simon de Alcazaba to Patagonia or Kingdom of Leon, and that of Diego de Almagro to Chile. The first of these sent his Captain, Ayolas, up stream to Paraguay and to cross the land towards the South Sea on parallel 25 where the Gobernacion of Nuevo Toledo ended and his own began; the second sent Juan de Mori to survey the interior of Patagonia, which he explored as far as the mountainous region, rich in guanacos and huemules, which Mori called "sheep of Peru," and he sent his sailors in small boats to explore the interior of the Straits of Magellan; the third crossed the land of the Charcas, of the Juries and Diaguitas, the Tucuman, penetrated into "Chile," and advanced by sea and land to the River Itata.

All these expeditions led to descriptions and geographical charts which, beyond any doubt, reached the Councillors of the Sovereign. The reports referring to the expeditions to Rio de la Plata are to be found from that date in the Archives of the Indies. Gonzalo Fernandez de Oviedo, chronicler of the Indies, who maintained constant correspondence with the Council, received from the survivors of Alcazaba's expedition all the details concerning that disastrous enterprise; and the reports of Alonso Vehedor, a notary, and of Juan de Mori, treasurer of that squadron, are also to be found from that time onwards in the archives of the "Casa de Contratacion." The clergyman, Cristobal de Molina, who accompanied Almagro in his expedition to Chile, made the description and the map of the territory which had been visited, and which he sent to the Comendador Mayor of Leon, Francisco de las Cobas, Secretary of Charles V.

In 1540 Father Francisco de Rivera, by order of the Bishop of Placencia and of his brother Francisco de Camargo, to whom the Sovereign had granted the Gobernacion of the southern extremity of the continent which became vacant on Alcazaba's death, made a fresh expedition to Patagonia and the Straits of Magellan. One of his ships, commanded by Alonso de Camargo, crossed the Straits, entered the South Sea, and sailed along the littoral of the Pacific northwards to a port of Peru. He took with him a record of the degrees in which the Straits lay and of what happened on the voyage, a record which was handed to Pedro Cieza de Leon, as this same author relates in chapter v. of the *Primera Parte de la Crónica del Peru*. Cieza de Leon, a distinguished geographer, the author of a notable geographical description of the western part of South America, was in Seville in 1553, publishing the first part of his *Crónica del Peru*, which deals with the demarcation of its provinces and their description, and in the edition of 1554, which was dedicated to the Sovereign himself, there is to be found a small map of South America made by Juan Bellerio, representing as perfectly as was possible at that time the general outlines of the continent, showing in its interior a long chain of mountains which corresponds to that of the Andes, the course of the river Amazon, the Rio de la Plata, the Straits of Magellan, etc.¹

¹ The edition of Cieza de Leon's work in which this map is to be found has
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Attached to the Casa de Contratacion and Council of the Indies there was a well organized service under cosmographers, occasionally men of eminence, of pilots and of draughtsmen, whose duty it was to use the reports, voyages, and sketches of navigators and explorers, in order to rectify and complete the information of the Council. It will be sufficient to cite Juan de la Cosa, Amerigo Vespuccio, Juan Dias de Solis, Sebastian Cabot, Rui and Francisco Falero, Alonso and Jerónimo de Chavez, Hernando de Blas, Diego and Sancho Gutierrez and Alonso de Santa Cruz, who successively discharged those duties and made voyages of discovery, executing and completing maps from the beginning of the sixteenth century to the year 1560.

It may, therefore, be affirmed with good reason that in the year 1555 the geographical charts of the Casa de Contratacion concerning South America were complete in their southern extremity through the data furnished to the Royal cosmographers by the expeditions of Pedro de Mendoza, of Almagro, of Alcazaba and Camargo. The presence of Pedro Cieza de Leon at the very place where the cosmographers resided at the time is another proof that they were perfectly informed upon the geographical configuration of the countries respecting the demarcation of which they were consulted by the Crown.

When the Captains, who had been commissioned by the first Governors of Chile, crossed the Cordilleras, and laid on the other side of them the foundations of the most important towns of the present frontier provinces of the Argentine Republic, they did not penetrate into alien territory. Their campaigns were not the work of independent adventurers, but were expeditions carried out by order of their direct superiors

the following title : *Part first of the Chronicle of Peru dealing with the demarcation of its provinces, their descriptions, the foundation of the new cities, the rites and habits of the Indians and other strange things worthy of being known. Made by Pedro Cieza de Leon, a resident of Seville. To which are added a description and map of the Indies with an alphabetical table of the principal matters therein contained.* At Antwerp by Juan Bellerio, MDLIIII.

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with the object of making the authority of the Governors of Chile effective in the less known and still incompletely subdued parts of their Province.

In the paragraph quoted by us from pp. 487-488 of the Argentine Statement, it is maintained that the region of Cuyo, although subdued by the conquerors of Chile, formed a separate Province, bounded on the west by the "high crest of the Cordillera," and dependent, like all the territories of the southern part of the continent, on the Viceroy of Peru, whose authority "was not limited by seas, by rivers or mountains." Without dwelling on the gross exaggeration of this last phrase, we shall set against this assertion of the Argentine Representative the text of the law dictated by the Sovereign, which, besides fixing the boundaries of the Kingdom of Chile, determined the part to be taken by the Viceroy of Peru in its government. It is law xii. title 15, book ii. of the "Recopilacion de las Leyes de Indias," which created the Royal Audience of Santiago in 1680 and which we have already quoted in another part of this Statement.

"It [the Audience] may have for district," it says, "*all the Kingdom of Chile with its cities, villages, hamlets and lands included within the Government of the said provinces, all that now is pacified and settled, as well as all that may be subdued, settled and pacified within and outside the Straits of Magellan and the land to the interior as far as the Province of Cuyo inclusive. And we hereby ordain that the said President-Governor and Captain-General shall govern and administer the said Gobernacion in all and for all; and the said Audience and no other Minister may take cognizance of this matter unless it be our Viceroy of Peru, and only in such cases as, according to the law of this book and according to our Orders, may be permitted.*"

Law xxx., title 3, book iii. of the same "Recopilacion" also stipulates :

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“That the Viceroy of Peru and Audience of Lima shall not hinder or embarrass the President-Governor and Captain-General of Chile in the government, war, and matters under his charge, unless it be in grave cases of much importance, although he may be subordinate to the Viceroy and Governor of the Audience of Lima.”

When in 1797 the President-Governor of Chile requested the Monarch to declare that the Government of the Kingdom was to be independent of the Viceroyalty of Peru, in order to avoid the embarrassment eventually caused by decrees in which the Viceroy intervened, especially in matters relating to the defence of the country, the King issued, under date of the 15th of March, 1798, an Order declaring that the Captain-General of Chile should be independent of the Viceroyalty, “as should always have been understood.”¹

Now if the Viceroy of Peru were authorized to intervene in the affairs of the Government of Chile in certain grave and important cases, this in no way means that the portion of the territory of Chile over which such act of jurisdiction was exercised remained outside the boundaries of the Kingdom. The Province of Cuyo until 1776, and the Patagonian lands to the east of the Cordilleras until 1810, always formed *integral parts of the Gobernacion de Chile* submitted to the authority of the President-Governors who resided in Santiago; and it is a parody of history to affirm that they were separate colonies equivalent to the other subdivisions of the Viceroyalty of Peru. The same Royal Order of 1776 which added Cuyo—i.e. the territories of Mendoza and San Juan del Pico—to the Viceroyalty of Buenos Aires, does not state that they were a province of Peru, but that they were “under the dependency of the Gobernacion de Chile.”

¹ Amunátegui, *Títulos de la República de Chile*, etc. Santiago, 1855, pp. 66 and 67.

In different parts of his Statement the Argentine Representative persistently scatters phrases reiterating that the jurisdiction of Chile never extended to the east of the snowy crest of the Andes, and, speaking of the Province of Cuyo, says that its incorporation into the Kingdom of Chile was but "temporary," "exceptional," and caused by "geographical ignorance." (pp. 3 and 4; pp. 487 and 532; p. 1063.) On the other hand, he affirms (p. 532) that "it has already been *thoroughly proved* that the traditional limit between the Argentine Republic and Chile is the summit of the Cordillera along the watershed of its main chain."

This "thorough" proof, the merits of which are claimed by the Argentine Representative, consists essentially in a series of quotations from historians, who, when referring to the region of Chile, describe it as a long and narrow strip of land enclosed between the sea and the Cordilleras; but a cursory examination of the expressions of those authors shows that most of them, and certainly the most trustworthy and reputable, make a clear distinction between the stretch populated principally by the Spaniards, and the *Gobernacion de Chile*, of which it formed only a small portion. None of these quotations has the slightest value as evidence, since the admitted rule of Spanish-American International Law, when fixing the boundaries of the new Republics as heirs to the colonies of the metropolis, says that *these boundaries must be established, taking into consideration not the territorial extent to which this or that name was applied, but the areas which were comprised within this or that jurisdiction*. What was taken into account when fixing the principle of the "uti possidetis" for the formation of the Spanish-American

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Republics was the possessions pertaining to the Viceroyalties, Presidencies or Captaincies-General in 1810, and which were acknowledged by law and competent authorities. Consequently it is necessary to base on these the traditional boundaries of the Republic, and not on the scope which was given to certain geographical names.

The jurisdiction exercised by the Governors of Chile over Cuyo was permanent.

The jurisdiction exercised by the Governors of Chile in Cuyo was neither "exceptional" nor "temporary," for this country formed an integral part of Chile from the time of the foundation of the *Gobernacion de Chile*, in the middle of the sixteenth century till its incorporation in the Viceroyalty of Buenos Aires in 1776, i.e. during nearly two and a half centuries.

Being situated within the zone of 100 leagues in breadth from east to west, assigned by the Sovereign to the *Gobernacion de Chile*, Cuyo belonged to its jurisdiction, not as an "exception," but by virtue of the same law and of the same Royal disposition by which Santiago, Concepcion, Valdivia, or any other province of this vast Kingdom belonged to it. The Cordillera de los Andes, interposed between Cuyo and the region of "Chile proper" did not prevent the formation in Mendoza and San Juan of centres of Chilean population, precisely as in any other part of the Gobernacion.

The Cordillera de los Andes was never the boundary of Chile, and was frequently called Cordillera de Chile.

The assertion of the Argentine Representative that the most elevated crest of the Cordillera was always considered as the eastern boundary of Chile is so unfounded that in official documents and in writings of authors of the highest repute among the Argentines themselves, when assigning the western boundary of the Gobernacion of the Viceroyalty of La Plata, the Cordillera de los Andes is often spoken of as the

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"Cordillera de Chile" (which is equivalent to saying a mountain situated in Chile or belonging to Chile), and at other times as the "*eastern slope of the Cordillera*," or of "*the most eastern slopes of the Cordillera de los Andes*."

Among other proofs, we beg to quote the Royal Order of 1663. Order of the 10th of February, 1663, wherein the King asks the President of the Audience of Charcas to send assistance to the Governor of Chile: "It may be possible," he says, "for him to reach Buenos Aires at a time when the *Cordillera de Chile* is closed without his being able to cross to that country." The Royal Order of May 15, 1669, says:

"My Governor and Captain-General of the provinces of Rio de la Plata . . . in letters which he has written to me from the port of Buenos Aires . . . mentions . . . that the extremity of that jurisdiction (Rio de la Plata) on its southern part, and at the extremities of the *Cordillera de Chile* and province of Tucuman, had always been inhabited by numerous Indians from the mountains and Pampas."

In the Memorial which Don José de Herrera i Sotomayor, the substitute of Don José de Garro in the Government of Rio de la Plata, addressed to the King on January 23, 1683, respecting a projected mission among the Indians, the following may be read:

"The object of this proposition, Sire, is none other than to attempt the conversion of the innumerable Indians . . . besides tribes and nations settled inland . . . inhabiting the banks of the rivers and shores of the lakes which have their origin on the great *Cordillera de Chile*."

And a little later he says:

"It is also extremely advisable in order to discover and exploit the great riches of gold and silver which, by common report, exist in *many parts and ranges of the said Cordillera de Chile*, of which some stones

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yielding a rich percentage have been seen in the arms used by Indians inhabiting those regions.”¹

Father Lozano. Father Lozano, in his geographical description of the province of Tucuman, says :

“The lofty hills encircling this valley (Calchaqui Valley) are the most rugged in character to be found in these provinces ; their extent from north to south is thirty leagues ; *on the western side the lofty Cordilleras which form the termination of that of Chile act as a wall*, and form the commencement of the province of Peru ; and on the east others no less high, and perhaps with even worse roads than those of Chile, according to the testimony of people who have travelled over both.”

And later :

“ . . . The famous hill of Aconquija is found in a range running from north to south from the valley of Calchaqui, and within view of which the city of San Miguel lies placed on a flat land. . . . Starting from this point westwards are found the valleys of Andalgala, Abaucan, and Malfin, which march with the *famous Cordillera de Chile*, and with these are connected all the high ranges forming the said fertile valleys. Continuing over ridges, at the back of the *Cordillera de Chile* . . . is the lofty and renowned mount of Famatina,” etc.²

Father Falkner. The Jesuit Father Thomas Falkner, whose book on Patagonia, published in 1774, is justly renowned because of its personal observations prolonged through many years and based on careful researches, *considers the River Saladillo, running on the 35½° lat., as the southern boundary line of the Spanish Gobernacion de Buenos Aires*,³ and, when speaking of the Cordilleras, says that *the whole of them is found in Chile*. When describing the tribe of Moluches Indians, he says :⁴

“They are scattered over the country *both on the east and west sides*

¹ Angelis, *Memoria Histórica*, 1852, pp. iv. and v. ; Amunátegui, *Cuestion de Límites*, vol. iii. pp. 50 and 183.

² *Historia de la Conquista del Paraguay, Rio de la Plata y Tucuman* (Biblioteca del Rio de la Plata), vol. i. pp. 176 et seq.

³ *A Description of Patagonia and the adjoining parts of South America*, Hereford, 1774, p. 52. ⁴ *L.c.* p. 96.

of the Cordillera de Chile, from the confines of Peru to the Straits of Magellan, and may be divided into different nations of the Picunches, Pehuenches, and Huiliches."

Elsewhere, when speaking of the mountains of the southern part of the continent, he says :¹

"The Casuhati (the Ventana ridge of the modern maps in lat. 38°, long. W. 62°) is the beginning of a great chain of mountains which forms a kind of triangle, whereof it makes one angle ; and from hence one side of the triangle extends to the *Cordillera de Chile* and another terminates in the Straits of Magellan."

Don José de Espinoza, one of the officers of **Espinoza.** Malaspina's expedition and one of the authors of the *Carta Esférica*, mentioned elsewhere, says :²

"On the west this Viceroyalty (Buenos Aires), therefore, is boundea by the eastern slopes of the great *Cordillera de los Andes* on the part where they stretch from 35° up to 20° (lat.)."

The learned Don Felix de Azara, quoted on **Azara.** page 23 of the Argentine Statement in favour of the Argentine theory, frequently uses the expression "*Cordillera de Chile*." Thus, for instance, he says, when speaking of the savage Indians :

"I believe that all these Indian nations formerly inhabited the very *Cordillera de Chile*, and that they descended thence to inhabit the country where they are to be found at present."

And in another part :

"I have not seen many other wandering tribes of savages between the Patagonian coast and the *Cordillera de Chile* from the 41° as far as the Straits of Magellan." ³

Nor does this geographer speak of the snowy crest of the Cordillera when designating the western boundaries of the territory of Rio de la Plata ; he simply says that it had "*for*

¹ *L.c.* p. 73.

² *Viaje político-científico alrededor del mundo*, etc., Madrid, 1885, p. 567.

³ *Voyages dans l'Amérique Meridionale depuis 1781 jusqu'au 1801*, Paris, 1809, vol. ii. p. 48.

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western boundary the most easterly slopes which branch off the Cordillera de los Andes," and when referring to the "conformation and quality of the land," he adds :

"Of all the country which I describe, it may be asserted in a general sense that it is a continuous plain ; for the exceptions are mere hillocks or small ranges of brief extent which do not exceed 210 'varas' in height from their base, and which would not even be designated as such were they not situated among plains ; therefore I consider that I must not dwell on matters of such small importance and consequence in a general description of this kind."

And further on :

*"Another consequence is that the country can never be irrigated by artificial waterways, nor will mills or hydraulic machinery be feasible, nor will it possess a flowing supply of water. The possible exceptions would be near its east and west boundaries, i.e. at the places where the waters emerge from the slopes of the Cordillera, and in the vicinity of Brazil, which are more inclined and less horizontal."*¹

How could the author possibly have written thus, had the country which he was describing, i.e. "Paraguay and Rio de la Plata," delimited in his opinion to the west on the high and snowy crest of the central range of the Cordillera de los

Inaccuracy of the assertions drawn from a quotation from Father Olivares to be found on page 18 of the Argentine Statement in order to prove that the Chilean Spaniards never settled to the east of the Cordillera.

Andes ?

The anxiety of the Argentine Representative to make the crest of the Cordillera de los Andes appear as a strategic frontier assigned to Chilean jurisdiction and acknowledged as such in the Colonial Period, leads him to strange and unwarrantable conclusions in the interpretation of certain paragraphs of the *Historia Militar, Civil i Sagrada de Chile*, written by Father Miguel de Olivares in 1758.

¹ Azara, *Descripcion e Historia del Paraguay i del Rio de la Plata*. (Posthumous work, published by Don Agustin de Azara, Madrid, 1847.) Vol. I. chaps. i. and ii.

"The attention of the Tribunal," he says on page 18, "is directed to the facts revealed in the passage just quoted. They are very important, as they show that the sometimes rather easy crossing of the passes of the Cordillera in summer in the central part forced the Spaniards to maintain continually a garrison capable of preventing the crossing of an enemy. From this fact two conclusions are to be derived : 1st, *the Chilean Spaniards never went to the lands east of the Cordillera*, having their garrisons at the western side of the passes ; 2nd, *the Spaniards then, as the Argentines now, considered the 'Cordillera' as the natural bulwark for easy defence against an enemy.*"

The paragraph of Olivares' work which is relevant is the following :¹

"The drawback to the 'Correjimientos' of the Province of Chillan in enjoying *the beautiful lands of their Cordillera*, is the serious risk of robbery by the Peguenche Indians, who roam in the country opposite the territory of the City of Chillan, the Cordillera being in the middle ; but as *this Cordillera here breaks up into so many branches*, it is less high and more accessible, and the '*potreros*' (*pasture fields*) situated in its centre are of a doubtful ownership by reason of their being easy of access from both sides. The natives of the City of Chillan used several of them. A good many years had elapsed without any special arrangement as to the Indians, until four years ago, when a resident by the name of Francisco Mercado was robbed of some 100 horses. Finding no other way of obtaining compensation, Mercado armed twelve or more servants of his dependency and crossing to the Peguenches' lands without being discovered, imposed upon them a fourfold penalty by seizing 400 horses. *The Indians filed their complaint at the Captaincy-General*, which ordered the restoration of the horses and proceedings against the culprits, of whom Francisco Mercado and two of his servants named Echavarrias were exiled to the garrison of Santa Juana. . . . So things remained till the present year of 1758 in the month of February, when the Peguenche Indians again robbed the residents of Chillan of 600 horses, from the '*potreros*' called '*El Reldun*' and '*Valle Hermoso*' ; this I can vouch for, because I was in the City at the time of the occurrence, and when complaints were made to the Judge, requesting permission to retaliate. . . . In past times there was good cause for fear, when the number of the Indians exceeded that of the Spaniards, but things have now entirely changed, for the number of Spaniards is much greater, our arms are better, the science of war superior, and our territory is better defended. The Spaniards can cross to the lands of the Indians whenever they

¹ *Coleccion de Historiadores de Chile*, vol. iv. book i. chap. iii.

choose by reason of their frontiers being defenceless, for, having no political and military government, they lack soldiers to guard the passes from the Cordillera to their lands. The Spaniards, on the contrary, constantly maintain in those passes a garrison capable of opposing the passage of the enemy. . . . The Peguenches know all this, and therefore would never be so foolishly self-confident as to harbour the imprudent project of invading the land belonging to the province of Chillan, being very unlike the stupid animals of the fable who entered the lion's cave without having explored its exit."

We have deemed it advisable to quote the entire paragraph, filling in the suppressions made in the quotation of the Argentine Statement, in order that we may clearly establish the fact that in all the lengthy narratives of Father Olivares from which the Argentine Representative has drawn transcendental conclusions regarding the strategic importance of the Cordillera and of the defence organized by the Spaniards of Chile in its passes, there is no reference to anything but the reprisals occasionally made by the residents of the City of Chillan against the thievish Indians on the other side, who had come to steal horses from certain "potreros" of the neighbouring Cordilleras. The "enemies" to whom reference is made in the paragraph quoted, are the Peguenche Indians of the same jurisdiction of Chile who, believing that they had been unjustly punished by the residents of Chillan "filed their complaints" *before the Captain-General of Chile* as the proper authority; and the "frontiers," the defence of which is discussed, are not the frontiers of the Spanish Province of Chile, but the boundaries of the "potreros" and farms in the Cordilleras occupied by residents of Chillan, and which the same Olivares calls "Cordillera de Chile."¹ Is it legitimate to distort the simple fact that some private owners of land in the Cordilleras of Chillan established guards thereon in order to

¹ *Loc. cit.* book i. chap. ii.

protect their "potreros" against the incursions of Indians from the other side of the mountains but of the same jurisdiction of Chile, and to try to prove by it that the Spaniards of that time, like the Argentines of to-day, considered the Cordillera as the natural bulwark affording an easy defence against any enemy?

Even were it permissible to admit such interpretation regarding the small portion of the Cordilleras to which the paragraph from the book of Olivares really refers, what will justify the other conclusion of the Argentine Representative when he affirms that "the Chilean Spaniards never went to the lands east of the Cordillera, having their garrisons at the western side of the passes"?

Chilean colonization to the East of the Cordillera. Historical facts contradict this statement in the most categorical manner. The first (and for two centuries the only) settlers who established themselves at different points on the vast zone of land inhabited by nomadic Indians from the confines of Tucuman to the Patagonian deserts were Chilean colonists from the central and southern provinces of what was properly called "Chile." As proof of this, there stand the towns of San Juan, San Luis and Mendoza in the north, and the mission of Nahuel-huapi in the south.

"The colonization of the River Plate and of Chile," says the Argentine statesman and historian, General Don Bartolomé Mitre, "was effected by the colonists themselves. . . . While the colonists of the River Plate crossed immense deserts and reached the Pacific by way of Upper Peru, *the colonists of Chile crossed the Andes from Arauco and established themselves east of the Cordillera at Mendoza, opening for themselves a road to the Atlantic.*"¹

But apart from this, there exists unmistakable evidence

¹ B. Mitre, *The Emancipation of South America*. Translated by W. Pilling, London, 1893, p. 80.

that from the early time of the conquest there was some considerable traffic—if we take into consideration the sparse Spanish population in Chile in general—of colonists between one and the other side of the Cordilleras.

The road most frequently used in the remotest times was that which crossed the Cordilleras from the ancient town of Villarica, situated on the outlet of the lake of the same name. The chronicler Córdoba i Figueroa (in the middle of the eighteenth century), referring to this matter, says :¹

**Córdoba i
Figueroa.**

“In that direction (i.e. opposite Villarica) the Cordillera is low and more accessible, and offers a road for its crossing which can be made easily in all seasons of the year, even in the severest, *the convenience of which was not underrated by the Spaniards during all the time it subsisted, frequent commerce being carried on with Buenos Aires by wagons (of which even at present there are some remains), thus increasing the importance of the towns of the bishopric of Imperial.* The road was better than that which is used at present. The extent of all those lands is very wide ; its greater part is formed of low and even hillocks, with forests neither so scarce nor so abundant as to be a nuisance to the inhabitants of the country, which the Spaniards found very populated, and to-day, in the general decline of the Kingdom, it still remains with a sufficient number of people.”

**Felix de
Azara.**

Don Felix de Azara mentions the same fact :²

“I believe,” he says, “that all the Indian nations formerly inhabited the *Cordillera de Chile*, and that they descended therefrom to inhabit the country where they are found at present, at the time when the savage tribes settled down there as we have previously seen. I base my belief upon the following fact : *Those Indians were not to be found on the road used by the Spaniards who formerly went in wagons from Buenos Aires to Chile*, passing by the Villarica volcano, where the Cordillera is open and presents a low and connected passage of almost one mile in length. At present this road is forgotten and people go to Chile by Mendoza, crossing the Cordillera with great difficulties.”

¹ *Coleccion de Historiadores de Chile*, vol. ii. chap. iii.

² *Voyages dans l'Amérique Méridionale*, vol. ii. p. 48.

Father Ramirez. We add to this the fact that "*the cabildos*" (city councils) and priests of the cities of Valdivia and Osorno (in the south of Chile), undertook the spiritual conquest of the Indians, extending it successfully over the eastern valleys of the Andes to the lake of Nahuelhuapi. . . ."¹ This is confirmed by the narrative of Father Ramirez in his *Cronicon Sacro-Imperial* respecting the missions in Patagonia of the Priests of the Order of Mercy.²

"The towns and the convents of Villarica and Osorno," he says, "extended their dependencies and spiritual conquests over the eastern valleys of the Andes as far as the famous Lake Nahuelhuapi."

On account of the general rebellion of the Indians and of the destruction of several most important towns in the south of Chile, the enterprises of colonization east of the Cordilleras, initiated with such good results from the earliest period of the conquest, were interrupted in the seventeenth century. Traces, however, remain of the activity of those former colonists, not only in the annals of history but also in the aspect of the country, where certain proofs of culture still testify to the presence of Chilean colonists east of the Andes.

"Wherever he went the conqueror of America carried not only the sword but also the attributes of civilization. Among the most important introduced by him into the new continent were domestic animals, plants and fruit trees of the Old World. They all became acclimatized; the fruit trees especially grew well and tended to grow wild. Hence these trees for many years bore testimony of the residence of a former settler after he had abandoned it.

The wild apple forests. "We find to-day in the deserts at the eastern foot of the Cordillera, in the latitude enclosed between Villarica and Nahuelhuapi, as incontestable signs left by civilized man, extensive forests of wild apple trees."³

¹ Gay, *Historia Física i Política de Chile*, vol. ii. p. 66, note 1.

² Quoted by Amunátegui, *Cuestión de Límites*, etc., vol. iii. p. 340.

³ Fonck, *Viajes de Frai Menendez a Nahuelhuapi*, Valparaiso, 1900, vol. i. pp. 9 and 10.

The explorer, Don Basilio Villarino, who in 1782 ascended the River Negro and one of its north-western affluents up to the neighbourhood of the Cordilleras in the latitude of the town of Valdivia, had occasion to observe dense forests exclusively formed of apple trees, the fruit of which practically covered the ground, presenting the very type of the vegetation so characteristic of the banks of the rivers in the Chilean Province of Valdivia. The modern travellers who have gone over that region likewise give an account of the wild apple trees, although their abundance seems to have diminished since the days of Villarino.

Apart from the forests of apple trees which owe their origin in all probability to the plantations that were made by the settlers of Villarica or by other Spanish colonists of Chile in their establishments on the road to Buenos Aires and Nahuelhuapi, few reminiscences remain of the primitive culture initiated in the time of the conquest by Chilean Spaniards. But shortly after peace was established with the Indians and the towns of the southern provinces were rebuilt in the eighteenth century, the current of Chilean colonization extended afresh towards the other side of the Cordilleras without being checked by the formidable "natural bulwark"; and the result of this movement, which was carried on slowly but unceasingly for over a century, is that to-day the bulk of the population of the Argentine Provinces of Mendoza and Neuquen is of Chilean origin, and is maintained, as in former times, in close relationship with the towns, ports and markets on the western side of the Andes.

Modern travellers. In order to be convinced of the accuracy of this assertion, it suffices to read the descriptions given by modern travellers who have visited those provinces.

General Roca. General Don Julio A. Roca, the actual President of the Argentine Republic, says in a letter addressed from Rio Cuarto under date of April 24, 1876, to the Editor of the Buenos Aires newspaper *La República*, the following :¹

"I, therefore, do not see why our Government do not hasten to take possession of the eastern side of the Andes, if not as far as to where Chile has advanced, at least down to Rio Grande or Neuquen. . . . We would thus come in contact with the Pehuenche Indians ; they are the most inclined to accept the benefits of civilization. . . . Almost all the 'caciques' (chiefs) of these tribes obey the Chilean authorities ; the most powerful of those chiefs, Feliciano Purran, who lives at Campanario, twelve leagues south of the Neuquen, and who has the title of Governor and General, receives a salary from the Chilean Government that he may protect and safeguard the interests of the Chileans established in those regions. . . . Among these 'caciques' there are some who fulfil the duties of administrators of the Chilean farms where thousands of cattle are entrusted to their keeping, which are scrupulously returned after the winter."

Host and Rittersbacher. The Argentine Lieutenant-Colonel Francisco Host and his adjutant, Don Julio Rittersbacher, two officers of General Roca's expedition against the Indians of the Pampas during the years 1879-1881, in a narrative of their excursions over the bordering regions of Mendoza and Neuquen, make the following statement :²

"The whole stretch of land which we have visited from the Menuco as far as the Tucuyo (affluents of River Curruleubu, a tributary of the Neuquen, lat. 37°) is inhabited by Chilean farmers. . . . The valley of the Atreuco (an affluent of the upper Neuquen) is inhabited by Chilean families, who in the summer send their cattle for pasture up the mountain. . . . After a march of twenty kilometres in a western direction, we reached the valley of the mighty River Malbarco, five kilometres higher up from its confluence with the Neuquen, and we camped on the farm of the Chilean Don Francisco Mendez de Urrejola, who acquired these lands from the Pehuenche Indians previous to our occupation, and who to-day, like all

¹ *La Conquête de la Pampa. Recueil des documents relatifs à la campagne du Rio Negro*, by M. J. Olascoaga, Buenos Aires, 1881, p. xxxvii.

² Host and Rittersbacher, *Die Militärgrenze am Rio Neuquen (Zeitschrift d. Gesellsch. f. Erdk., Berlin, Bd. xvii. Heft ii., 1882)*, pp. 153-159.

the other Chileans who possess lands in that region, pays pasturage to the National Commissioner appointed by our Government. The cattle of all kinds pasturing in the valley and on the heights along the Malbarco number perhaps 20,000 heads. When I reached the farm, situated on the Malbarco, called 'Latigo Viejo,' wheat was being harvested. . . . I found some hundred workmen altogether, all Chileans. . . . All these Chilean colonists, numbering about a thousand persons, occupy farms extending over an area of 480 square leagues; but I was told that previous to our occupation there were three times as many settlers there, who returned to Chile because of unfounded fear. The Chileans sow, and spend the summer in these lands and the winter in Malbarco. In the spring, when the snow melts on the hills and the grass is uncovered, they climb the mountains with their cattle to sow their seed there, to milk their cows, and make cheese. After the harvest they return with their cattle to the lower valleys of the Cordillera. This always happens at the end of March, so that they have sufficient time during April to take the products of their farms to the markets of Chile and then return home to begin their winter labours before the Cordillera is closed. . . . From the summit of the Andes down to Roblecillos the valleys of the Neuquen and of its affluents are inhabited by Chilean families who spend the summer from October to April in these regions; their cattle pasture there in a real garden of flowers. Continuing my surveys in the valley of the Neuquen, I found at seven kilometres distance the Fragua Brook (lat. 36° 42'); here begin the winter quarters of the Chilean colonists who own vast wheat and pea fields on both sides of the Neuquen and on the banks of the Fragua."

Other quotations. In the documents respecting the expedition to River Negro carried out under the command of General Roca, reference is frequently made to the Chilean establishments to the eastern side of the Cordilleras. Malalhue, Valle Hermoso, Laguna Blanca, Chacay, Cachico, Pinales, Malbarco [Barbarco], Ranquil-Leubu, and many other places to be found south of parallel 35° and east of the water parting range of the Andes, are called "truly Indian and Chilean villages." Their extension to the south as far as the region of Nahuelhuapi is shown by the following words :

"This Indian tribe established throughout this vast region clearly shows that the land is fertile, *especially that part enclosed between the*

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*rivers Grande, Barrancas, Neuquen, and Limay, where there is pasturage for one hundred thousand cows, and where are established a great number of Chilean farms."*¹

Professor Bodenbender, of the National Academy of Córdoba, says in an account of his journey to the eastern slopes of the Andes, between Rivers Diamante and Negro:²

"Up to the present the greater part of this region belongs, from a commercial point of view, if one can really speak of commerce in this connexion, to Chile. The 'vaqueros' (cowboys), many of them Chileans who live scattered about the Cordillera, get their cattle together once a year, select the best of them, and take thousands of heads to the markets of Chile. . . . Chile imports there merchandise of all kinds," etc.

According to the last census of the Argentine Republic corresponding to the year 1895, the territory of the Neuquen has a population of 14,517 souls, only 5,505 of them being Argentines. Of the 9,012 foreigners, 8,861 *are Chileans, that is to say, 61 per cent. of the total number of inhabitants.* (Second Census of the Argentine Republic, Buenos Aires, 1898, vol. ii. p. 658.)

From all these details, which might be considerably augmented, it may be gathered that the snowy crests of the Cordilleras never formed—from the epoch of the conquest down to the most modern times—an impassable strategic bulwark to the Chilean inhabitants of the central and southern provinces west of the Andes. Profiting by the passes which interrupt the continuity of the mountain, they have settled for centuries in the fertile and well watered lands extending

¹ *La Conquête de la Pampa. Recueil des documents relatifs à la campagne du Rio Negro . . . sous les ordres du Général D. Julio A. Roca*, par Manuel J. Olascoaga. Buenos Aires, 1881, p. 86.

² Bodenbender, *Vorläufige Mitteilungen über eine Reise nach dem Ostabfall der Anden zwischen Rio Diamante und Rio Negro*. (Petermanns Mitteil., 1890, pp. 242–247).

at the eastern bases of the chain ; and if any natural barriers have existed which might prevent the extension of their colonies eastwards, they were only the Pampas with their vast unwatered stretches, and the arid Patagonian plateaus inhabited by savage tribes of Indians.

Such is the historical truth, which the Argentine Representative cannot obscure either by his unjustifiable theories upon the colonial policy of the Kings of Spain, or by the erroneous interpretation of certain paragraphs from the historians of the Colonial Epoch.

Chapter V.

CREATION AND DELIMITATION OF THE VICEROYALTY OF BUENOS AIRES AND OCCASIONAL JURISDICTION ATTRIBUTED TO THE VICEROYS IN THE EASTERN PATA- GONIAN COAST.

**Royal Order
of 1st of
August, 1776,
creating the
Viceroyalty
of Buenos
Aires.**

IN the year 1776 the Viceroyalty of Rio de la Plata or Buenos Aires was created, and by a Royal Order of 1st of August of that year appointing Don Pedro de Ceballos first Viceroy, the Province of Cuyo was incorporated within the districts of his Gobernacion.

The Argentine Representative has presented these facts to the Tribunal in the following words (page 5) :

"It *soon*¹ became manifest to the statesmen of that epoch, that owing to the *ruggedness, loftiness, desolation and extent of the formidable chain of mountains*, the administration of the 'Province of Cuyo' by the authorities of Chile was rendered impracticable, and hindered at the same time the development of its commerce, which was then restricted to that Captaincy-General. The situation was so difficult that the merchants themselves, who were only able to cross the Cordillera during a few months of the year, prayed the Mother Country to allow them to transact business with the east, that is to say, with Buenos Aires. Such a state of things, which was only brought about by the special circumstances connected with the conquest and colonization, could not last, and was entirely modified by the great change effected in 1776, when it was decided that the chain of the '*Cordillera Nevada*' should divide those interests that had developed in opposite directions," etc.

¹ "Soon"—i.e. after 230 years !

The bound-
ary is not
established
on the Cor-
dillera de
los Andes.

Any one reading the passage we have just quoted might believe that King Charles III., in the document creating a new Viceroyalty, had laid down a clear and determinate principle of demarcation, selecting the "snowy Cordillera" by reason of its "extent, ruggedness, loftiness," etc., to serve as the western boundary of that State.

But, in reality, what the Royal Order of August 1, 1776, did say is the following :

"Don Pedro de Ceballos, Lieutenant-General of my Royal Army, etc. . . . I have decided to appoint you my Viceroy, Governor and Captain-General of the Provinces of Buenos Aires, Paraguay, Tucuman, Potosí, Santa Cruz de la Sierra, Charcas, and of all the 'Correjimientos,' cities and territories to which the jurisdiction of that Audience extends . . . including also under your command and jurisdiction the territories of the cities of Mendoza and San Juan del Pico, which are to-day dependent on the Gobernacion de Chile, with an absolute independence of my Viceroy of the Kingdom of Peru," etc.

Jurisdiction
of the Vice-
royalty.

The Sovereign enumerates in this document all the provinces and jurisdictions which thenceforth were to form part of the Viceroyalty of Buenos Aires ; and if they be compared with those of the former Gobernacion of the same name, it will be seen that to the Provinces of Paraguay and Buenos Aires which formed its primitive centre were added all the other dependencies of the Audience of Charcas segregated from the Viceroyalty of Peru, and the territories of Mendoza and San Juan, viz. the Province of Cuyo, segregated from the Gobernacion de Chile.

The
Audience of
Charcas is
incorpor-
ated into
the Vice-
royalty
without con-
sideration
of any
natural
boundary.

Now, does the demarcation of the Viceroyalty of Buenos Aires, as set forth in the document of its foundation, answer to the principles attributed to the Crown by the Argentine Representative—*that in the great change of 1776 it was decided that the chain of the "Cordillera Nevada" was to*

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divide the interests developed in opposite directions? Assuredly not, for while the boundary was established in the relatively small portion of the Cordilleras west of the territory of Cuyo, viz. from the frontier of Tucuman to the headwaters of River Diamante, at the same time and in the same document the vast provinces of the Audience of Charcas, comprising a large portion of the territory of the actual Republic of Bolivia with its Cordilleras and interposed plateaus reaching the Pacific Ocean in the territory of Atacama to the north of the boundaries of the Kingdom of Chile, were included within the boundaries of the Viceroyalty. Don Jorge Juan and Don Antonio de Ulloa in the *Relacion Histórica* of their voyage to South America, describe the boundaries of the jurisdiction of the Audience of Charcas in the following manner :

“The jurisdiction of this [Audience] commences in its northern part at Vilcanota, belonging to the Province of Lampa of the bishopric of Cuzco, and reaches to Buenos Aires on its southern part; on the east it extends as far as Brazil, its boundary being the meridian of demarcation, and on the west it reaches in certain parts to the coast of the South Sea, as happens in Atacama, which province belongs to it and is the northernmost point there, but the rest delimitates with the Kingdom of Chile.”¹

The Viceroyalty of Buenos Aires extended, therefore, in its northern parts, from the boundaries of Brazil across the whole continent to the coast of the Pacific Ocean, and the “snowy Cordillera,” with all its crests, ranges, and plateaus, was disregarded in the delimitation, remaining in the midst of the territory in spite of its “ruggedness, loftiness, desolation, and extent,” and in spite of the “opposing interests” which had developed on both sides of it. What characterizes the disintegration of the Viceroyalty of Peru, commenced by

¹ *Relacion Histórica*, vol. iii. p. 188.

the foundation of that of Buenos Aires in 1776, is precisely its arbitrariness, its neglect of the interests of the different races. Alexander von Humboldt, when speaking of this matter, says :¹

"When separating from Peru the four Provinces of La Paz, Charcas or La Plata, Potosí and Cochabamba, not only the provinces, *the waters of which flow to the south-east*, and the vast regions where the affluents of the Ucayali and Madeira Rivers (tributaries of the Amazon) begin, were placed under a government residing on the banks of the Rio de la Plata, but also the inland system of the rivers which on the backbone of the Andes and in a longitudinal valley confined in its two extremities by the mountain knots of Porco and Cuzco, feed the Alpine lake of Titicaca. *In spite of these arbitrary divisions the traditions of the Indians inhabiting the borders of the lake and the cold regions of Oruro, La Paz, and Charcas refer more often to Cuzco. . . . than to the pampas of Buenos Aires.*"

The historical truth does not correspond, therefore, to the assertion of the Argentine Representative (Statement, p. 1064), that

"Carlos III., in 1776, constituted the 'Virreinato del Rio de la Plata' in such a manner that the natural boundary of the snowy summit of the Andes should be the frontier between the Great Southern Dependencies of the Crown."

The only Andean boundary established is to the west of the Province of Cuyo. In reality the only Andean boundary established by Charles III. was that corresponding on the west to *the territories of San Juan and Mendoza, which were especially mentioned in the Royal Order as the only parts of the Gobernacion de Chile that were to be segregated from it.* All the remaining regions belonging to Chile on both sides of the Cordilleras, by virtue of the resolutions of the Crown already

¹ *Voyage de Humboldt et Bonpland.* Première partie, Relation historique. (Paris 1825.) Vol. iii. book ix. chap. xxvi.

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alluded to, continued unchanged, and there exists no official document either previous to 1776, or later, introducing any change in any other part of the boundaries of the Gobernacion as established in the days of Pedro de Valdivia.

Once the fact is demonstrated that the King, when creating the Viceroyalty of Buenos Aires could not have intended to establish natural boundaries among its different South American colonies, the question under discussion is but slightly affected by an investigation of the true motives for the incorporation of Cuyo into the Viceroyalty.

However, from the circumstances immediately preceding this act, an unquestionable proof is afforded that the Sovereign did not wish to establish in 1776 the "Cordillera de los Andes" in its entire extent down to the southern extremity of the continent as the boundary between the new Viceroyalty and the Captaincy-General of Chile.

The Monarch's resolution to found a Viceroyalty on the banks of the Rio de la Plata was hastened, while the circumstances regarding this matter were still under consideration, by reason of the fact that open hostilities had commenced on account of the differences existing between the South American dominions of the Portuguese and those of the Crown of Spain. Charles III. then decided to send to Buenos Aires a military expedition commanded by Don Pedro de Ceballos to recover the fortresses and ports taken by the Portuguese. Ceballos himself, appointed Viceroy of Buenos Aires, because of this commission, presided in Madrid over a committee of experts to whom were handed, by order of the King, five copies of the large map of South America made by His Majesty's Geographer, Don Juan de la Cruz Cano i Olmedilla, and printed in 1775

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in order that the question of boundaries pending with the Crown of Portugal might be discussed in view of it.

The creation of the Viceroyalty of Buenos Aires was made with the aid of Cano i Olmedilla's map.

That map which, as the official document, was consulted in all the boundary questions as well as in these conferences of the experts—the immediate result of which was the creation of the Viceroyalty of Buenos Aires—traces the boundary between the Kingdom of Chile and the Gobernacion del Rio de la Plata, with their respective subdivisions, in such a manner as to include in the former, apart from the Province of Cuyo, the extensive regions of the southern extremity of the continent to the east of the Cordilleras.

It is, therefore, in the highest degree improbable that when fixing the boundaries of the Viceroyalty by the Royal Order containing the appointment of Don Pedro de Ceballos and when including in its districts "*the territories of Mendoza and San Juan del Pico, which to-day are dependent on the Gobernacion de Chile,*" the King should have wished to separate from Chile more than he expressly designated, i.e. more than the territories of Mendoza and San Juan: that is to say, the Province of Cuyo, whose boundaries were marked beyond all possibility of error in the cartographic document which served as the official basis for the acts preparatory to the creation of the Viceroyalty of Buenos Aires.

Cano i Olmedilla.

The frontier lines relevant to the case may be seen in detail in the facsimile of the map of Juan de la Cruz Cano i Olmedilla accompanying this Statement,¹ and we beg to call the special attention of the Tribunal to the said document, which is of capital importance, as it was the acknowledged standard for the

¹ Map No. 1 (sheets 1-4) in the Map-Case.

work of delimitating the colonies and the source consulted by the authorities in the Deed of the foundation of the Viceroyalty of Buenos Aires.

Boundaries of the Kingdom of Chile according to Cano I Olmedilla's map. On that map are drawn two kinds of lines of demarcation, namely, the "*Divisiones de Reyno*" by means of dots and dashes (· - · - · - · -), and the "*demarcaciones de Provincia o Partido grande*" by means of a series of dots (.). The line "*Divisiones de Reyno*," which delimitates on the north the *Reyno de Chile*—words which are given in large letters on the 38° of latitude covering the space from the coast of the Pacific Ocean across the Cordilleras to the centre of the Pampas of Rio Colorado—commences on the coast of the Pacific a little south of parallel 25°, runs to the N.E., with slight deviations, across the desert of Atacama up to the line of the tropic. Here it runs in a S.S.E. and S. direction, generally keeping this last course until reaching the neighbourhood of parallel 29°, thence taking a S.E. direction, encircling on the east the "*Provincia de Cuyo*" which naturally appears enclosed within the territory of the Kingdom of Chile. In latitude 32° 30' the line turns to the S.W. until it reaches the River Quinto, which, as stated in the inscription, "when in flood communicates by channels with the Saladillo." It follows the river down as far as the meridian 316°, reckoned eastwards from Teneriffe, where it deviates for a short distance to the south until it reaches the River Hueque-Leuvu (or River Barrancas) in the 37½° lat. Hence the line runs along the river for some distance in a S.E. direction, afterwards deviating to the E. and touching the Atlantic Ocean in the neighbourhood of parallel 37° between Cape Lobos and Cape Corrientes.

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The line "Demarcacion de Provincia o Partido grande," enclosing the "Provincia de Cuyo" on the west, starts on the boundary of the "Reyno de Chile" in latitude 29° to the S.E. of Valley Famatina, ascends the Cordilleras in a S.W. course until it reaches the place called "Pismanta" (lat. $29^{\circ} 50'$); from this point it runs south over the Andean ranges, describing several marked curves so as to follow invariably the continental water-parting as far as the northernmost source of the River Diamante, which is erroneously placed in $35^{\circ} 40'$ south latitude. According to this the western boundary of the Province of Cuyo, which in 1776 was incorporated in the Viceroyalty of Buenos Aires, follows the continental water-parting in the Andean region for a distance of a little less than 6 degrees of latitude from the neighbourhood of "Pismanta" in latitude $29^{\circ} 50'$ to the source of River Diamante, supposed to rise in latitude $35^{\circ} 40'$. Therefore, from 1776 this same portion of the boundary became part of the frontier between the Captaincy-General of Chile and the Viceroyalty of Buenos Aires.

Towards the south the map of Cano i Olmedilla traces the boundary of the Province of Cuyo in the following manner: From the headwaters of the River Diamante the line runs along the northern bank of this river to a point where the stream abandons the mountainous region; then turning north-east it crosses the River Colorado a little further south of parallel 35° and finally joins the main boundary of the "Reyno de Chile" at the same point where the latter descends to the valley of River Quinto, as we have previously stated. According to this the southernmost point down to which the territory of Cuyo extended is found on the $35^{\circ} 50'$ latitude in the valley of the River Diamante.

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At this point ended the jurisdiction of Mendoza, the most southerly city of the three which formed the "Province of Cuyo," and here, therefore, ran the southern boundary of the Viceroyalty of Buenos Aires established by the Royal Order of the 1st of August, 1776.

Studying on the map the rest of the southern half of the continent, it is seen that to the *south of the source of River Diamante*, in the latitude mentioned, *down to Tierra del Fuego, there is not a single boundary traced on the Cordilleras*. All the vast extent of the continent in its southern triangle, from one sea to the other, belongs to the "*Reyno de Chile*," in which the author of the map distinguishes two portions, which, however, are not separately marked by frontier lines: the northern part, comprising the region formerly submitted to the Incas and afterwards the bulk of the Spanish population, and which he calls "*Chile Antiguo segun el Inca Garcilaso*" (Ancient Chile according to the Inca Garcilaso), and the southern part whose greater extent lies east of the Cordilleras on the Patagonian plateaus and bears the following inscription:

"Chile Moderno que los Geografos antiguos llamaron Tierra Magallánica, de los Patagones i los Césares, tan celebrados del vulgo, cuando no hai en estos paises naciones mas crecidas i numerosas que los Aucaes, Puelches, Telchus i Serranos de quienes dimanar otras parcialidades que tratan con los Españoles." (Modern Chile, which the ancient geographers call Magellanic Lands, of Patagones and the Césares, so well known to the general public although no other larger and more numerous nations exist in these regions than those of the Aucaes, Puelches, Tehuelches and Serranos, from whom derive other tribes having intercourse with the Spaniards.)

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The Argentine Representative has attempted to lessen the value of the document to which we refer, by a few remarks the feebleness of which is apparent to whomsoever glances at the map, even though he may not be acquainted with the antecedents of its construction and the proofs of its special importance in the boundary question.

**Refutation
of the ar-
guments
on p. 557 of
the Argen-
tine State-
ment re-
garding
Cano i
Olmedilla's
map.**

Speaking of the inscriptions "*Reyno de Chile*" and "*Chile Moderno*" which appear in the sections of the map to which we have referred above, the Argentine Representative says (Statement, p. 557):

"The 'Mapa geografico de America meridional, dispuesto y gravado por Don Juan de la Cruz Cano y Olmedilla,' published in Madrid 1775, contains erroneously the words '*Reyno de Chile*' (Kingdom of Chile) in the territory south of Mendoza and '*Chile Moderno*' to the south of 45° south latitude in the Andean region. These names are clearly misplaced."

Although the Argentine Representative in certain cases, for instance in order to discover the meaning of the words "Cordillera de los Andes," pays great heed to the location of the inscriptions in ancient geographical charts, deducing therefrom the most important conclusions, he has not deemed it advisable to do this when dealing with the most valuable document of the cartography of South America which comes down to us from the Colonial Period. He contents himself instead with declaring dogmatically that such names have been "*clearly misplaced*."

Fortunately Don Juan de la Cruz Cano i Olmedilla has not only indicated the political divisions contained on the map with inscriptions in large letters, but has also traced the dividing lines, and the scale of the map permits us to follow them in their minutest details. We have already given a summary description of the course of the frontier line,

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enclosing the territory of the "Reyno de Chile" on the map, and any one bearing this in mind will grant the inadmissibility of the Argentine Representative's assertion that the corresponding inscription covering territory on both sides of the Cordilleras in latitude 38° is the result of an error. Moreover, Cano i Olmedilla, as though wishing to dispel all doubt concerning the proper location of the inscription "Chile Moderno," adds that this is the country called by other geographers "Magellanic Lands of the Patagones, and the Césares," where live the "Aucaes, Puelches, Tehuelches, and other tribes springing from these." In view of this declaration we ask ourselves: Where does the Argentine Representative think that the words "Chile Moderno" ought to be placed on the map, if not on the western and eastern slopes of the southern Cordilleras and on the neighbouring Patagonian plateaus, which were the abode of the tribes mentioned?

Immediately after the paragraph above quoted, the following may be read in the Argentine Statement (p. 557):

"Moreover, one year later the 'Virreinato del Rio de la Plata' was erected, and the *Spanish Sovereign ordered that the summit of the Sierra Nevada or Cordillera de los Andes should be the limit between his possessions on the Pacific side and those on the side of the Atlantic.*"

Here again the Argentine Representative attributes to the Spanish Monarch an Order which as a matter of fact he never issued. We have already seen that the Royal Order of August 1, 1776, which is the fundamental document of the foundation of the Viceroyalty, contains absolutely nothing to justify the capricious assertion that Charles III. had established the summit of the "Cordillera Nevada" as the boundary between his possessions on the side of the Pacific

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and on the side of the Atlantic. The fact of including within the Viceroyalty of La Plata "the territories of Mendoza and San Juan del Pico," and no other part of the Gobernacion de Chile, implied nothing more than the extension of the Andean boundary as far as the head waters of the River Diamante, and did not deprive the "Kingdom of Chile" of the slightest shred of its trans-Andean dominions south of the southern boundary of Cuyo, which dominions belonged to it by virtue of the decrees issued in favour of its first Governors and were so acknowledged in the same official map that formed the basis of segregation for the territories in question.

This is the only part of the Cordilleras to which the words of a document previous to the Royal Order of August 1, 1776, refer, and which speak of the "Resolucion" (decision) of the Sovereign, to entrust Don Pedro de Ceballos with the command of the expedition against the Portuguese and to appoint him Viceroy of the Provinces of La Plata, conferring upon him "the superior command of those territories and of all those enclosed within the district of the Audience of Charcas as far as the Province of La Paz inclusive, *and the cities and settlements situated as far as the Cordillera which divides the Kingdom of Chile in the district of (por la parte de) Buenos Aires.*" It will be readily seen that the italicized phrase is but a verbal variant and involves no substantial alteration of the sense of the corresponding phrase in the fundamental Royal Order of the 1st of August, which says: "*The territories of Mendoza and San Juan del Pico, which are to-day a dependency of the Gobernacion de Chile.*" Mendoza and San Juan are precisely "the cities and settlements situated as far as the Cordillera which divides the Kingdom of Chile *in*

the district of Buenos Aires," but not along all its extent over the continent, as the Argentine interpretation implies. It seems that the indefinite nature of the sentence contained in the "Resolucion," which is in no way a decisive document and which undoubtedly has no greater force than the Royal Order of the 1st of August, 1776, was the reason for replacing it in the wording of the final document by the more precise expression which speaks of "the territories of Mendoza and San Juan del Pico."

In the judgment of the Argentine Representative the map of Don Juan de la Cruz Cano i Olmedilla affords no proof of the rights of Chile over territories east of the Cordilleras, but simply "represents the opinion of its author, a compiler of geographical documents, who was not in a position to judge of their relative value." He also adds that the map "has no bearing on the boundary question," and that it contains errors no less grave than others which are dated over a century later (Argentine Statement, pp. 557-558).

No one denies that the map of Cano i Olmedilla contains errors of some magnitude in the topographical details given by it; but, notwithstanding this it cannot be gainsaid that, as a most competent historian and geographer has stated, the map "is a historical document of the greatest value as a demonstration of the geographical knowledge of the time in which it was published, and was for many years the model for the charts of these countries drawn in Spain and abroad, as well as the starting point for subsequent studies."¹ This was the cartographical document which guided Humboldt in his expeditions in South America, and ranks, in the opinion

¹ Barros Arana, *Historia Jeneral de Chile*, vol. vii. p. 161.

of d'Avezac¹ "among the most valuable maps" in the same category as those of d'Anville of the eighteenth century. Even the Argentine historian, Don Pedro de Angelis, an able defender of the pretensions of his country in the boundary dispute with Chile, writes as follows in the "Discurso Preliminar" which precedes his edition of Falkner's book entitled *Descripcion de la Patagonia*:²

"Another proof of the esteem in which this work [Falkner's book] has been held, is its having served as the text for the formation of the great map of South America of which Mr. Arrowsmith has made use, and which Don Juan de la Cruz Cano i Olmedilla published in Madrid in 1775, and thus far nothing has been brought forward to discredit these maps in any way."

The errors of topographical detail contained in the map do not in the least degree affect the general tracing of the boundaries which appear there and which the author was enabled to make in view of the official documents at his disposal.

The Argentine Representative has informed the Tribunal that Juan de la Cruz Cano i Olmedilla was merely a compiler, who was not in position to judge as to the value of the documents he used, and that the map is merely the expression of the author's individual opinions.

Official character of Cano i Olmedilla's map. The facts contradict this assertion. The map of Don Juan de la Cruz Cano i Olmedilla is an official one, made by order of the King, and the author did not draw on it anything of his own invention, but consulted the official documents in the Department of the Indies as well as others placed at his disposal by engineers and geographers of his time. The map was also printed with

¹ d'Avezac, *Observations Géographiques*, Paris, 1857, p. 129.

² *Coleccion de documentos*, etc., vol. i. Buenos Aires, 1835, part iv.

the approval of the Ministry and the sanction of the Sovereign, who awarded a prize to its author on account of the care and accuracy with which he had executed his commission.

The following documents will prove our statement :

In a communication addressed to the Minister, the Marquis de Grimaldi, under date of December 8, 1767, Don Juan de la Cruz :¹

"SIR,—Don Juan de la Cruz Cano i Olmedilla, a pensioner of His Majesty, and a member of His Royal Academy of San Fernando, says, that his honour being involved by the confidence placed in him by your Excellency when you were pleased to command him to execute the map of South America, he cannot do less than state a second time what occurs to him on the subject, in order that he may be successful in his endeavour to serve the King and your Excellency. Moved therefore by that incentive which should inspire a son of our country, and unwilling to limit himself to merely correcting the map of Don Francisco Millau i Maraval, he has found himself under the necessity of constructing another and a new one on a different projection (although of the same dimensions on account of the size of the plates), with all the valuable plans which were taken for this purpose from the Department of the Indies, which being insufficient, although there are sixty-two of them, it would be advisable that your Excellency should request Don Manuel José Ayala, the Royal Keeper of the said Department, to allow those he has to be used."

To this document, which shows us that the map of Cano i Olmedilla was made by order of the King and based on official documents, we add another which has been brought forward by Don Carlos Morla Vicuña. It is a Memorial sent to the Crown, in proof of his own services, by Don Manuel José de Orejuela, who had been appointed by the King to proceed with the Governor of Valdivia to the discovery of the "Césares." It is dated on the 6th of July, 1787, and in one of its paragraphs says :

"As an expert in navigation, he (i.e. the petitioner, Orejuela) has

¹ This document belongs to the Archivo General Central of Alcalá de Henares. The Chilean Legation in London has an authenticated copy of it.

imparted information concerning maps and charts to *Don Juan de la Cruz Cano i Olmedilla*, a pensioner of His Majesty in the Royal Academies of San Fernando and the Sociedad Vascongada, a resident of this court, assisting him in the formation of the general charts which, by order of His Majesty, have been drawn up concerning the South American boundary, published with ministerial approval and presented to the Royal Person of His Majesty, it having been necessary for the said Don Juan de la Cruz, in order to ensure the exactitude of his information, to mention as the author in those maps the said Don Manuel de Orejuela as an expert regarding the coasts of the Chonos Archipelago and the territories of the town of Osorno," etc.¹

We also call the attention of the Tribunal to a note with which Orejuela accompanies his Memorial, asking the Secretary-General of the Indies, Don José de Galvez, that several copies of the map of South America by Don Juan de la Cruz be sent to the Governments of the Colonies, because of their presence being indispensable for guidance in expeditions such as that which had been entrusted to him for the discovery of the "Césares."

"Using this guide," he says, "their resolutions will be better directed not only now but in future, and therefore when going to Buenos Aires with the expedition of His Excellency, Señor Ceballos, a copy of it was given him for his guidance, which is to-day in possession of the present Viceroy."

The document just quoted is another categorical proof that the map of Don Juan de la Cruz was made by order of the Government of Spain and with the co-operation of Royal cosmographers and engineers such as Orejuela. It also shows that its publication was made with the approval of the King and the Ministry; and—a point of capital importance—that it was delivered to Don Pedro de Ceballos, first Viceroy of Buenos Aires, to serve for his guidance in his mission, which consisted, as we know, in fulfilling the

¹ The document belongs to the Archivo General de Indias. An authenticated copy is kept in the Chilean Legation in London.

Royal Order of August 1, 1776, i.e. to make war on the Portuguese and to lay the foundation of the new Viceroyalty on the banks of the Rio de la Plata. Orejuela's testimony is moreover confirmed by the instructions left by Ceballos to his successor, the second Viceroy of Buenos Aires, Don Juan José de Vertiz, in which he says amongst other things :¹

"And in order that it may serve you as guide in the tracing of the boundary line, I leave to Your Excellency in an office or chamber of the fortress a map executed by Don Juan de la Cruz, Geographer of His Majesty, printed by order of the Court and containing South America."

In view of all these circumstances, we may confidently maintain that the map of Don Juan de la Cruz Cano i Olmedilla, made and published by order of the Spanish Government, immediately preceding the foundation of the Viceroyalty of Buenos Aires, served the authorities as a topographical basis for the new territorial arrangements, and was used by the persons entrusted with the practical execution of them as the official guide for their operations. The Sovereign's acknowledgment of the work done by Cano i Olmedilla is confirmed by the following document :²

"Palace, April 7, 1776. To Don Francisco Manuel de Mena : The King has determined that out of the returns of the Gazeta and Mercurio, a gratuity of 6,000 reales de vellon shall be paid to Don Juan de la Cruz in consideration of the care and accuracy with which he has constructed and engraved the map of South America."

Importance of Cano i Olmedilla's map regarding boundaries. The Argentine Representative has affirmed that Cano i Olmedilla's map has no bearing on the boundary question. The fact is, however, that this document was used by the Plenipotentiary of the Crown of Spain in the negotiations of the

¹ Authenticated copy of the original in the Archivo General de Indias.

² Authenticated copy of the original in the Archives of Alcalá de Henares.

boundary treaty signed with Portugal in 1777 and was handed over by the Spanish Government to their boundary commissioners, in whose official correspondence, as well as in other correspondence of later date, several references to this document are made. The celebrated Don Felix de Azara, one of the Spanish Commissioners, although he pointed out some topographical errors in the map, gives the following general opinion on it: "This map is rightly held to be the best of South America."¹ In 1802 Don Francisco de Requena, who was also one of the Spanish Commissioners in the demarcation of the boundary, said:

"This work, which was printed in 1775, is an honour to the Nation, to the wise Minister who promoted it, and to the author himself, on account of the minuteness of detail and the completeness with which he executed the map . . . At the time the map was published, none more accurate could have been made."

App. Doc.
No. 13.

In a detailed report² made upon this map by the "Académico de Número" Don Tomas Lopez, before the Board of the Geographical Academy of Madrid, under date of the 14th of July, 1797, it is said that this document was compiled and engraved "*by order of the Ministry of State,*" and that "*once the map was finished . . . it was presented to the King and Royal personages by the Minister of State, it being well received and generally pleasing everybody. Then the Government ordered that a number of copies should be printed, distributing them in the Ministry, among the Ambassadors, persons of some standing and various men of letters.*" Examining afterwards, one by one, the different countries represented on the map, the report states that "*the Kingdom*

¹ *Voyages, etc.*, vol. i. p. 12.

² Authenticated copy of the original belonging to the Library of the Real Academia de Historia in Madrid.

of Chile is the best part of this map," and in the same paragraph some critical remarks are made upon the tracing of the coasts in the region of the Straits and of the shores of the Atlantic up to the Rio de la Plata including them, as is done on the map, within the "Kingdom of Chile."

Don Luis Dominguez, in his *Historia Argentina*, also confirms the statement that the tracing of the boundary line agreed upon by the Treaty of 1777 "had been made according to the map published at Madrid in 1775 by Don Juan de la Cruz Cano i Olmedilla constructed from the geodetical surveys of the boundary Commissioners under the Treaty of 1750."¹

In the face of these statements, can it be pretended that the tracing of the political boundaries on the map of Don Juan de la Cruz Cano i Olmedilla represents only in certain portions the official opinion of the Crown that ordered the execution of the work, and, in the other parts, the arbitrary opinion of the author, it being in both cases a question of the boundaries of the same Spanish province; namely, the ancient Gobernacion del Rio de la Plata? An affirmative answer is made even more impossible by the fact that the Royal Order creating the Viceroyalty, the "Resolucion," and other documents preceding it, prove that the differences between Spain and Portugal which terminated with the Treaty of 1777 were the immediate cause of the new territorial distribution of the Spanish colony by which the Viceroyalty of Buenos Aires was formed and a portion of the boundaries of the Gobernacion de Chile was altered. In both respects the map of Juan de la Cruz afforded the

¹ 4th edition, p. 306.

topographical bases, and certainly it would not have met with the official approval of the Crown had not the tracing of the exterior and interior boundaries of the Spanish colonies represented exactly the opinions of the authorities of the metropolis.

The boundaries between Chile and the Viceroyalty of Buenos Aires are not altered from the year 1776 up to the time of the Independence.

In the space of time between the year 1776—the date of the foundation of the Viceroyalty of Buenos Aires—and the end of the period of the Spanish domination in 1810, the Court of Spain prescribed nothing new as to the demarcation of the boundary which divided its two great colonies in the southern part of the South American continent.

It is true that in a Royal Order of 1778 directing the foundation of several establishments on the eastern coast of Patagonia to prevent its occupation by a foreign power, it is stated that said *coast* forms part “of the Viceroyalty of Buenos Aires”; but from the instructions delivered by the Government of the metropolis to the Viceroy of the Provinces of Rio de la Plata, that he might transmit them to the Commissioners superintending the establishments of Sin Fondo and St. Julian Bays, it clearly appears that the regions to the interior, the plateaus to the east of the Cordilleras, were always considered as integral parts of the Captancy-General of Chile. The Order says :

Rivers Negro and Colorado run over the Kingdom of Chile.

“There are two principal regions to which we must direct our attention, and occupy soon with an establishment which may eventually improve and may serve as a starting point for others; the first is Sin Fondo Bay or San Matias Point, *where the river Negro, which penetrates for nearly 300 leagues into the Kingdom of Chile, discharges.* And this circumstance makes its occupation and the erection there of a temporary fort still more necessary.”

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And further on it adds :

"That the Commissioner of Sin Fondo Bay shall direct the most precise surveys of the neighbouring country, endeavouring to obtain from them all the advantages possible for the consolidation and increase of that establishment, extending his expeditions to the inland regions ; that he shall endeavour to direct them by sea as its first object to the mouth of the River Colorado or de las Barrancas, which also penetrates into the Kingdom of Chile and is situated at about 20 leagues north of the River Negro."¹

Whatever may be the disposition as to some points of the eastern coast of Patagonia, the explicit terms of this Royal document establish beyond doubt that the Kingdom of Chile comprised, in the opinion of the Spanish Government, the territories stretching for 300 leagues along the River Negro, and those watered by the River Colorado. As both rivers start from the Cordilleras and run east towards the Atlantic, it is clear, therefore, that the part of the Kingdom of Chile to which this document refers is situated east of the Andes.

President-Governors Benavides and O'Higgins did not believe that their jurisdictions terminated at the Cordillera.

To prove that the jurisdiction of Chile "ended at the crest of the Cordillera," the Argentine Representative mentions (Statement, p. 4) some communications addressed by the President-Governors of Chile, Don Ambrosio de Benavides and Don Ambrosio O'Higgins, in 1781 and 1789 respectively, to the Viceroys of Buenos Aires, Don José de Vertiz and the Marquis of Loreto. On consulting the documents to which the Argentine Representative alludes, though he does not quote them, it will be seen that they possess none of the convincing value which he ascribes to them.

¹ The entire document is published in the *Memoria del Ministro de Relaciones Exteriores de Chile*, of the year 1874, p. 100.

President O'Higgins, in a note dated at Santiago on the 10th of July, 1789, informs the Viceroy of Buenos Aires that a British ship had been sighted, which it was feared was coming to those seas, and he adds :

"I communicate this news to your Excellency, principally for your information and as bearing upon the measures you are taking, by reason of those of a similar nature which have occurred *on the Patagonian and other coasts of the north under the jurisdiction of your Excellency.*"

In a note of the 3rd of December, 1781, addressed to Viceroy Vertiz, President Benavides spoke of "*Patagonia under the jurisdiction of that Viceroyalty.*"¹

It is impossible for us to discover in these two phrases of the two Governors of Chile the slightest indication that they fixed the termination of their jurisdiction on the "crest of the Cordillera de los Andes." Both communications speak of the jurisdiction of the Viceroy of Buenos Aires over the Patagonian *coast*, as has been expressly said by O'Higgins and—as must be understood without giving his words a false interpretation—by President Benavides. We have already said that in those years the Spanish Government, fearing a foreign invasion on the *eastern Patagonian coasts*, had ordered the foundation of establishments on that littoral, placing them in temporary dependency to the Viceroys of Buenos Aires. The communications of the Presidents can only refer to the jurisdiction over a small strip of the eastern littoral of Patagonia, and it would be absurd to contend that they afford any proof of the "Cordillera de los Andes" dividing the jurisdictions of Chile

¹ A. Bermejo, *Cuestion de Límites entre la República Argentina i Chile*, Buenos Aires, 1876, p. 31.

and Buenos Aires in the southern extremity of South America.

Benavides and O'Higgins exercised their jurisdiction east of the Cordilleras. In order to show more clearly the inaccuracy of the assertion of the Argentine Representative, we shall mention some official Acts issued by the same Presidents Benavides and O'Higgins, whence it will be seen that their jurisdiction extended over territories east of the southern Cordilleras.

During the Colonial Period preceding and subsequent to the year 1776 the Governors of Chile, through their Maestres de Campo and Lieutenant-Generals, intervened with the forces of the Kingdom in the affairs of the native tribes inhabiting the eastern valleys of the Cordilleras and adjacent plains.

From the administration of Don Manuel de Amat i Juniet down to that of Don Ambrosio O'Higgins, the Chilean troops marched in the direction of the Pampas east of the Cordilleras, crossing over the gaps existing between the rivers Maule and Bio-bio, to pursue the Pehuenches and Aucaes Indians, who no sooner allied themselves with the Spaniards than they joined against them with the Huilliches and other Araucanian Indians.

Meetings attended by Indians from east of the Andes. Representatives from the tribes east of the Cordilleras assisted at almost all the so-called "Parlamentos" (general meetings) held by the Governors of Chile during the Colonial Period with the Indians of their dominion; and further, in those meetings matters under discussion were sometimes those relating exclusively to the eastern region. Thus in the meeting held at Tapihue in 1746 it was stipulated in a clause added to the ordinary wording of those compacts concluded with

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the natives, "that the Indians should not attack the inhabitants of the Pampas or the Spaniards who crossed them."¹

Lonquillmo Meeting. One of the most important of those meetings was that called at Lonquillmo in January 1784, in the present Chilean department of La Laja, at which the then Lieutenant-General, Don Ambrosio O'Higgins, presided in the name of the Governor of Chile. There assembled at this meeting Indians from all the "Butalmapus" or districts into which their territory was divided: including "the *Pehuenches*, who had in their train representatives of new tribes from the eastern part of the River Neuquen and from the inland regions by the Pampas of Buenos Aires, tribes hitherto unknown, and who bore themselves with their usual arrogance."² Apart from the narrative of what occurred during the session of this meeting, there are other previous circumstances connected with it. In a meeting held at Los Angeles in March 1781, Don Ambrosio O'Higgins informed the Indians of the arrival of a new Governor, "the most illustrious Señor Don Ambrosio de Benavides, appointed by His Majesty, whom may God preserve, as his Captain-General of the kingdom and of the adjacent provinces of Indians from the plains of the coast of Arauco in its entire extent, and of *those of the Cordilleras and nations beyond these lands.*"

In the articles of the Treaty or Convention drawn up with the Indians at Lonquillmo the boundaries of the four "Butalmapus" were established, and the third Article says:

"That henceforth there will be included in this same Butalmapu (the fourth called 'de la Cordillera') the Puelche and Pampas Indians who own

¹ *Memoria del Ministro de Relaciones Exteriores de Chile*, 1874, p. 124.

² Morla Vicuña, *Le Chili et la République Argentine*, Paris, 1876, p. 49.

the countries in the northern [eastern] part of the Kingdom from Malalgué and frontiers of Mendoza down to Mamilmapu situated in the Pampas of Buenos Aires, who, forming one body and faction with our Puelches and Pehuenches from Maule, Chillan and Antuco, will be commanded in the name of the King our Lord to submit, together with the rest of the Indians, to the present terms of general peace, assuring them of the Royal protection so long as they abandon their pernicious incursions and hostilities continually exercised against the Spaniards of the jurisdiction of Buenos Aires," etc.

All the other articles agreed to at this meeting were conceived in the same spirit and prove the existence of a general conviction that the Indians from the eastern side of the Cordilleras were dependent on the Captaincy-General of Chile. The Indians acknowledged the Monarch of Spain as their King and Lord and pledged themselves to obey the orders which should be imparted to them in the name of His Majesty by the Captain-General of the Kingdom of Chile and his Commander-in-Chief on the frontiers. In addition to this, on this same occasion O'Higgins recommended the loyal Caciques of the Aucaes and Puelches to watch vigilantly over the Magellanic territories and to give notice if they discovered any foreigners establishing themselves in those regions, "*for the information of the Captain-General of Chile,*" assuring them that in such cases they would be rewarded in proportion to their zeal and activity.¹

The then Governor of Chile, Don Ambrosio de Benavides, whose testimony is quoted in the Argentine Statement as an apparent proof in favour of the "natural boundary" in the "crest of the Cordillera," informed the Government of the metropolis of the assembly convened at Lonquillo, and, explaining the special importance of this

¹ Morla Vicuña, *l.c.* p. 50.

meeting, says in his communication dated at Santiago on the 11th of June, 1774 :

"In it the boundaries and territorial dependencies of the Butalmapus were fixed in order that they may be subdued and that their chiefs should be accountable for any disturbances, *especially as to the rebellions of frequent occurrence in the fields and Pampas of Buenos Aires*, respecting which they were reprimanded and warned that in future they should not continue them."

In the answer to this communication the Royal satisfaction was expressed to the Governor of Chile for all that had been done, as meriting the most complete approval. If President Benavides and his Commander on the frontier, O'Higgins, had exercised such an act of sovereignty over tribes whose abode lay outside the jurisdiction of Chile, how could their procedure have met with the official approval of the Spanish Government ?

The Pampa Indians are included in a Chilean district.

In a note dated at Concepcion, Chile, on the 23rd of April, 1785, O'Higgins, replying to a Royal Order of the 31st of May, 1784, with reference to the Government of Chiloé, and to the Indians of the neighbouring continent, says :

"In this connection I deemed it advisable to fix and to agree in the last general meeting of last year, 1784, as to the territorial districts of the Butalmapus or four governments of the Indians, as may be seen more extensively in the eighteen articles which were stipulated in the shape of a solemn treaty authorized in that Congress, giving all the 'caciques' present to understand the uncontested right and force of the Spanish domination along the extent of the country situated *south of Bio-Bio down to the Magellanic Lands, and those which extend across the interior from the Provinces of Rio de la Plata as far as the South Sea.*"

Further on, and after stating that the neighbouring Indians had fulfilled the compact of Lonquimo by not attacking the ultramontane Spaniards of the neighbourhood of Cuyo, he says :

"*It seems that on the other side of the Cordilleras and in the confines of*

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the Viceroyalty of Buenos Aires, this obedient and peaceful disposition of the Indians of those territories is not to be found," etc.

The confine or boundary of the Viceroyalty is not to be found, therefore, on the "crest of the Cordillera," but on the lands of the Pampas Indians, "*who*," as is said in another part of the same document, "*do not yet acknowledge subjection to the Presidents of Chile.*"

In view of the exposition we have just given, it is impossible to maintain the assertion of the Argentine Statement (p. 532) that

"without considering the exceptional jurisdiction over the Province of Cuyo until the erection of the 'Virreinato del Rio de la Plata' with which that province was incorporated, *no Chilean authority ever existed to the east of the high Andean crest until the occupation of the Straits of Magellan in 1843.*"

It seems unnecessary to repeat that the jurisdiction of the Governors of Chile over the territory of Cuyo was in no manner "exceptional," but that such region formed an integral part of the Kingdom in view of the Royal Orders which constituted it, as in the cases of Valdivia, Concepcion, Chiloé, or any other province of the Gobernacion; and that the authority of the Government of Chile in this eastern portion of its dominions was fully and efficiently exercised during little less than 250 years until the foundation of the Viceroyalty of Buenos Aires. After this deed, which gave to Chile a new boundary separating it from the Viceroyalty of Buenos Aires by the line of the River Diamante and the River Quinto down to the coast of the Atlantic in latitude 37°, no law or Royal resolution can be produced altering the course of the boundary line, precisely as it appears from the official map which served as the basis for the territorial adjustments of 1776. The Governors of Chile continued to exercise their authority over

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the regions east of the Cordilleras and south of the territory of Cuyo, as is proved by the guerrilla expeditions against the Pehuenches, Aucaes, and Pampas Indians and by the meetings held with them.

Chilean missions to the east of the Cordilleras. In the last twenty years of the eighteenth century the voyages of missionaries to the Indians on the eastern side of the Cordilleras were renewed, thus continuing the enterprises which by order of the Governors of Chile the Jesuits had carried out in the latter half of the seventeenth and beginning of the eighteenth centuries. After the destruction of the mission established on the shores of Lake Nahuelhuapi, many years passed before any attempt was made to re-establish it; but in 1764, while Don Antonio Guill i Gonzaga was Governor of Chile, the Jesuits, through their Father Procurador, Juan Nepomuceno Walther, renewed the proposal for a vast plan of missions, asking for the re-establishment of the mission of Nahuelhuapi with the object of starting from it the evangelization of all the Indians of Patagonia, the Straits and Tierra del Fuego. In this connexion there has been discovered in the "Contaduria Jeneral" of Madrid a report which was made in view of a letter from the Governor of Chile, Guill i Gonzaga, and of certain documents drawn up in connexion with the foundation of the village of Chonchi and mission of Caylin, both in the Island of Chiloé. In this, reference is made to the letter of the Governor, and also to two petitions, one from the Father Procurador Walther and the other from the Protector of the Chiloé Indians, as well as to a report from the then Governor of the Province of Chiloé. In his petition Father Walther urged an increase in the number of missionaries to those latitudes, because, he says, "*other missions are urgently*

needed to save the souls of different races living towards the Straits of Magellan." He also affirmed that the *Puelches and Poyas*, i.e. the Indians who lived on the eastern side of the *Cordilleras opposite Chiloé*, had, from the year 1722, repeatedly asked for missionaries.

These ideas met with a favourable reception on the part of the Government; and by a decree of the 12th of July, 1764, the Governor of Chile, by virtue of the power granted him by Royal Order of the 12th of February, 1761, assigned to each individual of the two missions, the foundation of which was agreed to at Chonchi and Caylin, three hundred pesos a year, and to others he granted one hundred pesos during the years in which "*they effected an entrance to the main land so as to reach the Straits of Magellan and the races inhabiting it, provided that none be effected without the express consent of that superior Government.*"¹

In consequence of the official authorization to carry out their enterprise, the Jesuits began the work, and in 1765 a mission was established at the port of Ralun, a starting point for the interior on the coast of Reloncaví Inlet. At the same time Father Sejismundo Guell undertook to open the lost road to the ancient mission of Nahuelhuapi. His first explorations, however, failed, and when he was preparing for another attempt, the expulsion of the Jesuits from the Spanish colonies took place, as decreed by Charles III. in 1767.

**Father
Menendez
mission.**

The missionary work of the Jesuits was afterwards continued by the Franciscans, and it devolved upon Father Francisco Menendez to carry it out

¹ *Memoria del Ministro de Relaciones Exteriores de Chile*, 1874, pp. 141-143; Fonck, *Viajes de Frai Menendez a Nahuelhuapi*, p. 101.

in the southern region on both sides of the Cordilleras. In the introduction to his Journal of the first voyage to the interior of the Cordilleras, which he accomplished in 1783, starting from the town of Castro in Chiloé, he says :¹

"It was my lot to be one of the fifteen priests who were sent by the College of Ocopa to Chiloé, and the Father Commissioner of Missions gave us in Lima a copy of a Royal Order for the foundation of the villages of Chonchi and Caylin requested by the Jesuit Fathers. . . . *And the said Order commands those succeeding the Jesuits to endeavour to find a passage to the other side of the Cordilleras and to see if the Magellanic lands can thereby be inspected.* . . . The circular mission over these islands devolved upon me, and I took the opportunity of obtaining information from many of their inhabitants, both Indians and Spaniards, among whom were Don Miguel Barrientos and his sons living in the province of Quiquell. *These, in the month of April of this year eighty-three, penetrated into the Cordilleras as far as the point where they found the streams (vertientes) flowing to the east ; they returned by reason of it being late in the season, and on their return to Chiloé they asked me to accompany them. As I had the same desire, I discussed the matter with the Father President and the Governor, and we agreed to begin the mission sooner, starting much earlier than usual, and in that manner I accomplished both objects.*"

Father Menendez penetrated into the Cordilleras for the second time in 1786 by the estuary of Comau, went up the River Bodudahue, towards a secondary pass between this river and the lakes giving origin to the River Futaleufú-Yelcho, and on the 2nd of January, 1787, crossed the water-parting range bordering on the west the valley of the Lelej, an affluent of the Chubut. Some of his companions advanced even further east and found unmistakable traces of the presence of Indians in those valleys.

In the years 1791 to 1794 Father Menendez, by order of his official superiors, carried out explorations in the region of Lake Nahuelhuapi, which for centuries had served as a centre

¹ Fonck, *Viajes de Frai F. Menendez a la Cordillera*. Valparaiso, 1896, pp. 4-7.
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and starting point for Chilean enterprises of missionary work and discovery in Patagonia east of the Andes. As the Province of Chiloé had been placed from the year 1768 under the immediate administration of the Viceroys of Peru, these were the official superiors who had to decide on Father Menendez's enterprises. In the Journal of his expedition of 1791 Father Menendez says :¹

"His Excellency the Viceroy, Don Francisco Gil i Lemus *ordered me back to Chiloé with the sole object of discovering Lake Nahuelhuapi and of exploring for a distance of five leagues round it.* By order of His Excellency I was provided in that capital with all that I considered necessary, and His Excellency gave orders to the Governor of that province (Chiloé) to allow me all the necessary equipments."

On the 1st of August, 1792, the said Viceroy issued the following decree :

"In view of this report *and in consideration of the different orders which at various times have been addressed to the Captaincy-General of Chile and even to this Government, that the greatest zeal be shown in endeavouring to discover the several tribes inhabiting the uncultivated lands stretching from the Patagonian coast to that of Valdivia and Chiloé . . .* it is therefore necessary that every effort which may appear opportune and advisable in order to attain the desired end, should be continued with all vigour and activity."²

The journals of Menendez's expeditions give us an account of the success of his enterprises. He crossed the Cordilleras several times, settled in Nahuelhuapi, having friendly relations with the bands of Indians then roaming about the pampas at the eastern foot of the Andes, and even started excursions to the interior which took him as far as the River Colloncura, at no great distance from the site of the present village of Junin de los Andes.

It is true that Menendez's journeys were not ordered

¹ Fonck, *Viajes de Frai Menendez a Nahuelhuapi*, pp. 164-167.

² Fonck, *l.c.* p. 347.

directly by the Governor of Chile but by the Viceroy of Peru in virtue of the exceptional arrangement regarding the administration of the Province of Chiloé. But on the other hand, if the "crest of the Cordillera" had formed, as claimed by the Argentine Representative, the western frontier of the Viceroyalty of Buenos Aires which, according to the text of the Deed of its Foundation, should enjoy "*absolute independence from the Viceroys of Peru*," how could the Viceroys of Peru, Don Teodoro de la Croix and Don Francisco Gil i Lemus, as well as their subalterns, the Governors of Chiloé, possibly have ordered, encouraged, and equipped expeditions of discovery and missions which penetrated into the heart of the Patagonian Pampa east of the Cordilleras, bringing soldiers and workmen from Chiloé, and establishing permanent barracks and a mission as a central point of meeting for the Indians who went in crowds to treat with them?

**Nahuel-
huapi
central
point of
Chilean mis-
sions.** During the Colonial Period, both before and after the foundation of the Viceroyalty of Buenos Aires, the Chilean mission at Nahuelhuapi east of the Southern Cordilleras was the central point for the conversion and subjugation of the Patagonian Indians. The fame which, in this respect, it enjoyed in Chile is seen from the descriptions given by renowned writers of the Colonial Epoch, such as Fathers Rosales, Olivares, and Molina, all of whom place it within the "Kingdom of Chile," and finally in the journals of Father Menendez and of his contemporary, the pilot José de Moraleda, according to whom "the lake belongs to the jurisdiction of the Province of Chiloé."¹

The laws of the Indies forbade the Viceroys, Presidents, and Governors to interfere with the jurisdiction of others,

¹ Fonck, pp. 320 and 321.

and, therefore, the "Cordillera de los Andes" lying to the west of the site of the mission of Nahuelhuapi could not be considered, either before or after the year 1776, as the boundary between Chile and the Gobernacion del Rio de la Plata or Viceroyalty of Buenos Aires.

It was generally believed in Chile, even up to the latest periods of the Colonial régime, that the plains at the eastern foot of the Cordilleras and south of the boundary of Cuyo belonged to Chile. In a speech addressed to an Indian chief, while in the midst of the eastern plains, those pampas are called "Chilean deserts" by the "Alcalde" (Mayor) of the City of Concepcion, Don Luis de la Cruz, who crossed the Cordilleras in 1806 by the Antuco Pass, escorted by Chilean soldiers, to discover new roads which might facilitate the traffic with Buenos Aires.¹ In a report of his works sent on the 17th of July, 1807, to the "Prior" and "Consules" of the capital of Chile, the same Don Luis de la Cruz, praising the results of the expedition and the projected road, said :

"The 'Consulado' will find that by it (the road) this Kingdom is connected with that of Buenos Aires, *leaving on our side as much land as can be claimed by the Kingdom of Chile in all its extent.* You will find first-class land to extend our cattle farms and enable our commerce to reach Europe. You will find fertile regions, immediate water supplies, and adequate sites for our settlements. You will find easy means *to defend our Patagonian coasts from our foreign enemies, making use of our new friends* (the Indians) to defend our discoveries and conquests in the most distant places."

Such was, at the time of the Independence, the situation of the "Kingdom of Chile" and of the "Viceroyalty of Buenos Aires" regarding the southern regions of the continent.

¹ Angelis, *Coleccion*, etc., vol. i.

Chapter VI.

WHAT WAS UNDERSTOOD BY "CORDILLERA DE LOS ANDES" DURING THE COLONIAL EPOCH.

IN chapter ii. of his Statement the Argentine Representative investigates what was understood by "Cordillera de los Andes" during the Colonial Epoch.

Among the reasons which, according to him, make it obligatory to establish precisely the sense of these words, is the necessity of confining the differences of opinion between the Experts "to matters within the 'Cordillera de los Andes,'" and he would derive this necessity from Article II. of the Protocol of 1893.

Although this point is treated at some length in another part of this Statement, it may be convenient to observe here that the article of the Protocol quoted contains no reference whatever as to the necessity of confining the differences of the Experts to the region of the "Cordillera." It speaks of the dominion and sovereignty which both Republics have respectively to the east and west of the "main chain of the Andes" *in conformity with the spirit of the Treaty of 1881*, and it establishes the absolute sovereignty of each State over the respective littoral, referring

especially to the peninsular region of the Pacific in the neighbourhood of parallel 52°. The "main chain of the Andes" is a vague term, only to be understood by bearing in mind, as the article says, the "spirit of the Treaty of 1881"; and according to this same "spirit," the line traced must follow the water-divide, which can be no other than the *divortium aquarum* between the rivers flowing to Chile on the west and to the Argentine on the east. Up to that line, therefore, the dominion and sovereignty of the two States extend, and the possible differences between the Experts are, according to the Treaty (Article I.) and the Protocol (Article III.) precisely those liable to arise where "the water-divide should not be clear."

But leaving this point aside for the moment, by examining the very quotations of the Argentine Representative, and adding others which are of importance in this matter, we shall see if it be possible to maintain the assertion that the name of "Cordillera de los Andes" was applied in the Colonial Epoch only to the high snowy crest of the central chain (whether real or imaginary) of the mountain (Argentine Statement, p. 25).

**Quotations
in chapter II.
of the Argentine
Statement with
which it is
attempted
to prove that
what was
called "Cordillera"
in the Colonial
times was
its main
chain. Refutation
of this assertion.**

The treatment of this matter, found in chapter ii. of the Argentine Statement, offers a certain difficulty owing to the disorderly and confused manner in which the principal point is developed. Under the heading "Meaning of the Cordillera de los Andes in the Colonial Epoch," the Argentine Representative has collected some twenty-five quotations from chroniclers and travellers between the sixteenth and eighteenth centuries, all of whom say, in more or less the same words, that what

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was properly called "Chile" is delimited on the east by the "Cordillera," by the "Cordillera Nevada," by the "famous Cordillera," by the "Great Snowy Cordillera," etc. We fail to discover how similar expressions which are repeated in numerous writings of the Colonial Epoch, apart from those quoted by the Argentine Representative, can serve to present clearly the idea which those writers and their contemporaries had of the "Cordillera de los Andes"; and we must therefore take exception to the arbitrary manner in which the Argentine Representative draws his own conclusions when he deduces from these quotations, as shown in paragraph 3 of the same chapter, the following statement: "*The authorities quoted suffice, also, to prove that the Cordillera de los Andes is the name given to the high crest of the principal chain of the Andes.*"

An analysis of this chapter reveals that among all the numerous writers quoted there are but four authors from whose works the Argentine Representative has reproduced a few paragraphs which refer to the configuration of the "Cordillera"; and it is easy to demonstrate that none of them is sufficiently weighty to prove that the words "Cordillera de los Andes" were only applied to "the high crest of the principal chain."

We shall begin with the three authors who, according to the Argentine Statement (page 25), are "the highest Chilean authorities of the Colonial times," namely, the Jesuit Fathers Diego de Rosales, Alonso de Ovalle and the Abbé Juan Ignacio Molina.

The "Cordillera" according to Father Rosales. Father Rosales, in his work entitled *Historia General del Reyno de Chile*, has devoted a lengthy chapter, the third of book ii., to the description

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of the Cordilleras under the heading "The Great Snowy Cordillera and the diversity of its climate."¹

Therein it may be seen that Father Rosales speaks of the "Cordillera" as a "*mass of heaped up mountains*" which is "*forty leagues in its widest part*"; that not only in Peru and Quito but also in some parts of the Kingdom of Chile "*it separates and forms two Cordilleras,*" the valleys of which are inhabited by Indians and Spaniards and which "*in the southern part of Chile divides into an infinite number of islands, forming the Chiloé and Chonos Archipelago,*" etc. When speaking of the ancient road crossing the Cordilleras in the latitude of Villarica, and which was known to him through his own voyages, Father Rosales says that there

"all the Cordillera is crossed through a gap of thirty leagues by a road comparatively smooth, while in crossing from Santiago to Mendoza the road is more difficult, because from the valley of Aconcagua begins the ascent of the Cordilleras and very high mountains; so much so that on reaching the highest point when crossing the Cordillera, one finds one's self many leagues above the clouds."

To this we may add what he says in chapter xii. of the same book respecting the River Aconcagua :

"The depth and speed of this river would make the passage of the Cordillera difficult were it not that in the midst of it (the Cordillera) is found a cañon between two very steep precipices, where a very strong bridge has been placed, and there guards have been stationed who examine the travellers."

The passage quoted can only refer to the place called "Puente de las Vizcachas," where since olden times the road from Santiago to Mendoza crosses the River Acon-

¹ On page 16 of the Argentine Statement some fragments of this chapter are quoted, being erroneously attributed to Don Alonso de Solórzano i Velasco.

cagua by a bridge, and this point, although more than forty kilometres west of the "*cumbre*" (summit or highest crest of the main chain according to Argentine interpretation) is, as Rosales says, "in the midst of the Cordillera." We shall quote the following from among the numerous passages which prove that Father Rosales does not use the word "Cordillera" in the restricted sense which the Argentine Representative attempts to apply to it.

Book ii. chap. v. :

"This Kingdom (Chile) also contains treasures of silver in several ranges, especially those of the Peguenches, *who dwell within the Cordillera towards Villarica*, where a hill was found with veins of silver visible through the crevices of its rocks."

Book ii. chap. ii. :

"By the same line and road of Villarica are, *in the midst of the Cordillera, the two famous lakes* of Epulabquen—signifying 'two seas'—for indeed in their greatness they appear as such. . . . I remain silent concerning other lakes of minor importance, such as those of Lloben, Maguey-labquen, Ranco-labquen, and Quino-labquen, which are *at the foot of the Cordillera and receive its streams* (vertientes)."

Book ii. chap. xiii. :

"The Bio-Bio rises *in the interior of the snowy Cordillera*; from January its fords begin to be perceptible, and improve daily until March, and by May they are at their best. *Within the Cordillera there are some rivers which serve for the communication and commerce of the Peguenche Indians*, although their rapidity and great rocks render them dangerous."

Book vii. chap. ix. :

"The Governor being hurt that the *Peguenches—who are the Indians inhabiting the midst of the Cordillera*—should have allowed passage to Lientar to attack Chillan in the rear, although some said that the Puelches had allowed the passage, it was not so, because *the Puelches are the nation living, not in the Cordillera, but on the other side*, in the plains which run towards Córdoba and Buenos Aires. . . ."

Numerous other proofs might also be cited from another

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work of Father Rosales entitled, *Conquista Espiritual del Reyno de Chile*, which still remains unpublished. Of this some paragraphs are to be found in the National Library of Santiago de Chile and have been reproduced in volume iii. of Don Miguel Luis Amunátegui's book entitled *La Cuestion de Lmites entre Chile i la República Arjentina*.

When discussing the location of the mythical city of the "Césares," Father Rosales says among other things :

"The distance from the principal part of the city of Chile, which is that of Santiago, to the Césares is over 500 leagues. *And between them there is a chaos of snowy Cordilleras.*"¹

In another part, speaking of the steps taken by Father Mascardi for the discovery of the "Césares," he said :

"Besides this the Father had information shortly afterwards of another city of Spaniards which was situated within the Cordilleras towards the region of the Chonos and of the Southern Ocean."²

And in a letter from Father Mascardi addressed to the Governor of Chiloé, Don Juan Henriquez, reproduced by Father Rosales in the same chapter, the following may be seen :

"In the letter which I wrote last year to your Excellency, I gave you an account of the voyage I made towards the Chonos, of the great attention paid me by the Poyas and barbarians inhabiting along this road, and of the good will with which they received the Christian faith and teaching, as well as of the many conflagrations near *various lakes of this Cordillera* caused, as I personally saw two years ago, by the Spaniards of the South, who, in my opinion, were only seeking *a road by this Cordillera* in order to join the Spaniards of Valdivia or Chiloé."

It is clear, therefore, that if an author alludes to tribes of Indians, to cities, and to lakes which by reason of their size seem like seas, as situated "in the centre of the Cordillera,"

¹ Amunátegui, *loc. cit.* iii. p. 79. ² *Ibid.* p. 95.

³ *Ibid.* p. 98.

and says that the "Cordillera" has a width of forty leagues, and that in the south it divides to form islands and archipelagoes, one cannot impute to him the idea that such "Cordillera" is nothing more than a high crest of a principal chain. In every single instance where Father Rosales uses the expression "Cordillera" in the singular he refers to the mass of ranges and hills, to the "mass of heaped up mountains" with their ridges and interposed valleys, without particularizing a prominent crest; and when describing the "summit of the Cordillera" on the road from Santiago to Mendoza, he expressly adds the distinctive phrase "lo sumo" (the highest point) so as to leave no doubt as to the part of the "Cordillera" to which he refers. Just as nowadays the word "Cordillera" is often used in the plural ("Cordilleras"), Father Rosales and many other writers of the Colonial Epoch used it in the same comprehensive sense to designate the multitude, the "chaos" of ranges and masses which together form the "Cordillera de los Andes."¹ We may here remark upon the same peculiarity which occurs in Article 1 of the Chilean-Argentine Boundary Treaty of 1881. After saying that the boundary is from north to south up to the 52nd parallel of latitude, the "Cordillera de los Andes," it adds that the boundary line shall run in that extent over the highest summits of *the said Cordilleras*, which divide the waters.

The second authority quoted by the Argentine Representative is Father Ovalle, in whose *Histórica Relación del Reyno de Chile*, book i., there is a

¹ The Spanish pilot, Don Basilio Villarino, in the report of his journey to Rio Negro (1782), says, for instance: "Day 12. . . . To-day *we sighted a "cordillera" of very high mountains in the Cordillera*" [una cordillera de cerros altísimos en la cordillera]. Angelis, *Colección*, etc., vi. (page 64 of the Report).

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chapter (the fifth) entitled "On the famous Cordillera of Chile." In order to form a correct idea of the scope of the orographic description contained in it, it is necessary to bear in mind the whole of the chapter, instead of the conveniently grouped paragraphs skilfully selected in the Argentine Statement.

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After referring in general to the "Cordillera," which according to him is little less than 1,500 leagues in length *and forty in diameter*, "*with many ravines and intermediate valleys*," and following in this matter more or less the description of the chronicler Antonio de Herrera, Father Ovalle proceeds to refer to his personal observations during his journey across the Cordilleras between Santiago and Mendoza, which he says he often traversed. Having found that Herrera's description, according to which there were two Cordilleras running parallel throughout the continent, was incorrect in that section of the mountain which he had crossed, he maintains that in that part no such division into two chains is seen, "but continuous and interminable mountains on either side, which serve as walls, barbicans and antemural fortifications, in the midst of which rises one which is more properly called Cordillera."

Father Ovalle thus gives the impression which he received when crossing the Paso de la Cumbre, and it is not to be wondered at that the concentration of the Andean ranges into one high and dominant crest which really may be observed in that part should have so forcibly impressed him that he distinguished that range as the Cordillera properly speaking. But it is in no way permissible to deduce from the author's words a general definition of the "Cordillera" as claimed by the Argentine Representative. His observation

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refers only to the trifling section of the Andean region which he had seen on his journey between Santiago and Mendoza, for, apart from his own most definite declaration, a general restriction of the word "Cordillera" to the snowy crest of the Andean range would be incompatible with the assertion repeated three or four times in the same chapter of Ovalle, that the "Cordillera" "in all that part over which it extends and runs under the jurisdiction and Kingdom of Chile," is *forty leagues in diameter*: which is equivalent to 250 kilometres in width, or a little more than the whole distance between Santiago and Mendoza.

Father Ovalle is, in fact, more modest than the Argentine Representative would make him appear. He does not pretend to give definitions or to speak of anything personally unknown to him. Thus at the end of chapter vii., in which he describes "the sources, rivers and brooks of the Cordillera," as found on the road between Santiago and Mendoza, he declares :

"This is what may be seen by this road when crossing the Cordillera at this point; but of the other things found *in the remainder of this immense mass*, who can give an account? Who knows it? I do not doubt that there are others who know much more of these things, but *I narrate here only what I have seen, which is very little.*

The "Cordillera" according to Abbé Molina.

The Abbé Molina, the third "highest Chilean authority" in the Colonial Epoch according to the Argentine Representative, cannot possibly be quoted as favouring the supposed restriction of the word "Cordillera" to a dominant chain or crest of the Andean mountains. Even the passages of the first book of his *Historia de Chile*, reproduced in the Argentine Statement, contain nothing to support such a theory. In order that the Tribunal may form an exact idea of what Molina understands

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by the "Cordillera de los Andes," we reproduce in the Appendix long extracts from the chapter out of which the Argentine Representative has taken and amalgamated certain disconnected paragraphs.

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It may there be seen that Molina, in speaking of the "natural division" of the Kingdom of Chile, distinguishes three parts: First, the region of the islands; second, "Chile properly called"; and third, "the Andes or the country occupied by that range of mountains." When speaking of this last portion, he says that "the Andes" traverse the whole continent of America from north to south, being in its northern part nothing but the continuation of the "Cordilleras." In the part belonging to Chile he assigns to them "*a width of 120 miles*," which is less than the width established by the Fathers Rosales and Ovalle, but which suffices to include in the central and southern regions all the branches of this great mountain system. The "Cordillera" consists, as he goes on to say, "of a great number of mountains, all of them wonderfully high, and which appear as if intertwined one with another." The tribes of Chilean Indians south of the parallel of 33° , and even the Patagonians, live, according to Molina, within the Cordilleras. "That portion of the Cordilleras," he says, "which is situated between the 24° and 33° is sheer desert; but the remainder, as far as the 45° , is inhabited by some colonies of Chileans called Chiquillanes, Pehuenches, Puelches, and Huiliches, though more generally known by the name of Patagonians." And when speaking more especially of the region which he calls "Araucanía," between the Rivers Bio-bio and the Archipelago of Chiloé, he says:

"Araucanía lies upon the sea coast and is reckoned to be 186 miles in

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length; it is generally considered as the most pleasant and fertile part of Chile; its breadth from the sea to the foot of the Andes was formerly estimated at 300 miles, but the Puelches, a nation inhabiting the western parts of the mountains, having joined the Araucanians in the last century, it cannot at present be less than 420 miles in breadth, and the whole of their territory is reckoned to contain 78,120 square miles."

This agrees with what Molina says in his *Historia Civil de Chile* respecting the abodes of the Indians and their division into four "butalmapus" or districts, one of which is the "piremapu" or district of the Andes.

"In that of the Andes," he says, "is included all the valleys of the Cordilleras, situated within the limits already mentioned, which are inhabited by the Puelches. These mountaineers, who were formerly a distinct nation in alliance with the Araucanians, are now united under their government and have the same magistrates."¹

The fact that the Abbé Molina mistakenly asserts the Andes to be composed of three parallel chains, one of which he called the principal, running between two of a lesser height, entwining itself with other transverse ramifications, has no connexion whatever with the main point under discussion. The author never applies the terms "Cordillera de los Andes," "Cordilleras," or "Andes" to the supposed main chain *alone*, but always gives them a more ample sense, extending them to the *ensemble* of heights and mountainous masses which, according to him, have a width of 120 miles in the part corresponding to the Kingdom of Chile.

The "Cordillera" according to Father Olivares.

Were it necessary to prove by quotations from other authors of the Colonial Epoch how unfounded is the Argentine Representative's assertion that the name "Cordillera" was applied only to the highest crest of the main chain of the Andes, we might quote among others

¹ Molina, *The Civil History of Chile* (The Geographical, Natural and Civil History of Chile, vol. ii., London, 1809), book ii. chap. ii.

the description given by the Jesuit Father Miguel de Olivares in his *Historia Militar, Civil y Sagrada de Chile*, book i. chapter ii. which speaks of "The Cordillera de Chile and its particulars." The Argentine Representative has reproduced some passages from this work in paragraph 2 of chapter ii. of his Statement, deducing from it the inference that "what is understood by 'Cordillera' is only the principal chain, known traditionally as the 'Cordillera de los Andes.'"

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Olivares says :

"All the writers who have reported concerning this Kingdom (Chile), either in manuscripts or in print, have mentioned this Cordillera, which is certainly worthy of consideration, for even if there be in the world mountains of more stately height . . . it is, however, beyond doubt that in extent no ranges in the world can be compared with *those of Chile*, the length of which from Quito down to Magellanes is over 1,500 leagues, and their width in parts reaches 40 and in other parts 50 (leagues)."

As may be seen, the extent assigned by Father Olivares to the "Cordillera de Chile," both in length and in width, agrees with the statements of Ovalle and Rosales and is sufficient to include even the most distant lateral ranges east and west of the supposed "main chain." It follows, therefore, that the "highest Chilean authorities of the Colonial Period," invoked by the Argentine Representative, most conclusively contradict his assertion that "it would be absurd to say that the name of Cordillera which was applied in Colonial times, and since, to the highest crest of the main range of the Andes was also applied to the mountain lying to the east and west of it." If it were true that the word "Cordillera" was applied exclusively to the snowy crest of a central Andean range, how could Olivares speak of "*extensive valleys and swamps in which large herds of cattle are pastured*," of "*beauti-*

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ful lands" and of "*potreros*" (pasture fields) which are "*in the centre of the Cordillera*" opposite the town of Chillan?

The "Cordillera" according to Gonzalez de Nájera.

The Maestre de Campo Alonso Gonzalez de Nájera, who at the beginning of the seventeenth century wrote his *Desengaño y Reparó de la Guerra del Reyno de Chile*, has also been quoted by the Argentine Representative among the authors who give "the meaning of the 'Cordillera de los Andes' in the Colonial Epoch." But in the quotation reproduced in the Argentine Statement there is nothing which allows us to form any notion of what that author understood by "Cordillera de los Andes." On the other hand, in Nájera's work (book i., Relacion 1), there is a chapter treating, as he says in its heading, "*De la montuosidad de Chile*" (Of the mountainousness of Chile), and, had the Argentine Representative taken this into consideration, he would have found that the author gives the "Cordillera" an exceptionally large extension from west to east, making its western slopes reach in many places down to the very ocean. He says:

"In the geographical descriptions, whenever this Kingdom (Chile) is described, it is impossible to construct correctly a picture so diffuse and detailed, since the geographers who have described that land, even in special charts, pay more attention to its notable parts than to a description of its ruggedness; hence in its descriptions that Kingdom appears to be more level than mountainous. I, therefore, simply say as much as can reasonably be said, that a land so near *such great and broken ridges as are those of the snowy Cordillera* cannot possibly be level, for it is only natural that it should be composed of other mountains which, though smaller, proceed therefrom, as may be seen there, and, *as parts of its body, gradually diminish, reaching in many parts the shores of the South Sea as slopes of the same Cordillera.*"¹

The passage in which this author speaks of the portion

¹ Gonzalez de Nájera, *Desengaño y Reparó de la Guerra del Reyno de Chile*, published by Don José Toribio Medina, Santiago, 1889.

of the Cordilleras situated between Santiago de Chile and Mendoza is also extremely significant.

*"Mendoza is," he says, "40 leagues distant from the celebrated City of Santiago, and in the same latitude and district; the distance or interval existing between one and the other city being the width of the great Sierra or snowy Cordillera, whose road is devoid of vegetation although not of water, and extremely rough because of the ruggedness of its great and broken ranges and deep valleys."*¹

Thus it follows that Gonzalez de Nájera understands by "Cordillera" all the wide mass of mountains which, with an extension of forty leagues from west to east, is interposed between the cities of Santiago and Mendoza, his definition agreeing with that given later by Fathers Ovalle, Rosales, and Olivares.

Were the Argentine Representative really anxious to inform the Tribunal as to what was understood by "Cordillera" at the Colonial Epoch, he should have quoted the explicit description given by the Maestre de Campo Don Pedro de Córdoba i Figueroa in chapter ix. book i. of his *Historia de Chile*, which treats of the "Situation of the Kingdom of Chile, its extent and description of its famous Cordillera."

Instead of quoting this, however, the Argentine Representative merely reproduces the paragraph of the chapter in which Don Pedro de Córdoba speaks of the extent of what was called "Chile" in his time, and which reached eastwards as far as "the famous Cordillera," allowing a passage during but six months of the year. Moreover, the Argentine Representative draws attention in a note to the fact that the Chilean geographer Señor Astaburuaga (who wrote an

¹ *Loc. cit.* p. 14.

introduction to the work of Córdoba i Figueroa in the *Coleccion de Historiadores de Chile*) declares this author to be worthy of credit on account of his position, his antecedents and because of the documents at his disposal.

Now let us hear what Córdoba i Figueroa, an author so especially worthy of credit, says regarding that "famous Cordillera" :

" Nature produces certain phenomena which fill men with admiration ; one of them is *the Cordillera*, a description of which we shall give, as it forms such a *principal part of the Kingdom*. *It is amazing for its longitude and latitude*, elevation and roughness, riches and forests, as well as for the impenetrable depths of its *snows*, the whole forming a tremendous and enchanting object . . . It starts from the new Kingdom of Granada and ends at the Straits of Magellan, a distance of perhaps 1,600 leagues ; *we shall only speak of that part enclosed within the boundaries of the Kingdom* (Chile). Its height is so astounding, its parts so superbly elevated, that the rays of the sun are prevented from penetrating to the west, until it is seen far up above the horizon ; *its latitude is of 50, 60 and even 100 leagues at several parts*, especially towards the pole, where its slopes widen and the mountains gradually overtop one another until they reach their extreme height.

" *This famous Cordillera is not composed of one single range, but of two, three, and even four, one following upon the other, and between them there are many valleys of vast extent, variety and pasturage.*" ¹

It seems unnecessary to comment on the passage quoted, which contradicts in the most formal manner the thesis which the Argentine Representative has endeavoured to defend in chapter ii. of his Statement. We shall simply add that Córdoba i Figueroa, like other authors of the Colonial Epoch, occasionally uses the plural of the word "Cordillera" when designating the whole of the Andean mountains. He says for instance :

" *Within the 'Cordilleras' there are two great lakes of enormous depth and extent ; from one of them the great Bio-Bio starts, and from the other the River Laja.*" ²

¹ *Coleccion de Historiadores de Chile*, vol. ii. pp. 15 and 16. ² *Ibid.* p. 49.

**Espinoza
and Bauzá's
"Carta
Esférica"
showing the
road from
Valparaiso
to Buenos
Aires.**

The Argentine Representative lays great stress on the evidential value possessed, according to him, by Don José de Espinoza and Don Felipe Bauzá's *Carta Esférica* published at Madrid in 1810 with a view to showing the road from Valparaiso to Buenos Aires. He says that in this chart the boundary between the Viceroyalty of Buenos Aires and the Kingdom of Chile has been marked along the line of the highest summits, cutting the source of the River Maipo and the principal arm of the River Tunuyan, which is shown as rising in a depression between two chains of the Cordillera and crossing the eastern one of them.

The truth is that in this map the region of the sources of the River Maipo, which had not been visited by the authors, appears completely altered; but it is not the fact that the boundary line cuts the sources of the River Maipo, although by an error of the engraver an uninterrupted course of water is traced between one source of the River Maipo and the opposite headwaters of the Tunuyan.

In the original manuscript of the *Carta* in the British Museum¹ it may be seen that such hydrographical confusion does not exist; it has been caused by simple carelessness on the part of the engraver and introduced in the printed copy reproduced in the Argentine Statement. Respecting the upper course of the River Tunuyan and the adjacent part of the Cordilleras corresponding to Portillo Pass, it must be borne in mind that the authors expressly declare in the "Advertencia" accompanying the manuscript map that such

¹ Add. 17,668b. "*Carta Esférica de una parte de la America Meridional para manifestar el camino que conduce de la Ciudad de Valparaiso a la de Buenos Ayres. Levantada sobre los mismos lugares por dos Oficiales de la Armada en 1794.*"

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part has been drawn, not according to their surveys, but according to information from another person, and that they guarantee the accuracy of the *Carta* only "in the points indicated, which have been fixed by observation."

The manuscript of the *Carta* contains no tracing of boundary, nor does it show the orographic drawing of the Cordillera in the shape of separate and parallel chains as in the printed reproduction. If, therefore, another hand added this boundary line later on, placing it arbitrarily upon a chain which does not appear in the original, what can justify the Argentine Representative's assertion that the tracing of that line "synthetises the idea of what Spain understood by the boundary of her two jurisdictions in the southern extremity of America"? Would it not have been more logical to look for the synthesis of that idea in the official and complete map of all South America of which the Spanish Government made use in the negotiation of boundary treaties in the eighteenth century by giving it to their Commissioners to delimitate the frontiers with the Portuguese possessions?

The map to which we refer and whose official character and evidential value in the boundary question have already been proved in chapter v. of this Statement, is the one made by order of the King in the year 1775 by Juan de la Cruz Cano i Olmedilla. This document shows, in the region to which we allude, the tracing of the boundaries between the Province of Cuyo and Chile proper: that is to say, the line which was afterwards the boundary between the Viceroyalty of Buenos Aires and the Kingdom of Chile, *following in detail all the windings of the continental waterparting as far as the headwaters of the River Diamante*, where it deviates to the east, following the river for a certain distance. Neither

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the Maipo nor the Rivers Tunuyan or Mendoza appear cut by a line, and this is the map which really embodies the official opinion of Spain upon the boundary of those territories.

Application of the words "Cordillera de los Andes" in the "Carta Esférica." Another conclusion which the Argentine Representative derives from the *Carta Esférica* by Bauzá and Espinoza is "that the name 'Cordillera de los Andes' is only given to the loftiest part of the mountainous mass"; which in his opinion "synthetises the idea of what Spain understood by the 'Cordillera de los Andes.'" The Argentine Representative, in making this assertion, must have looked simply at the inset map attached to the principal map and representing the region of the pass of "La Cumbre," where the words "Cordillera de los Andes" are placed along the crest which includes the highest point of the road between Santiago and Mendoza. Were it justifiable to draw conclusions of so much importance simply from the manner in which the inscriptions are placed on the maps, the *Carta Esférica* in its principal part would allow of conclusions very different from those reached by the Argentine Representative. The words "Cordillera de los Andes" being placed there precisely on the intermediary space between the two parallel chains of mountains which are drawn to the north and to the south of the portion represented in the inset, it would be impossible to decide to which of those two ranges the authors wished to apply the denomination. It would, in fact, be much more reasonable to suppose, in view of this document, that the term "Cordillera de los Andes" comprises all the general mass of ranges and chains with their intermediary spaces without assigning it to any one in particular. This interpretation would also conform to certain expressions of Don José de Espinoza, one of the authors of

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the *Carta*, which are found in his *Study upon the customs and interesting descriptions of South America*, inserted in the narrative of the famous voyage round the world by Don Alejandro Malaspina, an expedition in which Espinoza took an official part.

He says, for instance : " At a distance of 22 or 24 leagues from Mendoza, *Uspallata, the famous mine of very fine silver, is found in the Cordillera,*" etc.¹ The Uspallata mine is marked on the *Carta Esférica* in one of the lateral ranges to the north-east of the village of the same name, and notwithstanding this, Don José de Espinoza considered it situated "in the Cordillera." According to the same travellers, Bauzá and Espinoza, the town of Los Andes is situated "almost at the foot of the Cordillera."

" On the east of the mentioned valley of Aconcagua," they say, "and near the river, almost at the foot of the Cordillera, is situated the new town of San José de los Andes recently founded by President O'Higgins . . . Leaving this town at a short distance we find the commencement of the Cordillera, which penetrates to the south 80° east at about a league and a half down to the last small house called 'del Sauce.' " ²

This declaration of Bauzá and Espinoza as to the location of the town of los Andes and "the commencement of the Cordillera" on the western side, is repeated by the future Governor of Chile, Don Ambrosio O'Higgins, in almost the very same words, regarding the town of Mendoza on the eastern extremity of the "Cordillera." In a report³

¹ "*Viaje político i científico alrededor del mundo por las corbetas 'Descubierta' i 'Atrevida,'*" etc., published by Novo i Colson, 2nd ed. Madrid, 1885, p. 568.

² *Description of the Kingdom of Peru and of the Provinces of Chile and Buenos Aires*, compiled by members of an expedition fitted out by the Spanish Government 1793-1794 (MS. in the British Museum, Add. 17,592), p. 384.

³ MS. in British Museum, No. 17600: *Noticia sobre las casillas construidas en la Cordillera de los Andes, para resguardo y acogida de los correos de a pie.* (Information as to the refuges constructed in the Cordillera de los Andes for the preservation and assistance of the mail carriers.)

addressed by O'Higgins to President Guill, May 29th, 1763, on the subject of constructing refuges for the mail carriers on the trans-Andean road, the following may be read :

"In order to make my proposition with more clearness, I wish to observe that the distance generally estimated between the Aconcagua Valley, which is situated on this part of the Cordillera, to the town of *Mendoza*, located in a plain on the other side and *almost at the foot of the same Cordillera*, is as follows . . . "

It goes on to indicate the distance in leagues between the principal points of the road, by saying :

	Leagues.
" From La Cumbre to Las Cuevas	1½
From Las Cuevas to Puente del Inca	4
From Puente del Inca to Punta de las Bacas	6
From Punta de las Bacas to Huspayata	12
<i>From Huspayata down to 'el Carbon,' end of the Cordillera.</i>	18
From 'el Carbon' to Mendoza	5½

" El Carbon " is situated at the eastern foot of the Sierra de Uspallata, which therefore forms part of the " Cordillera de los Andes," according to the opinion of O'Higgins as expressed in his official Report.

The system adopted by the Argentine Representative of attributing conclusive evidential value to inscriptions placed in a more or less casual and arbitrary manner in cartographic documents, eventually leads to results entirely contradictory to the Argentine thesis. In the official map of Cano i Olmedilla which we have just mentioned, there appear the words "*Cordillera Grande*," written along a branch of mountain which encloses the upper valley of an arm of the River Aconcagua to the west, and at whose western foot starts the River Mapocho, on the banks of which the City of Santiago is situated. The interior part of the Cordilleras where the " Santiago volcano " lies, i.e. the Tupungato, is denominated "*Sierra Blanca*," so that,

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Application
of the word
"Cordillera"
in Cano i
Olmedilla's
map.

if the argument of the Argentine Representative is applied to the cartographical document of greatest authority which we possess of the Colonial Epoch, it must result in the name of "Cordillera" being attributed to a lateral range and not to what he considers to be the "snowy crest of the main chain" of the Andes.

Consulting other sections of the same map of Cano i Olmedilla, we find additional proofs that the assertion of the Argentine Representative is far from correct when he says (Statement, p. 25) : " Not once, either in the histories or in the maps, is the name of 'Cordillera de los Andes' given to the lateral mountains referred to." It is sufficient to look at the section of the map reproduced in the Argentine Statement (Plate xviii. p. 558) in order to be convinced that in the Patagonian region facing Chiloé the author applies the name of "*Cordillera Nevada de los Andes*" to the *most eastern* branch of the Andes, while in the central part, which corresponds to the supposed "main chain" of the Argentine Representative, a range is traced denominated "*Cordillera de la Masna*," and to the west of it, nearing the coast of the Pacific, runs a third branch with the name of "*Cordillera del Corcovado*."

If in that part of the Andes situated in the latitude of Santiago de Chile the special configuration of the mountain lends itself to the idea conceived by a few travellers who have not visited other sections of it, of assigning the term "Cordillera properly speaking" to the highest and snowy crest whereby the road to Mendoza runs, this in no way justifies the assertion of the Argentine Representative that such an application of the word "Cordillera" has always, and without any restriction, been the general rule all along the extent of this great system of mountains.

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Villarino. The pilot of the Royal Navy, Don Basilio Villarino, well known from his exploration of the River Negro in 1782, speaks of "the Cordillera" as a mass of mountains, within which he distinguishes "Cordilleras" or ranges of hills. Only in this manner can the following expression which we find in the journal of his voyage be understood :

"Twelfth day (March) . . . *To-day a Cordillera of very high hills in the Cordillera was seen*; so covered with snow and so white that not even a speck of any other colour could be seen on them." ¹

In the *Carta Esférica* of the western coast and Patagonian islands enclosed between 41° and 46°, which was constructed, by order of the Viceroy of Peru, by the pilot of the Royal Navy, Don José de Moraleda, upon his surveys in the years 1792-1796,² there is not a complete drawing of the Andean ranges and chains, and no inscription is placed in the corresponding space of the *Carta* which might give rise to erroneous interpretations such as that derived by the Argentine Representative from the *Carta Esférica* of Bauzá and Espinoza; but in the notes accompanying the title of the map, which has the character of an official document, Moraleda has drawn with sufficient clearness the eastern and western boundaries of the "Cordillera Real de los Andes."

Meaning
given to the
word
"Cordillera"
on Mora-
leda's map.

"All these lands and heights," he says, "*which are shown on this coast belong to the Cordillera Real de los Andes*, the greater part of the summits of which are covered with snow in the winter."

And in another note he adds :

"The inlets have no land fit for cultivation or any useful products for settlement nor easy access from their interior *to the pampas or lands east*"

¹ Angelis, *Coleccion*, vol. vi. p. 64 of the Journal.

² *Anuario Hidrográfico de la Marina de Chile*, vol. xiii.

of the Cordillera Real whose western boundary is the said coast, and its valleys already mentioned are but its narrow and deep ravines below the level of the sea."

The "Cordillera Real de los Andes" comprises, therefore, according to the official testimony of Moraleda, "all the lands and heights," bounded on the west by the sea, and on the east by the pampas.

And this opinion is also maintained by him when penetrating to the interior of the Cordilleras in search of a road to Nahuelhuapi. In the journal of his third expedition giving an account of his voyage from Reloncaví Inlet to the valley of the River Peulla we read, as follows :

"Todos los Santos Lake is shown on the large scale map we have made of it, and on the reduced map of our surveys, both exhibiting its various arms and extent; *its shores of steep cliffs are mostly formed by the elevated mountains of the Cordillera Real de los Andes, of which the bulk is partly covered with snow in the winter, and some completely, like the volcano Osorno or Hueñauca, of which we have already spoken, whose eastern slope forms the westernmost shore of the lake, such as Bonechemó peak and others. . . . I imagine that it (the lake) seldom has so little water as at present because the continuous good weather and great heat have melted almost all the snow of the Cordillera which encloses it, so much so that the people who have repeatedly travelled to Nahuelhuapi say they have never seen it so free from snow as at present.*"¹

Moraleda and Menendez. Like his contemporary, the Franciscan Father Menendez, who made several journeys to the interior of the Patagonian Cordilleras and to Nahuelhuapi, when speaking of the "Cordillera de los Andes" or simply of the "Cordillera," Moraleda did not mean by this the high crest of the main range; but he applied these terms indiscriminately to numerous ranges and masses which rise throughout the entire extent of the Andean region, whether on the shores of the Pacific or on the border of the Patagonian

¹ *Anuario Hidrográfico*, vol. xiii. pp. 215 and 216.

plateau. The volcanoes and prominent mountains on the littoral, such as the Osorno, Calbuco, Corcovado and Melimoyu, are, according to Moraleda,¹ in the Cordillera de los Andes, just as are the Bonechemó and other ranges which "enclose" Todos los Santos Lake.

Speaking of the navigation of this lake, Father Menendez says :

"We boarded two 'pirahuas' (Indian boats) very early, and rowed straight towards the *Vanquenmay Hill* (the *Puntiagudo* of the modern maps) *situated in a range of the Cordillera running east-west, ending here in the volcano called Calbuco in Chiloé.*"²

According to the same traveller, the western arm of Lake Nahuelhuapi runs "*between two high elevated Cordilleras.*"³ Towards the south of this lake there are "*Cordilleras, but not very high, and with little vegetation,*"⁴ and its islands are "*at the foot of the snowy Cordillera.*"⁵

**Hernandez's
definition of
"Cordillera."**

By order of the Viceroy of Buenos Aires, in the year 1806, Don Esteban Hernandez made the survey of a more direct route between Mendoza and San Luis

¹ *Loc. cit.* vol. xii. p. 575 : "The high snowy mountain called '*el Corcovado*' may be seen on the mainland at a distance of 45 or more leagues. *None of the other hills of the Cordillera in which it is situated can be mistaken for it, because of its shape and superior height.*"

Loc. cit. xiii. p. 182 : "Nearly halfway inside the Inlet, a little further north-east, is the famous snowy mountain of Corcovado. This is the highest of the *nine mountains which I have said are prominent in this portion of the Cordillera.* It is nearer the sea, for its base is bathed by the sea."

Loc. cit. p. 148 : "In clear weather the best sign to steer by when going to the mouth of Refugio Channel is Melimoyu Mountain ; it is the one which, *of all the nine that I have said are prominent in this section of the Cordillera Real* enclosed between 41° and 47° latitude, is most covered with snow."

Loc. cit. p. 155 (referring to an expedition to the *Lower River Palena*) : "At a short distance we found the features common to all pinnacles and the *interminable Cordillera of which they are their most western part.*"

Loc. cit. p. 175 (when speaking of the *Tictoc Estuary*) : "It is sufficient to say that *the coast forms the western boundary of the famous Cordillera de los Andes.*"

² *Viajes de Fr. Menendez a Nahuelhuapi*, published by Dr. Fonck, Valparaiso, 1900, p. 264. ³ *Loc. cit.* p. 290. ⁴ *Loc. cit.* p. 298. ⁵ *Loc. cit.* p. 432.

in order to co-operate in the project of opening a new pass by the Cordilleras facing the central provinces to Chile. Speaking of the great Cerro Nevado which rises in the $35\frac{1}{2}^{\circ}$ latitude and $68\frac{1}{2}^{\circ}$ longitude west from Greenwich, to the south of Upper Atuel River, he says :

“Cerro Nevado does not derive from the Cordillera, because to the west of the said mountain the chain of hills continues, forming at its termination a strait with a *mountain called El Morro which is where the great Cordillera ends.*”¹

The Morro Hill belongs to a western range of the Cordillera to the east of the upper valley of the River Grande, an affluent of the Colorado, and is situated on the $35\frac{1}{2}^{\circ}$ latitude and $69^{\circ} 55'$ longitude west from Greenwich, at a distance of over thirty miles east of the crest which—according to the Argentine Representative—is the only one to which the expression “Cordillera,” “gran Cordillera,” etc., should be applied.

Another traveller of that same epoch, Don Luis de la Cruz, who crossed the Cordillera in search of a new trans-Andean road between Concepcion and the Pampas of Buenos Aires, understands by “Cordillera” not only the main body of that mountain with all its more or less connected ranges, but even the most distant ramifications extending over the Pampas of Neuquen and the River Colorado. In the XVIth entry in his diary,² when describing his march along the River Cobuleubu, a name given by the Indians to the River Colorado of the Pampa, he says :

“March 13, 1806. At seven o'clock in the morning the caravan was on horseback, and going down stream by the river bank we went in

¹ Pedro de Angelis, *Coleccion de documentos*, etc., vol. vi. No. 1.

² Published by Don Pedro de Angelis, *Coleccion*, etc., vol. i.

a S.S.E direction over a good road . . . We left the river, and turning east we penetrated a cañon of low and stony hillocks, a land full of crevasses. To come out of it we climbed a slope of one-third of a 'cuadra.' We reached a beautiful point of the same land covered with brushwood. *To the N.N.E. runs the Cachaguen range, the summit of which is very broken rock, and to the south-east that of Auca Maguida. Up to this point only, where a league's distance was reached, can the Cordillera be considered as such, for further on only plains are visible.*"¹

The point indicated by Cruz as the extreme end of "the Cordillera," may be determined in view of the positions which he gives to the Cachaguen range (lat. 37°, long. 68° 40' W. Greenwich), and to Auca Maguida range (lat. 37° 30'. long. 68° 40' W. Greenwich),² and which in every case falls some 140 miles to the east of the "main chain" of the Argentine Representative.

Speaking of the Cordillera of the Andes in general, he says :

"The range of the Andes said to be formed of three chains I have most carefully observed, and found that it *is composed of innumerable ranges*, and that they are *a mass of mountains* inexplicable and incomprehensible to man. I can only say that it is a chain of hills, *a Cordillera which one sees running from east to west as often as from north to south*. Anyhow, I crossed no other Cordillera than that of Pichachen and that of Cocholmaguida [Choloi-mahuida, situated east of the upper River Neuquen between it and its affluent River Colileuvu], and behind me, on either side of the road, I left mountains with no regularity as to height or direction, for some are connected and some are isolated. Among these innumerable ranges, it is true that hardly one exists which does not enclose beautiful valleys containing water and useful minerals."³

* * * * *

We shall briefly summarize the principal conclusions at

¹ *Loc. cit.* p. 90.

² These positions are those given to the said ranges in Dr. Brackebusch's map, where the names are written "Chacha-Huen" and "Auca-Mahuida."

³ The paragraph quoted is to be found in the *Descripción de la naturaleza de los terrenos que se comprenden en los Andes, poseídos por los Pehuenches* i

which we have arrived in the present exposition of historical facts and examination of the documents relating to the delimi-

los demas espacios hasta el Rio Chadileubu, reconocido por Don Luis de la Cruz, Alcalde Mayor provincial del Ilustre Cabildo de la Concepcion de Chile. (Description of the nature of the lands which are enclosed in the Andes possessed by the Pehuenches and of the rest of the lands as far as the River Chadileubu, surveyed by Don Luis de la Cruz, Provincial Mayor of the Illustrious City Council of Concepcion de Chile) published in Angelis's *Coleccion*, vol. i. p. 17. See also the description which he gives of the River Neuquen: "The River Neuquen runs from north to south at the western foot of the Cordillera of Pucon-Maguida or, as others say, Cholchol-Maguida, and, crossing it in order to take its course towards the east, receives at a distance of three leagues from Butacura, as I said, the Ringi-leubu [Reñileo], and afterwards the Tocaman [Trocoman]. . . . As I have said, *the Neuquen, from its junction with the Ringi-leubu and Tocaman, runs east until it leaves the Andes*, and, in the reach between these points, it receives at its southern side the Buta-leubu, the Raqueco, the Triquico, the Taquimilá and the Pichi-Neuquen which is the "estero de las Salinas Grandes," from the confluence of which the River Maculeubu flows into it *on its descent from the east of the Cordilleras*, and the Neuquen is henceforth called Macum-leubu, a name which it keeps for fifty leagues until joining the Limay-leubu."

With these data it would be easy to determine on any map the eastern boundary of the Andes or of the "Cordilleras" according to the ideas of Don Luis de la Cruz, and it would then be seen that the boundary reaches in the region of the Neuquen as far east of the "snowy crest" as he has established it, as we have shown, in the region of the River Colorado.

In the same *Descripcion* Don Luis de la Cruz says (p. 10): "*The range of the Andes*, according to the experts, diminishes in height as it runs south. Therefore the Pehuenche and Huilliche Indians who inhabit its territories all agree on this point, and even add that the further north one goes the earlier are the mountains snow-clad, and the later they are practicable." In the description of his voyage Cruz communicates the reports which he obtained from an Indian chief upon the River Limai-leubu, which is that at present called Aluminé and Collon-Cura. "He told me that it (River Limai-leubu) started from a beautiful lake called Alomini, *which is situated in the centre of the first Cordilleras of the west in a straight line towards Maquegua*; that it was originally a small river and afterwards became swollen owing to the many tributaries which join it. Manquel said that he already had information that the lake was a very large one, that he had often gone over its shores, and that it took him a day and a half to cover the distance; *that the river which started from this lake was joined in the midst of the Cordilleras* by the rivers Matananc-leubu, Rucachonoi-leubu [Rucachoroi], Quelguen-leubu [Quillen], Pichi-leubu, Mayen-leubu [Malleo], Nahuelhuapi-leubu, *and that the lake is situated in the midst of the Cordilleras of Miquen and Guenuco.*" The confluence of the River Collon-Cura with the Nahuelhuapi-leubu, i.e. the one at present called Limai, is therefore, according to the opinion of the Indians and of the traveller Cruz, "in the midst of the Cordilleras."

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N

tation of the Spanish Colonies corresponding to the existing Republics of Chile and Argentina.

1. The Crown of Spain divided its possessions in the southern half of South America into a series of Gobernaciones stretching along the whole breadth of the continent, from the Atlantic Ocean to the Pacific, and separated from each other by certain parallels of latitude. One of them was the Gobernacion del Rio de la Plata, which, according to the Capitulation made in 1534 with Don Pedro de Mendoza, extended from ocean to ocean, from latitude $25\frac{1}{2}^{\circ}$, approximately, to the neighbourhood of parallel 37° , and which, in virtue of the Capitulation made with Juan de Sanabria, was temporarily restricted in the south to parallel 31° and enlarged on the north to the neighbourhood of parallel 19° .

2. The Gobernacion de Chile (Chile as a Province of Spain) was only established in 1548 by the Decree which President La Gasca issued in favour of Don Pedro de Valdivia, whereby an extent of land was granted to him, north to south, from parallel 27° to 41° , and in breadth from west to east from the Pacific Ocean inland for one hundred leagues of $17\frac{1}{2}$ leagues to the degree. In 1555 the King enlarged the Gobernacion de Chile to the Straits of Magellan, thus including in it all the southern extremity of the continent without altering the original arrangement respecting its breadth of one hundred leagues west to east, in which there remained included, besides the territory corresponding to the present Republic of Chile, the wide strip of the present Argentine provinces and Gobernaciones stretching east of the Cordilleras from Tucuman to the Rio Negro and almost the whole of Patagonia.

3. The fundamental and official delimitation of the Province or Kingdom of Chile was made by the Spanish Monarch with full

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knowledge as to the existence and general features of the "Cordillera de los Andes," which was not, however, taken into consideration in fixing the boundaries, nor was it even mentioned in the Royal Orders or Decrees appertaining to the case. From the beginning the Governors of Chile busied themselves, with good results, in making their authority effective over the eastern and southern parts of their Gobernacion, sending their captains with troops to the east of the Andes; ordering the sailing of maritime expeditions to the Magellanic Lands up to the shores of the Atlantic; laying the foundations of several cities—among them Mendoza—which now are the capitals of Argentine provinces, and directing the allotment of territories and their Indians to the east of the Cordilleras among the Spanish residents of the principal cities of the Kingdom.

4. The repeated assertion of the Argentine Representative that the eastern boundary of Chile was "from the first days of the Conquest the crest of the 'Cordillera de los Andes,'" falls through if it be borne in mind that such assertion depends on the misuse made of the confusion arising from the two different applications of the word "Chile," i.e. the Colony of this name created and delimited in its district and jurisdiction by the Crown of Spain, and what was properly called "Chile," i.e. the central and flat part of the present Republic between the sea and the Cordilleras where the mass of the Spanish population lived. The most trustworthy historians and geographers of the Colonial Epoch—Rosales, Herrera, Ovalle, Jorge Juan and Antonio de Ulloa, etc.—as well as the most renowned authors of geographical summaries and maps of those centuries, clearly establish the distinction between these two applications. When the modern South

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American Republics were formed after the War of Independence with Spain, it was acknowledged as a rule that the basis of their territorial extents should be the different districts and jurisdictions enclosing the Viceroyalties, Gobernaciones, and Captaincies-General of the Colonial Epoch and, therefore, the Republic of Chile is the inheritor of the Gobernacion or Captaincy-General of this name with the boundaries fixed by La Gasca and the King in 1548 and 1555, save only the territories of Tucuman and Cuyo, which were separated in 1563 and 1776 respectively, but not of the territory to which the geographical name of "Chile" in its restricted sense referred.

5. The extent of the Gobernacion de Chile over vast territories to the east of the Andes and the unity of its Government embodied in the President-Governor and Captain-General residing at Santiago are explicitly confirmed by Law xii., title 15, book ii. of the *Recopilacion de Leyes de las Indias* sanctioned by King Charles II. and promulgated in 1681. Numerous proofs show that the Colonial Government of Chile continued to exercise practical jurisdiction over those territories, as may be seen, for instance, from the expeditions organized by the President-Governors of Chile in search of the Spaniards of the City of "the Césares," situated, according to the belief of the time, east of the Patagonian Andes, as well as from the journeys of missionaries to the same region carried out by order of the same authorities. This fact is not contradicted by the circumstance that the King gave to the Governor of Buenos Aires a temporary commission to survey with his ships the eastern coasts of Patagonia down to the Straits, with the object of preventing settlements of foreign nations in those regions.

6. There is no proof whatever confirming the Argentine

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Representative's assertion that the Sovereigns of Spain sought natural barriers when delimitating their different colonial states in South America, nor is the assertion correct that the Chilean Spaniards always considered the "Cordillera de los Andes" as an insurmountable barrier and strategic frontier, and that they never crossed to its eastern side. On the contrary, there are numerous and unanswerable proofs that the Chilean-Spanish colonists, especially those of the southern provinces, crossed the Cordilleras in considerable numbers and established themselves in the Pampas of Mendoza, Neuquen and Rio Negro, where up to the present time they form an important contingent, and in certain parts the overwhelming mass of the population.

7. By the Royal Order of the 1st of August, 1776, which established the Viceroyalty of Buenos Aires, there were incorporated into the new state the territories of Mendoza and San Juan, i.e. the region of Cuyo, which were separated by this act from the Gobernacion de Chile. This represented the establishment of an Andean boundary in the stretch of land from Tucuman—which had been separated from the Gobernacion de Chile in 1563—to the source of River Diamante, as is shown in the great map of South America drawn and engraved by order of the King, by Don Juan de la Cruz Cano i Olmedilla, which is the official cartographic document that served as the basis and was consulted in the negotiations previous to the foundation of the new Viceroyalty. The boundary is traced in that extent along the inter-oceanic water-parting line corresponding to the delimitation established in the Deed of Foundation of Mendoza in 1561, which says that the territory of the city commences "on the great Snowy Cordillera, whence the waters flow to the Northern Sea," or,

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in other words, from the Andean summits where the waters begin to flow towards the Atlantic. The very text of the Order quoted, and the tracing of the boundaries of Juan de la Cruz's map show that the only territories separated from the Gobernacion de Chile were those of Mendoza and San Juan. Thus there remained included in it the rest of the trans-Andean possessions from the line of the River Diamante to the Straits of Magellan : that is to say, the country designated on the map as " Modern Chile, called by ancient geographers Magellanic Land, of the Patagones and the Césares." The official documents categorically contradict, therefore, the Argentine Representative's assertion that King Charles III., by the Deed of Foundation of the Viceroyalty of Buenos Aires, ordered that the "crest of the Cordillera de los Andes" should serve as the boundary between his possessions on the side of the Atlantic and of the Pacific.

8. From 1776 to 1810, the end of the Spanish dominion over the South American Colonies, there was no official alteration whatsoever in the boundaries between Chile and the Viceroyalty of Buenos Aires. The supervision exercised by the Viceroys of La Plata over the eastern Patagonian coast and the establishment of certain ports on it does not alter the fact that the Governors of Chile extended their jurisdiction by right and *de facto* during the rest of the Colonial Period to the region of the Pampas and Patagonian plateaus east of the Cordilleras. This is proved by their intervention with armed forces in the affairs of the Indians of those regions ; by the meetings held with them, in which even the tribes living in the centre of the Pampas took part and received orders ; and by the missionary journeys among the

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Indians of the eastern side of the Cordilleras, the mission of Nahuelhuapi being, as formerly, the starting point of these enterprises.

9. The Argentine Representative claims, in support of his theory of the "arcifinious" boundary imposed by tradition between the colonies of Chile and Rio de la Plata, that the signification given during the Colonial Period to the words "Cordillera de los Andes" was that of the highest crest of a main range of that mountain. The examination of the very quotations cited in the Argentine Statement, proves, however, that such assertion is absolutely devoid of all foundation. Rosales, Ovalle, Molina, Olivares, Gonzalez de Nájera, and Córdoba i Figueroa, speak of the "Cordillera de los Andes" in the sense of a mass of mountains and not as a predominant crest, since they assign to it a breadth of forty, fifty and even more leagues; and they mention lands, valleys, lakes, tribes of Indians, colonies of Spaniards, etc., situated within this same "Cordillera." If Father Ovalle distinguishes a certain range as the "Cordillera proper," such distinction refers, according to what he himself says, only to that part of the mountains visited by him: that is to say, to the region of the "Paso de la Cumbre" on the journey across the Cordilleras between Santiago de Chile and Mendoza. If the configuration of the mountain lends itself in that region to the drawing of such a distinction, it is not on that account permissible to generalize it and to distort Father Ovalle's opinion into a definition referring to the whole of the Andean system. Authors of the subsequent Colonial Epoch, such as Juan de la Cruz, Espinoza, Moraleda, Menendez, Esteban Hernandez, and Luis de la Cruz, also give to the Cordillera a considerable lateral extent, thus discrediting the conclusions derived by the

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Argentine Representative from the location of the inscription "Cordillera de los Andes" which appears in Bauzá and Espinoza's *Carta Esférica* of the road from Valparaiso to Buenos Aires.

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Chapter VII.

THE "UTI POSSIDETIS" OF 1810 AND FIRST BOUNDARY NEGOTIATIONS ESPECIALLY REGARDING PATAGONIA.

DURING the years immediately following their emancipation, the new States formed on the basis of the ancient Spanish Colonies of Chile and Rio de la Plata paid no attention to determining their respective boundaries. They were chiefly occupied with the defence and consolidation of their Independence, and to this work they more than once devoted their common efforts.

**Treaty of
1826 not
ratified by
Chile.** In the Argentine Statement it is recalled (page 6) that in 1826 Chile and the Provinces of Rio de la Plata bound themselves by a Treaty wherein they agreed "to guarantee the integrity of their territories and to take action against every foreign power which shall attempt to change by force the boundaries of the said Republics, as recognized before their emancipation or subsequently, in virtue of special treaties."

This fact is true only to a certain extent, for the Treaty of 1826 which is cited, was not completed, inasmuch as it lacked ratification by the Government of Chile. But even if that project of treaty had been a valid treaty, we confess that we cannot understand how the arrangement quoted from it could serve in any way to illustrate the question submitted to the

decision of H.B. Majesty's Government. Strictly speaking, it was a treaty of defensive alliance against the foreign nations which might menace the integrity of the territory of the contracting nations, and was based on the fact that the former metropolis had not yet recognized their independence. It merely refers incidentally to boundaries and says nothing applicable to the main point upon which the present controversy turns.

What conclusion can, therefore, be drawn from the fact that both Republics declared in 1826 that their boundaries were those acknowledged at the time of their emancipation or those which afterwards were given them by special treaties? Only that they accepted the "uti possidetis" of 1810 as a basis of delimitation between themselves, and nothing else. But in no case can it be deduced from this declaration that Chile then acknowledged that her territory could not extend in any part east of the Cordillera de los Andes. On the contrary, if it be true, as we believe we have amply demonstrated by documents of supreme authority, that in 1810, i.e. at the moment of the emancipation, the legal authority of the Kingdom of Chile extended over a considerable portion of land east of the Cordillera, and even as far as the Atlantic, the Treaty of 1826 would simply represent an acknowledgment on the part of the Argentine Republic of the justifiable right by which Chile later on claimed, as her own property, all eastern Patagonia, which was, in the opinion of her Government, incorporated in her dominions during the Colonial Epoch.

**The Consti-
tutions of
Chile.** An argument which it is sought to draw from the political Constitutions of Chile is more relevant to the question under the consideration of the Tribunal. In

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fact, all of them, as well as that of 1833 which is the one in force at present, contained—up to 1888—an article stating that the boundary of Chile on the east was the Cordillera de los Andes, which, according to the Argentine Statement, is equivalent to this : that Chile, by the will of her people as represented in Congress, acknowledged that her territory comprised only the land enclosed between the Andes and the Pacific Ocean from the desert of Atacama to Cape Horn.

**They are
not applic-
able to the
boundary
question.**

But the connexion of this argument with the question under discussion is merely apparent, because in reality the article quoted from the Constitutions of Chile, even were it not open to interpretation and explanation, is irrelevant in the present case ; nor does it involve an acknowledgment of the right claimed by the Argentine Republic to carry her boundaries on the west up to the highest crests of the Cordillera de los Andes.

Giving it hypothetically all the scope ascribed to it, this article would prove at most that the framers of the Constitution in 1833 erroneously believed that the territory of Chile only extended to the east as far as the Cordillera de los Andes. But is the ignorance of the framers of the Chilean Constitution of 1833 surprising, when it is seen that until recently, sixty-eight years afterwards, there was still discussion and examination of archives in order to ascertain how far the respective boundaries of Chile and the Argentine Republic reached when they became independent of Spanish rule ? In 1848 the Government of Buenos Aires discussed two claims with the Government of Chile : one formulated by the former respecting the foundation of a Chilean Colony in the Straits of Magellan ; and the other which had been presented by the Government of Santiago regarding the advances of Argentine

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jurisdiction over certain valleys in the Chilean Province of Talca. With reference to the first of these, Don Felipe Arana, Minister for Foreign Affairs of the Argentine Confederation, expressed himself in the following manner in a communication dated the 16th of November of that year.

"I believe, like Your Excellency, that to attain the best results it is indispensable that both Governments should reciprocally communicate to each other their respective titles to the disputed territories, in order to arrive at a fair and equitable decision in conformity with the rights disclosed by them."

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And referring to the second claim he stated that he could not accept the proposition of the Government of Chile tending to make immediately a general demarcation of boundaries, because, he added, for that purpose "it is necessary to collect many geographical and historical data and other scientific elements which only can be prepared slowly, with deliberation and prudence." Therefore, if in 1848 the Argentine Government acknowledged that it was absolutely necessary to produce titles in order to settle the boundary question with Chile, and declared that they needed time for the collection of the geographical and historical facts which might serve as the basis for a resolution to be adopted by mutual agreement or dictated by an arbitrator; if, moreover, the Government of Chile agreed with them that the point was open to controversy, and that it was a subject needing explanations, can it be seriously maintained that the framers of the Chilean Constitution had already decided that very question of boundaries fifteen or twenty years previously—that is to say, at a period when undoubtedly it was less studied and less known than in the year 1848, at which date

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the Governments of Chile and Buenos Aires were for the first time concerned with it?

**The Treaty
of 1856.**

But there exist many unquestionable proofs showing that the Congress of Chile itself never believed that the boundary questions between the Republic and the neighbouring States were decided by Article 1 of the Constitution. Among these proofs we shall select one most applicable to the case: that which is taken from the Treaty of Peace, Friendship, Commerce and Navigation made between the Republic of Chile and the Argentine Confederation in the year 1856. The following is the *verbatim* translation of the text of Article 39 of this Treaty.

“Both contracting parties *acknowledge as the boundaries of their respective territories, those which they possessed at the time of their severance from Spanish rule in the year 1810*, and agree to defer the questions which have arisen, or may arise, regarding this matter, to discuss them afterwards in a pacific and friendly manner without ever recurring to violent measures; and in case they should not reach a complete arrangement, to submit their decision to the arbitration of a friendly nation.”

**Interpretation
given to the
Constitution
by the Con-
gress that
approved
the Treaty.**

The Congress of Chile approved this Treaty and such approval altogether invalidates the arguments of the Argentine Statement with which we are dealing. In the article just quoted it is expressly stipulated that the territorial boundaries acknowledged by Chile are those which she possessed at the time of her severance from Spanish rule. And this declaration remained in force and served as the preliminary for the special Boundary Treaty of 1881, the introduction to which states that it is made “in fulfilment of Article 39 of the Treaty dated April, 1856.”

Therefore, at that date the Congress of Chile did not

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understand the Constitution as it is understood by the Argentine Representative for the purpose of this controversy. For that reason they authorized the declaration that the boundaries of the country on the east were those which it possessed in 1810 in conformity with the titles originating from the Kings of Spain, whence it might follow that such boundaries were either on the Cordillera de los Andes or in some other part. In this manner was established, by the only authority having power to do so, the purport of Article 1 of the Constitution of 1833, and this was done in conformity with the prescriptions of this Constitution, as to its interpretation, which is an attribute of Congress and a matter of law.

A Constitution does not imply international obligations.

However, we might well have omitted these remarks, which, strictly speaking, are unnecessary. We feel sure that the Tribunal would not attach great weight to the argument deduced from the boundaries given to Chile by her Constitution, being perfectly well aware that international obligations are not embodied in a constitution, which is essentially an instrument of domestic government. These are to be found in treaties, which are the only source of the rights of any country in connexion with another, and which the laws of nations, as expressed by writers on International Law, have accordingly placed much above municipal laws. So much is this the case that treaties remain in force even if constitutions are altered or disappear altogether, or if the countries bound by them should change their form of government. In our case, when Chile adopted her first Constitutions and included in them an article relative to her eastern boundary, she did not contract any obligation

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towards the Argentine Republic, nor, consequently, did she grant any right which might be alleged in the boundary questions then pending. Further, since the Argentine Republic subscribed to the Treaty of 1856, in which is found the mutual obligation of accepting as the only source of right to the territory inherited from Spain, the decisions of her Kings in boundary questions, the Constitution of Chile, which was of much earlier date, had thenceforward no bearing upon the question.

Although the foregoing arguments would suffice to show clearly the irrelevancy of the argument with which we are dealing, we nevertheless wish to add an historical fact which is perfectly applicable to the matter in question.

**Case of the
United
States of
America and
Peru.**

In 1852, for reasons which it would be out of place to recall here, the Government of the United States of America disputed the right of Peru over the Lobos Islands, arguing that they were not included in the Peruvian Constitution, which, as in the case of Chile, enumerated the territories belonging to the Republic. Respecting this there ensued a diplomatic discussion between the Governments of Lima and Washington, which ended in an acknowledgment by the latter of the principles for which we contend.

In a despatch addressed to the Chargé d'Affaires of the United States at Lima, under date of the 23rd of October of the said year, 1852, the Peruvian Minister for Foreign Affairs laid down this principle in the following terms :

“The fact that a part of the territory be not mentioned in the Constitutional Law of a State, which is only a political law, will not be considered by the Chargé d'Affaires as a sufficient reason for repudiating its territorial rights, based on a title derived from the

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law of nations. If this assertion be correct, Peru cannot consider that her right of ownership respecting the Lobos Islands is in any degree less than that which she possesses in the rest of the places forming her territory, whether they have or not been circumstantially and deliberately determined in her political constitutions."¹

The Government of Washington, having been informed of the circumstances of this case, categorically declared that the Government of Peru was entirely in the right and withdrew their claim. Here are the precise terms of their communication :

"The President, having examined the arguments and facts contained in the Note of Mr. Osma, under date of October 7th, with all the attention to which they are so justly entitled, and having carefully weighed the information contained in the despatches of the Chargé d'Affaires of the United States at Lima, and in the notes of His Excellency the Peruvian Minister of Foreign Affairs, has laid aside all doubt with respect to the rights of Peru to the Lobos Islands. He can see no reason for questioning any longer the legal sovereignty of that country over those islands and he hastens to make that confession in view of the injustice unintentionally done Peru in consequence of a temporary ignorance of the facts relating to the matter.

"The President has, therefore, ordered that the undersigned withdraw, without reserve, all the objections made by the last Secretary of State to the sovereignty of Peru over the Lobos Islands, and over the other Guano-producing islands on the Peruvian coast, and of which the Republic would be in possession ; and, moreover, to assure Mr. Osma, that the latter might apprise his Government of the same, that no support or protection would be extended by the United States to the acts of such of its citizens as may be contrary to this recognition."²

Case of Tarapacá. A practical and relatively recent case shows in an incontrovertible manner that the Constitution of Chile, like every law of domestic order, does not play an important part in international relations. It is known

¹ M. L. Amunátegui *Títulos de la República de Chile a la soberanía i dominio de la estremidad austral del continente americano*, Santiago, 1855, p. 137.

² Note from Mr. Edward Everett, Secretary of State of the U.S. of America. Published in the *New York Herald*, 2nd December, 1852.

that in the year 1883 Chile and Peru signed a Treaty, by virtue of which the latter country ceded to the former the Peruvian Province of Tarapacá which was from that date definitely included within the territory of the Republic of Chile and submitted to her legislation and authorities. However, the Article of the Chilean Constitution in question was not then modified, and for five years more it continued to state that the territory of the Republic extended on the north] from the desert of Atacama: that is to say it left unincluded the Province of Tarapacá, situated to the north of the desert of Atacama and which *de facto* and *de jure* was incorporated in the national territory from the time when the ratifications of the Treaty containing such cession were exchanged. Peru did not, and could not, claim that such territorial cession, based on an international covenant, should be invalidated simply because of the fact that the Constitution of Chile assigned other boundaries to this country.

The acknowledgment of the Independence of Chile by Spain.

Of identical value with the one just examined is another remark made in the Argentine Statement with a view to proving that the Cordillera de los Andes was always the boundary between the two countries, a remark based on the Treaty of 1846, wherein Spain acknowledged the Independence of Chile. In that Treaty His Catholic Majesty acknowledged the Republic of Chile as a free, sovereign and independent State formed by the territory specified in its Constitution, i.e. by that which stretched north to south from the desert of Atacama to Cape Horn, and east to west between the Cordillera de los Andes and the Pacific Ocean. The conclusion drawn from this document by the Argentine Representative is that "Chile

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does not derive from Spain the alleged right to encroach over the Andes."

This argument scarcely calls for a reply, for nobody is ignorant of the fact that a State enters *de jure* on the enjoyment of its sovereign rights immediately its complete independence is acknowledged by the former metropolis. By virtue of such sovereignty it is empowered to give itself a constitution and laws, and to modify them freely in any way it may consider advisable. Spain, when acknowledging the Independence of Chile, did not fix the boundaries of her territory; she merely respected those which, as a *de facto* independent State, the latter had spontaneously incorporated in her constitution. As Spain had no territory bordering with Chile, there was no reason why she should determine any boundary line with the latter. Neither did she exercise any dominion or protectorate over the Argentine Republic, already an independent State, which might have authorized her to act on behalf of the latter in a treaty of this kind. The one thing done by Spain was, as we have already said, to respect on her side the boundaries indicated at that time by Chile in her constitution; but this in no way prevented Chile, as absolute mistress of her own destinies, from abolishing or modifying, without the consent of any alien power, her own constitution, and from delimitating her territory more in conformity with her own rights and those of the neighbouring countries. At the time of their separation from Spain, Chile and the Argentine Republic merely severed the political ties which united them to her. As happens in political transformations of this kind, colonial units, with the territories which belonged to them at the time, went to form new independent

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States. To modify this situation, it would have been necessary for both Republics to subscribe to a treaty establishing other conventional boundaries. Far from this happening, the Treaty of 1856, dated many years after Spain's acknowledgment of the independence, confirmed, as we have seen, that same principle establishing as the origin of their respective territorial rights only what they possessed at the time of their political emancipation in 1810, and agreeing to settle this matter either by direct friendly means or by the decision of an arbitrator. In conformity with this engagement several propositions of settlement were discussed between them, and finally a treaty was signed in 1881. Chile, therefore, did not derive from Spain's acknowledgment of her independence the right to fix her frontiers at this or that point. Such question was previously decided by the Royal Orders which, during the Colonial Period, had determined the scope of their territorial jurisdiction. What Chile and the Argentine Republic gained from these treaties with Spain was that country's acknowledgment of the political organization formed therein, and her agreement to respect in their entire extent the manifestations of internal and external sovereignty fully possessed by the new Republics. But it is useless to expand any further on such clear and well-known principles of International Law.

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The situation resulting from the Revolution of 1810, by virtue of which Chile and the Argentine Republic became independent States, remained unaltered for many years. The territorial jurisdiction of either Republic was provisionally ruled, on the basis of a

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mutual agreement, by the provisions which the former sovereign had dictated for the delimitation of the territories of the Captaincy-General of Chile and of the Viceroyalty of Rio de la Plata.

The careful study of these complicated provisions was not considered as an indispensable necessity during the first twenty-five years of independent existence. That time was preferably occupied in the domestic organization of the country, and above all in placing it in a position to frustrate any attempt against its independence. Once those aims were accomplished and all danger of foreign attack was dispelled, Chile considered that the time had come to examine calmly which were the territorial boundaries of the Captaincy-General of Chile in the year 1810; and such study led the Government to the conclusion that, in conformity with the most authorized dispositions of the Spanish Sovereign, nearly all Patagonia, the Straits of Magellan, and Tierra del Fuego were included within the boundaries assigned to the Spanish Colony in which the new Republic of Chile had been formed. If Patagonian lands situated to the east of the Cordillera de los Andes really belonged to Chile, it is evident that the Cordillera itself in that part must also have belonged to her.

It has been seen that the Spanish Sovereigns did not take into consideration the Cordillera de los Andes when granting territorial concessions to their discoverers in America, or when determining the boundaries of the political entities over which their authority was to be exercised. It is sufficient to glance at the map of South America to perceive that Spain did not select the Cordillera de los Andes as the necessary frontier of the several colonies which she founded on that continent. Far from this: of the Republics which

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were organized upon the basis of those colonies, each preserved the whole of the Cordillera in their respective sections. This same rule was observed respecting the Gobernacion de Chile, to which, as has been shown, was given an extent which reached, north to south, from the desert of Atacama to the Straits of Magellan, and from west to east, *one hundred Spanish leagues* of $17\frac{1}{2}$ leagues to each degree. In this manner the Cordillera de los Andes in all that longitudinal extent was included within the Gobernacion de Chile, and owing to this circumstance it is known by many historians and geographers by the name of "Cordillera de Chile." The territories which, within the said 100 leagues, extended to the east of the Andes, comprised, beginning from the north, the ancient Tucuman; in the centre, the Province of Cuyo—that is to say the territories of San Juan and Mendoza; and in the south, Patagonia or the Magellanic lands. In 1563 Tucuman was detached from Chile, and since then the Cordillera de los Andes continued as the eastern boundary of Chile in that section. Two centuries later, in 1776, the second and last segregation took place. The Royal Order which created the Viceroyalty of Buenos Aires in that year separated from Chile the Province of Cuyo and incorporated it in the new Viceroyalty, the Cordillera de los Andes remaining thenceforward as the frontier between the two Colonies down to the southern boundary of the Province of Cuyo which had just been segregated. As regards Patagonia the Spanish Sovereign did not then, nor later, make any disposition; accordingly it continued to form a part of the Gobernacion de Chile.

**Patagonia
not included
in Argentine
territory.**

It was a general idea that the Argentine Republic did not comprise Patagonia, and we find

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evidence of this in any work on geography previous to the Treaty of 1881.

**Encyclo-
pædia Bri-
tannica.** Thus in the *Encyclopædia Britannica*, 8th edition, vol. xvii. p. 776, the following passage is highly relevant :

"The United Provinces of the Rio de la Plata, otherwise called The Argentine Confederation, a country of South America, lies between S. lat. $22^{\circ} 20'$ and $40^{\circ} 56'$ and between W. long $55^{\circ} 20'$ and $70^{\circ} 30'$; and is bounded on the N. by Bolivia; E. by Paraguay, Brazil and Uruguay; S.E. by the Atlantic; S. by Patagonia; and W. by Chile. It extends from the eastern slopes of the Andes to the Rivers Paraguay and Uruguay, which separate it from the respective countries of these names; and on the S. it is divided by the Rio Negro from Patagonia."

**American
Encyclo-
pædia.** From the *American Encyclopædia*, vol. i. p. 685, New York, 1873, we quote the following :

"Argentine Republic, formerly more commonly called Argentine Confederation, an independent State of South America, between Lat. 21° and 41° S. and Long. 53° and $71^{\circ} 17'$ W. bounded N. by Bolivia, E. by Paraguay, Brazil, Uruguay and the Atlantic Ocean and Patagonia, from which it is separated by the Rio Negro and W. by the Andes separating it from Chile. The Argentines dispute with Chile the right to the territory S. of the Rio Negro as far as Tierra del Fuego according to the original division by the Government of Spain."

**Larousse's
dictionary.** In the *Grand Dictionnaire Universel du XIX. Siècle* by Pierre Larousse, vol. i. p. 604 (Paris, 1866) the following may be read :

"The Argentine Confederation or United States of the Rio de la Plata, a federal Republic of South America, on the Atlantic Ocean. Capital—Paraná. It is situated between the 22nd and 41st degrees of south latitude; 59 and 72 degrees of western longitude. It is delimited on the north by Bolivia; on the east by Paraguay, Brazil, Uruguay and the Atlantic Ocean; on the south by the desert of Patagonia and on the west by Chile."

**Malte-
Brun's Geo-
graphy.** Malte-Brun, in his *Géographie Complète et Universelle*, vol. ix. p. 464 (Paris), referring to the boundary of the Argentine Republic, says :

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"It delimitates on the south by the Atlantic Ocean and Patagonia, from which it is separated by the course of the Rio Negro ; to the west the Cordillera de los Andes separates it from Chile ; to the north it has Bolivia for boundary ; to the east the right banks of the Rivers Paraguay and Uruguay separate it from Paraguay, Brazil and Uruguay. Almost all the large watercourses which water the Argentine Confederation debouch on the Atlantic Ocean. The principal ones are :—The River de la Plata, the River Mendoza or Colorado, and the River Negro, called the River Diamante in the upper part of its course, a river which separates Buenos Aires from Patagonia."

It would be useless to multiply these quotations. They show that in the opinion of their authors the Argentine Republic delimited on the south at the River Negro, which they approximately located in lat. 41° S., and that, from that point northwards, the Cordillera de los Andes constituted her western boundary with the Republic of Chile. For this reason the writers who discussed this matter, or who incidentally referred to it, might say with perfect propriety that the Argentine Republic and Chile were separated by the Cordillera de los Andes. The quotations which have been accumulated with so much care by the Argentine Representative to prove this fact might very well have been dispensed with. It was always acknowledged that to the north of Patagonia the Andes divided the two countries ; but where this territory commenced—that is to say from the River Diamante or, rather, from the River Negro to the south—the Cordillera de los Andes could not be acknowledged by Chile as her eastern boundary since she alleged rights of ownership to the region which was situated on the other side of the Andes.

Chile takes possession of the Straits of Magellan and their territory.

In 1843 the Government of Chile took effective possession of the Straits of Magellan with the territory pertaining thereto, and founded a colony on that spot. In taking this step they believed them-

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selves to be exercising an unquestionable right and serving at the same time the interests of navigation and humanity.

Argentine claim. Four years later, on the 15th of December, 1847, the Government of the Argentine Republic addressed the Government of Chile informing them that, during that interval of time, they had reached the conclusion that the Chilean colony was situated in the territory of their Republic, and after adducing some considerations intended to justify their assertion—among others, that the colony occupied a central part of Patagonia—they ended with these words :

"The Government of the undersigned abstain in the present note from going into more detailed inquiries upon the founded right of their claim ; and should those already stated not suffice in Your Excellency's opinion for the attainment of the object desired, they will consider it their duty to instruct the Argentine Minister, who will start for Chile with full instructions for the prosecution and due discussion of such a vital and important affair."

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Chile's answer. Acknowledging the receipt of this communication from the Minister for Foreign Affairs of the Argentine Republic, the Chilean Foreign Minister, under date of 31st of January, 1848, made the following statement :

"I immediately informed the President of this claim, and His Excellency could not but be surprised at the announcement of it, for he was far from thinking that such a claim would ever be presented on the part of the Argentine Government, or of any other, respecting a territory which has always been considered as an integral part of the Kingdom of Chile, and at present of the Republic in which it was constituted . . . However, as His Excellency received at the same time the agreeable tidings of the future visit to Chile of Señor Otero, the Argentine Minister, he considers that I am excused from giving a formal answer to Your Excellency's note, and from setting forth the titles justifying the indisputable right which Chile has, not only to the ground occupied by the colony recently established in Magallanes, but also to the whole of the Straits and to the adjacent and other lands which the said titles specify. Consequently His Excellency considers that it is most

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natural and prudent to reserve this grave matter in order to treat and discuss it in a careful, frank and friendly manner with the Argentine Minister, whose visit to Chile was ardently desired by this Government in order to arrive at an arrangement respecting the boundary in another point of the Chilean territory . . .”¹

About that same time, as has been seen, another disagreement had arisen between the Governments of Chile and of the Argentine Republic respecting the ownership and dominion over certain valleys or “Potreros” in the Cordilleras of the Chilean Province of Talca and of the Argentine Province of Mendoza.

Chile requests the settlement of the frontier. The Government of Chile ardently wished to arrive at a satisfactory agreement respecting these two questions, and with this object communicated with the Government of Buenos Aires in a note of 30th August, 1848, as follows :

“In the present case, as regards both questions titles are alleged which each of the interested parties qualifies as clear, authentic, and incontrovertible; and the inconveniences being apparent which would arise from such a conflict of claims in detriment to private individuals, citizens of one or of the other nation, and involving the danger that the relations of cordial friendship and fraternity, which it is so important to cultivate between this Republic and the Argentine Federation, may be altered, it seems proper to the justice of the two Governments to communicate reciprocally the foundation of their claims and to proceed to the exact demarcation of the boundary in which the Chilean territory and the Federal provinces touch. This is a matter upon which my Government has attempted, before now, to communicate to the Government of Buenos Aires the ardent desire with which they are inspired and cannot but urgently repeat their application in order that an agreement in which interests of no small importance are at stake may be delayed no longer.”²

The Minister for Foreign Affairs ended his communication by inquiring whether the departure from Buenos Aires of

¹ *Memoria del Ministro de Rel. Est de Chile*, 1873, pp. 10-11. ² *Ibid.* p. 14.

the Argentine Plenipotentiary, whose journey had been announced, would be delayed very much longer.

The Argentine Government declare not to be prepared for the discussion.

The Government of Buenos Aires answered the suggestions of the Government of Chile by saying that they equally appreciated the advisability of seeking, through a frank and friendly discussion, the solution of the two existing questions, the one relative to the Chilean colony in Magallanes, and the other relating to the valleys or "Potreros" of the Cordilleras of Talca and Mendoza; but they added:

"The work of demarcation of the boundaries requires other conditions than those in which this Government find themselves at present. . . . On the other hand, it is necessary to collect many geographical and historical data and other scientific evidence which can only be prepared with deliberation, study and care. This is a task which by its nature requires pacific and appropriate times, and in which it is not possible to engage at present. It is not to be doubted therefore that the Government of Your Excellency will acknowledge the force of these observations and will grant them the acceptance which they deserve."¹

In the presence of the Argentine Government's declaration that they were not prepared to enter upon a discussion and determine the boundary between both countries, the Government of Chile did not at that time insist on their desire, already expressed, to give an immediate and friendly solution to those disagreements. Chile continued to occupy the Straits of Magellan with their adjacent territories, and the controversy which had arisen regarding the dominion over certain valleys of the Cordillera was postponed.

The Treaty of 1856 sanctioned the "uti possidetis" of 1810.

The Argentine Minister, whose journey had been announced in the year 1848, reached Chile in 1855, and it is probable that he did not receive instructions to reopen the debate respecting the

¹ *Loc. cit.* p. 18.

two questions to which reference has been made, since his diplomatic action was confined to negotiating a Treaty of Friendship, Commerce and Navigation. In this Treaty, ratified in the following year, 1856, there was stated, as has been shown (page 189), the obligation of acknowledging as boundaries of their respective territories those possessed as such at the time of their severance from the Spanish dominion in 1810, and the formal agreement to postpone the questions which had arisen or might arise upon this matter, in order to discuss them afterwards in a peaceful and friendly manner without ever recurring to violent measures; and, in case of a complete arrangement not being arrived at, to submit the decision to the arbitration of a friendly nation.

This stipulation did not decide the existing difficulties: it postponed them, but established the manner in which they were to be decided later on. It designated in fact, as the source of right of both parties, the "*uti possidetis*" of 1810; and it established arbitration as a solution for all difficulties as to which they could not agree.

Moreover, in the long period of time which **Up to 1856 Argentina did not occupy any part whatsoever of Patagonia.** had elapsed from the emancipation up to 1856—that is to say during almost half a century—the Argentine Republic had not set foot on any part of Patagonia by appointing any authority or by exercising any act of jurisdiction. The latter ended at the northern bank of the River Negro, and Chile alone was engaged in opening roads for the civilization of those regions starting at the Straits of Magellan, the occupation of which, in 1843, began to render to humanity and to the commerce of all nations the most marked services. This fact is acknowledged by Argentine statesmen themselves. Señor Irigoyen,

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to whom we shall have to refer frequently owing to his decisive action in the direction of the negotiations with Chile, stated to the Argentine Congress in 1881 that he had endeavoured to avoid arbitration on the subject of Patagonia, as he was afraid of the result. And one of the reasons which led him to resist such arbitration was, as he said, that

"I feared that if this matter were to be placed before an international judge, *and he were to open the map of South America to investigate how far our settlements and our administrative action reach*, he might give to our adversaries starting from that line a more or less lengthy stretch of the territory comprised between such line and Cape Horn."¹

And in another part of the same speech, corroborating this opinion, he added :

"We must not on any account expose the continuity of our jurisdiction in the Atlantic, *which it is possible, and even probable, would be divided by an arbitral decision.*"²

The discussion of the titles on which both countries supported their claims to the ownership of Patagonia was not practically opened till the year 1872. However, in 1866 an attempt was made by Chile to settle the frontier question in this part by means of a compromise. Señor Don José Victorino Lastarria, Plenipotentiary of Chile at Buenos Aires, proposed that Tierra del Fuego be adjudicated to Chile, and that, on the continent, a boundary line be traced which, starting from Gregorio Bay, in the Straits of Magellan, should run northward along its meridian as far as 50° of latitude, and from this point up to the parallel of Reloncaví Inlet, 41° 10', along the foot of the extreme eastern ramifications of the Cordillera.

The Argentine Representative, analysing this proposi-

¹ B. de Irigoyen, *Discurso sobre el Tratado de Límites entre la República Argentina i Chile*, p. 111. ² *Loc cit.* p. 206.

tion and some phrases from the communication of Señor Lastarria, believes himself entitled to state: That the Argentine Republic did not allow a discussion regarding Patagonia, and that the Minister Lastarria never attempted to uphold any rights of Chile to that territory (Argentine Statement, p. 155).

**Chile always
alleged a
right to
Patagonia.** Nothing would be easier than to destroy these assertions by simply producing official communications in which they are contradicted by the Argentine Government. But for that purpose it may be sufficient to mention here the declarations which were made respecting this matter by the Minister for Foreign Affairs of the Argentine Republic, Señor Irigoyen, before the Congress of his country in the year 1881, with reference to the Treaty of that year.

When giving the general history of the negotiations, the Minister recalled the fact that the debates carried on at Santiago in 1872-74 "regarding Patagonia" yielded no results, and he added:

"After these debates the Government of Chile requested that the negotiations should be transferred to Buenos Aires. Nothing, they said, is to be expected from the discussion at Santiago. It has been exhausted, and the case foreseen in the Treaty of 1856 has presented itself. In it was stipulated that, if both Governments cannot settle in a friendly manner the pending boundary questions, they shall submit their decision to an impartial Government, and it is now time to designate it. The Argentine Government accepted these indications, and the conferences were in fact opened at Buenos Aires in order to constitute the arbitration stipulated, *thus admitting that Article 39 of the Treaty of 1856 ruled the question raised respecting the ownership of Patagonia.*"¹

This declaration of the Argentine Minister for Foreign

¹ *Loc. cit.* p. 35.

Affairs shows—and it is corroborated by other official documents, to which we shall have to allude in this same chapter—that the Argentine Republic admitted a discussion respecting Patagonia.

Respecting the steps taken by Señor Lastarria, the same Minister said :

"As to the territories to the south of 41°, that statesman (Lastarria) must have been disposed to question them, since, as a moderate compromise, he proposed to obtain for his country one-third or one-half of them."¹

Before expressing himself thus, Señor Irigoyen had shown that Señor Lastarria was going to question the mentioned territories, remembering that one of the instructions from the Government of Chile prescribed the following :²

"Your Excellency will put forward the aforesaid reasons and any others which your knowledge and patriotism may suggest to you in order to maintain assiduously before that Government the right which we have to claim for Chile the territories extending from the River Negro down to Cape Horn."

We need say no more to prove that the Chilean Plenipotentiary, Señor Lastarria, maintained the Chilean claims as to the dominion over Patagonia.

The negotiations of Señor Lastarria at Buenos Aires were fruitless, and another six years elapsed before any attempt was made to settle the frontier question.

In 1871 the Argentine Government accredited to Santiago as their Envoy Extraordinary and Minister Plenipotentiary Señor Don Felix Frias, who was soon to promote considerably the discussion of this point. It must be observed, however, that

**Mission to
Chile of the
Argentine
Plenipoten-
tiary, Señor
Frias.**

¹ *Loc. cit.* p. 28.

² *Loc. cit.* p. 26.

Señor Frias had no instructions to reopen the debates upon the pending questions.

"Five years after Señor Lastarria's mission," said Señor Irigoyen, in Congress, "the Argentine Government accredited a Legation to Santiago. Its object was not to claim the Straits, nor to continue the discussion begun in 1848 regarding the valleys or Potreros of the Cordillera; it was directed to strengthening the relations of the two Governments."

This declaration shows that, nearly a quarter of a century after the occupation by Chile of the Straits of Magellan and their territories, the Argentine Government, who alleged a right to them, felt no necessity to claim them, nor to promote any arrangement regarding the matter.

Yielding, however, to a suggestion from the Government of Chile, who saw in the unsettled state of their respective boundaries a source of disagreement in the relations between the two countries, the Argentine Plenipotentiary presented a proposal of settlement. It consisted in tracing the boundary line, starting from Peckett Bay, in the Straits of Magellan, and running in a westerly direction till it met the Cordillera de los Andes.

The Minister for Foreign Affairs of Chile considered the proposed compromise wholly unacceptable. "This division would be equivalent," he said, "not to a prudent and reasonable compromise respecting the vast disputed territory, but to the renunciation by Chile of the rights to all Patagonia which she derives from clear, and in my opinion unquestionable, titles." He added that, dealing with territories to which both nations believed they had a right, the fairest arrangement would be to divide them in half, and he formulated a counter proposition in conformity with

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this idea. As the disputed region was, according to Minister Ibañez, that stretching to the south of the River Diamante, he said :

" . . . My Government would agree that the separation be determined by the 45th parallel from the Atlantic to the mentioned chain of the Andes. In this manner the Argentine Republic would acquire the greater portion of Patagonia and Chile would possess its southern part as far as Cape Horn."¹

With this object, and leaving somewhat in the background propositions for an agreement which became impracticable from the extreme point of view of the Argentine proposal, both Ministers went fully into the discussion of the titles supporting the claims of one and the other country.

This discussion lasted for almost three years, and we have no intention of occupying therewith the time of the Tribunal.

It is rejected by the Argentine Government. Señor Irigoyen, giving the history of the long debate, recalled Señor Ibañez' proposition, and added: " This proposition was rejected by our Minister, and the discussion *embraced all Patagonia the Straits and the Potreros questions being neglected.*"

But unfortunately such discussion did not succeed in reconciling the conflicting demands of the parties, and the Government of Chile believed that the opportunity had presented itself for giving effect to provisions of the Treaty of 1856, submitting the solution of this controversy to the decision of a friendly power.

Patagonia remained abandoned by Argentine in 1872. In referring to the epoch when the Treaty of 1856 was signed, we said that, up to that time, the Argentine Republic had not exercised the slightest act of jurisdiction over Patagonia. We have now

¹ *Memoria del Ministro de Rel. Est. de Chile*, 1873, p. 55. ;

reached the year 1872, and we can say the same in this respect, supporting our assertion by an official Argentine document. Congress having requested certain information from the Executive, the corresponding Ministry, in charge of the distinguished Argentine statesman, Don Luis L. Dominguez, addressed to it a message dated the 6th of September, 1872, in which the following words may be read :

“The last settlement which the Republic has on the Atlantic is that of Carmen de Patagones, situated on the banks of the River Negro, and a small colony of Welshmen upon the Chubut. As the Argentine Republic lacks a fleet and coastguards, *Patagonia is, as it has always been, in the most complete abandonment.*”

Argentine project of 1873 to colonize Patagonia. At the same time there arose some incidents caused by the attempt to exercise jurisdiction in the disputed territory. There is no need to trouble the Tribunal with a detailed narrative of it. In this respect, it will be sufficient to recall that the Argentine Government presented to Congress in June, 1873, a project of law for the colonization of the Patagonian territories. This happened precisely at the time when their ownership was being discussed at Santiago.

Chilean protest. The Government of Chile considered this measure to be unjustifiable. Consequently, they protested by note of the 25th of June of that same year, and at the same time declared to the Argentine Government that the Chilean Government “would not consent to any act diminishing their sovereignty over the entire extent of the territories in which they found themselves in actual and pacific possession and which had their natural boundary in the River Santa Cruz.” The Government of Chile made public this declaration, which was considered indispensable to leave

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clearly defined the respective position of both nations with regard to the controverted territories until a direct arrangement or the decision of an arbitrator should dispose otherwise.

The Argentine Government acknowledged the receipt of this protest saying that Congress would take cognizance of it, and no change occurred in the disputed territory.

Negotiations for arbitration in Buenos Aires. Meanwhile as the long controversy maintained in Santiago had proved fruitless, the Government of Chile ended it by directing Señor Don Guillermo Blest Gana, their Minister at Buenos Aires, to obtain the consent of the Argentine Government to constitute the arbitration stipulated in the Treaty of 1856 in the event—which had happened—of the direct arrangements falling through.

Argentina includes Patagonia within the project of arbitration. As to the negotiations carried on with that object by the Minister of Chile, their result is the only point which is of importance. The Argentine Foreign Office gave a favourable reception to the idea of negotiating a treaty with that object and it determined the matter of arbitration. So it appears from a note addressed by Señor Don Carlos Tejedor, the Minister for Foreign Affairs to Señor Blest Gana, under date of the 27th of April, 1874, in which, condensing what had been discussed during the conference which he held with him, he said :

“The third point of which I spoke to Your Excellency was the matter of arbitration, which did not appear clearly defined in the discussion which had taken place up to the present time, and which *the Argentine Government would determine, including Patagonia, the Straits of Magellan and Tierra del Fuego.*”¹

¹ *Memoria de Relaciones Exteriores de Chile*, 1874, p. 275.

The same note records that Señor Blest Gana made no remark concerning the proposition on account of his having received no detailed instructions respecting it, and a little further on, it adds :

“The Argentine Government accept with pleasure the invitation to draw up a Treaty of Arbitration, which, besides fulfilling the Treaty of 1856, would end, once and for ever, the only differences which divide the two countries ; taking it for granted that Your Excellency will be provided with instructions sufficient to draw up the agreement in the terms indicated.”

The Government of Chile accepted all the proposals of the Argentine Government as to the subject matter of arbitration and as to the power of the arbitrator, and sent to their Legation at Buenos Aires the necessary instructions to draw up a treaty embodying the agreement of both Governments. Consequently, the Chilean Minister informed the Argentine Foreign Office by a note of the 24th of August, 1874, that its proposals had been accepted.

Argentina takes action against arbitration. The agreement was not, however, drawn up immediately, on account of a pending change in the Government of the Argentine Republic ; and it was not drawn up afterwards because the new President, Dr. Avelaneda, made every effort to avoid the obligation contracted in 1874 by the previous administration. This is not affirmed by us, but by Dr. Irigoyen, his Minister for Foreign Affairs.

“The President of the Republic,” said Señor Irigoyen in his speech of 1881 already quoted, “undertook to consider that complicated question (of the boundary), and the first resolution was to maintain integrally the jurisdiction of the Republic all along the coasts of the Atlantic, and to defend her rights to the vast stretch of Patagonia, *endeavouring to guard it by all such means as prudence should suggest from the inconveniences and dangers of the arbitration to which it was already pledged.*”¹

¹ Irigoyen, *Discurso*, etc., p. 54.

And in another passage he adds :

"We therefore had to accept the facts as we found them, and to manœuvre, if I may use this word, in the most convenient manner *to attain our object ; the constant idea which as Minister for Foreign Affairs I have held in this matter : to save Patagonia from the risks of an arbitral decision.*" ¹

This sufficiently explains the failure of these negotiations, which had advanced to the point shown by the preceding documents. The rock on which they split was Patagonia, to which Chile believed that she had a right by virtue of the titles which she did not hesitate to submit to the decision of an arbitrator, and which the Argentine Republic also wished to acquire by "manœuvring" to avoid the arbitration to which she had engaged to submit when the Treaty of 1856 was signed.

We think it advisable to give at this point a **Résumé of this chapter.** very brief summary of the conclusions, drawn from the history of thirty-three years, which this chapter comprises and which presents the situation such as it was when the negotiations were begun in the year 1877.

In 1843 Chile had founded a colony in the Straits of Magellan and declared that by this act she took possession of the adjacent lands and of the rest belonging to it, by virtue of the rights which she had inherited from the Crown of Spain and which were derived from authentic titles. She referred in this declaration to Patagonia, which, in the most authorized cartographical document of the Colonial Epoch, the map of Cano i Olmedilla, appeared with the name of *Chile Moderno*.

When protesting against this act in December, 1847, the Minister for Foreign Affairs of the Argentine Confederation argued that the said colony being situated "almost in the

¹ *Loc. cit.* p. 60.

centre of the Straits" and occupying "a central part of Patagonia," the Chilean Government had invaded territory which belonged to the Viceroyalty of Buenos Aires and which had passed by inheritance to the Argentine Republic.

There being conflicting claims to that territory which were said to be based on good titles, the Governments of Chile and of the Argentine Republic agreed to discuss them in order to settle the question amicably. This discussion of title only took place in 1872. In the meantime, and while the point of law was defined, the situation *de facto* remained unchanged, it having been regulated in 1856 by a treaty which declared that the boundaries of both Republics were those which they possessed at the time of their emancipation in 1810, and which bound both parties to defer the discussion of such questions as had arisen or might arise respecting them, to debate them amicably later on, and eventually to submit them to the decision of an arbitrator.

This situation remained unchanged until 1881. In the interval it was established with even more precision and clearness that the territory which both countries disputed was that of Patagonia, from Rio Negro to Cape Horn.

Simultaneously with the foregoing question there arose another in 1846 concerning the right as to the ownership of certain valleys of the Cordillera to the north of Patagonia. This question was, like the previous one, deferred, and was naturally comprised in the agreement to submit all the differences regarding boundaries to the arbitration of a friendly nation if it should prove impossible to decide them by direct agreement. However, it was never again considered at length, although from time to time its existence was recalled in diplomatic conferences and documents.

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Respecting this the Government of Chile assumed a perfectly logical attitude. Basing themselves on the *uti possidetis* of 1810, which was the rule of delimitation that both countries accepted by express and formal agreement in the Treaty of 1856, they held that the valleys of the Cordillera, in which it could be proved that the Spanish authorities of the Captaincy-General had exercised jurisdiction, should belong to Chile. On that account, in their protests of 1846, they invoked an immemorial and continuous occupation in support of their rights.

But how could the difficulty be overcome in the cases where it would not be possible to demonstrate sufficiently that some valley in dispute had been ruled by authority of the Gobernacion de Chile or of the Viceroyalty of Buenos Aires? As the rule of the *uti possidetis* was insufficient in those cases, the Government of Chile tacitly agreed to the understanding that such cases should be ruled by the principle of the water-divide, as already mentioned in our former Statement. On the side of the Argentine Republic, there can be no doubt as to the fact that this principle constituted the general and traditional rule for the demarcation of the boundary. This will be more fully shown in the following chapter.

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Chapter VIII

THE TRADITIONAL BOUNDARY

WE have just alluded to the existence of a sort of tacit and traditional understanding, which had been established in principle between Chile and the Argentine Republic previous to 1881, acknowledging the water-parting line as the boundary in the section of the Cordilleras not included in the Patagonian controversy.

**Argentine
under-
standing.**

The Argentine Representative has not contradicted the existence of the traditional understanding just mentioned, but he contends that the several expressions which were employed to designate the boundary line, such as "culminating edge which separates the streams," "water-parting line," "*divortia aquarum* of the Andes," corresponded not to a "continental divide," but to the "line of the highest crests which divide the waters within the Cordillera," and to the "watershed peculiar to the highest chain," etc.

**Chilean
under-
standing.**

Chile has upheld the contrary view. In her judgment, the traditional understanding, in the opinion of the two countries and in the spirit of the relations which their Governments maintained from the epoch of the Independence, answered to an idea clearly indicated by those phrases; and the line of demarcation

which they indicated was no other—and could be no other—than that continental water-divide, applicable in all the regions of the bordering territory over which the effective possession referred to in the Treaty of 1856 could not be proved.

It is therefore a point of capital importance in the present controversy to investigate what was understood by “traditional Andean boundary,” whenever questions or difficulties arose to determine it.

Before going further, however, we may be permitted to make an expository statement which will help to remove all misunderstandings and to explain certain apparent contradictions—though merely verbal in fact—which may be observed both in the Chilean and Argentine documents. What was called “boundary question” between Chile and the Argentine Republic from the year 1847 to 1881 was simply that referring to the rights of dominion over the southern extremity of the American continent; that is to say, from the River Negro southwards. There was also the controversy as to the better right to the ownership of certain valleys of the Cordillera, to the north and outside of that region; but it was always considered of such secondary importance as compared with the main question of Patagonia, that the expression “boundary question” was reserved for the latter; the phrase applied to the other being “Potreros (or Cordilleran valleys) question.” This double employment of the word “question,” applied to matters differing so widely, explains the apparent contradictions which we wished to remove. An example of these apparent contradictions is afforded by the Argentine

The name of
“boundary
question” is
given only to
that of
Patagonia.

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negotiator himself, Dr. Irigoyen, who, having given his assent, as will be shown presently, to the determination of a line of boundary through all that part of territory as to which "no boundary question whatsoever has arisen up to this date," continued to refer on several occasions to the "cuestion de los Potreros de Cordillera" or "Cordilleran valleys question" in his speech before the Argentine Congress,¹ a question which had arisen precisely in the region referred to in the draft of Agreement.

Origin of the Cordilleran Potreros or valleys question. The Cordilleran Potreros question which arose in 1846, and other cases which we are about to mention, afford conclusive proofs as to the true

scope given to the words "traditional boundary in the Andes." This question arose out of a protest presented by the Minister for Foreign Affairs of Chile against the attempt of the authorities of the Argentine Province of Mendoza to tax the Chilean citizen, Don Manuel Jiron, the owner of the valleys known by the names of Potreros del Yeso, Valenzuela, Montañez, and Los Angeles, which valleys are situated between parallels 35° and 36° of south latitude.

As already stated, the Government of Chile had informed the Government of the Argentine Republic that these valleys formed part of the Chilean territory, and that they had been under the jurisdiction of their authorities from time immemorial. It was, in fact, proved that the civil suits which had arisen between Señor Jiron and other neighbouring proprietors as to the ownership of these same valleys had been submitted to the judicial authorities of

¹ *Loc. cit.* pp. 29, 30, etc.

Chile and decided by them. The Government of Chile considered that in this case the rule of the *uti possidetis* of 1810 was applicable, and, on the strength of this doctrine, formulated a claim on the 7th of April, 1846, in which they protested against that violation of the territory of the Republic.

The Argentine Government, who also claimed to possess titles of dominion over these very valleys and who promised to produce them, no doubt wished to collect data in support of their resistance to the Chilean claim; and it is evident that, at their suggestion, the Governor of the Province of Mendoza, under date of the 4th of December of this same year 1846, appointed a Commission of Experts to examine the valleys claimed by Chile, to draw up a map of them and to study especially *the course of the waters*.¹

**Report of a
technical
Argentine
Commission
in 1847.**

The Commission presented their report on the 27th of April² and in it the following statement may be read:

"The Cordilleras de las Lletas and Planchon which are drawn on the annexed map, are the continuation of the preceding ones, and the valleys Valenzuela, Montañez, el Yeso and los Ángeles, which are in the same situation as that of the Tunuyan, cannot in any circumstance be considered as an integral part of Chilean territory.

"*The rivers which flow from them*, as may be seen on the map, are affluents of the great Colorado which empties itself into the Atlantic on the Patagonian coast. . . .

"In order to show more clearly how unfounded is the claim to the valleys in question, the map we present has *been extended up to the sources of the River Grande*, and in view of this it must be inferred that in the same case there are to be found the valleys Hermoso, El Cobre, Santa Elena, etc., concerning which no claim has been made, in spite of the fact that the Chilean farmers have been paying pasturage there for the last ten years."

¹ The corresponding documents have been published in Señor Quesada's book entitled *La Patagonia i las tierras australes del continente americano* (Buenos Aires, 1875), p. 23. ² *Ibid.* pp. 23 and 24.

Plainly, then, ever since the first difficulties arose concerning the ownership of the frontier territories, the Argentine authorities maintained that the boundary was marked by the sources of the rivers which flowed to the territories of both nations. "The valleys claimed by Chile," said the report, "cannot in any circumstances be considered as an integral part of Chilean territory" because "the rivers which flow from them are affluents of the great Colorado which empties itself into the Atlantic."

And in order to indicate the boundary of the Argentine territories in that region, the Commission of Experts "extended the map up to the sources of River Grande." It was therefore necessary, in the opinion of the technical commission, to ascertain the ultimate course of the waters flowing from the valleys in dispute, because upon this circumstance depended the ownership over them which might be claimed by either Republic. The fact being established, in their opinion, that the waters which flowed from those valleys were affluents of rivers running towards the Atlantic, there could be no doubt that the legitimate ownership of those valleys was vested in the Argentine Republic. Briefly, in the opinion of the officials of this Republic, the determination of the boundaries between the two countries was subordinate to a simple expert operation consisting in the investigation of the head-waters of the rivers and streams which in their ultimate course run towards the Atlantic or towards the Pacific. And, starting from this principle, the Commission stated in their reports that, for the reason given, not only did the valleys referred to in the Chilean claim belong to the Argentine Republic, but also others which are found in similar circumstances: as, for instance, the valleys Hermoso, el Cobre, and Santa Elena.

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We shall see later that such was also the opinion of the Governor of Mendoza and of the Argentine Government.

To show that this same idea as to the principle of demarcation was likewise shared by the persons in the Argentine Republic who had applied themselves to the study of this matter, we referred in our previous Statement to certain expressions which Dr. Don Antonio Bermejo, an ex-Cabinet Minister, inserted in his book entitled *La cuestion chilena i el arbitraje*. Señor Bermejo wrote his book in 1879, that is to say, when the formula referring to the principle of demarcation had already been agreed upon between the Chilean and Argentine Plenipotentiaries; and in it, when referring to the Cordilleran Valleys Question, he expressed his ideas in these terms (p. 93) :

Dr. Bermejo's opinion.

He locates the boundary in the divortia aquarum.

"The most elevated mountains of the Andes, in their prolongation to the southern extremity of the continent, *separate in diametrically opposed directions the water-courses* which fertilize the territories stretching to both sides of it.

"Given the extent of the Cordilleras, *which attain a considerable breadth* in almost their entire length, the necessity is obvious of adopting, respecting the valleys included in them, a line of demarcation which might adjudicate them equitably and reasonably to the bordering nations.

"In this case, the *water-parting line*, that is to say the *divortia aquarum* defined as the boundary by all writers, gives a clear and convenient basis for the delimitation of territorial sovereignty. More than this: many authors, such as Bluntschli, teach that in doubtful cases the water-parting line constitutes the legal boundary."

The preceding words are free from all ambiguity. The defender of the Argentine rights recalled with perfect accuracy the fact that the Cordillera de los Andes attains a considerable breadth, in order thus to show the impossibility of finding among its several orographical features a principle of demarcation exempt from all doubt. And in view of this

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situation he observed that there existed a clear hydrographical basis to determine equitably the possessions of both countries, since those same high mountains separated from north to south in diametrically opposed directions the water-courses which fertilize the lands of both countries. This line of separation of the waters from north to south, this general *divortium aquarum* was what, in his opinion, should constitute the principle of demarcation between both nations; and Dr. Bermejo recommended this principle not only because it was clear and equitable, but also because it is supported by the opinions of authorities on International Law. It appears, therefore, that at that time the very defenders of the Argentine interests gave to the precepts of writers on International Law, not the meaning which it is now sought to attach to them by the Argentine Representatives, but the same that has always been given to them in Chile.

But it is now objected (Argentine Statement, p. 81), that the straightforward and precise statement made by Dr. Bermejo regarding the structure of the Cordillera and regarding the manner in which the frontier line should be traced thereon has not the natural significance inherent to its terms, if the following paragraph of the same Señor Bermejo, which precedes the words quoted, be taken into consideration :

“The demarcation between the Chilean and Argentine possessions on the summits of the Andes is connected with the discussion respecting the Potrereros of the Cordillera which we shall now examine.”

It is difficult to understand how the preceding words can alter the theory of demarcation which the author maintains. Dr. Bermejo, after writing this sentence, goes on, as we have already seen, to explain how the boundary on the summit of the Andes must be understood and applied, maintaining, with

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the support of authors, that the international water-divide which is fixed by nature at the sources of their respective fluvial systems must be adopted.

But, in order that there may be no doubt regarding Señor Bermejo's idea, it will suffice to point out in his own words the reasons upon which his opinion was based. When analysing the report on this matter of the Commission appointed by the Governor of Mendoza, he added (page 95) :

He locates the boundary in the origin of the streams. "Although insignificant at first sight, it must be acknowledged that this question (that of the Potrerros of the Cordillera) is of the greatest importance, however slightly the special condition of the Andean provinces be taken into consideration. The industry of these provinces being entirely dependent on the irrigation supplied by the streams which rise in those summits, it will be understood that the Chilean jurisdiction, if extended *to this side of the origin of those streams*, would hold the very life of those Argentine provinces at its mercy."

He mentions besides that the Commissioners made on the ground (page 102)—

"a minute examination whereby it was ascertained that the Andes form throughout their extent two branches of Cordillera separated by great valleys of more or less extent, *which present their main declivity to the east*; that in their midst are joined the waters proceeding from both mountain chains, and therein are formed the innumerable rivers which rise to the surface of the Argentine territory."

And elsewhere he says, (page 223) :

"The valleys of the Cordillera claimed by Chile are situated on the *eastern side of the water-parting line* and, *therefore*, in Argentine territory."

The foregoing phrases show how the boundary was understood by persons specially dedicated to the study of the matter. It was considered that the Argentine Republic could not consent that the valleys east of the *water-parting line* should not belong to it, and it was also

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maintained that this line should leave on the Argentine side the whole of its rivers from their sources, because, as Señor Bermejo puts it, the industries of those Andean provinces were entirely dependent on "the irrigation supplied by the streams which rise in those summits," and "the Chilean jurisdiction," if extended to this side of the origin of those streams, would hold the very life of those Argentine provinces at its mercy.

We deem it advisable also to observe that Señor Bermejo,¹ when commenting upon the report of the Commissioners which we have just quoted, underlines the phrase referring to "the great valleys which *present their main declivity to the east*," thus drawing attention to the fact that it is "the declivities of the valleys," and not of the slopes of the hills or mountains, that he has always borne in mind whenever he has spoken of "streams which flow or descend to one side and the other." In the geographical part of this Statement it will be shown that all along the region comprising the valleys mentioned the eastern Cordillera is, in its passes and summits, much more elevated than the western one; and not only much more elevated, but also less accessible, for not more than five paths traverse it, whilst the other—the western—presents nineteen passes.

Now, none of these circumstances which, according to the theories of the present Expert of the Argentine Republic, would be necessary to characterize the dividing line, was taken into account at the time either by the surveyors of the Commission appointed by the Governor of Mendoza, or by the Argentine Government to whom the question was referred.

¹ *La cuestion chilena*, p. 102.

As may be seen, there was no idea of submitting the boundary line to the conditions which it is now sought to attribute to it on the Argentine side. The *divortium aquarum*, viz. the international water-parting line, was defined and claimed with perfect clearness. The boundary with Chile was not sought for on the most elevated crest of the Cordillera as is now claimed, but only in the line which would leave to the Argentine Republic the whole of the watercourses, on the absolute possession of which the progress and life of those provinces was considered to depend.

Señor
Quesada's
opinion.

This has also been expressly acknowledged by the distinguished Argentine writer and diplomatist, Don Vicente G. Quesada, in his book entitled *Virreinato del Rio de la Plata*. Speaking of the epoch of the fourth Viceroy, Arredondo, he says :

"Then the authorities on both sides of the Andes selected the '*divortia aquarum*' as the territorial frontier, and they conformed to it in the complicated emergencies caused by the Indians of both frontiers." ¹

And the proof that Señor Quesada, when speaking of the "*divortium aquarum*," understands by this the inter-oceanic water-parting and nothing else, is proved by a passage in his book entitled *La Patagonia i las tierras australes del continente americano*, wherein he analyses the report of the Commission of Engineers appointed by the Governor of Mendoza in 1846, to which we have already alluded. After reproducing it, he says :

¹ *Virreinato del Rio de la Plata, 1776-1810. Apuntamiento crítico-histórico para servir a la cuestion de limites entre la República Argentina y Chile.* (Buenos Aires, 1881), p. 209.

"This document shows what the pending antecedents of the frontier are—that is to say, as to boundaries in the same Cordilleras between the two bordering nations—the unquestionable fact that the Cordillera divides both territories being acknowledged. *It is therefore clear that until a scientific survey determines the dividing line* the questions which always arise *whenever there is no tracing on the ground* cannot be avoided. . . . The question was circumscribed to the ownership of the 'potreros' bordering the Province of Talca. . . . It was a mere question of the dividing line in the Andes, of the '*divortia aquarum*.'" ¹

Again, in the same book, when discussing the same matter, he adds :

"It is therefore proved, in view of the official documents of Chile, that from 1810 until after the protest of the Argentine Government regarding the Colony in the Straits, there was never any question as to the eastern frontier of that country, and that the tracing of the dividing line was the one subject of negotiation. This is natural and unquestionable. France is divided from Spain by the Pyrenees, and the treaty and the surveys which determined the line of demarcation are of recent date. In the same manner, Chile and the Argentine Republic being separated by the Andes, require that the dividing line, the *divortia aquarum* which the Chilean Government call eastern frontier, be fixed on the mountain in order to avoid the conflicts which, owing to the collection of charges for pasturage by the authorities of Mendoza, had given rise to reciprocal claims" ²

**Report from
the Governor
of Mendoza
of 1864.** Zealously persevering in the accumulation of data with which to maintain their claims to the possession of the interior valleys of the Cordillera in question, in 1864 the Argentine Government further requested a report on the matter from the Governors of the provinces bordering on Chile.

The Governor of Mendoza forwarded some data and expressed some opinions which confirmed and amplified the conclusion of the Commission of Experts of 1846.

¹ Vicente G. Quesada, *La Patagonia i las tierras australes del continente americano* (Buenos Aires, 1875), pp. 483-487.

² Vicente G. Quesada, *Loc. cit.* p. 533.

This official affirms, when referring to the valleys enclosed between the Cordilleras del Planchon and de las Llaretas, that they are Argentine, and that they are so because the boundary with Chile is situated in the western Cordillera del Planchon, and not on the eastern one—de las Llaretas. It is in the Cordillera del Planchon, he adds, that *the courses of the rivers* descending towards the Rivers Grande and Colorado, which flow to the Atlantic, *take their rise*, passing through the disputed valleys, or “Potreros” and crossing the Cordillera de las Llaretas. It should here be observed that, this being the foundation of the Governor of Mendoza’s assertion *regarding the nationality of the valleys in question*, the contrary conclusion would have been inevitable had the investigations carried out yielded inverse results. Had the watercourses been found to rise in the Cordillera de las Llaretas and to flow to the Pacific, crossing that of Planchon, evidently the intermediate valleys would have been Chilean.

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A similar argument is applied, and a similar conclusion is reached, in the case of the valley of the Tunuyan, to which the first part of the report refers. The Governor of Mendoza says that if, in the valley formed by the two equally elevated Cordilleras de los Piuquenes and Portillo, *a river had not been formed, the boundary would have been doubtful*. And he continues, stating that *the river Tunuyan is that which has defined the frontier over the Cordillera de los Piuquenes*, opening a passage towards the territory of the Province of Mendoza, across the Cordillera del Portillo.

The logical conclusion from the declarations of the report is that, if the river Tunuyan decides the boundary to be over the western Cordillera of Piuquenes because of its having opened a passage across the eastern chain of the Portillo towards

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Argentine territory, the boundary would be on the Cordillera del Portillo had the river opened a passage through that of the Piuquenes towards Chilean territory. To say, as the report affirms elsewhere, that the absence of a course of waters, which might indicate the hydrographical dependence of the valley, would have made the *boundary doubtful*, amounts to saying that this boundary is to be found on the line deciding the said hydrographical dependency.

However, these rigorously logical conclusions are controverted in the Argentine Statement. It says (pp. 76, 77):

"The statement of the Governor of Mendoza would not have been brought forward by the Chilean Republic had there not existed the constant tendency of confounding a mountain watershed with the water-divide of a continent dependent or independent, as the case may be, of mountain features. *It is true that in that statement the courses of waters, rivers and streams are mentioned, but it is not said that the boundary runs through their sources*, as some proceed to the Pacific and others to the Atlantic—it is said, on the contrary, that 'the greatest heights from which these' rivers start are what has always been 'considered as the boundary between the two territories.'"

These assertions do not stand comparison with the text of the document to which they refer. The Governor of Mendoza says: "The greatest heights from which these rivers rise"; but in the preceding lines, which have not been reproduced in the Argentine Statement, he states that those rivers "*are the rivers which with all their affluents flow to the plains and valleys of the Argentine and Chilean territory*, such as the rivers Mendoza and Aconcagua, the Tunuyan and the Maipo." That is to say, that in the view of the Governor of Mendoza the frontier line stood where rivers with opposite courses rise.

It would be unreasonable to suppose that this official was ignorant of the fact that the Aconcagua and the Maipo are

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rivers running to the Pacific, and that the Mendoza and Tunuyan are rivers which run to the Atlantic, and it would have been unnecessary to name the oceans into which they respectively empty, since, had it been said that one set of rivers descends to Argentine territory, it would have been equivalent to saying that they were tributaries of the Atlantic; and the statement that the others descend to Chilean territory would amount to saying that they were tributaries of the Pacific.

* * * * *

Following the chronological order of facts we come to the negotiations begun at Buenos Aires, in 1865, by the Minister Plenipotentiary of Chile, Don José Victorino Lastarria. The Argentine Representative also refers to them (p. 154) with the object of showing that, at that time, the Government of Chile wished to abandon the traditional boundary and to adopt another principle for the delimitation of the entire frontier.

He draws this conclusion from the following paragraph of a note addressed by Señor Lastarria to the Minister for Foreign Affairs for Chile :

“Your Excellency directs me not to accept any other boundary in the Cordillera de los Andes than the summits of the most eastern ranges of this Cordillera, the Government of Chile having always maintained that this boundary runs along the summits of the most elevated branch of the Andes which separates the watercourses to the east and west, upon which point both our Governments have always been in accord, this decision never having been disputed.”

To determine the meaning of the order from the Government of Chile to which Señor Lastarria refers, it will suffice to recall the fact that this diplomatist had presented to the Argentine Government a draft for a compromise in Patagonia

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which, in the opinion of the Government of Chile, embodied excessive concessions. The Minister for Foreign Affairs declared that on this account the draft was unacceptable, unless the Argentine Government would consent to counter-balance the terms of the compromise by acknowledging Chile's ownership over all the Cordilleran valleys which might exist to the north of the disputed territory, with which object the frontier should there be traced over the summits of the extreme eastern ranges of the Andes.

Moreover, the very quotation made in the Argentine Statement which we have just cited shows that Señor Lastarria's opinion was that the dividing line should run over "the summits of the most elevated branch of the Andes *which separates the watercourses on the east and west.*"

Señor Lastarria further added that such had always been the unquestionable opinion of the Governments of Chile and of the Argentine Republic.

**Proposition
of the
Chilean
Plenipoten-
tiary Señor
Lastarria in
1866.** Señor Lastarria's words quoted in the Argentine Statement (pp. 154 and 155) are a fresh confirmation that the traditional boundary, tacitly acknowledged until then by both Governments, ran along the most elevated summits of the Andes which separate the watercourses flowing to the east and west. The Chilean Plenipotentiary drew the attention of the Government of Chile to the fact that to claim as the boundary the easternmost summits of the Cordillera all along the extent in which it separates the two countries would be equivalent to abandoning the principle tacitly acknowledged for some time back by both Governments. Señor Lastarria forgot, when making this remark, that there was no question of confirming by a treaty what usage had established beforehand, but that

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it was a case of compromise in which both parties were free to make reciprocal concessions, the fact that tradition indicated this or that limit being no bar to their freedom of action. Chile was disposed to surrender its claims to almost the whole of Patagonia in favour of the Argentine Republic, but contended that, in exchange, her dominion should be acknowledged over all the valleys of the Cordillera which should remain to the west of the easternmost summits of the Cordillera.

* * * * *

The report of the Governor of Mendoza already alluded to was issued in 1864, but the Argentine Government made no use of it in the boundary controversy until 1872. It was then inserted by the Minister for Foreign Affairs, Señor Tejedor, in the Report which he presented to Congress.

In the following year another official document on the same matter was published, and sent to the Ministry of the Interior of the Argentine Republic, by the provincial Government of San Juan on the 28th of September, 1872.

Another Argentine official document. This document is important as once more confirming the technical sense given in the Argentine Republic to the expression "water-parting line." It is also important as a precedent proving that the scientific opinion of that country was that, according to the principle of demarcation of the main chain of the Andes, the valleys lying west of the high Espinacito range (lat. $32^{\circ} 10'$) would have been Chilean, and that only "the water-parting line between both Republics" has made them become Argentine. And if only the principle of the water-divide adjudged to the Argentine Republic valleys in that region which lay to the west of the highest chain of the Andes, logic and

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equity compel the acknowledgment of Chile's right in the Patagonian region to the valleys which that same water-divide leaves on its side without regard to the height of the mountains on the west.

The origin of this document may be stated here :

On the 7th of February, 1872, the Government of San Juan entrusted to a commission composed of the engineers Don Octavio Nicour and Don Matias Sanchez the survey for a cart road to Chile by Los Patos Pass. On the 28th of September of that year they presented their project and plans, accompanied by an interesting report, which was immediately printed as an "official publication," and the original was sent to the Ministry of the Interior of the Confederation.

In this report, the most important and relevant parts of which we extract in the Appendix, Señores Nicour and Sanchez say that, abandoning the rule hitherto observed by *most of the geographers* who had studied the Cordilleras of San Juan, they have accepted as the Chilean-Argentine frontier line that which runs by the pass of Valle Hermoso. They add that this line is usually made to pass by the peaks of Donoso (Ansilta), Mercedario, Ramada and Aconcagua, which belong to the line of greatest altitude in the Cordillera ; but that they (the reporting engineers), following a more general and universally adopted principle, make the frontier pass *by the water-parting line of the two Republics*, which is in this case different, being much lower and situated further west than that of the greatest heights. And they even add that the selection of the line of greatest altitude for the frontier would have the drawback of leaving the

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**Report of
a technical
Commission
appointed
by the
Governor of
San Juan.**

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"Valle de Los Patos" and "Valle Hermoso" in Chilean territory, although they are *irrigated by Argentine waters, and therefore should be Argentine territory.*

The subordination of orographical features to hydrographical lines as reasonable indications of the Andean frontier, could not be stated with greater clearness and precision.

In the view of the Commission, the Cordillera del Espinacito is "the great central Cordillera," "the most gigantic Cordillera of the world," and the River Los Patos crosses it by "a deep cañon formed in the very heart of the Cordillera," over "the deep and complete section of the Cordillera," "made by nature itself . . ." The rivers Volcan, Vuelta de los Caminos (Teatinos), Yeseras which descend from the Aconcagua, Ramada and Mercedario peaks, belonging to the Argentine Cordillera, flow west of this Cordillera, joining in the Valley de los Patos, and cross to the eastern slope by means of the great fracture of the said Cordillera. For them this cañon, this "true feature of the Cordillera" is the only circumstance determining the Argentine nationality of the Valley de los Patos. This follows from the simple fact that its waters open a passage towards the Argentine Republic.

They consider the boundary by the water-divide reasonable and favourable.

The explicit declaration of the Commission, that in their judgment not only was it *reasonable* to select a water-parting line as a principle of demarcation, but that it was also *favourable* to the Argentine Republic, is well worthy of attention.

In another part of this Statement it will also be seen that only considerations of convenience could have induced the Argentine Expert to abandon, in the tracing of the frontier line, the inflexibility of the theory of the main chain

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of the Andes, with a view to acquiring certain valleys which, if submitted to the laws of that theory, it would be necessary to leave under the jurisdiction of Chile.

It is hardly necessary to insist here that by "water-parting line of the two Republics" Señores Nicour and Sanchez, like the Governor of Mendoza, understood the "continental divide" and not a "highest crest watershed," since, as they repeatedly declare, in their view the highest summits, the highest Cordillera, were not coincident with the watershed. They gave the identical sense of a "continental divide" to the phrase "the water-parting line," which is that employed by the Treaty of 1881, when they said they had reached that line "across the most gigantic Cordillera of the world."

The Boundary Commission of the Argentine Senate.

About this time the hydrographical principle of demarcation, thus formulated by surveyors well acquainted with the ground, was also officially accepted. In fact, it was the basis for a project of law to fix the boundaries of the new Argentine Territories which was submitted to the Senate of the Republic by the ex-President General Don Bartolomé Mitre and other members of that legislative body who formed its "Boundary Commission." According to this project, the transverse boundaries of such Territories were, from north to south, the River Diamante, the River Grande or Colorado, the River Neuquen, the River Negro, the River Chubut, the River Santa Cruz and the Straits of Magellan; and the longitudinal boundary, common to all, was *the water-parting line in the Cordillera de los Andes*.

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It follows logically from this project of law that, the transverse boundaries being *Argentine rivers which drain to*

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the Atlantic, none of the Territories could be extended further west than the *sources of those rivers*, which is corroborative proof that the expression "water-parting line in the Cordillera de los Andes" refers to the continental divide towards both oceans. In addition to those already quoted there are several Argentine documents which go to show what the traditional boundary was understood to be by Argentine statesmen before the year 1881.

The bound-
ary accord-
ing to Señor
Frias, Argen-
tine Plenipo-
tentiary.

During the discussion upon Patagonia carried on at Santiago, the Argentine Plenipotentiary, Señor Frias, several times expressed himself, as to the boundary in the region of the Andes, in terms which it is advisable to recall.

The Minister for Foreign Affairs of Chile having affirmed incidentally in one of his communications that the question of the "Cordilleran Potreros" was still pending, Señor Frias made the following observations in a note of the 20th of September, 1873 :

"The question of the 'Potreros' which Your Excellency recalls is a question which was solved as soon as the investigations carried out on both sides of it (i.e. the Cordillera) showed that they were situated on its eastern side, that is to say, in Argentine territory ; and the authorities of the province of Mendoza have continued in possession of them without any question whatever."¹

The investigations to which Señor Frias referred were undoubtedly those which had been carried out on the Argentine side by the Governor of Mendoza.

Now, those investigations, as we have seen above, had established that the "Potreros" in question were enclosed between two main Cordilleras the waters of which flowed to

¹ *Memoria de Relaciones Exteriores de Chile*, 1874, p. 36.

Argentine territory. Señor Frias, however, being aware of this fact, simply said that these "Potreros" were situated "*to the east of the Cordillera*." The truth is that they are to be found to the east of one Cordillera and to the west of another, both main cordilleras; and, inasmuch as he gave the name of Cordillera to that of the two in which the water-divide occurred, Señor Frias evidently understood that the Cordillera forming the boundary was that which separates the international waters.

He expressed this same opinion with still greater precision in another part of the same communication. Alluding to the opinions of some Chilean authorities upon the boundary question, he said :

"Your Government (that of Chile) always agreed that the Andes were the eastern boundary of Chile; and when they spoke of the demarcation of frontiers, they referred to the operation of fixing in the Andes themselves the *divortia aquarum*, that is to say, *the boundary line between the two countries*, an operation of experts which has not yet been performed."¹

In the same communication Señor Frias blamed the Government of Chile for having attempted to exercise jurisdiction in Argentine territory, ordering the exploration—with the object of using its waters—of Lake Diamante (lat. 34° 10'), which, as was stated in the Report presented to the Argentine Congress by the Minister for Foreign Affairs, "is wholly on Argentine territory, *at about a league's distance from the water-parting line*."

Finally, referring to an incident respecting Pissis' maps, to which we shall refer further on, Señor Frias expressed himself thus in the same communication :

¹ *Loc. cit.* p. 49.

"That surveyor (M. Pissis) has merely complied with the official instructions given to him . . . in tracing on the Andes the *anticlinal or water-parting line*, for, like everybody else, the Government of Chile have understood, in conformity with the universally adopted international rule, that when a mountain or Cordillera separates two countries, the parting of the waters on its summits marks out the boundary between them."¹

It seems to us that this expresses with sufficient clearness and precision the idea formed in 1873 regarding the boundary lines of Chile by the Argentine Government, in whose name their Minister Plenipotentiary spoke at Santiago.

From the texts reproduced it follows that he located that frontier, whenever he happened to mention it, on the water-parting line; that he considered as synonymous the expressions "water-parting line" and "anticlinal line"; that in view of the existence of two equally high cordilleras, he only gave this name to the one dividing the waters into opposite and definite courses; and that, finally, he condensed this idea in the Latin expression, "*divortia aquarum*," which, thus introduced by him, appeared for the first time in the boundary controversy.

The boundary according to Señor Tejedor, Argentine Minister for Foreign Affairs. This idea regarding the frontier line, expressed by Señor Frias in his communications to the Chilean Foreign Office, accords with that emitted by the Argentine Minister for Foreign Affairs, Señor Tejedor, in the documents by which he informed the Congress of his country as to the position of international questions.

In fact, in the Report presented in the year 1873, Dr. Tejedor thus expressed himself regarding the boundary with Chile :

¹ *Ibid.* p. 69.

"There has always been a common and traditional understanding that the jurisdictions of Chile and Rio de la Plata were by right delimited by the summits of the Cordilleras de los Andes, running from north to south as far as the Straits of Magellan, and from parallel $41^{\circ} 10'$ of S. latitude, where this natural fact ceases, by the line dividing the waters flowing towards both seas, taking for this purpose the middle between the points where sources (vertientes) or traces of water are found, and to the south ending this line the most prominent point of the continent, i.e. Cape Froward, more or less on the $53^{\circ} 50'.$ "¹

But Señor Tejedor understood that even in the region in which, in a general way, the boundary was fixed on the summit of the Andes it was the water-divide that constituted the line of separation between both countries. So he clearly gives it to be understood when, in the Report of Foreign Affairs, he refers to the incident respecting Lake Diamante, which a Chilean Commission had set out to examine. Alluding to this incident Señor Tejedor says:

"Lake Diamante (situated between parallels 34 and 35), in which the river of the same name takes its origin, has lately been the object of an exploration by a Chilean Commission in search of more water for the country irrigated by the headwaters of the River Maipo. From the observations of the explorers it follows that Lake Diamante is wholly in Argentine territory, *at about a league's distance from the water-parting line.*"

It is plain, therefore, that, according to the idea of the Minister for Foreign Affairs, the lake mentioned was not in Argentine territory by the mere fact of its being to the east of the summits of the Andes, but by the essential circumstance of its being to the east of the water-parting line. Consequently, what established the boundary between both countries was—not the vague and undetermined feature designated with the name of summit of the Andes—but the clear and visible principle of the water-divide. This is the

¹ *Memoria de Relaciones Exteriores de la República Argentina*, 1873, p. 15.

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same principle he wished to be applied in the south, selecting, in accordance with the same idea, a formula more adequate to the special configuration of the ground there.

Putting together these views and comparing them, it is clearly seen that, according to Señor Tejedor, the dividing line between both countries was to be found in the sources of the rivers and of their affluents, which he believed to be in the summits of the Cordillera of the Andes as far as latitude $41^{\circ} 10'$; and thence—where the configuration of the Cordillera changes its aspect, where the summits sink to give place to transverse valleys—that line was to be formed by the water-divide towards both seas, the central points between the “vertientes” or traces of water being taken to determine it. And he left no room for any doubt as to the idea which he had formed of the frontier line, when in the same document he stated that the western boundary of the Argentine Republic with Chile was “the water-parting line, at the point where the gigantic Cordillera de los Andes sinks without disappearing.” These last expressions correspond exactly to what occurs in Patagonia, where the principal Andean masses sink and form valleys through which pass the rivers Manso, Puelo, Yelcho, Palena, Cisnes, Aisen, Huemules, Baker, Bravo and Pascua.

The Argentine Representative cannot have failed to see that these declarations of Señor Tejedor respecting the character of the traditional frontier line located by him in the international water-parting, considerably strengthen our interpretation of the Treaty of 1881.

Accordingly he has attempted (Argentine Statement, page 79) to weaken them by saying that among those different opinions a contradiction exists which must be attributed to

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a typographical error.¹ He says that the contradiction is this :

That in the paragraph above quoted it is stated, first, that the Cordillera de los Andes stretches as far as the Straits of Magellan and then that it ceases at parallel $41^{\circ}10'$ —twelve degrees to the north of the Straits.

There evidently does exist a contradiction in these statements, but it must be observed that they are not due to Señor Tejedor. This Statesman, after having named "the summit of the Cordillera de los Andes," adds "*where this natural fact ceases.*" What is the natural fact which, according to Señor Tejedor, ceases? The Cordillera, says the Argentine Representative, in order to show that there is a contradiction, although it would be more logical to understand that Señor Tejedor referred to the "summit," or, better still, to the "fact" of its continuity.

Fortunately, this explanation is corroborated by the unmistakable words used by Señor Tejedor himself, and found in an Appendix to the Report of Foreign Affairs of 1873, when, speaking of the scope attributed by him to the boundary question with Chile, he said :

"On the southern extremities, it involves the neutralization of the Straits, which could not be carried out if the Straits and Tierra del Fuego belonged to one nation; and on the east [west?], our independence itself, which would no longer be defended by the gigantic Cordillera de los Andes, or the division of the waters, at the point *where it sinks without disappearing.*"²

¹ The inadmissibility of this "error" will be pointed out in another chapter of this Statement, when commenting upon page 950 of the Argentine Statement where this "error" is again referred to.

² Appendix to the *Memoria*, etc., for 1873, p. xix.

Consequently, in parallel $41^{\circ}10'$ the Cordillera, according to Señor Tejedor, does not "cease," but sinks without disappearing.

The Argentine Representative had an additional reason for wishing that Señor Tejedor had said that the Cordillera ended at parallel $41^{\circ}10'$: the object of establishing that he accepts the water-parting towards both seas as the boundary from that point only and because towards the south there was no Cordillera. But this deduction of the Argentine Representative is absolutely without foundation, since it has been proved that Señor Tejedor knew that to the south of that parallel the Cordillera continued, though more or less depressed.

In order to give all its value and scope to this opinion of Señor Tejedor, it is well to recall the facts which might have helped to form it at that time, and to this end the Argentine Statement itself supplies sufficient material by recalling that the explorations of the *Adventure* and *Beagle* in 1829, those of Vidal Gormaz in 1862 and 1872, and those of Simpson in 1871 and 1872, had drawn attention to the notable depressions of the Cordillera from the River Puelo in the neighbourhood of parallel $41^{\circ}10'$ as far as the narrows of Kirke.

Señor Tejedor fixed on latitude $41^{\circ}10'$ the point of termination of the geographical fact to which he referred, because, as a matter of fact, the successive depressions of the Cordillera begin there.

To sum up: the opinion formed by Señor Tejedor regarding the traditional frontier line was that it followed the inter-oceanic water-parting, and he expressed this opinion in formulae destined to be applied in regions of different

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topographical configuration. Where a crest or "edge" should form the water-parting he did not see any difficulty or cause for hesitation ; but where there existed breaks in the mountains or plains and marshes he foresaw the case in which "vertientes" (sources), and "traces of water" might be found at a certain distance, and said that the line should be traced by taking the middle points between them.

**Importance
of Señor
Tejedor's
opinions.**

The importance of Señor Tejedor's declarations on the matter is principally due to the fact that when he was in charge of the Foreign Affairs of the Argentine Republic the boundary question had really begun, and it was this statesman, therefore, who shaped its future course by means of his instructions.

**Conclusions
of this
chapter.**

We shall condense into the briefest terms the conclusions which are logically drawn from the document we have quoted and commented upon in this chapter.

The incidents arising from the ownership of certain valleys of the Cordillera, the opinions expressed by official Argentine Commissions, by Experts well acquainted with the ground, and by other authorities of that country, show that from the year 1846 the Argentine Republic invariably upheld the continental water-parting line as the boundary of both countries.

In fact, the Commission of Experts appointed by the Governor of Mendoza in 1846 stated that the valleys in question belonged to the Argentine Republic because the rivers flowing through them were affluents of the Colorado which drains into the Atlantic.

In 1864 the Governor of Mendoza proved that those same valleys were Argentine territory, because the rivers which start there defined the boundary.

The surveyors commissioned in 1872 by the Governor of San Juan stated that the natural and convenient boundary of the Argentine Republic was the line dividing the waters of the two Republics.

In 1871 the project for the delimitation of the new Argentine territories designated the said water-parting as the western boundary of that country.

Señor Bermejo, when studying later on the question of the valleys of the Cordillera, pointed out the necessity of fixing the boundary on the before-mentioned line, so that the Argentine Republic should own the entire course of the rivers which irrigate the provinces of that country and sustain their industries.

The Argentine Plenipotentiary, Señor Frias, in his discussion with the Minister for Foreign Affairs of Chile, Señor Ibañez, referred to the water-parting whenever he mentioned the frontier line, he having been the first who designated it with the Latin expression "divortia aquarum."

The Argentine Minister for Foreign Affairs, Dr. Tejedor, not only accepted the opinion of the Governor of Mendoza, who located the frontier line at the sources of the rivers and of their tributaries in the Cordillera, but he himself also fixed it at the separation of the waters towards both seas "where the Cordillera sinks without disappearing."

Chapter IX.

NEGOTIATIONS OF 1876 TO 1879 CONCERNING THE GENERAL BOUNDARY.

WE have already established—as we believe, irrefragably—that till the year 1875 the Argentine officials who had pronounced a decided opinion regarding the questions of territorial jurisdiction which had arisen in the Cordilleras, had expressed themselves in the sense that the boundary between Chile and the Argentine Republic was formed by the line of water-parting towards opposite oceans, maintaining that this boundary conformed to the rules of international law and to the tradition existing in both countries.

**Barros
Arana-Iri-
goyen nego-
tiation of
1876.**

This being the situation in 1876, Señor Don Diego Barros Arana was accredited as Minister Plenipotentiary of Chile to the Government of the Argentine Republic. The instructions which were given him for the fulfilment of his mission are published in the *Report of the Minister for Foreign Affairs of Chile* for the year 1878,¹ and they refer exclusively to the settlement of the boundary question in Patagonia by means of a compromise or by arbitration. The negotiations were

¹ pp. 33-36.

opened in June of the said year, the Argentine Government being represented by their Minister for Foreign Affairs, Dr. Don Bernardo de Irigoyen. The latter presented to the Chilean Plenipotentiary a proposition of agreement upon the basis of the parallel of Mount Aymond (lat. $52^{\circ} 10'$) as the boundary between that part of Patagonia which would be acknowledged to be Argentine, and the Chilean possessions in the Straits of Magellan, this line to be extended westward as far as the Cordillera de los Andes.

Señor Barros Arana, informing his Government of this proposition (Note of the 10th of July, 1876), said :

The Argentine Government suggests the adoption of a general principle of demarcation. *"This Government [the Argentine] also wished that, if this proposition be accepted and if a definite treaty be drawn, a general principle should be agreed upon, which might serve for the demarcation of the boundary all along the extent of the Cordillera de los Andes. This principle, which might be founded on the culminating points of those chains of mountains or on the water-parting line, would serve to remove the doubts which have arisen, or might arise, in certain valleys to the dominion of which both countries may claim rights."*

This suggestion of the Argentine Government deserved to be considered. In truth, if a treaty were to be drawn up to settle the Patagonian question by fixing there *definite boundaries*, it was advisable—to avoid further negotiation and prevent difficulties occurring elsewhere—to convert the agreement which was being negotiated into a general boundary treaty. Hence, the point remained under consideration.

But this negotiation of 1876 was fruitless. The Government of Chile were unable to accept the terms of the Argentine propositions respecting the delimitation of Patagonia, of the Straits of Magellan and of Tierra del Fuego; and therefore they had to abandon the negotiation for a direct

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arrangement and to look for a settlement of the question by means of arbitration.

Negotiation between the same parties of January, 1877. In January 1877 fresh conferences were held between the Plenipotentiaries in order to come to an agreement or decide as to the terms under which the question might be submitted to an arbitral decision, and they established certain bases of discussion as to which the Chilean Plenipotentiary had to consult his Government before any agreement could be arrived at regarding them. Señor Barros Arana did so by letter of the 8th of the said month, and to his despatch of inquiry, Don José Alfonso, Minister for Foreign Affairs, replied by note of the 24th of March. We reproduce the parts of the latter communication disclosing the contents of those bases. It reads thus :

Bases established in this negotiation. "I duly received your telegram dated the 16th inst., in which, referring to the bases of the arbitration which you sent me with your letter of the 8th of January, you expressed to me the desire to know if bases such as those formulated, or with alterations of slight importance, would receive the approval of my Government.

"The bases alluded to were the following :

"1. The arbitration will devolve upon the strict application of Art. 39 of the Treaty of 1856, giving to it, as is usual, an interrogatory form such as this: Which were the territories that in 1810 were possessed by Chile and the Argentine Republic?

"2. The Judge would be arbitrator *de jure*, as proposed by one of my predecessors in a note of the 26th of May, 1874, addressed to that Government.

"3. Until the arbitrator gives his decision the following *status quo* would be established. Chile maintains jurisdiction over the whole of the Straits of Magellan and adjacent islands; the Argentine Republic over the whole of the coast of the Atlantic and adjacent islands. The former shall not exercise fresh acts of jurisdiction to the east or north of Punta Arenas; the latter to the south of the River Santa Cruz. The concessions made outside these boundaries shall be considered as of a temporary character. Purely precautionary measures like those tending

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to easy communication between the points occupied, the defence or guarding of these, etc., are understood as not introducing any innovation. This agreement shall not be invoked before the arbitrator as a title of right.

"4. The period for the presentation of reports and refutations, as also of the documents and arguments which may be used therein, would be the same as I have already indicated to you.

"5. The person of the arbitrator or tribunal of arbitration will not be, in your opinion, a matter of difficult settlement.

"6. From 50° northwards the boundary of both countries shall be the summit of the Cordillera de los Andes, *whether the most culminating parts are selected, or the water-parting line, which in your judgment it would be easy to discuss and settle.*"

It is singular that in a draft agreement, which had not for its object the fixing of definite boundaries in Patagonia but the submission of the question to arbitration, a clause foreign to this matter should be inserted, such as the one relative to the fixing of a general frontier line which should be extended from parallel 50° northward. The Argentine Plenipotentiary had insisted upon it, and we shall shortly see the purpose of his action.

It is likewise advisable to state that the basis to which we refer testifies that the only thing agreed upon by the Plenipotentiaries was to include in the agreement they might make a clause relative to the general boundary between both Republics. The principle of demarcation to be adopted was a point left open to discussion. Mention had been made of these two: "The most culminating parts of the Cordillera" and "the water-parting line"; but there had been no decision in favour of either. Señor Barros Arana simply laid the matter before his Government, adding that there would be no difficulty in agreeing on one of the two.

Respecting this the Argentine Representative, however,

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says (p. 159) that to Señor Barros Arana the adoption of either of these two terms "was of no consequence"; but it is difficult to discover any ground for this assertion. What Señor Barros Arana said to his Government was simply that it would be easy to discuss the point and to arrive at an agreement; and the mere fact of his expressing the opinion that there would be a discussion on the matter does not show that the option between those two terms was indifferent to him. If he had the intention of *discussing*, it was because he had made up his mind to *maintain* an opinion.

In connexion with the bases copied above, Señor Alfonso, after examining carefully each one of the first five, wrote as follows regarding the sixth:

Objection of the Government of Chile to the sixth basis. "As to the sixth—that is to say, to accept at once that from the fiftieth degree northwards the demarcation of the frontier of both Republics should be the summits of the Andes—it seems to me wholly unacceptable. To begin with, it would be prejudging, and deciding in advance and by ourselves, the boundary question to Chile's disadvantage. The 50th degree is found at 30' from the Straits of Magellan, and we cannot agree that thence up to the desert of Atacama the Andes should be the frontier line. The only thing that could be agreed to in this respect would be that, wherever the Andes divide territories of both Republics the highest summits of the Cordilleras should be considered as the line of demarcation. *If some such formula as this* were employed, there would be no difficulty whatsoever later on, for the arbitrator would decide where the territories of one and of the other nation end."¹

The Argentine Representative believes that in this part of Señor Alfonso's note, which he reproduces incompletely (p. 159), he has discovered instructions given by the Government of Chile to their Plenipotentiary in Buenos Aires to agree that the general boundary should be fixed on the

¹ *Memoria de Relaciones Exteriores de Chile*, 1878, p. 67 et seq.

highest summits of the Cordillera, to the exclusion of the water-parting line.

This objection does not refer to the nature of the general boundary. Such a deduction is unjustifiable if the circumstances, and the object with which Señor Alfonso alluded to the Andean boundary, are taken into account. The fundamental question then under discussion, we repeat, the one which constituted the sole preoccupation of the Government of Chile, was that of determining the matter for arbitration : that is to say, the territory as to which the arbitrator would have to decide. The Argentine Republic had agreed in 1874, whilst Señor Tejedor was Minister for Foreign Affairs, that the disputed territories which were to be the subject of an arbitral decision were Patagonia, the Straits of Magellan and Tierra del Fuego ; but later on Señor Tejedor was replaced by Señor Irigoyen in the direction of Foreign Affairs, and thenceforward a change was observable in Argentine politics regarding the pending question with Chile.

Señor Irigoyen had formed the conviction that it was not advantageous to his country to submit to the decision of an arbitrator the relative value of the titles with which the two Republics maintained their dominion to Patagonia, and with this conviction carefully sought the means of avoiding that danger. Being unable to attempt this openly without repudiating the formal agreement of his predecessor, Señor Irigoyen, by the employment of certain terms apparently not connected with the main question, endeavoured to attain that end indirectly. Chile had consented to refer to the decision of an arbitrator her claim to the Straits of Magellan and adjacent lands which she had occupied for thirty years back, but demanded, at the same time, that the vast Pata-

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gonian stretch south of the Rio Negro should likewise be included in the arbitration. It was upon this extensive region that the discussion and the propositions which were formulated turned: whether to divide it in an equitable manner, or to submit without any restrictions to the decision of a third power. Upon this matter the instructions of Señor Alfonso to the Chilean Plenipotentiary had been sufficiently explicit and detailed. They considered all the situations which might arise in the course of the negotiations regarding the direct partition of Patagonia or its eventual submission to arbitration. In his instructions he had expressed no opinion or view respecting the Andean boundary because he considered it subordinate to the result respecting the ownership of Patagonia.

His object was that Patagonia should not be dealt with. Señor Alfonso being thus exclusively occupied with this main question, it is easily seen that, in making to Señor Barros Arana the remark contained in his note, his sole object was to call attention to the danger that the arbitrator might be compelled, if that stipulation were left standing, to decide that almost all Patagonia, north of 50° S. lat., belonged to the Argentine Republic, since the parties themselves admitted the fact that the Cordillera de los Andes constituted the boundaries between them as far as parallel 50°. In calling attention to this fundamental consideration, there was no need for him at that moment to mention the geographical condition of the boundary; it sufficed to point out the inadvisability of accepting this boundary, whether determined by the culminating points or by the water-parting line suggested by the Plenipotentiary. In short, the point under consideration was not whether this or that principle of demarcation was preferable, but whether a

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damaging effect upon the arbitrator's decision might result from not establishing that the Cordillera would be the common boundary only as far as the point where the disputed part of Patagonia began.

As a matter of fact, Señor Alfonso thought it inadvisable and inappropriate to introduce a clause relative to the general boundary of both Republics in a treaty of arbitration for the solution of the Patagonian question, and he expressed that idea with sufficient clearness in several documents. He would have wished, therefore, to eliminate the sixth basis; and if he did not request it expressly, it was in deference to the Argentine Government, with whom, as has been seen, originated the idea of leaving a general principle of demarcation established. But if the said basis were maintained, he demanded that it be altered in terms which would impose no restriction whatsoever on the arbitration concerning Patagonia.

In this respect the sentence of his note which perhaps best conveys his idea and intention respecting the sixth basis is the last one, which, as we have already observed, is not reproduced in the Argentine Statement. "*If some such formula as this were employed,*" so the phrase reads, "*there would be no difficulty whatsoever later on, for the arbitrator would decide where the territories of one and of the other nation ends.*"

This idea is not obscure or ambiguous. Señor Alfonso says that the wording as given by him to the preceding paragraph, which commences, "the only thing that could be agreed," etc., contains no other precise idea than that of preserving the integrity of the Patagonian question in the arbitration, and accordingly he adds that he would continue

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to consider good *any formula* which may lead to that same result. The Chilean Plenipotentiary could therefore agree to any general principle of demarcation so long as he clearly declared that it should not be applicable to any point of the disputed Patagonia.

**Negotiation
of April
and May,
1877.** These conclusions are amply confirmed in the further development of this same negotiation. The latter not having borne any fruit on the bases of January, the conferences of the Plenipotentiaries were temporarily interrupted. They were resumed in April, when Señor Barros Arana presented fresh bases limited to the arbitration on Patagonia. At the request of the Argentine Plenipotentiary he had, however, to draft two others, as to which he informed his Government by note of the 13th of May, 1877, in the following terms :

**The Chilean
Plenipo-
tentiary
proposes the
divortia
aquarum as
a general
principle of
demark-
cation.** "As the Minister expressed to me a wish that the Convention should contain certain other declarations, I told him that on my side there were no objections to stating in it, or in the Protocol of the Conference, the two following principles :

"1. Chile and the Argentine Republic believe and maintain that the territories which were under the dominion of Spain in this continent exclusively belonged to the nations which after their independence have taken her place as regards territorial rights. Therefore the territories constituting the subject of this discussion belong either to Chile or to the Argentine Republic, the claims which any other foreign nation might desire to put forward being excluded.

"2. Chile and the Argentine Republic are agreed that along the whole extent of their respective territories, *over which no question of boundaries has arisen up to this date, the boundary line is the 'divortia aquarum' of the Cordillera de los Andes*, and that all difficulties which might arise owing to the existence of certain valleys *where such line may not be perfectly clear* shall be decided, according to a treaty to be made, by Experts appointed by both parties or by other friendly means."¹

¹ *Memoria de Relaciones Exteriores de Chile*, 1878, pp. 78-79.

Consistency
of this pro-
position
with the
instructions
of the
Govern-
ment.

We beg to call special attention to this document, because it shows how the Chilean Plenipotentiary understood the controverted part of Señor Alfonso's note of the 24th of March, 1877.

Señor Barros Arana understood, in the first place, that his Government preferred that in the Treaty of Arbitration no clause whatsoever relative to the general boundary should be introduced, but he abstained at first from proposing anything to this effect. Having been requested, however, to do so by the Argentine Plenipotentiary, he wrote the two declarations copied above. Having understood, moreover, that he was left free to choose between the two principles of demarcation previously mentioned, he proposed in the name of the Government that of the *divortia aquarum*. Finally, in conformity with the advice he had received not to include Patagonia in the application of any general principle of demarcation, he declared that the one proposed would only be agreed to respecting territories which were not under discussion. The Minister, Señor Alfonso, in his note of the 14th of June, 1877,¹ answered *in extenso* to that of Señor Barros Arana of the 13th of May; on this occasion he made no remark respecting the determination of the general boundary, which was based, as has been seen, on the *divortium aquarum*. This was because the defect of the corresponding basis of January had been amended in the new one, and therefore there was nothing to object to in it.

If Señor Alfonso's note of the 24th of March, already alluded to, were in need of interpretation, it is given by the

¹ *Loc. cit.* p. 82 et seq.

documents to which we have just referred, emanating from the only two persons duly authorized: that is to say, the Minister who wrote it and the Plenipotentiary to whom it was addressed.

**Formula
agreed to
for the
Andean
boundary.**

All the bases of arbitration which Señor Barros Arana had proposed during the conferences of April, including the declarations upon other points which we have just copied, were drafted in the form of minutes to serve as themes for the discussion. When the time came later on to give them shape as an article of a treaty, the one relating to the general Andean boundary was agreed to in these terms:

“The Republic of Chile is divided from the Argentine Republic by the Cordillera de los Andes, the boundary line running over its most elevated points and passing between the sources of the streams (manantiales de las vertientes) which flow to one side and the other.”

**The Argentine
Plenipotentiary
accepts the
principle of
the *divortia*
aquarum.**

It appears from documents which we shall examine presently when dealing with the refutation of contrary assertions of the Argentine Statement, that the Argentine Plenipotentiary accepted, without raising any objection, the proposition of the Chilean Plenipotentiary, as to the *divortium aquarum* being the general principle of the demarcation. In order to shape it, and not to modify it, the Argentine Plenipotentiary himself suggested a wording which he took from the text of Don Andres Bello, a writer on International Law highly reputed in South America and especially in Chile.

The bases to which we have just alluded were agreed upon by the Chilean and Argentine negotiators on the 12th of May, a date which it is important to bear in mind, as

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appears from a telegram from Señor Barros Arana, beginning thus : "I have arranged the bases of the arbitration and I am about to draft the Convention. All the points are in accordance with the instructions, etc." The Government of Chile, however, did not accept this draft convention because they did not approve of the clauses contained therein respecting the *status quo* : that is to say, respecting the exercise of temporary jurisdiction by both countries in the disputed territory during the arbitral suit.

The Argentine Statement asserts regarding this (p. 160) that the proposed arrangement was not accepted by the Government of Chile "in consequence of its clauses not stating that the boundary should be marked out in the Cordillera."

**Why the
Government
of Chile re-
fused their
approval to
this agree-
ment.**

This assertion is completely unfounded. The Government of Chile refused their approval to the project for the sole reason we have already recorded, and this is shown by the notes in which Señor Alfonso objected to it, and which contain not a solitary word respecting the general boundary or the principle of demarcation.¹

Once this fresh attempt at agreement had fallen through, and seeing that it was impossible to negotiate an arbitration on acceptable terms, the Government of Chile decided to suspend negotiations and to instruct Señor Barros Arana to leave for Brazil where he was also accredited. But they wished to make one last effort in favour of a direct arrangement, and, by note of the 21st of May, Señor Alfonso authorized the Chilean Plenipotentiary, in case

¹ *Loc cit.* pp. 79 et seq. and 82.

he considered its acceptance possible, to propose to the Argentine Government a fresh idea of agreement.

Project of compromise of the Government of Chile. "This idea consists," he said, "in the fixing of a line which would separate the possessions of both nations on the River Santa Cruz for instance, and at least on the River Gallegos. This line, prolonged to the Andes, would be the boundary of the two Republics in Patagonia, and the highest summits of those mountains towards the north."¹

It is not presented to the Argentine Government. Señor Barros Arana did not present this proposition. Having received, on the 5th of June, the note by which he was authorized to do so, he immediately answered by telegraph :

"I have received the communication No. 20. As you suppose, it is impossible to obtain by means of a Boundary Treaty what is indicated therein. This Government cannot go beyond the bases which I transmitted on the 10th of July last, owing to the resistance with which it would meet in Congress."²

We refer again to the dates because they have in this case a special importance. *On the 12th of May* Señor Barros Arana agreed as to the above mentioned bases and informed his Government that they were in conformity with the instructions. *On the 21st of May* Señor Alfonso authorized him by notes sent by mail to propose a project of compromise. *On the 5th of June* Señor Barros Arana received that note and answered that any fresh proposition was useless because it would not be accepted.

Now, the Argentine Representative says (Statement, pp. 159 and 160) that Señor Barros Arana negotiated the agreement he signed on the 12th of May by virtue of instructions which the Government of Chile sent him on the 21st of the same month and which he did not receive

¹ *Loc. cit.* p. 75.

² *Loc. cit.* p. 76.

until the 5th of June. The impossibility of this is not apparent at first sight in the Argentine Statement because the date of the 21st of May is not mentioned and it is replaced by a phrase of great elasticity.

The Argentine Representative reproduces the paragraph of the note of Señor Alfonso of the 24th of March relative to the 6th basis of the month of January and textually adds :

"Señor Alfonso also transmitted to Señor Barros Arana, a few days after the despatch of his communication, a new Convention."

A few days after the 24th of March, may be the last days of March or the first days of April, but in no case the 21st of May, *fifty-eight days after*.

He then reproduces the text of Señor Alfonso's proposition of compromise of the 21st of May in which the phrase is to be found : "this line (that of the Santa Cruz or Gallegos) prolonged to the Andes would be the boundary of the two Republics in Patagonia, and the highest summits of those mountains towards the north." And he adds :

"The instructions were thus clearly specified. To fulfil them, it was necessary for Señor Barras Arana to enter into a negotiation concerning the terminal point of the Andean boundary, and to have inserted in the proposed Convention that, in the section of the territory in which the Cordillera separated the two countries the line of demarcation should run over the highest crests."

"Señor Barros Arana was bound to devote himself, of course, to the fulfilment of the mission entrusted to him in the form which his Government prescribed."

**Erroneous
deduction
based on this
confusion.**

The Argentine Representative infers from these circumstances that Señor Barros Arana drew up the formula of the Andean boundary of the 12th of May in conformity with the *clearly specified* instructions of Señor Alfonso and, consequently, that it

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should be understood and interpreted in the sense that it stipulates as the boundary the highest summits of the Andes and not the *divortium aquarum*.

This entire argument falls through, however, in the face of these two facts: (1) that those "clearly specified" instructions of the 21st of May *did not exist* when Señor Barros Arana came to an agreement with Señor Irigoyen regarding the bases of the 12th of May; (2) that Señor Barros Arana *did not enter into any negotiation* after having received those instructions because, as we have already shown, he did not present to the Argentine Government the form of compromise of Señor Alfonso.

With reference to the project of Señor Alfonso of the 21st of May we need hardly observe that, being one of compromise, it interfered with no principle or right whatsoever, and that, not having been even presented, it is, as though it had never existed. The Argentine Representative, in order to give it some value, has had to connect it inaccurately with another previous plan of agreement. And, on this account, we also beg to state that the Representative himself has not found, nor can he find, any document or declaration made to his Government by the Plenipotentiary of Chile in favour of the thesis which he now upholds. Far from that, he acknowledges (p. 167), with the testimony of Señor Irigoyen, that Señor Barros Arana proposed the *divortium aquarum*, not only in a letter addressed to the President of the Argentine Republic, but also in several conferences which he had with the Minister for Foreign Affairs; and this would suffice to place beyond doubt, as concerns Chile, her intention of maintaining the water-divide as the boundary of the two countries.

In the negotiations of 1876-1877 the *divortium aquarum* was agreed to as the boundary.

It is proved in this history of the negotiations of 1876 and 1877, which we have been compelled to complete in order to establish clearly the origin of the meaning of Article 1 of the Treaty of 1881 :

1. That the Chilean and Argentine negotiators agreed to adopt, as a general principle of demarcation of the Andean frontier to the north of Patagonia, the *divortium aquarum* proposed by the former and accepted by the latter ;

2. That the Argentine Government must have given to this principle the same meaning which was given to it by the Plenipotentiary of Chile when he proposed it, because he had no other authorized and official precedent by which to determine its meaning than the proposition itself.

The Argentine Representative denies that his Government accepted it.

The fact that the principle mentioned was accepted by the Argentine Government is, however, denied in the Argentine Statement, and it is affirmed (p. 167) that an exchange of propositions took place in 1876-1877 by virtue of which the principle of the *divortium aquarum* was eliminated and replaced by the formula of the highest summits, a proposal said to have been made by Señor Irigoyen.

It is shown in the documents that it was accepted.

A brief examination of other documents relative to these negotiations will enable us to show the real facts, and thus refute the fresh assertions on this matter which appear in the Argentine Statement.

The manner in which the negotiations of 1876-1877 between Señores Barros Arana and Irigoyen were carried on is easy to explain, since both statesmen have recorded them in documents published in due course by their respective

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Governments. From those documents it appears that, on the failure of the several attempts made in the years 1876 and 1877 to find a mutually acceptable formula which would end the dispute regarding the ownership of Patagonia, the Argentine negotiator Señor Irigoyen thought it right to state in a memorandum, destined for the information of the President of the Republic, the trend and circumstances of those sterile negotiations. Before presenting this document to the President of the Republic, Señor Irigoyen deemed it advisable to submit it to Señor Barros Arana, requesting him to correct or fill in whatever he might consider inaccurate or incomplete. The Chilean Plenipotentiary answered under date of the 26th of July, 1877, recalling to the Argentine Minister certain incidents which, in his opinion, "it was important to place on record," and this note, reproduced on page 166 of the Argentine Statement, though unfortunately in an incomplete form, proves that Señor Irigoyen had expressly accepted the *divortium aquarum* as the general principle of demarcation.

In Señor Barros Arana's note it is said :

"When we resumed our conferences in the latter part of April and the commencement of last May, I had the honour to place in the hands of Your Excellency a Memorandum in which I stated the bases which, in my opinion and according to the instructions of my Government, were to serve as draft for the Convention of Arbitration. In accordance with my wish, and in conformity with that Memorandum, we were to insert in the records of our conferences the following three facts :

"1. The explanations given by me respecting the capture of the *Jeanne Amélie*, and considered by Your Excellency, which, if not sufficient to put an end to the discussion of this incident, would at least be sufficient to lay it aside for the moment and to enter into the discussion of the main subject.

"2. *The reciprocal declaration that both Governments consider that the boundary line between Chile and the Argentine Republic in all that portion*

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of the territory respecting which there has been no discussion, is the divortia aquarum of the Cordillera de los Andes.

"3. That both Republics believe that, as the successors to the rights of the King of Spain in these countries the disputed territories belong either to Chile or to the Argentine Republic, and that they do not recognize the claims that any other country might wish to make with regard to same.

"*Your Excellency, as well as myself, were in accord respecting these three declarations, but we did not state, or even discuss their definite form, nor whether they were to be introduced into the Protocol or into the text of the Convention.* I recollect distinctly that, regarding the second of these points, Your Excellency consulted me as to whether it might not be well to employ the words used by Don Andres Bello in his work on International Law at the time of mentioning the boundaries of countries separated wholly or in part by chains of mountains, and I replied that I could not object to an authority so reliable and so highly respected in Chile."

Up to this point the Argentine Statement has reproduced accurately Señor Barros Arana's words; but it has omitted the following phrases, which are of importance because they make clear and precise the nature of the boundary agreed to.

"I suggested," Señor Barros Arana goes on to say, "that it would be well to state in the Protocol Chile's desire that it should be agreed by a subsequent arrangement that all difficulties which might arise owing to the existence of certain valleys of the Cordillera, *where the water-parting line is not perfectly clear*, should be amicably solved by experts. But in all this we only agreed as far as *the main idea* was concerned, without arriving at a definite wording." ¹

The foregoing suggestion from Señor Barros Arana emphasizes the declarations agreed to by the negotiators, and shows the perfect conviction they both had that they adopted the water-parting line as the general principle of the demarcation, since they only foresaw difficulties in the places where such line should not be perfectly clear. And Señor Irigoyen accepted this principle, which was the *main idea* on which

¹ *Memoria de Rel. Est. de Chile*, 1878, p. 96.

they were in accord, and in order to put it into words, he proposed the form adopted by Bello in his Treatise on International Law.

**Official de-
clarations of
Señor
Irigoyen.** Señor Irigoyen himself hastened to declare that he had accepted in the conferences of April and May, 1877, the principle of demarcation of the *divortium aquarum*. In fact, answering under date of the 7th of July of that year the previous communication of Señor Barros Arana, he reproduced the three propositions recalled by the latter, and added :

"These three points were actually agreed to, and the undersigned drafted the bases containing the last two, and read them to Your Excellency. There was no question of discussing the wording. In that relating to the boundaries, the words of Señor Bello, an authority acknowledged by Your Excellency, were taken textually."

And he even adds, when referring to the phrase of Señor Barros Arana omitted in the Argentine Statement :

*"Your Excellency properly recalls the fact of having suggested the convenience of a subsequent arrangement by which the difficulties that might arise owing to the existence of certain valleys in the Cordillera, where the water-parting line is not perfectly clear, should be amicably solved by Experts. The undersigned raised no objection to the suggestion. He considered the difficulty which Your Excellency apprehended to be remote, but should it arise, the manner proposed for settling it was acceptable."*¹

There was therefore a perfect agreement between the negotiators to adopt the *divortium aquarum* ; Señor Irigoyen proposed the form in which this agreement should be inserted in the Protocol ; and acknowledged that difficulties (which he considered remote) could only occur in the valleys where the water-parting line should not be perfectly clear. And the fact that they did not agree to a definite wording does not weaken

¹ *Mem. Rel. Ester. de la Rep. Argent.*, 1878, p. 50.

the pointed declarations made by both that they were in accord as to the "main idea," that "those points were actually agreed to," and that Señor Irigoyen "raised no objection."

On the other hand, the definite wording did not offer any difficulty, because, on resuming the negotiations in January, 1878, Señores Barros Arana and Elizalde (who had replaced Señor Irigoyen) signed a Draft Treaty in which they stipulated exactly what had been agreed upon with the Argentine negotiator of the previous year. Article 1 of this Draft Treaty reads thus :

Text of the agreement respecting a hydro-graphical boundary.

"The Republic of Chile is divided from the Argentine Republic by the Cordillera de los Andes, the boundary line running over its highest points and passing between the sources of the streams which flow down to either side. The difficulties which might arise owing to the existence of certain valleys of the Cordillera where the water-parting line is not perfectly clear, shall be amicably solved by means of Experts."

Thus no innovation was effected in 1878: the principle of the *divortia aquarum* was stipulated in the words of Don Andres Bello suggested by Señor Irigoyen; and the declaration relative to the valleys in which the water-parting line should not be perfectly clear was drafted in the manner proposed in May of 1877 by Señor Barros Arana, and to which Señor Irigoyen, according to his own words, gave his assent.

The documents quoted clearly set forth, therefore, the history of the negotiations from 1876-78 and establish certain facts beyond all doubt :

Facts which are proved by the documents of the preceding negotiations.

1. That during the conferences of 1877 it was placed on record that both Governments were agreed as to the boundary line between Chile and the Argentine Republic, throughout the extent of territory upon which no discussion whatsoever had arisen, being the "*divortia aquarum* of the Cordillera de los Andes."

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2. That Señor Irigoyen said, in his note of the 7th of July, 1877, that this point was agreed to; that it was not possible to dispute its wording; and that, in the clause referring to the boundary, the words of Bello, suggested by himself, should be used.

3. That Señor Irigoyen accepted the idea of amicably settling, by means of Experts, any difficulties, which he considered remote, arising from the existence of certain valleys where the *water-parting line* should not be perfectly clear.

It has been necessary for us, as we have already said, to refer again to these documents and to establish these facts in order to answer, on positive ground, the assertions made in the Argentine Statement (p. 168) that as a consequence of an *exchange of propositions* the principle of the *divortia aquarum* was abandoned, and replaced by the formula of the high crests proposed by Señor Irigoyen. It has already been seen that there was no such exchange of propositions beyond the unfailing agreement of the negotiators in regard to the *main idea of a hydrographical boundary*, expressed in the terms of Bello's definition.

Articles published by Señor Irigoyen in 1895 upon the negotiations. But these assertions of the Argentine Statement are based on those made by Señor Irigoyen in certain articles published by him in 1895, eighteen years after writing the documents which we have just examined. Before comparing those articles with these documents, it is necessary to take into account that in 1895 fresh interests relating to the boundary question had sprung up, interests which Señor Irigoyen wished to defend, and which it would not be easy for him to reconcile with the declarations which he had subscribed to when he was Minister for Foreign Affairs.

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Señor Irigoyen stated in those articles that he did not accept the formula of the *divortium aquarum* because he could not then appreciate its practical scope; because it was completely new to him; because in it the Cordillera de los Andes was not mentioned, and he even adds: "But as to the *divortium aquarum*, the hydrographical basins, I do not remember them to have been sustained or mentioned in any negotiation at any time."¹

**Its
refutation.** It is this regrettable lapse of memory on the part of Señor Irigoyen which has compelled us to recall the numerous documents which acquainted him with the *divortium aquarum*, and those which established it as a principle of demarcation bearing his own signature.

In fact, it is out of all question that the Minister for Foreign Affairs of the Argentine Republic, the negotiator of several projects of Treaty with Chile in 1876 and 1877, could not have been ignorant of the official documents bearing upon the matter or of what statesmen and writers had published upon it during the protracted debate, a résumé of which we have given in the preceding chapters. It is incredible that he should not have been acquainted with the notes of the Plenipotentiary, Señor Frias, and with the reports presented to Congress by Señor Tejedor, his immediate predecessor in the Ministry of Foreign Affairs.

Nor is it reasonable to suppose that he was also unacquainted with the documents emanating from the Governors of San Juan and Mendoza, who delimited both countries by the line which separates the courses of the rivers or in the culminating edge which separates the streams; with

¹ *Artículos del Doctor Irigoyen*, Buenos Aires, 1895, p. 32.

the studies made by Burmeister, who scientifically referred to those formulae as the line of separation of the hydrographical basins ; with the writings of Señores Bermejo and Quesada, which we have already quoted, and with those of other well known Argentine authors who had given a clear and exact meaning to these expressions.

Negotiation and Agreement of 1878. The negotiation of 1878 between Señor Barros Arana as the Plenipotentiary of Chile, and Señor Don Rufino de Elizalde who had succeeded Señor Irigoyen in the Ministry for Foreign Affairs of the Argentine Republic, resulted in the signing of a Treaty, Article 1 of which is reproduced in the course of this chapter. This was a Treaty of Arbitration ; but, in accordance with what had been agreed in the previous year, a provision relative to the general Andean boundary was included in it. Respecting the definition of this boundary it is but a textual copy, word for word, of that agreed to between Señores Barros Arana and Irigoyen on the 12th of May, 1877. There was added to it on this occasion the clause relating to the manner of solving the difficulties which might arise owing to the possible existence of valleys where the water-parting line should not be clear—a clause which accentuated the hydrographical nature of the boundary.

Señor Alfonso's remark as to the general boundary clause. We should have added nothing further respecting this Treaty, were it not that, in connexion with its signature, we have a document which amply confirms what we have already said respecting the attitude assumed by the Minister Señor Alfonso to the clause regarding the Andean boundary. Señor Alfonso objected to this draft Treaty by a telegram which bears the date of the 7th of February, and which reads thus :

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"Since it was believed that in a boundary question *as to the southern territories of the Continent* the first point to be established was that the boundary line between the two Republics was that formed *by the highest summits of the Andes on the water-divide*, it was also necessary to agree that this division terminated where the disputed territory began. Otherwise there is the danger that the arbitration may be reduced to determine which is that line as far as the southern extremity of America, which would involve the complete loss of the question for Chile. The contrary is not indicated by the letter of the Treaty. On this important point no doubt or ambiguity should be left subsistent. It is therefore necessary to complete the Treaty with a declaration in the sense which I have just expressed. In like manner, in Art. 2 the matter of the controversy should be indicated by explicitly saying that it includes the Straits, Tierra del Fuego and Patagonia, and not by any limitation to the Straits and the disputed territories. With this declaration conformity will be maintained with the long discussion already held, and the scope and significance of Art. 1 will be better understood."¹

As may be seen, Señor Alfonso coincided with the Plenipotentiary of Chile respecting the idea of establishing, as the boundary line between the Republics, the line formed by the highest summits of the Andes on the water-divide. He mentioned the incongruity which in his judgment resulted from including a provision relative to the general boundary in a treaty of arbitration regarding Patagonia, and only objected to it by reason of the unfavourable results which the arbitral suit might occasion to Chile owing to the circumstance that the terminal point of that boundary in the south was not defined so as to exclude the whole of Patagonia.

This project, like the previous one, also became fruitless for the reason already expressed.

Before closing the history of the negotiations of 1876-78, and since we have referred to the rejection by the Government of Chile of the projects then drafted, it is advisable

¹ *Memoria Rel. Est. Chile*, 1878, pp. 144, 145.

to recall here that subsequent facts have proved that Señor Alfonso showed a far-seeing prudence when he deprecated the introduction of a general boundary clause in a Treaty of Arbitration respecting Patagonia, the object of which might have been to decide indirectly the question of ownership of this territory.

As we have already said, Señor Irigoyen, when proposing that such stipulations as to the Andean frontier be inserted in the projects of Arbitration, had two objects in view: to decide the doubts relative to the "Potreros" of the Cordillera by means of the *divortia aquarum* and "to save Patagonia" from the consequences of the same arbitration which he was negotiating.

**Subsequent
declarations
of Señor
Irigoyen.** This last circumstance, which Señor Alfonso clearly saw, and which at that time might have been considered a mere conjecture, is now recognized by Señor Irigoyen, who, referring some years afterwards to one of the projects agreed to in 1877 between himself and Señor Barros Arana, spoke as follows in the Chamber of Deputies of his country:

"In that treaty it was stipulated that the Argentine Republic is separated from that of Chile by the Cordillera de los Andes, the boundary line running along its most elevated points and passing between the sources of the streams which flow to one side and the other.

"This is the basis which the deputy who was in possession of the House yesterday called the true solution of the boundary question; *it was a carefully prepared formula [forma] in order to save Patagonia as much as possible from the consequences of an arbitration in which I have never had full confidence—not because I had doubts as to our right or as to the value of our title—but for other reasons which I shall give later on.*"¹

¹ *Discurso del Señor Irigoyen*, pp. 72, 73.

This ingenuous declaration on the part of the Argentine negotiator shows up the significance of the negotiations of 1876-78, and throws a light on their true history.

In them Chile's one aim was to end the dispute as to the ownership of Patagonia, the Straits of Magellan and Tierra del Fuego by submitting it to the arbitration stipulated in 1856; the Government of the Argentine Republic introduced into the draft agreement certain formulae which, by reason of the scope which they extended to the general boundary, tended to "save Patagonia from the consequences of an arbitration" according to the words of Señor Irigoyen; and these formulae were rejected by the Government of Chile simply because they prejudged the question over Patagonia, and because they decided in advance what it was intended to submit to an arbitral decision.

**Mission of
Don J. M.
Balmaceda.**

In 1879 Don José Manuel Balmaceda was accredited Minister Plenipotentiary of Chile in Buenos Aires, Dr. Don Manuel A. Montes de Oca being Minister for Foreign Affairs of the Argentine Republic.

Between these two statesmen there was not, properly speaking, any negotiation upon boundaries. The Minister of Chile on this occasion merely listened to two propositions which the Argentine Minister submitted to him. The first proposition of compromise made by Señor Montes de Oca was worded thus:

"The Cordillera de los Andes is, from north to south, the dividing boundary between the Republics of Argentina and Chile as far as lat. 52°, the line of separation running over the highest points of the said Cordillera, and passing between the sources (manantiales) which flow down either side."

In our previous Statement we remarked, in connexion

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with this article, that instead of saying, as in the preceding drafts, that the boundary line shall pass "*between the sources of the springs*" it was simply said shall pass "*between the sources*": thus warranting the belief that its author, Señor Montes de Oca, had wished to avoid a redundancy, since in Spanish the words "manantiales" and "vertientes" have the same meaning of waters springing or flowing.

The Argentine Representative says (p. 174), with reference to this remark, that the redundancy only appears in our translation of the English phrase, which is erroneous; and remarks in turn that Señor Montes de Oca re-inserted, in a second proposition on the 25th of July, the original phrase.

We shall not dwell on this point, as questions of the translation of terms are dealt with elsewhere; but we shall certainly examine this second proposition of Señor Montes de Oca, to which the Argentine Statement refers, without giving its text. It reads thus:

"The Cordillera de los Andes is from north to south the boundary between the Republics of Argentine and Chile. This boundary line shall run along the summits of the said Cordillera, passing between the sources of the springs which flow to one side and the other of same. *In the points where the water-parting line should not be perfectly clear this boundary shall be established by means of Experts.*"¹

This last phrase does not leave the slightest doubt as to the hydrographical nature of the boundary which the Argentine negotiator proposed. While abandoning the wording of the corresponding provision of the Agreement of 1878, instead of entrusting the Experts with the settlement of difficulties arising from the existence of valleys of the

¹ The text is given by Señor Gonzalo Bulnes in his book entitled *Chile i la Argentina* (Santiago, 1898), p. 100.

Cordillera in which the water-parting line should not be clear, it transformed the request into an order by saying: wherever the *water-parting line* should not be clear, *this boundary* shall be established by means of Experts. Now, when the Experts, in view of this order, should have found and traced the water-parting line in any point whatsoever, the boundary would have been demarcated at that point. But, as the frontier line between the two countries was a single one in its entire extent, that section demarcated by the Experts would necessarily be a part of the general line which was thus clearly determined all along its extent by the water-divide.

The Argentine Representative asserts (p. 170) that Señor Balmaceda proposed the adoption of a frontier line over the easternmost slopes of the Cordillera.

Possibly he may have suggested this idea unofficially, as part of some proposed compromise, and this would seem to be the fact from the following telegram which he addressed to his Government and which is reproduced in the Argentine Statement (p. 170):

"Yesterday, in the presence of the Cabinet, there was a meeting of geographers and specialists to give their opinions upon the Andean region east of the Cordilleras and on the configuration of the high plain at its foot. They think that it would be very difficult to carry out the demarcation on the ground itself, and as well to effect the same on the map of the plain mentioned. And as to the Cordillera, they *unanimously maintain* that it ends at Cape Providencia and that *from Reloncaví southwards there is a well defined divortium aquarum dividing Patagonia from the western region.*"

As the accuracy of the information contained in this telegram has not been disputed, we may infer from it that the "geographers and specialists" whom the Argentine Government consulted opposed the delimitation over the

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easternmost slopes of the Cordillera as proposed by the Chilean Plenipotentiary, because there was in the Patagonian region, to the south of Reloncaví, a well defined *divortium aquarum*. The logical conclusion of an opposition based on this fact is that they were of opinion that such well defined *divortium aquarum* should be the boundary.

**Dr. Moreno's
"Central
Cordon."** In connexion with the Balmaceda-Montes de Oca transaction, the Argentine Representative states (p. 170), quoting from a Chilean writer, that the Chilean Plenipotentiary requested the Argentine Government to adopt a demarcation further east than that of the high summits, *inasmuch as the water-parting line was not clearly defined in the Patagonian region*, and that the Chilean Government was informed that, according to some Argentine geographical specialists (Dr. Moreno being one of them) there was a "well defined *divortium aquarum* dividing Patagonia from the western region, from Reloncaví to the south." Information given about that time by Dr. Moreno is also quoted (*id.* and note) as a proof that it was never intended, on the part of the Argentine geographers and diplomatists, to remove the boundary to the east of the Cordillera.

In the first place, Chile never maintained that there was such an intention, and the Tribunal will readily perceive the difference between such a contention and the upholding of a natural line of demarcation which follows its own course without being influenced by human intentions. Moreover, the quotations from Dr. Moreno, far from giving force to the Argentine argument, are really so many proofs that if *the watershed* was to be agreed to as a boundary line in Patagonia, such an expression was understood to mean the general Patagonian watershed, the "true water-parting line" as it was called some years later at the Argentine Geographical Institute. In fact, Dr. Moreno calls "central cordon" "*the one that serves as the division of the waters*," using his own translation; so did another Argentine explorer, Don Ramon Lista, in a book published about that time, though we do not know if he was one of the "specialists" called in to give his opinion on that occasion. Speaking of the Patagonian Atlantic Rivers between Deseado and Gallegos, he says that they all

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"rise at the foot of the Andes," and when he uses the expression "principal chain" he takes care to mention that it is the "site of the *divortia aquarum*." ¹

The Tribunal will find it hard to reconcile these precise definitions with the theory attributed to Dr. Moreno in the Argentine Statement that the river Aisen crosses the summit of the Andes, meaning that of the same "central cordon" or principal chain. How a river can cross a cordon which serves as a division of waters is a thing impossible to understand, since the condition of dividing the waters and that of being traversed by a watercourse are incompatible and contradictory. At the most, given the fact that the chain *is* crossed by a river, it might be said that the part of the chain lying north, for instance, of the river is one watershed and the part lying to the south another; but both parts could never be correctly designated as constituting the same watershed or water-parting. It is equally impossible to accept that, given the knowledge that a chain of the Cordillera (be it called central, lateral, or otherwise) be crossed by a river, if there were an intention on both sides to agree on such a chain as a boundary, the same could have been designated as *the divortium aquarum* or *the water-parting chain*.

Moreover, amongst the "*low passes* of some importance" formed by the "central cordon" of Dr. Moreno, he mentions that "which Musters visited opposite Teckel" (Teca): this the same Dr. Moreno, as Argentine Expert, now refuses to acknowledge, even as a part of the Cordillera, and it is declared by the Argentine Representative to be outside the controversy. It will be fully demonstrated, when dealing with the geographical description of that region, that the data already furnished by Musters in 1870 could leave no doubt as to the topographical characteristics of the country where "*the watershed*" (as he calls it) was located by Nature, independent of the intentions or the exertions of man; and that if that "pass" (Teca) was mentioned as being "of some importance" by Dr. Moreno, it was precisely on account of its low level and the facility of communication which it afforded between Eastern and Western Patagonia.

We must then conclude that in the negotiations of 1879, as in the previous ones of 1877, there was no formal discussion about the

¹ Ramon Lista, *Mis exploraciones i descubrimientos en la Patagonia* (1877-1880), Buenos Aires, 1880, pp. 35, 36.

Andean boundary. If Chile entertained certain doubts about the existence of a well-defined watershed to the south of Reloncaví, they were considered as settled when information was forthcoming from the Argentine geographers, who affirmed the existence of a well-defined *divortium aquarum* in that region; and in consequence of such information, the "divortium aquarum" or "water-parting line" boundary was maintained throughout these negotiations. And it must be pointed out to the Tribunal that the fact that Chilean negotiators in 1865 and 1879 sought for another boundary because they entertained doubts as to the existence of a *well-defined water-parting* to the south of Reloncaví (doubts originated by the reported existence of lakes with two outlets), and that they ultimately withdrew their suggestion on the Argentine geographers' assertion that "*there was a well-defined divortium aquarum,*" and that the "central cordon was the one that serves as the division of the waters"; it must be pointed out, we say, that this fact is the strongest evidence that the "divortium aquarum" or water-parting line was really the boundary line which both sides were ready to accept, provided its existence as a *well-defined* line were proved. As has been seen, even the difficulty due to its being undefined or not absolutely clear in places was obviated in the second draft presented by Señor Montes de Oca. Another remark might be made to confirm this, if necessary: that neither in this transaction, nor in the previous or subsequent ones, did the Chilean negotiators contemplate the case, even as an hypothesis, that the boundary ridge could be crossed by a watercourse; but that if the existence of such watercourses as could be Argentine in their upper course and Chilean in their lower one was assumed by the Argentine geographers or diplomatists, and if they thought it rational to call such a broken succession of ridges a "water-parting line," they kept their ideas to themselves, and never tried to arrive at a clear agreement on this point.

And it must be further pointed out that it would have been inconsistent on the part of the Argentine negotiators to give or accept for the expression "divortium aquarum" or "water-parting line" a meaning in Patagonia different from that which they gave to it in the central region, where the "divortium aquarum" rule was held up as the basis of the Argentine claim to the "Potreros de

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Cordillera." The precise meaning of both expressions had just been made perfectly clear at the time of the negotiations by an Argentine writer in a pamphlet on the boundary question inspired by the views of Señor Don Felix Frias, ex-Minister to Chile. In this paper, which has been quoted before,¹ it is clearly taken for granted that the "divortium aquarum" or "water-parting line" maintained as the legal rule for the demarcation of the boundary is that which parts "the origin of the watercourses" (p. 95). When speaking of the "various chains of mountains" to be found within the "considerable breadth of the Cordilleras," no mention is made of the height of those chains, their inaccessibility, their being or not being covered with snow, their general direction, etc.; the only clear thing is that, according to the "divortium aquarum" rule of demarcation, "the extensive valleys contrasting by their fertility with the barrenness of the orographic system of the Andes were to belong to that country towards which they presented their principal declivity" (p. 102). In a word the rule was not spoken of as a "secondary one" to know in what part of a particular chain the line ought to be marked out, but as a fundamental rule according to which the particular chain constituting the boundary was to be ascertained.

It has been already said that about that time the Argentine geographers and explorers, being fully aware of the Chilean explorations which showed that some Patagonian rivers cut through the mass of the Andean system, continued to call "central cordon" and "main chain" "that which serves as a division of the waters," and it must be further shown how the opinion of those geographers was used as a reason for upholding the boundary along the "central cordon of the Andes" as far as the southern extremity of the Continent. The author just quoted said in this respect (p. 52): "The scientific explorations carried on since the beginning of the century in the southern regions have corroborated the general opinion that the *Central Andean Cordon*, through its extent from north to south, is prolonged *without interruption* along the western part of America," . . . and (p. 53) "that according to the Argentine

¹ Antonio Bermejo, *La Cuestion Chilena, etc.*, 1879.

scientist" (Dr. Moreno) "the backbone of America terminated hidden under impenetrable forests" in the vicinity of Magellan Straits.

It is not for us to inquire how the Argentine writer could reconcile the notion of a "central" uninterrupted cordon "that serves as the division of the waters" with the fact of its *interruption* at the end of the Sarmiento Peninsula (lat. 52°), or by the valley of the Aisen, as is claimed to have been shown at the time (Argentine Statement, p. 170, note) in a sketch-book that was not known in Chile; it is enough for our present purpose to point out once more to the Tribunal that the same "cordon" could not be identified with that which was understood to constitute the legal limit in the central region, unless it left to Chile *all* the Cordilleran valleys the principal declivity of which lies towards Chile, as it was understood to leave to the Argentine Republic all those which presented their declivity towards that country.

Reasons for
the joint
acceptance
of the
divortium
aquarum.

So much as regards the history of the negotiations of 1876-79, of which, as we have seen, the only result was the adoption, by mutual agreement, of a general principle of demarcation applicable to the Andean zone. It now behoves us to inquire into Señor Barros Arana's motive in proposing for that object the principle of the *divortium aquarum* and the reasons which Señor Irigoyen had, or might have had, for accepting it without the slightest demur, as his official documents prove.

The origin of the Agreement of the 12th of May, 1877 (see page 251 *et seq.*), is to be found in the desire expressed by the Argentine Government that any treaty which might be drawn up respecting Patagonia should contain a general rule for the delimitation, which should solve the doubts that had arisen, and those that might arise, in some valleys of the Cordillera, the dominion over which might be claimed by both countries.

Regarding well known cases, the first doubt which arose

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in the Cordillera in 1846 referred, as has been seen, to the ownership of the valleys Valenzuela, Montañez, Yeso, and Los Angeles, or, in other words, the Potreros of the Jirones, between the Cordilleras del Planchon and de las Llaretas. The second, in 1873, referred to Lake Diamante, between the Cordilleras del Maipo and de la Laguna. The third, in 1874, related to the valley of "Los Patos del Sur," between the gap of this name, otherwise called Valle Hermoso, and the high Cordillera del Espinacito.

New questions might arise in regions whose known position resembled those above mentioned, and it was not unreasonable to anticipate them in the valley of "Los Patos del Norte" between the Cordillera de Doña Rosa and de las Cortaderas ; in the "Invernadas" (valleys) of Donoso between the Cordilleras of Santa Cruz and of Ansilta ; in the valley of the Tunuyan, between the Cordillera del Portillo and de los Piuquenes ; and in the valley of Lake Lacar, which, according to Cox, its first explorer, was enclosed by "a great deviation of the central line of the Cordillera towards the east." It was also to be presumed that questions would arise in less known regions of the Cordillera occupied by the Indians, such as the valleys of the upper Bio-bio and Lonquimay, of which only the vaguest knowledge then existed.

It answered its object. The principle of demarcation proposed by Señor Barros Arana decided all those doubtful cases, and therefore fulfilled the object of its stipulation. The rule of the high summits was inadequate for that object. There were well known cases of difficulty in which its adoption would have been wholly inadequate. As an illustration we may recall the case of the valley enclosed

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between the equally high Cordilleras del Portillo and de los Piuquenes, regarding which the Governor of Mendoza said in 1864 : " If the River Tunuyan had not been formed in this valley, which is the one that had opened a passage to this (Argentine) side, the boundary in this part would have been doubtful." Consequently, it was evident that, at this point, only the principle of the water-divide could solve the difficulty.

But the very adoption of this principle left other probable or possible doubts untouched. Cases might occur of valleys in which no river opening a passage towards one of its two sides was formed, and there the boundary, according to the said principle, would be doubtful. The other source of difficulty would be the opposite case : that of a river opening a passage to both sides, as it was thought probable might happen in the cases of the River Huahum or of Lake Lacar, in view of the explorations of the engineer, Señor Frick, in 1864.

Señor Barros Arana also took into consideration in his proposition those remote cases of difficulty which might arise owing to the water-parting line not being clear in some parts, and he suggested that they should be decided by means of Experts.

As has already been shown, Señor Irigoyen accepted the proposition of his colleague in both its parts ; and it may plausibly be held that the chief motive of the agreement between both statesmen on this point must have been that the Chilean proposition answered satisfactorily to an idea common to both. Therefore they adopted it. It is inconceivable that they should have acted otherwise, because if they sought a settlement, it was with the special

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object of removing all difficulties, of avoiding discussions, of establishing harmony and of leaving outstanding none of the previously existing problems. The principle of the *divortium aquarum* selected by them decided all the existing questions, and, as that was not sufficient, they also laid down beforehand rules of procedure for the solution of exceptional difficulties to which that principle might be inapplicable.

It accorded with the scientific criterion formed in both countries upon the boundary. But, there was another and more powerful motive which must have influenced the action of the negotiators of 1877 in favour of the principle of demarcation by the water-divide. And this was that the adoption of this principle would simply sanction the scientific opinion expressed at that time in both countries regarding the boundary line.

By Pissis in Chile. In Chile, as has been seen in our previous Statement, the geographer Pissis had been commissioned in 1848 to mark out on the Cordilleras the culminating edge between the streams of either country. In execution of his commission Pissis published in 1873 the maps in which he identified this edge with the "continental divide," and in 1875 he issued his *Jeografia Física*, on the first page of which it is stated that the eastern boundary of Chile is the "anticlinal line of the Cordillera de los Andes."

The Argentine Statement says (page 55) that the work of Pissis "was certainly taken into consideration above all others in deciding the geographical boundary on the south, viz. : in the *anticlinal line of the Cordillera de los Andes*," which is the frontier that the eminent geographer holds to be the true one. On this point we are in perfect accord. But it is our duty to point out the mistake made in con-

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tending that Pissis attributed to the expression "anticlinal line" the meaning of "highest crest watershed"—an assertion by which it is vainly sought to appeal to the authority of the learned French geographer in favour of the Argentine interpretation.

What Pissis understood by anticlinal line is **Anticlinal line according to Pissis.** *the line which delimitates or separates the hydrographical basins*, whether it runs over a mountain or over plains. It is in this sense that he employs the said expression on every occasion throughout the chapter of his *Jeografía Física* entitled "Hidrografía," beginning with the statement that "all the watercourses of Chile have as their boundary *the summit of the Andes.*" This statement, coming from a geographer who was acquainted with the multiplicity of the Andean ranges, cannot but imply the consequence that, in his opinion, the true summit of the Andes was that where the rivers of Chile rise. When describing the basin of the Rapel, he says that it is enclosed by "the anticlinal line of the low hills (colinas bajas) of Teno"; when speaking of the basin of the Bio-bio he says that "the anticlinal line in which it is enclosed *descends to the plain* from Pangal as far as to Tucapel"; he uses similar expressions regarding the basin of the River Valdivia, of the River Bueno, the anticlinal line of which "surrounds the northern part of Lake Llanquihue and of the swamps of Frutillar," and of the basin of the River Maullin, "the southern boundary of which is formed by an anticlinal line running from the heights of Puerto Montt as far as Carelmapu." Thus in Pissis' view the "anticlinal line of the Andes" was the eastern boundary of the hydrographical basins of the Chilean rivers starting from the Andes.

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No. 24.

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**Dr. Bur-
meister in
the Argen-
tine Re-
public.**

If, as the Argentine Representative rightly believes, the work done by Pissis in Chile was taken into consideration in the negotiations from 1877 to 1881, there is no ground for not believing that the work done in the Argentine Republic by Dr. Burmeister—whose scientific reputation was at least equal to that of Pissis—was also taken into account. Dr. Burmeister had just finished (January, 1876) in Paris the publication of the first volume of his work *Description Physique de la République Argentine*, wherein he established the “*divortium aquarum*” as the Andean boundary with a remarkable simplicity and scientific precision of terms.

This definition was cited in our previous Statement, and nothing seems to us more calculated to show its convincing value in the present controversy than the fruitless attempts made by the Argentine Representative to weaken it.

“The western boundary” (of the Argentine Republic), says Dr. Burmeister, “is better defined. It is the same that existed from the time of the Spanish Dominion between the Viceroyalty of La Plata and the Gobernacion de Chile. When the new Viceroyalty was founded, the separation of the hydrographical basins was intelligently chosen as the political boundary, and all the country and all the mountains from which the waters flow to the east were adjudicated to the State of La Plata. Chile, on the contrary, was given the whole of the hydrographical system drained to the west.”¹

Dr. Burmeister includes, as may be seen, in his definition, three propositions of which the last two are consequent on the first:

1. The political boundary which separated the Gover-

¹ *Description Physique de la République Argentine*, vol. i. p. 150.
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nacion de Chile and the Viceroyalty of La Plata was the line of separation of the hydrographical basins ;

2. The Viceroyalty comprised all the territory and mountains *the waters of which run to the east ;*

3. Chile covered all the hydrographical network *emptying to the west.*

Having established these propositions, the significance of which could not be more complete, Burmeister proceeds to apply them to that part of the Cordilleras with which he was more familiar.

"Thus," he says, "towards the north the line follows the *western border* of the high plateau of the Cordilleras and afterwards follows its *western prolongation* called *La Cumbre* (the summit)."

Why? Because *this line, this western border, this western prolongation, forms the line of separation of the hydrographical basins.*

"The valleys and cañons between the two chains," he continues, "belong to the Argentine Republic."

Again we ask, Why? Because the waters of those valleys and cañons flow to the east.

It is sufficient to glance at the map published in 1875 in the Supplementary Papers to Dr. Petermann's *Geographische Mittheilungen*, as an appendix to an article by the same Dr. Burmeister, in order to understand that the assertions quoted are but the application of the first two propositions of his definition. It is also sufficient to read the description of the valleys and *passes* of the Cordillera which Dr. Burmeister gives in his book, to arrive at the conclusion that he considers each one of those *passes* as a point of the hydrographical separation between a Chilean

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and an Argentine valley. The only instance where he applies the name of "pass" to a supposed water-gap is that of Riñihue, where, according to the information supplied by Frick, the communicating lakes drain both to the east and to the west, thus constituting a case where the line of the separation of the hydrographical basins would not have been perfectly clear, had this case really existed.

All this forms such a consistent whole, that its significance cannot be explained away. The Argentine Representative alleges (page 75) that the authors to whom our Statement refers (Dr. Burmeister included) when speaking of the "watershed," were alluding to the "watershed proper and peculiar to the main chain." He goes on to say that "save some errors in the translation" our quotation is correct although "incomplete." Then, completing it with the phrases in which the author applies his definition to that "part of the Cordillera" with which he was familiar, he says nothing is more conclusive; that only "on the western border of the high plateaus," on the "western prolongation of the Cordilleras," *only there should the watershed be sought*. He finally says that in Burmeister's book there is "something else" which we have not quoted, and this is a sentence in which the author mentions, when classifying the Argentine mountains, in the first place, "the Cordilleras, the western frontier of the country, with their highest summits crowned by volcanoes mostly extinct, and rising from the midst of eternal snows"; and the Representative of the Argentine Republic even asks where the eternal snows would be, and where the high summits, if the continental divide were accepted as a frontier?

We cannot find, after a minute examination of the quo-

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tation from Dr. Burmeister, either any mention of the " watershed " or the errors of translation which he attributes to us. We believe, on the contrary, we should have made a serious mistake had we translated Dr. Burmeister's expression " la ligne de séparation des bassins hydrographiques " by " watershed proper and peculiar to the main chain."

The remark as to the incompleteness of our quotation is pointless. A quotation cannot be called incomplete when that part of the text which is fundamental has been copied, though the examples illustrating it may not have been included.

In the paragraph quoted from the Argentine Statement it has been deemed necessary to observe that " the line of separation of the hydrographical basins " must be looked for in certain *borders* or certain *prolongations* of the Cordillera. As to this, we shall simply say that as such a line is a natural and visible feature, it will always be easy to find and determine it, whatever the character of the region in which it may be situated. Nor does any value as an argument attach to the query in the Argentine Statement as to where one would find the snows, the summits and the volcanoes, spoken of by Dr. Burmeister, if the mentioned line of separation of the hydrographical basins were accepted as a frontier ; because Dr. Burmeister, having established a general, clear and precise principle, evidently understood that to the Argentine Republic belonged those snows, summits and volcanoes comprised within " the hydrographical network which empties to the east," and to Chile those comprised within " the hydrographical network emptying to the west."

Chapter X.

NEGOTIATIONS OF THE TREATY OF 1881.

THE negotiations carried on between the years 1876 and 1879, which we have narrated in the preceding chapter, did not remove the disagreement between the Governments of Chile and of the Argentine Republic respecting the question of Patagonia. The negotiators could find terms neither for an acceptable compromise nor for the arbitration to which both countries, by the Treaty of 1856, had agreed to submit their territorial differences. The only result obtained was the Agreement of 1877 by means of which the Governments reciprocally declared that they considered as the dividing line of their respective countries, to the north of Patagonia, the *divortium aquarum* of the Cordillera de los Andes. This agreement, therefore, by the adoption of a general principle of demarcation, decided the doubts which had arisen respecting the ownership of certain valleys or "Potreros" of the Cordillera, and was maintained by the Chilean negotiators, Señores Barros Arana and Balmaceda, and by the Argentine negotiators, Señores Irigoyen in 1877, Elizalde in 1878 and Montes de Oca in 1879.

**Suspension
of negoti-
ations
from 1879 to
1881.**

But, respecting the main question of Patagonia, the Straits of Magellan and Tierra del Fuego, it had been impossible to arrive at an understanding,

and as this question was discussed with equal heat by both parties, the Governments from 1879 onwards made no fresh efforts to settle it in view of previous failures. Thus negotiations ceased and there was no diplomatic representation of Chile or the Argentine Republic in Buenos Aires or Santiago respectively.

They were reopened in 1881 through the Ministers of the United States. Such was the situation in 1881, a situation which had become both strained and dangerous, when the Ministers of the United States of America accredited to the Governments of both countries offered their friendly services towards reopening the interrupted negotiations. These offers were accepted, and by their interposition the negotiations which led to the signing of the Treaty of 1881 were carried out. Owing to this circumstance they were completely and impartially recorded in a documentary form.

In our previous Statement we alluded to these negotiations of 1881, but only to the extent necessary for supplying the elements of interpretation of Article 1 of the Treaty. We are now, however, compelled to deal with them more minutely, in order to present in their true light some important facts to which a misleading aspect is given in the Argentine Statement. All the documents relating to this negotiation will be found in the Appendix.

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26 (A-W).

The Minister in Buenos Aires requests from his colleague at Santiago a proposition of settlement. The friendly action of the American Representatives took as its starting point a private correspondence, respecting the pending questions, that passed between two well known Argentine gentlemen, Dr. Don Luis Saenz Peña, afterwards President of the Republic, and Don Mariano de Sarratea, residing in Chile. The American Minister in Buenos Aires

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on becoming acquainted with the contents of this correspondence, thought that it showed a desire to come to an agreement, as well as a means of attaining it; and he addressed his colleague at Santiago, asking him for a proposition from the Chilean Government.

**Chilean
Proposition.
The *divortium*
aquarum as
boundary as
far as the
52°.**

The reply from the American Minister at Santiago ran thus :

“SANTIAGO, *May 8th*, 1881.

“The Government of Chile would be disposed to settle all questions on the following bases. From the *divortia aquarum* of the Andes, 52° of latitude, a line would be traced as far as meridian 70° of longitude, and from the point of intersection the said line would deviate to the south until reaching Cape Virgins. The region south of this line, excepting Staten Island, which would be Argentine, would correspond to Chile, and the region to the north to the Argentine Republic.”

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No. 26c.

The telegram went on to say that this arrangement would be definitive; but if either of the parties or both demanded arbitration, only one arbitrator would be appointed to determine the pecuniary compensation for the loss of territory according to the titles. It added that the Straits of Magellan would be neutralized.

As may be seen, the first proposition presented in the negotiations of 1881 designates as the boundary the *divortium aquarum* of the Andes. In those of 1877 Señor Alfonso had only objected to such a boundary comprising any section whatsoever of the disputed Patagonia, and said that there would be no hesitation in accepting it outside the controverted territories. Now, as parallel 52 was accepted as the boundary line in Patagonia, from the north as far as this parallel the *divortium aquarum* of the Andes was to be established as the boundary, and from there the conventional line to Cape Virgins indicated in the telegram of the 8th of May.

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Argentine counter proposition. The American Minister in Buenos Aires answered on the 11th of May transmitting two propositions, one for arbitration, and the other for **The divortium aquarum to be the boundary as far as 52°.** a direct settlement.

The boundary clause, in both propositions, was conceived in these terms :

“The *divortia aquarum* of the Cordillera de los Andes as far as the 52°, shall be acknowledged as the boundary line between Chile and the Argentine Republic from north to south, and from this point of the *divortia aquarum* the boundary line shall run along the 52° as far as its intersection with the 70° of longitude, and from this point of intersection the line shall deviate to the south until it touches Point Dungeness.”

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Then it was suggested to submit to the arbitration of the President of the United States the question of ownership of the territory situated to the south of the mentioned line (from parallel 52° to Point Dungeness), with a view to granting territorial or pecuniary compensations.

The Argentine proposition respecting the frontier line to the north of parallel 52° entirely coincided, therefore, with the Chilean proposition, and both only reproduced the agreement of 1877-79 regarding the adoption of the *divortium aquarum* of the Andes as a general principle of demarcation.

From this moment there was no further talk as to the Andean boundary which was established by virtue of those two concordant propositions. The discussion continued only regarding the terms of the agreement respecting Patagonia.

The American Minister at Santiago replied to the Argentine proposition for a direct arrangement contained in the telegram of the 11th of May, by saying that it had been pointed out to him that a straight line drawn from the *divortia aquarum* of the Andes in parallel 52° to Point Dungeness “ would have to pass over water at some points.”

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"It is considered here," he added, "that there is some error in the telegram and that the idea of the Argentine Government must be that such line should always pass over the mainland (*tierra firme*), fixing some points at a certain distance from the coast, in the neighbourhood of Point Dungeness."

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No. 26E.

The discussion continued as to the extent of the territory which should be submitted to arbitration to determine the pecuniary compensations, until on the 27th of May the American Minister at Santiago, expressing his belief that the Government of Chile would prefer a direct arrangement, suggested bases of agreement in which the boundary line to the north side of the Straits of Magellan was described as follows :

"From Point Dungeness a line would be drawn which would run overland to Mount Dinero. The line would continue from Mount Dinero, following the greatest elevations of the chain of hillocks which stretches towards the west, until it reaches the height of Mount Aymond. From this point the line would continue as far as the intersection of 52° of latitude with the 70° of longitude, and from this point would continue in the direction of the 52° as far as the *divortia aquarum* of the Andes."

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On the 31st of May the American Minister in Buenos Aires telegraphed to his colleague assuring him that this proposition would be accepted, and reproducing it *ad litteram* in order to avoid mistakes.

Consequently the Chilean Minister for Foreign Affairs, by note of 3rd of June, which he addressed to the American Minister at Santiago, that he might bring it to the knowledge of the Argentine Government, formulated six bases of arrangement for the whole question. The first one, referring to the point that concerns us here, embodied the agreement arrived at in 1877 regarding the proposition which read: "It shall be acknowledged that the boundary line between Chile and the Argentine Republic

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**Formula
of the
Government
of Chile.**

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from north to south is the *divortia aquarum* of the Cordillera de los Andes as far as the 52° in the following terms :

“The boundary between Chile and the Argentine Republic is, from north to south as far as the 52nd parallel of latitude, the Cordillera de los Andes. The frontier line shall run in that extent, along the highest summits of the said Cordilleras which divide the waters. The difficulties which might arise, owing to the existence of certain valleys formed by the bifurcation of the Cordillera de los Andes and where the water-parting line should not be clear, shall be amicably solved by two Experts appointed one by each party. In case they should not come to an agreement, a third Expert appointed by both Governments shall be called in to settle the same.”

The Argentine Government accepts it with an addition. Señor Irigoyen, the Argentine negotiator, took no objection whatsoever to this wording, which shows that, in his opinion, it faithfully represented the agreement of both Governments upon the nature of the frontier line. He merely suggested the addition of the words : “and shall pass between the streams flowing down to either side,” not with the object of modifying the definition of the said line, but simply for the purpose of “completing it” with words already admitted in the negotiations of 1877 and 1878

Its meaning. In connexion herewith the following may be read in his note of the 4th of June, 1881 :

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“First basis accepted with a small addition which supplements it. It would remain in the following form : ‘The boundary between Chile and the Argentine Republic is from north to south as far as the 52° parallel of latitude the Cordillera de los Andes. The boundary line shall run in that extent along the highest summits of the said Cordilleras which divide the waters and shall pass between the streams¹ flowing down to either side.’ All the rest of the first basis is accepted, and I beg to state that the words added were already admitted by both Governments during the previous negotiations of 1877 and 1878.”

¹ The Spanish word “vertientes” is translated here by “streams” instead of by “sources,” as in our previous Statement, since in this case both may be regarded as synonymous. The subject of the translation of the Treaties will be dealt with at length in a subsequent chapter.

In this same sense he expressed himself in 1895 when he wrote the following :

"I wished to replace, in its entirety, the article as recorded in the negotiations of 1877 carried on by me, in the Treaty of 1878 signed by Señores Barros Arana and Elizalde, and in the project that was presented by Señor Montes de Oca to Señor Balmaceda. I thus endeavoured to sign a formula which already had the assent of two administrations and of the statesmen who succeeded me in the Ministry of Foreign Affairs."¹

All these documents irrefutably show that Article 1 of the Treaty of 1881 is in substance, **There was no modification in the substance.** although not verbally, a faithful reproduction of the agreement which both Governments had reached in 1877 and 1878, to establish the *divortium aquarum* as the principle of the demarcation of the frontier line in the region of the Cordillera. Nobody questioned it in the negotiation of 1881, or referred to it, or explained it, or expressed a desire to modify it.

The Argentine Representative says, however (Argentine Statement, p. 177) :

"The Minister (the American Minister at Buenos Aires) referred to the *divortium aquarum* of the Cordillera with the idea of localizing the points of the main chain over which the line was to run, and *the modification which the negotiators introduced* was worded with the view of stating in explicit terms, in unmistakable words, that it was not possible to go away from the crests under any pretext whatever."

This assertion, as we have just seen, is peremptorily destroyed by the declarations of the Argentine Minister, Señor Irigoyen, which show that he did not seek, in the negotiation of 1881, to make any modification whatsoever in the agreement of 1877-79, but on the contrary to maintain it in its entirety.

¹ *Artículos del Dr. Irigoyen*, p. 54.

In the articles published by Señor Irigoyen in 1895, to which we have referred several times, the Minister affirmed categorically that in the negotiations of 1877 "the formula of the *divortia aquarum* proposed by Señor Barros Arana . . . was eliminated, *not to reappear in any of the subsequent negotiations.*"

The Argentine Statement (p. 167) reproduces this assertion.

The official documents which we have here laid before the Tribunal bear testimony against this assertion by proving that the Argentine negotiator of 1881, who was Señor Irigoyen, opened the negotiation by proposing (on the 11th of May) as the boundary line "the *divortia aquarum* of the Cordillera de los Andes as far as the 52nd degree."

Señor Irigoyen asserts that the propositions of the American Ministers were not from the Government.

In order to explain or remove this incongruity, Señor Irigoyen himself affirmed, in the articles already quoted, that the propositions which the American Minister at Buenos Aires transmitted up to the 3rd of June did not emanate from the Argentine Government; that he (the Minister) did not write any of them; and that it was scarcely probable that he could have been acquainted with them. These are his own words :

"I am quite sure that I did not write the communication of the American Minister. I clearly laid before him, when we met, my own opinions and views on the boundary question; but I never attempted to dictate to him the terms of his epistolary or telegraphic correspondence; he would not have allowed it. I am inclined to believe that General Osborn may have communicated to me the text of his telegram, and if the proposal therein contained had been taken into consideration in Chile, I should have examined and co-ordinated the definite language of the eight bases quoted. But General Osborn's proposals were not admitted nor even taken into consideration, and therefore there was no reason for my dealing with them. The American Minister in Chile said that that Government found some points of General Osborn's telegram obscure and confused. The latter's communication was divided into two

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parts : the first one contained the bases of the arbitration, and the second one a formula for a direct compromise." ¹

And further on he adds :

"The American Representatives had, up to that date, transmitted their propositions, as the expression of their own views or opinion, after their conferences with the Ministers for Foreign Affairs, but neither of them ventured to say, as is assumed in the Chilean pamphlet, that he spoke in the name of the Government to which he was accredited." ²

Nothing is easier than to refute all these assertions of Señor Irigoyen by confronting them with official documents.

We must observe, first of all, that it is most unlikely that the Ministers intervening in such a grave and delicate matter as that which they had undertaken, should have confined themselves to transmitting "*their propositions*" and not the formal propositions from the Governments to which they were accredited. If they themselves had worded them, it may safely be assumed that they would have always consulted the respective Ministers for Foreign Affairs as to the text of their despatches. Neither of them would have ventured to create for himself a situation so false and embarrassing as would have arisen had a proposition, put forward as being inspired, say, by the Chilean Government, been rejected by them after its acceptance by the Argentine Government.

But the American Ministers themselves state at every stage of their correspondence that the ideas which they transmit originated with the respective Governments.

Thus the American Minister in Chile wrote: 8th of May : "*The Government of Chile* would be disposed to settle all questions on the following bases," etc. 18th of May : "Your

¹ *Artículos del Dr. Irigoyen*, pp. 48, 49.

² *Ibid.* p. 50.

telegram of the 11th received. *When informing* [whom?] . . . "the remark was made to me" [who made the remark?] . . . "Respecting Tierra del Fuego *the Government of Chile* . . . consider," etc. 22nd of May: "Your telegram of the 20th of May received. As to-day is a holiday *I shall not consult this Government* until Monday."

And the American Minister in Buenos Aires says: 11th of May: "Your telegram received. *It has been pointed out to me*" [by whom?] . . . "In spite of this *I have had a lengthy conference*" [with whom?] . . . "*This Government would feel disposed to settle* . . ." 20th of May: "*I have had a conference* concerning your telegram of the 18th. *This Government* maintains the partition of Tierra del Fuego . . . *This Government* agrees to submit the region mentioned to arbitration . . . The *Government of Chile* indicate . . . *The Argentine Government* reply . . ." 31st of May: "I have placed the question on the road to a direct arrangement. I have had a long conference . . . Regarding the partition which you propose for Tierra del Fuego . . . although *this Government* hesitated very seriously in accepting such a partition, *I have at last obtained their assent to it* . . ."

Thus both the American Ministers testify that, during the whole of the negotiation in which they intervened with their friendly services, they were constantly consulting the respective Governments. But to this testimony, which in itself more than suffices to give an official character to the propositions forwarded by them, we have to add the evidence of Señor Irigoyen himself, who stated in two official notes that all the propositions and particularly those contained in the

telegrams of 11th and 31st of May *were his*, and that *he had carefully worded and co-ordinated them all*.

The telegram of the American Minister at Buenos Aires, dated the 6th of June, only contains the textual transcript of a note which Señor Irigoyen had addressed to him on the 4th. When referring in it to the fifth of the definite bases proposed by the Minister for Foreign Affairs, Señor Irigoyen writes as follows :

“ Upon this point *I must maintain the meaning and wording which I expressed* to Your Excellency in our conferences on the 10th and 30th of May, and which Your Excellency informed me had been transmitted to Your Excellency's honourable colleague by telegrams of the 11th and 31st of May.”

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And further on :

“ . . . This Government believe that the termination of this question must be absolutely frank and adequate to re-establish cordiality between both countries. Your Excellency will remember that *I have been constant to this idea, and in presenting upon all the points wordings adapted to the true intention of both Governments.*”

Señor Irigoyen again persisted in claiming as his own the propositions of the 11th and 31st of May in another note, dated the 14th of June, addressed to the same Minister and literally copied by the latter in a telegram of the same date.

Señor Irigoyen says therein :

“ This Government have sought *from the beginning of the negotiation* solutions avoiding doubts or ambiguous interpretations. Having this idea in view, they have likewise felt well disposed towards a direct arrangement. Your Excellency deigned to submit these views to your colleague by telegram of the 11th of May, *which contained the two formulae which this Government would accept.* . . . Once this suggestion had been accepted, *we have always co-ordinated the several propositions made or accepted.* . . . ”

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And further on :

"This answer was understood to be in acceptance of the *basis which I proposed in the said telegrams of the 11th and 31st* and which I find myself compelled to maintain. . . ."

We shall not comment upon the overwhelming disproof afforded by these documents of the assertions contained in Señor Irigoyen's articles of 1895, when he endeavoured to show that he had never accepted the *divortia aquarum* of the Andes as a principle of demarcation between both countries. We simply beg to call attention to the fact that the proposition of the 11th of May which states it in such unmistakable terms was made and worded by him.

It is asserted that the propositions sent from Buenos Aires were not accepted in Chile.

But in the Argentine Statement the meaning of the arrangements negotiated in 1881 is objected to in another form by saying that the propositions contained in the telegram of the 11th of May were not accepted. On page 176 may be read :

" . . . The truth is that the proposals of Minister Osborn contained in the telegram of May 11 *were not accepted*, and that in a later despatch of May 31 he said to his colleague at Santiago: 'In view of the difficulties which you meet with in arranging arbitration, I have placed the question on the ground of direct settlement.'

"The telegram of May 11, therefore, like all the other telegrams exchanged between the American Ministers in the course of the negotiations for the adoption of arbitration, became devoid of importance and meaning, since they did not relate to the new efforts which they undertook in order to arrive at a direct settlement of the dispute."

In terms similar to this, Señor Irigoyen had expressed himself in 1895.¹

It is shown that they were.

Now, the documents testify categorically against these assertions of the Argentine Statement and of Señor Irigoyen.

¹ *Artículos del Dr. Irigoyen*, p. 50.

To begin with, it is not a fact, as the Argentine Statement would have it believed, that the telegram of the 11th of May simply contained the proposition of arbitration, and that only that of the 31st of May placed the question on the road to a direct settlement. That of the 11th contained two propositions, one of arbitration and the other for a direct settlement, and the latter is discussed conjointly with the former in the telegrams from Santiago of the 18th and 27th of May, and in those from Buenos Aires of the 20th and 23rd.

And the best proof that the proposition for a direct settlement of the 11th of May *was not rejected* is to be found in the fact that it was definitely approved and incorporated in the Treaty. This proposition contained the following points :

Straits of Magellan neutralized. This was approved and appears in the Treaty under Article 5.

Staten Island to be Argentine—This was approved and appears in Article 3 of the Treaty.

Dividing line in Patagonia. A line “which starting from the *divortia aquarum* in the Andes, 50° S. should run straight to Point Dungeness.” The Government of Chile observed that such line would pass over the water at some points and that they believed there was an error in the telegram, thinking that the idea of the Argentine Government was that it should always pass over the mainland. Once this difficulty had been overcome, the proposed line is that which is set down in Article 2 of the Treaty.

Tierra del Fuego and adjacent islands to be divided between the two Republics in conformity with the bases agreed between Señores Barros Arana and Irigoyen in

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1876. This was also approved and appears in Article 3 of the Treaty.

As is known, the boundary line to the north of parallel 52° gave rise to no discussion, and the *divortium aquarum* of the Andes was accepted as proposed by the Argentine Government in the telegram of 11th of May, and it is that which appears in Article 1 of the Treaty.

The utter groundlessness of the Argentine contention in this respect is thus conclusively demonstrated. The propositions of the 11th of May, 1881, regarding a direct settlement were not rejected; on the contrary, they were all accepted. A discussion arose upon some of them; but to discuss is not to reject, and we understand that whenever propositions for a friendly agreement are made it is precisely with the object of discussing them.

Another rectification. Besides, the Argentine Statement says (page 179) :

“While the Treaty of 1881 and the projects prior to it were the subjects of debate between negotiators, Parliaments and Ministers, the discussion was simply how far the limit of the Cordillera extended to the south.”

This was, it adds, “*the sole question.*”

We must also state this point correctly : this was not the *sole* question, although it was the *main* question. There was another question, considered at the time of lesser importance, but the solution of which Señor Irigoyen wished, from the commencement of the negotiations in 1876, to include in the final Boundary Treaty, acknowledging that it depended upon the adoption of a principle of demarcation for the Andean frontier.

This question, as will be remembered, was that respecting the *doubtful ownership of some valleys of the Cordilleran*

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region, and the solution proposed by Señor Irigoyen was to incorporate in the treaty "a general principle of demarcation for the entire extent of the Cordillera de los Andes." This view having been accepted by the Chilean negotiator and by his Government, and it having been agreed that the *divortium aquarum* should be that desirable "general principle of demarcation," its incorporation in the Treaty in any form could offer no difficulty, nor give room for discussion, and in fact it gave rise to none.

Chapter XI.

THE STIPULATIONS OF THE TREATY OF 1881 ACCORD WITH THE PRECEDENTS ESTABLISHED DURING ITS NEGOTIATION.

The principle of delimitation along the *divortium aquarum* was agreed to without discussion.

FROM the 2nd of May up to the 27th of June, 1881, the American Ministers accredited to Chile and the Argentine Republic were engaged in active telegraphic correspondence transmitting propositions and remarks from the respective Governments upon certain bases of settlement for the boundary question, and co-operating personally towards the success of the negotiation. In that extensive correspondence it may be seen that all the propositions made on both sides were discussed more or less at length, save that relating to the frontier line in the Andean region, which was not discussed at any time. The principle of the *divortium aquarum* of the Andes having been proposed for the demarcation of this line by Minister Irigoyen, in a telegram of the 11th of May, it was instantly accepted. Its wording in the shape of an article of the Treaty was drawn up by the Minister for Foreign Affairs of Chile, in a communication of the 3rd of June, and Señor Irigoyen, when approving the wording, confined himself to completing it with the addition of a phrase designed to re-establish integrally, as he then said, and has

App. Doc.
No. 26 D.

App. Doc.
No. 26 K.

App. Doc.
No. 26 N.

repeated later in his writings of 1895,¹ the article already accepted in the negotiations of 1877 and 1878.

Antecedents proving this agreement. As we have previously stated, in those negotiations of 1877 and 1878 there was no discussion on this point; and it is advisable to recall here, in a few words, how the agreement was reached, in order that our subsequent remarks may be understood. Señor Irigoyen having suggested the advisability of establishing a general principle of demarcation for the Andean frontier, Señor Barros Arana, concurring with him in this idea, proposed that such boundary should be the *divortium aquarum* of the Andes. Señor Irigoyen accepted the suggestion without objection, and proposed at the same time that in order to formulate it, a wording taken from the text on International Law by Don Andres Bello should be accepted. Señor Barros Arana readily granted this request, and thus the agreement was complete both in substance and form.

Antecedents attributed to it in the Argentine Statement. With these antecedents, which show : (1) That the only consideration brought to bear in 1877 in the adoption of the *divortium aquarum* of the Andes as a general principle of demarcation, was that it would serve to solve the doubts which had arisen or might arise as to the ownership of certain valleys of the Cordillera; and (2) That the only consideration brought to bear in 1881 in incorporating this same principle in the Treaty under discussion, was that it had been accepted by both Governments since 1877; with these antecedents, we say, the enunciation made in the Argentine Statement (pp. 196-200) as to the many considerations which the negotiators of the Treaty

¹ *Artículos del Dr. Irigoyen*, p. 51.

of 1881 are supposed to have had in view when adopting the frontier line which its first Article establishes cannot but appear surprising. Among them appear opinions of historians, of geographers, of *cabildos* (municipalities), of generals, of Ministers of State, of diplomatic agents, of Presidents, etc., and among those opinions, principally those alluding to the snows of the Cordillera.

Naturally we shall not even attempt to examine the twenty-seven consecutive sentences which this enumeration contains, because, in order to do so, it would be necessary to consider the full texts, the antecedents of facts, the positions held by persons, and thus this Statement would exceed all reasonable limits. But, among the considerations alluded to, the following deserves some attention :

**Spanish de-
limitation.**

"The remote origin of the international dispute which is under discussion," the Argentine Statement declares (pp. 196-197), "dates from the time in which the Spanish Monarch, in his character of absolute Sovereign of American lands, divided and subdivided them, in order to facilitate and expedite the jurisdiction of his deputy-lieutenants. The men of those times were guided by a just idea which appears in all the documents tending to mark out the boundary line of their extensive dominions, and this idea was that of determining *natural* boundaries, fit to prevent struggles and hinder as much as possible the encroachment of any rival neighbours. With this object, not only did they concern themselves with the geographical configurations, but with configurations which constituted *real obstacles*, namely rivers, seas, mountains."

It then adds that the gigantic Cordillera covered with eternal snow was the best barrier which could be found for that object, and continues :

"This was the opinion that Argentines and Chileans wished to adhere to, when saying in Article 39 of the Treaty of 1856 :

"*Both the contracting parties acknowledge as boundaries of their respective territories those they possessed as such at the time of separating from the Spanish Dominion in the year 1810.*"

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"This was the opinion upheld by Argentines and Chileans in the settlement of 1881, to which they agreed (it is said in its preface), in fulfilment of Article 39 of the Treaty of April, 1856."

In the first chapters of the present Statement we have laid before the Tribunal the Capitulations or Decrees from the Spanish Monarchs by virtue of which the discoverers and conquerors of the southern part of America were rewarded with concessions of land.

All these concessions prove that the recipients obtained government territories measuring a certain number of leagues in length and width, and there is not a single case in which natural boundaries, determined by such real obstacles as rivers and mountains, were fixed. What specially characterizes the territorial subdivision of the Royal Spanish Orders is the arbitrary character of the delimitations and absolute disregard of the strategic conditions of the frontiers. This was because the Gobernaciones thus constituted were not to become independent States with the right to declare war reciprocally: they were all dependencies of the King, just as all the Governors were his vassals, and it was out of the question that the Sovereign should think of placing each portion of his dominion in a position to defend itself against the aggressions of the others.

It is precisely for this reason that there have been so many boundary questions between the emancipated colonies. Had they been divided by well defined frontiers, the acknowledgment of the *uti possidetis* of 1810 would have been sufficient as a boundary treaty.

* * * * *

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Assertion in Argentine Statement that the principal rule of demarcation is to be found in the first phrase of Article 1.

The Argentine Representative, when examining the text of Article 1 of the Treaty of 1881, reproduces its first paragraph, which says :

“The boundary between the Argentine Republic and Chile from north to south as far as the parallel of latitude 52° S. is the Cordillera de los Andes,”

and adds (page 200) :

“This is the rule, the synthesis of the Treaty, the principle which dominates its correlative provisions. The frontier must lie within the Cordillera in virtue of a clause which binds the will of both nations.”

He further says (page 201) :

“The grammatical analysis of the precept permits it to be affirmed that it includes a complete and finished idea. ‘The boundary between Chile and the Argentine Republic from north to south, as far as the parallel of latitude 52° S. is the Cordillera de los Andes.’ So that is positive ; and the sentence, terminating with a full stop, indicates that the intention of the authors concludes there, so far as the substance is concerned, even if it goes on afterwards to refer to what is accessory or simply explanatory.”

We do not consider it an acceptable form of argument to divide into its component parts a complex provision and to select one of them arbitrarily in order to ascribe to it the character of being the principal one. Why is the first phrase of the Article the one containing the rule, the dominant principle of the Treaty and the complete intention of its authors, and not the second one ? Nobody knows. The Argentine Representative seems to have no other reason for deciding that one of the phrases of the Article is the principal one and the other merely accessory, except that they are separated by a full stop. But this reason is not sufficient, just as the explanation that the first phrase has a complete sense is not sufficient either, because the second phrase also has a full meaning. On our part, we attribute fundamental importance to the second of

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these phrases, and in a subsequent chapter destined especially to determine the interpretation of the Treaty, we hope to be able to demonstrate this.

In the first place, we shall show, as the starting point of our remarks, that the Boundary Treaty which Chile and the Argentine Republic decided to negotiate in 1881 had for its natural and acknowledged object, not theoretical difficulties, but difficulties existing between them owing to the fact of the vagueness of their frontier. The preamble of the Treaty acknowledges this when saying that the respective Governments proceed to negotiate it "with a desire to end in a friendly and dignified manner the boundary controversy existing between the two countries."

As is known, this controversy had turned, in the first place, upon Patagonia ; and secondly, upon the ownership of certain valleys of the Cordillera situated in the region stretching north of Patagonia. Both questions were taken into consideration in the negotiation of the Treaty of 1881 and settled amicably by means of the adoption of a boundary line, the tracing of which to the south of parallel 52° was determined in detail ; whilst, to the north thereof, it was submitted to a general principle of demarcation, to a "rule" as the Argentine Representative says : yet not to any rule, but to a precise and invariable rule which might effectively serve for the achievement of that object.

Such phrase does not contain a rule for settling the Cordilleran valleys question. Is that precise and invariable rule contained, or is *any other* rule of demarcation contained, in the phrase of Article 1 of the Treaty which the Argentine Representative considers to be the principal one ? Leaving aside remarks of a technical character in this connexion in order not to fall into repe-

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tion, we shall simply observe here : that the valleys, the ownership of which was disputed by both countries and which had given rise to conflicts of jurisdiction between them, being situated in the middle of the Cordillera, nothing would have been decided by saying that the latter was the boundary, and the question would have remained unaltered from what it was before the signing of the Treaty. But as it has been acknowledged by the negotiators of both parties that they incorporated in the Treaty a principle of demarcation which decided all these questions, and as such principle is not to be found in the first phrase of Article 1, it must necessarily be believed that it is to be found in some other provisions among those which the Argentine Representative considers as accessory, but which must be the principal one if it answers to the object of the Treaty.

Nor does it give a frontier line either. But even had there been no question to decide in the section of the territory where the Cordillera separates the two Republics, and even had it merely been a case of stipulating a frontier line for the general effects of the delimitation of jurisdictions, neither the declaration nor the mere statement that the boundary between Chile and the Argentine Republic *is* the Cordillera de los Andes would have sufficed. So long as it is only said that the Cordillera is the boundary, *which was the dividing line* remains unknown, because the great breadth of those mountains would permit of several lines being drawn at considerable distances apart. The Cordillera is at some points fifty or more miles in width ; and in order to know where the jurisdiction of each country began and where it ended, it would have been indispensable to negotiate another boundary Treaty.

Therefore, if the first phrase of Article 1 of the Treaty of 1881 does not contain a principle of demarcation, or determine a frontier line, or decide the special questions of jurisdiction for the object of which it was expressly negotiated, it cannot be said to be the rule and the synthesis of the Treaty, and that in it and with it the intention of its authors ended. Still less can this be said, seeing that in the phrases immediately following it a frontier line complying with the essential conditions required—precision, continuity, easy demarcation, and fitness to decide the questions at issue—is therein defined.

Definition of the frontier line by the Treaty. In fact, Article 1 of the Treaty goes on to say :
 “The frontier line shall run in that extent over the highest summits of the said Cordilleras which divide the waters and shall pass between the streams (vertientes) which flow down to either side.”

In this definition of the frontier line there are two elements : *the summits of the Cordilleras and the water-divide*. Which of the two is the principal one ? The whole question under discussion before the Tribunal is to be found therein because it was the one which divided fundamentally the Experts and their Governments.

Previous to that time, or better still, during the course of the negotiations of 1877–1881, no difference of opinion had arisen, as is shown by all the official documents, on the point that the *divortium aquarum* should be the boundary line in the Andean zone. However, as subsequent differences gave rise to two interpretations of the Treaty, it is necessary to appeal to the text itself of the said Treaty in order to show that it clearly and simply contains the ratification of the Chilean-Argentine Agreement of 1877, according

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to which the Plenipotentiaries of both countries formally declared that the boundary between the two nations was the *divortium aquarum* of the Cordillera de los Andes.

The definite
wording
confirms
and ratifies
the agree-
ment of 1877.

On this point the definite wording of the Treaty expressed with even more force and clearness than the text of the agreement of 1877 the nature of the general principle of demarcation adopted by common agreement of the negotiators. The basis agreed to in this respect in 1877 between Señores Barros Arana and Irigoyen reads as follows :

“The Republic of Chile is divided from the Argentine Republic by the Cordillera de los Andes, the boundary line running along the highest points of it and passing between the sources of the streams which flow down to either side.”

Article 1 of the treaty signed in January 1878 by Señores Barros Arana and Elizalde was a verbatim copy of the preceding basis. In both projects the boundary line was located “in the highest points of it” (of the Cordillera) without any other specification; and although the supplementary stipulation immediately following, which also made it “pass between the sources of the streams which flow down to either side,” expressed with perfect clearness that the principle of demarcation agreed to by the negotiators was that of the water-parting, still the sense of the entire stipulation would have been liable to misinterpretation, since the subordination of the summits of the Cordillera to the *divortium aquarum*, although involved, was insufficiently emphasized.

The Minister for Foreign Affairs of Chile, Señor Valderama, the negotiator of the Treaty of 1881, removed this possible source of misunderstanding by thus wording this

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part of Article 1: "The boundary line shall run *over the highest summits of the said Cordilleras which divide the waters.*" The subordination of the boundary summits to the precise condition of dividing the waters was thus established in a more compact form.

The Chilean negotiator did not attempt, by this wording, to alter in the slightest the agreement of 1877 but simply wished to make clear the qualification already involved in the previous formula. It will be observed that all the elements constituting the definition of 1877 are actually found in that of 1881. To "the highest points of it" in the first definition corresponds in the second one "the highest summits of the said Cordilleras"; and the simplified expression "which divide the waters" replaced in Señor Valderrama's formula the synonymous but longer phrase: "and shall pass between the sources of the streams which flow down to either side."

The Argentine Representative claims, however, that the wording of 1881 contains some modifications of significance. He says in his Statement (pp. 203-208):

"In order to grasp the meaning of these words, it is sufficient to take into consideration that in the various draft Treaties previous to that of 1881, it was constantly mentioned that the boundary would pass along the 'highest points,' which, considered absolutely, without further criterion, would have given rise to a broken line jumping from peak to peak over the summits of mountains which are often detached from the central massif, from the axis of the chain, and stand out, like advance guards, to the east or west of the main chain.

"But such an interpretation has never been sustained. When the projects of the Treaties referred to the 'highest points' they intended to signify by those words 'the summit of the Andes,' and the Treaty of 1881 accepting the same interpretation expressed it in unmistakable terms: 'the most elevated crests' of the Cordillera de los Andes. 'The most elevated crests' are those which form the principal chain of the Andes sanctioned once again by the Protocol of 1893."

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In all these *a posteriori* inferences, by means of which an endeavour is made to bring forward the singular notion that the Treaty of 1881 is *an interpretation* of the projects which preceded it, a single object is discernible: that of substituting for the "highest summits of the Cordillera" which appears in the definition of the frontier line as given in the Treaty of 1881, the "main chain of the Andes," an expression of reference which appeared twelve years later in the Protocol of 1893, and one to which the Argentine Statement assigns further on considerable significance. The value of the remarks quoted will be better appreciated when the substitution of the word "crests" for "summits" is dealt with in the translation and interpretation of the Treaties. For the present we shall simply state that Article 1 of the Treaty of 1881 is, in its substance, a faithful and complete reproduction of the agreement of 1877. Señor Irigoyen, the negotiator of the agreement of 1877 as well as of the Treaty of 1881, should know better than anybody else whether this last Treaty in that part said or did not say what was said in the first; and we have already recalled the fact that this same Minister stated that Article 1 of the Treaty of 1881, as it was finally worded, completely reproduced—and to reproduce is not to modify or to interpret—the provisions of the agreement of 1877.

We shall not pause for the present to discuss with the Argentine Representative whether the word "vertientes" is employed in Article 1 of the Treaty in the sense of sources or headstreams, or in that of slopes of a mountain. All these questions of translation and correct meaning of words are of such importance as to deserve a separate chapter.

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**The hydro-
graphical
principle
has a main
position in
the defini-
tion of the
boundary.**

Returning to the definition of the boundary line, we shall proceed to show that the hydro-graphical term forming a part thereof occupies the main position. This position is appropriate to it because the water-divide is a well known principle of natural delimitation which, applied to the demarcation of the Chilean-Argentine frontier, offers immense advantages in comparison with the so-called rule of the highest summits which is alleged to be found in the other part of the definition. We have already given some of them : such as, that its acceptance as boundary line should decide all the cases of doubtful jurisdiction which had occurred in some valleys of the Cordillera, as well as all those of a similar nature which might arise later on in the sections of the Andes still unexplored, a solution which the rule of the highest summits does not supply.

**Advantages
offered by
the adoption
of the diver-
tium
aquarum as
the frontier
line.**

The facility of its demarcation also constituted a considerable advantage in its favour. All the precedents show that Chile and the Argentine Republic were weary of their long boundary controversies, that they were anxious to be free from the pre-occupation to which these gave rise, and to devote themselves peacefully to promoting their welfare, which had been almost stationary owing to the uncertainty of the international situation. Their desire that the question should end was almost as ardent as their anxiety that it should end soon.

The Minister for Foreign Affairs of Chile, after having presented the six bases which decided all the points which formed the subject matter of negotiation in 1881, conceived the idea of adding to them a seventh basis, which should

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give the contracting parties a right, within a period of three years, to have recourse to arbitration with the one and only object of enabling the arbitrators to determine pecuniary compensations, in view of legal titles which either party might produce as to the territories under dispute. It was a condition, however, that the boundaries already agreed to should remain in any case immovable. The Argentine Government did not accept this suggestion, and these are the reasons which the Minister for Foreign Affairs, in his note of the 6th of June already quoted in another connexion, gave for not accepting it :

“Regarding the addition suggested by His Excellency, Mr. Thomas A. Osborn, and which might appear as seventh basis, I regret to say that it is not possible to accept it because it would be disadvantageous to both countries. By it we should leave open for three years a question in which the susceptibilities of public opinion on either side of the Andes would be interested. The question of rights (*titulos*) would continue to cause division. The Governments would feel inclined to make use of the reserved right and the debates would be renewed, entailing the unfriendly consequences which they generally involve.”

The American Minister at Buenos Aires said, on his side, that a definite solution was looked for “which would leave no room for reopening these questions.” The Government of Chile had repeatedly expressed these same views.

There being, therefore, a necessity felt by both countries, in 1881 as in 1877, that the settlement about to be signed should be definitive to an extent which would enable them to lay aside and forget the boundary question, it will be readily understood that the solution which the Governments chose would be the speediest. Now, it seems almost superfluous to say that the principle of

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demarcation along the water-divide—so easily applicable that there was no need to mark out the frontier line on the ground, to measure summits or to carry out complicated orographical inquiries—presented the advantage, so eagerly sought, of involving no long investigations, and for this reason, amongst others, it was adopted.

This consideration is unaffected by the fact that the question lasted, not only the three years which seemed so long to Señor Irigoyen, but twenty, the delay being due, as a matter of fact, to the distortion of the Treaty owing to the Argentine interpretation, which strenuously opposed the application of a principle which would have decided every question without controversy and without the need of appealing to an arbitral decision.

Motives of an economic nature must also have had no small influence on the minds of the negotiators of the Treaty, leading them to prefer the easy delimitation offered by the adoption of the *divortium aquarum*. Chile and the Argentine Republic possessed small revenues in 1877 and 1881. Compelled by the disagreeable consequences of the boundary debates of which Señor Irigoyen spoke, for years past they had devoted a considerable part of these small revenues to strengthening themselves on water and land. The longer the questions which had created this strained situation lasted, the greater the expenditure in respect of the maintenance of armies and fleets exceeding the requirements of the usual public service. To put an end to this excessive expenditure, and to reduce to the lowest point the charges on the exchequer on account of the demarcation of the frontier, propositions were made which had due weight in procuring the adoption of the principle of demarcation and

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which from this point of view had the double advantage of summarily removing the causes of national disquietude and of making the demarcation of the frontier line as little costly as need be.

* * * * *

Referring to one of the remarks contained in our previous Statement, the Argentine Representative says (page 210) :

“ It is not a case of discussing the different kinds of watershed that exist in nature. The only thing that must be borne in mind is that the Treaties only determine the watershed of the high crests, the *divortium aquarum* of the Andes, the watershed of the main chain, and the continental divide is never mentioned in them.”

**The division
of the waters
to which the
Treaty
refers is
the inter-
oceanic.**

We agree that the *divortium aquarum* to which the Treaty refers has not been designated by the name of “continental”; but we cannot agree with the Argentine Representative in that this name does not correspond to it, and much less in that the water-parting line determined by Article 1 would be the water-parting peculiar to the high crests or to the so-called main chain of the Andes. When the Article says that “the boundary line shall run along the highest summits of the said Cordilleras *which divide the waters*,” we understand that *the* waters are the *whole* of the waters flowing over the conterminous territories ; waters which, being compelled by natural laws to choose between two opposite directions of outflow, must involve the existence of a natural divide, the easy identification and necessary continuity of which leads to its being recognized as wholly adequate to serve as the international boundary. We further maintain that

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this meaning is correct and that it is based on the very meaning of the words forming the phrase "which divide the waters."

One of these words which seems to us decisive is the definite article "*las*" (the) which precedes the noun "*aguas*" (waters). This article would not have been employed had there been no intention of expressing that the waters designated by it are, not *some* of the waters, but *all* the waters which flow to one or the other country.

Had the Treaty been intended to refer to the partial and subordinate water-partings alluded to by the Argentine Representative—the article "*las*" ought to have been omitted and the phrase worded thus: "The boundary line shall run along the highest summits of the said Cordilleras which divide waters" (*la línea fronteriza correrá por las cumbres mas elevadas de dichas Cordilleras que dividan aguas*). Such a wording, however, though it might lead to various interpretations, would not have answered to the necessity of establishing an invariable rule of demarcation.

Examples determining the meaning of the expression "*las aguas*." Common and natural usage confirms the discrimination between both forms of expression; in order to prove this, we shall make a few quotations from the articles of Señor Irigoyen so often mentioned in this Statement.

Upholding the same theories of the Argentine Representative, he says on page 12 :¹

"In this manner the demarcators are compelled :

"1. To place themselves and to work within the main chain of the Andes which constitutes the height of the Cordillera.

"2. To determine within this chain 'the highest summits which

¹ *Artículos del Dr. Irigoyen*, Buenos Aires, 1895.

divide waters' (las cumbres mas elevadas que dividan aguas), and they cannot deviate from these terms."

Señor Irigoyen doubtless wishes to refer to subordinate water-partings in the Andes when he says: "The highest summits which divide waters" (las cumbres mas elevadas que *dividan aguas*).

On page 13 he says the following :

"It is also asserted that he (Barros Arana) maintains that it is not a certainty that the greatest heights of the Andes 'divide waters' (*dividan aguas*). Notwithstanding my respect for the opinions of this gentleman, I believe it to be beyond dispute that the highest chain of mountains running from north to south must necessarily 'divide waters' (*dividir aguas*), some to the east and some to the west, whether those waters are produced by rain or by thaws."

In contrast with this, when Señor Irigoyen refers to the whole river-systems of each country, he re-establishes the article, as on pages 14 and 15, where he says :

"1. That it is easy to determine the main chain and the high summits which the Treaty of 1881 indicates as the boundary line ;

"2. That a *part* has already been acknowledged by the geographer quoted (Pissis) ;

"3. That it is already ascertained that the said line of heights 'divides the waters' (divide las aguas), *those which descend to the west forming the rivers which flow over Chilean territory, and those which run to the east, the rivers which irrigate the Argentine territory.*"

He says besides (page 16) :

"The Chilean Expert will not deny that, among the mountains of the Andes the main chain to which the Treaty refers rises clearly and visibly. And he surely must admit that on the greatest heights of that chain are divided, and therefrom flow 'the waters' (*las aguas*) which descend to the west, irrigating the valleys and forming the rivers of Chile ; and irrigating, on the east, the valleys and forming the rivers of the Argentine Republic."

But the same Article 1 of the Treaty throws additional light upon this point when it goes on to say :

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"The difficulties that might arise owing to the existence of certain valleys formed by the bifurcation of the Cordillera, and where the water-parting line may not be clear, shall be amicably solved by two Experts, one being appointed by each party."

**Nature of
the
difficulties
foreseen by
Article 1 of
the Treaty.**

With regard to this clause, the Argentine Statement makes the following remark (page 211):

"With such definite rules, the negotiators of the 1881 Treaty did not foresee future difficulties, save in the event of the bifurcation of the Cordillera. In everything else doubt seemed impossible to the negotiators. But, as regards the bifurcation into two equally important branches, precaution suggested the necessity of defining beforehand a method of procedure for the avoidance of discussions which, should they arise, might go so far as to impede the demarcation.

"In view of this contingency, it was laid down in Article 1 that: 'The difficulties that might arise through the existence of certain valleys formed by the bifurcation of the Cordillera and in which the watershed may not be apparent, shall be amicably settled by two Experts, one to be named by each party.'

"It has been said, on the part of Chile, that this provision would be incongruous had the interoceanic watershed not prevailed, in the intention of the negotiators, as a uniform rule for tracing the frontier. It would seem much more incongruous to speak, as is done, of the hypothesis of the Cordillera bifurcating, had the Cordillera not prevailed in the intention of the negotiators as a uniform rule for tracing the frontier.

"The clause perfectly harmonizes with the rest of Article 1 without there being any necessity for suppressing phrases or altering sentences. The frontier line must pass along the most elevated crests of the Andes, which the Agreement assumes to be continuous, in general, from north to south."

Despite the remark contained in this last paragraph, the Argentine Representative must have felt it necessary to omit phrases of the Treaty in order to maintain his interpretation, since he omits them from his argument. Thus he alleges that the negotiators of the Treaty did not think any difficulty in the tracing of the frontier line possible, save in the case of the *bifurcation of the Cordillera*, when the Treaty textually

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says that the difficulties which might arise would be due to "the existence of valleys formed by the bifurcation of the Cordillera, *and where the water-parting line should not be clear.*" Naturally, by suppressing this last phrase, it is easy to bring forward a convincing argument. If the only difficulty foreseen in the Treaty is one of an orographical character—the bifurcation of the Cordillera—it is evident that the tracing of the frontier line answers to an orographical principle of demarcation. Re-establishing, however, the complete text, it is observed that difficulties are foreseen only in the event of the water-parting line not being clear; that is to say, that hydrographical difficulties are foreseen, whence it necessarily follows that the principle of demarcation is hydrographical.

In fact, a bifurcation of the Cordillera would not alone suffice to raise the difficulty in the tracing of the frontier line according to the Treaty; it is necessary that, together with the bifurcation, the circumstance of the water-parting line not being clear should also concur. If this line is clear, although there may be a bifurcation, no difficulty as foreseen by the Treaty will exist. And thus we have again, in an accentuated form, the subordination of the orographical element to the hydrographical element in the structure of the frontier line which was adopted by the Treaty of 1881.

The wording of the clause which we are examining admits of no other meaning than that which we have just given to it; but should any doubt exist upon this point, we need merely appeal to the documents in which its authentic history is written in order to remove it completely.

No doubt the Tribunal will remember that this clause was suggested by Señor Barros Arana during the negotiations

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of 1877. It will also remember that between Señores Barros Arana and Irigoyen some written explanations were exchanged concerning these points of negotiation. In fact, in Señor Irigoyen's note of the 17th of July of the year mentioned, the following may be read in this connexion :

"Your Excellency (Señor Barros Arana) properly recalls the fact of having suggested the convenience of a subsequent arrangement by which the difficulties that might arise owing to the existence of certain valleys in the Cordillera where the water-parting line is not perfectly clear should be amicably solved by Experts. The undersigned raised no objection to this suggestion. *He considered the difficulty which Your Excellency apprehended to be remote*; but should it arise, the manner proposed of settling it was acceptable."

Señor Irigoyen, as may be seen, considered it improbable that the water-parting line would cease to be clear in any part, and thus create a difficulty. However, he could not have considered the difficulty as being remote had it consisted in a bifurcation of the Cordillera, for he was acquainted with numerous cases of bifurcation—those of Portillo and los Piuquenes, of las Llaretas and of Planchon. The truth is that he saw no cause of difficulty in these cases, because the water-parting line was clear.

Therefore, if the Treaty did not foresee other possible difficulties in the demarcation of the frontier line than those of a hydrographical character determined by the fact of the water-parting line not being clear in certain valleys enclosed in bifurcations of the Cordillera, it must be acknowledged that we were right in saying in our previous Statement that the anticipation of that single case of doubt would be inconsistent with the definition of the boundary line, if this were to be the orographical line of summits mentioned by the Argentine Representative. In fact it would be exceedingly difficult to discover why the accidental obscurity of the

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water-parting line should cause any interruption in the tracing of a line over the high summits. The Argentine Representative claims, as has just been observed, that the difficulty foreseen arises from the bifurcation of the Cordillera "in two equally important branches." Admitting this hypothetically, it would have been natural, or rather indispensable, that the Treaty should have laid down some orographical rules with a view to determining which of these two chains should be considered the main one, and should furnish the boundary. There would thus have been a consistency in the several stipulations of the Article. But to claim that the difficulty springs from the presence of two equally important chains and that in order to overcome it the water-parting line must be looked for, is to impute nonsense to the Treaty.

The Argentine Statement says (pages 211 and 212):

"The parties carrying on the demarcation, finding themselves in presence of the bifurcation, would be perplexed if a precise rule for that case had not been previously established. It would not have been sufficient for them to have borne in mind that the boundary must positively be fixed in the Cordillera, as, even in this hypothesis, they were in the Cordillera. With the rule laid down in the Treaty of 1881 as the sole guide, the difficulty would be insolvable, and it was preferred to leave to the judgment of Experts the location of the frontier line in the places they might deem equitable, but without ever departing from the Cordillera where the bifurcation exists. Their powers could only be exercised within the space comprised between the eastern branch and the western branch of the Cordillera in the valley which it was not possible to qualify as Chilean or Argentine, as it was presumed that it was wedged in, obstructing the continuity of the line of the Convention."

The Argentine Representative here calls attention to an omission which is really observable in Article I of the Treaty of 1881; but the conclusions which he reaches are

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absolutely incompatible with the spirit of that covenant, which is defined and explained by the Protocol of 1893.

The omission observable herein consists in this : that, having pointed out a case of difficulty—as that arising from the existence of valleys formed by the bifurcation of the Cordillera and in which the water-parting line might not be clear—it directed the Experts to settle them amicably, but omitted to state clearly the procedure which ought to be followed in the fulfilment of their mission. It is probable that this suggestion was believed useless, since, logically, there was nothing to do but to suppress the cause of difficulty by searching, until found, for the water-parting line which was not clear but which must necessarily exist. The Argentine Representative holds a different view. He says that the Treaty did not in itself contain the solution of the difficulty—which consisted, according to him, in the bifurcation of the Cordillera—but that it preferred to submit to the arbitral and equitable decision of the Experts the location of the frontier line in that place.

This view of the Argentine Statement is in flat contradiction with Article 3 of the Protocol of 1893, which reads thus :

“In the case foreseen in the second part of Article 1 of the Treaty of 1881, of difficulties that might arise ‘owing to the existence of certain valleys formed by the bifurcation of the Cordillera, and where the water-divide should not be clear,’ the Experts shall endeavour to settle them amicably, causing this geographical condition of the demarcation to be searched for on the ground. To this end they shall dispose by mutual agreement that a survey be made by the Assistant Engineers which may serve them to solve the difficulty.”

It is, therefore, not the fact that the Experts were charged to “fix equitably” the frontier line at the points where the difficulty foreseen should present itself. The Treaty does

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not authorize them to do so, and the Protocol of 1893 enjoins them to solve the difficulty by "causing" the water-parting line "to be searched for on the ground." "This geographical condition of the demarcation," the Protocol says textually: but we do not think that we need waste time by showing that the phrase "this geographical condition of the demarcation" refers without the least ambiguity to "the water-parting line," which is, moreover, the only thing that has to be searched for.

The water-divide stipulated as the geographical condition of the demarcation. Thus the Protocol of 1893 uttered (so to say) the decisive word in the controversy to which the meaning of Article 1 of the Treaty of 1881 has given rise. The tracing of the frontier line is submitted to a *geographical condition*, and this, as expressed in unmistakable terms, is the *water-parting line*.

The Argentine Representative admits that the Protocol states this—indeed he could not possibly deny it—but he attempts to restrict the scope of the provision of Article 3.

"To begin with," he textually says (page 269), "it may be affirmed that the clause does not lay down a general rule applicable to the entire extent of the frontier, but that it refers specially to an isolated and particular case, viz. that of the existence of valleys formed by the *bifurcation of the Cordillera*."

"Besides, the article does not provide that the division of waters is to be the *only* geographical condition of the demarcation; it merely says that it is *a* geographical condition; that it is one among the many geographical conditions."

Beyond all doubt these two remarks, which form part of one single argument, complete and strengthen our own observation. The Argentine Representative actually acknowledges, in the paragraph quoted, that the division of the waters is the geographical condition of the demarcation, but claims that it is a condition applicable only according to the

Protocol, to the special case of the existence of valleys formed by the bifurcation of the Cordillera, and in which the water-parting line may not be clear. In other words, the Argentine Representative believes that the authors of the Treaty and Protocol considered it reasonable to order the demarcation of the frontier to be made by the water-parting line in all the points where this line should not be clear, and by another different principle where it should be so. For our part, we believe that there is no plausible motive for ascribing such an absurd idea to the negotiators of 1878 and 1881, and we rely upon a less complicated interpretation of their intentions. We think it much more logical to suppose that if they believed it good, and adopted the principle of demarcation along the water-parting line, where that line did not clearly present itself, and where the application of the principle offered some difficulties, *a fortiori* they would have held this principle to be good where it was easy of application, in other words, where the water-parting line should clearly present itself.

* * * * *

**Article 2
of the
Treaty
designates
the frontier
line with
the name of
divortia
aquarum.**

Going back to the text of the Treaty, we find, in Article 2 that the frontier line running from the north down to parallel 52° is designated by the name of "*divortia aquarum* of the Andes." We need not show that this phrase contains an abbreviated definition of the frontier line described more in detail in Article 1, because the Argentine Representative acknowledges this when he says (page 213) that Article 2 used it "in order not to repeat the long definition contained in the previous Article."

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But, although there be concurrence on this point, we shall still need to establish that the phrase "*divortia aquarum* of the Andes" would lack its importance as a simple phrase if it were isolated and new, and that all its value is due to the fact of its having been, from the beginning of the negotiations of the Treaty up to the end, the formula, as consecrated by use, of an agreement upon the nature of the principle of the demarcation. In fact, although in the text of the Treaty it is found but once, in the official documents in which the history giving the best precedents for the interpretation of this Covenant is written, it is to be found very often. In 1877 Señor Barros Arana, yielding to the wishes of Señor Irigoyen, who desired to establish a general principle as the rule of demarcation in the Andean zone, proposed that the dividing line should be the *divortium aquarum* of the Cordillera de los Andes. In 1881 the American Ministers accredited in Santiago and Buenos Aires, and through whose means the Treaty of this date was negotiated, synthesized the preceding agreements of both Governments upon the same dividing line with the same term, *divortium aquarum* of the Cordillera de los Andes.

The Argentine proposition which was transmitted to Chile by Gen. Thomas O. Osborn, by telegram of the 11th of May, reads textually as follows :

"The dividing line between Chile and the Argentine Republic from north to south shall be acknowledged to be the *divortia aquarum* of the Cordillera de los Andes to the 52°."

We say that this proposition is Argentine because Señor Irigoyen, as has been seen in the preceding chapter, acknowledged, in his note of the 4th of June, 1881, that he had worded it himself.

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It must be borne in mind, however, that in 1895 Señor Irigoyen made some declarations with regard to this, which are the very reverse of what he had written in his own document ; and, if we now refer again to these contradictions, it is because we find in them another proof, although more indirect none the less sure, that the Governments of both countries in 1881 were entirely agreed in establishing the international water-parting as the principle of the demarcation of the frontier line.

For reasons which need not detain us here, shortly after 1881 the Argentine Republic began to show signs of reaction against the delimitation determined by that Covenant for the region of the Andes, and the formula of the high summits of the Cordillera appeared, replacing that of the continental water-parting. It was asserted that the Treaty of 1881, rightfully interpreted, established the orographical delimitation. Who could be better acquainted with the understanding upon which it was signed than Señor Irigoyen, who had negotiated it from its beginning in 1877? Señor Irigoyen, therefore, resorted to the Press in order to serve the Argentine interest represented by the new interpretation, and made the declarations which are already known. He specially devoted his efforts to showing: (1) That in 1877 he had rejected the formula of the *divortia aquarum* proposed by Señor Barros Arana and replaced it by that of the high crests of the Cordillera; and (2) that the formula of the *divortia aquarum* which again appeared in the negotiations of 1881, in the correspondence of the American Ministers, was not his, because he had not drafted the propositions which the American Minister at Buenos Aires had transmitted to his colleague, and that he had been acquainted with it imper-

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fectly. We have incorporated in this Statement the official documents subscribed to by Señor Irigoyen, which prove to demonstration that he was in accord with Señor Barros Arana in 1877, and that he personally worded the propositions transmitted by the American Minister at Buenos Aires, and especially that one which recognized as the boundary between the two Republics the *divortium aquarum* of the Andes.

Now, if by *divortium aquarum* of the Andes must be understood, as claimed by the Argentine Representative, not the international water-parting, but a "water-parting peculiar to the high crests or the main chain of the Cordillera," what would have been the object of Señor Irigoyen's strenuous efforts to show that the agreement of the Governments in 1881 had not been effected upon the formula of the *divortium aquarum*? Those efforts can only be reasonably explained by admitting—what is the bare truth—that such formula answers to the hydrographical principle maintained by Chile. If it answered to the rule of the high summits maintained by the Argentine Republic, it would have been to Señor Irigoyen's interest to demonstrate that upon it the agreement of the Governments had really been arrived at.

The conclusion drawn from this is so evident that it is unnecessary for us to insist further upon the point.

If by the preceding remarks we have succeeded in showing that the principle of demarcation adopted in Article 1 of the Treaty of 1881 was that of the international water-parting, we need not pause to show that this same Article does not, and could not, contain any other principle of demarcation. It is necessary, however, that we should examine it here, however briefly, from the point of view of the Argentine interpretation.

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According to this interpretation the frontier line ordained by the Treaty to be marked out is essentially orographical. Previous to 1893 the Argentine Experts maintained that the boundary should run over "the highest summits of the Cordillera." After the Protocol of that year was signed, "the main chain of the Andes" occupied the first place in their definition. And, afterwards, in the Argentine Representative's Statement we find the frontier line located on the "predominant edge of the principal and central chain of the Andes," or in the "predominant central chain," or in "the line of slopes in the crest of the main chain of the Andes." These several quotations show the hesitations of the Argentine interpretation respecting the boundary line, which, in the Chilean view, has invariably been the *divortium aquarum* of the Cordillera de los Andes from 1877 to the present time.

We have already observed in this same chapter that it is not logical to admit that Article 1 of the Treaty of 1881, the object of which was to establish a principle of demarcation, should have intended to include this in the words "the highest summits of the said Cordilleras," which refer to a manifestly subordinate idea in the injunction which contains them. The injunction says that "the boundary line . . . over the highest summits of the said Cordilleras which divide the waters," and therefore no summit of the Cordillera can determine the course of the frontier line, or form part of the boundary, unless it complies with the precise condition of dividing the waters.

Besides, as we have had occasion to remark, the subordinate situation of the summits as regards the waters becomes more marked when the Article enjoins that the frontier line must pass between the streams which flow down

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to either side; and still more patently when, in the cases of difficulty foreseen, it only refers to the necessity of discovering where the water-parting line is to be found, without regard to the summits and without even mentioning them again.

But there is another point we have hardly touched and upon which we must dwell here for a moment. It is the one derived from the fact of the creation of a staff of Experts for the solution of difficulties which might arise when carrying out the demarcation of the frontier line defined in the same Article 1.

Manner prescribed by the Treaty for the determination of the boundary where the *divortium aquarum* should not be clear.

As is natural, and as happens in all boundary treaties, the Treaty of 1881 must have provided, and in fact did provide, for the proper working of its provisions on all points on which it would be necessary to carry out operations of demarcation on the ground. This is what Article 1 stipulates in this respect :

“The difficulties that might arise owing to the existence of certain valleys formed by the bifurcation of the Cordillera, and where the water-divide should not be clear, shall be amicably solved by two Experts appointed one by each party. Should these fail to agree, a third Expert, selected by both Governments, will be called in to decide them.

“A Minute of their proceedings shall be drawn up in duplicate, signed by the two Experts, on those points upon which they should be in accord, and also by the third Expert on the points decided by the latter. This Minute shall have full force from the moment it is signed by the Experts, and it shall be considered stable and valid without the necessity of further formalities or proceedings. A copy of such Minute shall be forwarded to each of the Governments.”

The whole text of the preceding provision shows that the operation to which it refers is of the greatest importance.

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In the first place, it creates officials of high rank, the Experts, in order to carry it out. Then, by the selection of a third Expert to decide the cases of disagreement between them, it provides for an arbitral suit and decision. It finally declares that the decisions of the first two Experts, whenever they be in accord, and that of the third upon the points which he might settle, are final and beyond appeal—"stable and valid without the necessity of further formalities and proceedings"—and that they shall be drawn up in a Minute or Act which shall be forwarded to each of the Governments.

It must be borne in mind that the whole of these provisions—the appointment of Experts, the constitution of an arbitral suit with the selection of a third Expert, and the drawing up of Acts with the character of final decisions—answer the fulfilment of one single requirement: that of solving the difficulties which may arise where the water-parting line may not be clear.

Now, if the water-parting were not the frontier line fixed by the Treaty, it is inconceivable that the operation of searching for it, and fixing it once found, should be surrounded by so many formalities. What would have been reasonable, according to the Argentine theory, was that all those formalities should have been applied to the procedure in virtue of which the Experts should arrive at a decision by declaring which of two equally important chains, formed by a bifurcation of the Cordillera, irrespective of the clearness of the water-parting line, should form part of the frontier line. The antecedents and foundation of the final award or decision were to be recorded in formal Acts or Minutes,—a procedure exclusively reserved in the Treaty for the deter-

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mination of the frontier at the places where the water-parting should not be clear. But the provision which we are examining gives occasion for a last remark. After enjoining that a record be drawn up of the decision arrived at by the Experts it adds : " This Minute *shall have full force* from the moment it is signed by the Experts, and it shall be considered *stable and valid* without the necessity of further formality or proceedings." The sense of this provision is perfectly clear. The Experts are demarcators of the frontier line, and, whenever they adopt resolutions, the boundary line is demarcated in the points to which these resolutions refer. The Treaty does not prescribe any special course to be followed by them in carrying out the demarcation where it offers no difficulties ; but where these present themselves it enjoins them to proceed with the formalities mentioned. Once these are fulfilled and the agreement is reached, or, in case of disagreement, once it has been decided by the third Expert, there is a stable and valid resolution, and without further formalities or proceedings the boundary line is also demarcated at the point which was doubtful. But upon what question has the resolution of the Experts been adopted, and which line has been demarcated ? Upon the water-parting line which had given rise to difficulty by reason of its not being clear. Therefore this is the frontier line of the Treaty, demarcated with due formalities where difficulties existed, and plainly marked out by nature itself where it was clear.

Moreover, all these remarks are secondary in the face of the one derived from the only precedent which the negotiations of the Treaty of 1881 have left irrefragably established for the interpretation of its Article 1.

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Official documents fixing the meaning of the Treaty regarding the nature of the boundary.

The Minister for Foreign Affairs of the Argentine Republic formulated, on the 11th of May, for the determination of the Andean boundary, the following proposition :

"The divortia aquarum of the Cordilleras de los Andes as far as the 52° shall be acknowledged as the boundary line between Chile and the Argentine Republic from north to south."

The Government of Chile frankly accepted this proposition, which was identical with that which had been formulated in 1877 by their Plenipotentiary at Buenos Aires, and the Minister for Foreign Affairs, Señor Valderrama, gave it the following form in his note of the 3rd of June :

"The boundary between Chile and the Argentine Republic is, from north to south, as far as parallel 52° of latitude, the Cordillera de los Andes. The frontier line shall run in that extent over the highest summits of the said Cordilleras which divide the waters."

The same Minister, in his note of the 3rd of June already quoted, said to the American Minister at Santiago :

"Seconding on our part these same efforts, I beg to request the friendly concurrence of Your Excellency in order to place before the Argentine Government the following bases of settlement, which answer, I believe, to the ideas recently expressed by both Governments."

The basis copied was the first one, and Señor Irigoyen, replying under date of the 4th, said :

"First basis accepted with a small addition that completes it . . . and shall pass between the streams which flow down to either side . . . and I beg to state that the words added were already admitted by both Governments during the previous negotiations of 1877 and 1878."

The whole history of the stipulation contained in Article 1 of the Treaty of 1881 may be found free from all comment in these few documents. They determine the

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meaning of the said Article, and we venture to hope that from them the Tribunal will form the conviction that the boundary line, stipulated by a perfect accord between both Governments, was the *divortium aquarum* of the Andes from the north as far as the 52nd parallel, in the sense that the Chilean Government and the Chilean Expert has always given to that expression.

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Chapter XII.

THE BOUNDARY LINE FIXED BY THE TREATY OF 1881 ACCORDING TO GEOGRAPHICAL AND OTHER AUTHORITIES IN BOTH COUNTRIES.

The boundary in the Cordillera was always intended as a true water-parting.

THE Argentine Statement recalls the fact that, as the explorations of Cox in the Lacar Valley, of Vidal Gormaz in the Puelo, and of Simpson in the Aisen, had, between 1863 and 1871, shown that the watercourses flowing through those valleys *crossed the Cordillera*, before Bello's formula for the boundary line was accepted, it must have been understood in 1877, by the Chilean as well as by the Argentine negotiators who intervened later in this question, that when they established the boundary *by the Cordillera*, according to that formula, the headwaters of those streams and others similarly situated would remain under the dominion of the Argentine Republic, as being on the eastern side of the Andes.

This would be fair reasoning if, each time the Cordillera boundary was agreed to between 1876 and 1881, it had not been expressly declared to be subject to the same general principle of demarcation throughout its whole extent, and were it not evident, as we have shown in our first Statement, that the only principle of demarcation contained

either in Bello's formula or in the *divortium aquarum* rule, is that of the general (and in this case continental) water-divide.

In addition to this, at the time of the signing of the Treaty, even the Argentine geographers who had partly explored Patagonia, Dr. Moreno and Señor Lista, continued to apply the terms "Central Cordon" or "principal chain" to the feature of the ground that "served as the division of the waters," and since they used the latter expression we are justified in insisting on giving it its logical sense: that is to say "general" or "true" water-divide.

This is the sense that Musters gives it when he says "we had crossed *the watershed*," speaking in 1870 of the "pass" at the head of the River Teca; the sense that Simpson gives it when he speaks of the "true division of the waters" at the source of the River Aisen in 1873; the same meaning that the Governors of Mendoza and San Juan, the Ministers Frias, Ibañez, Tejedor, the engineers Nicour and Sanchez, etc., gave it in their communications and reports already quoted; the same meaning that Señor Quesada ascribed to the "demarcation of a dividing line in the Andes, *divortia aquarum*," when he called on the Chilean Government to fulfil the promise of President Bulnes, who, he said, had given an "official, solemn and unmistakable acknowledgment, that the streams (vertientes) of the Cordillera descend, some towards the Argentine provinces, while others irrigate the Chilean territory"; the same meaning, finally, that Dr. Bermejo attributed to the *divortium aquarum* rule of demarcation when he said that by virtue of such a rule the *Chilean jurisdiction could not extend further east than the origin of the Argentine watercourses*, and that the "potreros

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valleys " could not in any way be considered as an integral part of the Chilean territory " because their principal declivity lies to the east." ¹

Thus, both in Chile and the Argentine Republic, as may be seen from these documents and reports " the water-parting line " and " the *divortium aquarum* de los Andes " stipulated in the Treaty of 1881 were understood to represent the enunciation of a frontier line leaving Chile in possession of all the valleys tributaries of her fluvial systems.

We shall now explain how it is that, after the signing of this Treaty, the same meaning continued to be given to the expression " water-parting line " by geographers, explorers and travellers of both countries, as well as by foreigners, whenever they had occasion to mention it in connexion with the principle of demarcation established by the said Treaty. It must be remarked that there was never any difference regarding the general meaning of the expression, but that on the Argentine side there was a tendency to give it a restricted sense in certain special cases where it was considered incompatible with the possession of certain valleys of the Cordillera the possession of which seemed desirable : either by totally omitting the terms which imply the subordination of the Cordilleran boundary to the hydrographical condition, or by proclaiming new expedient theories according to which a so-called " normal " course of the waters of those valleys would be opposed to their actual course.

Dr. Irigoyen's declarations before the Argentine Congress in 1881.

Keeping to chronological order we must begin the history of the interpretation of the Treaty of 1881 by dealing with the geographical inconsistencies involved in the interpretation given to the

¹ Bermejo, *La Cuestion Chilena*, p. 102.

Article relating to the boundary line by Dr. Irigoyen, the Argentine negotiator himself, when he stated that the line he had secured was full of "probabilities" for the Argentine Republic on the Pacific side, while Chile was permanently cut off from the Atlantic side.

The words of Dr. Irigoyen to this effect, in his speech delivered during the discussion that led to the approval of the Treaty by the Argentine Congress, have been quoted in the Argentine Statement (p. 214) and we reproduce them in the Appendix, together with the foundations for that statement based on information supplied by Dr. Moreno to Dr. Irigoyen. App. Doc.
No. 27.

According to Dr. Moreno "the central cordon runs at a long distance to the west" from the easternmost inlets of the Pacific, and it was this circumstance which led him to believe that :

"The Treaty which fixed to Argentine territory its southern limit on the 52nd parallel, and its western one on the Cordillera of the Andes, *allowed the Argentine Republic to have ports on waters belonging to the Pacific.*"

Without stopping to inquire how a "central cordon that serves as the division of the waters" could, according to the writer of this sentence, let *inlets of the sea* pass from one side to the other; without pausing to reflect that it was incompatible with simple good faith to suppose for a moment that Chile who had objected through the American Minister, on the 18th of May, 1881, to the boundary line *touching the waters of the Straits near the Atlantic entrance*, could have given her assent to the Treaty on the understanding that some *inlets of the Pacific* might become Argentine, Dr. Irigoyen proceeded to transmit to the Representatives of his country the information tendered by Dr. Moreno, anticipating that :

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“While I am persuaded (he said) that by the Agreement of *July we do not deliver up ports on the Atlantic*, I think it *probable* that the Republic *acquires* them in the waters which flow towards the Pacific.”

If the Argentine Minister had considered this point with due attention, he would have observed that Dr. Moreno had failed to grasp the whole meaning of the 1st clause of the Treaty when he based his deductions on the alleged fact that the clause referred to determined the western boundary of the Argentine Republic along “the Cordillera de los Andes.” Had Dr. Irigoyen paid more attention to this point, he would have remembered that the Cordilleran boundary line was subject to a geographical condition which had been agreed to as far back as 1877 with the object of solving the “Potreros” question; that this condition had been incorporated in the Treaty under *three different forms*, involving the same fundamental idea of complete separation of waters between both countries, and consequently that it must necessarily be incompatible with the possession of an inch of the Pacific shore by the Argentine Republic.

At the risk of repetition, we cannot but point out to the Tribunal, with the aid of official documentary evidence, how utterly baseless were the expectations which the Argentine Minister sought to foster in his country's Congress on the said occasion.

In the first place, attention must be called to the fact that, throughout the whole controversy concerning Patagonia, from 1847 onwards, the dispute has always been confined to the *Continent*, and that the Argentine Republic never expressed so much as a hope of being able to claim any part (however insignificant) of the Pacific channels or inlets of Western Patagonia. The best proof of this is that the

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Minister did not mention the matter in the light of existing *rights to be confirmed*, but in the light of a probable "*acquisition*."

Now, according to the precedents created during the negotiation of the Treaty, there was not the slightest probability of such an acquisition.

In the first place, the inlets to which Señor Irigoyen referred in his speech, and which are the only ones to be taken into account in these remarks, are: "Canal de las Montañas," "Worsley Sound," "Last Hope Inlet," "Disappointment Bay," and "Obstruction Sound." These altogether wash some 500 miles of coastline. But the whole of this coast was perfectly well known when the Treaty was negotiated, as it had appeared on charts of navigation from the beginning of the century; and it is out of the question that "probable" acquisitions could be made thereon, as might possibly happen in the case of unknown lakes or rivers discovered subsequently in territories still unexplored. On this well known coast only real acquisitions could be made, and the best proof that the Argentine Republic did not make such acquisitions is afforded by the Minister who negotiated the Treaty when he stated that he was not sure that he had made any acquisitions and he only considered them "probable." This proof is further corroborated by the fact that the Government of Chile never made the slightest observation regarding the point, and it is moreover absurd to suppose that they would have permitted the Argentine Republic to settle on the coast of the Pacific and thus interrupt the continuity of the Chilean territory.

But, apart from this, the documents afford positive proofs that the Argentine negotiator had no idea that the boundary

line could intersect a channel or sea-arm along parallel 52° . The proposition of the Argentine Government of the 11th of May was that "a straight line should be traced as the boundary from the *divortium aquarum* of the Andes in parallel 52° as far as Point Dungeness." The Government of Chile objected to this proposition in the following terms, which appeared in the telegram of the American Minister at Santiago to his colleague in Buenos Aires dated the 18th of May :

"Received your telegram of the 11th. When informing the Government of the compromise contained in the latter part, it was remarked to me that in tracing a line, as is proposed, from the *divortia aquarum* of the Andes, 52° , and extending it in a straight line to Dungeness Point, *such line would have to pass at some points over water, thus establishing confusion.* If you examine the configuration of the land in the northern part of the Straits, you will find very pronounced sinuosities which confirm the accuracy of the remark made to me. *It is considered here that there is some error in the telegram, and that the idea of the Argentine Government must be that such a line should always run over land,* determining some points at a certain distance from the coast, in the vicinity of Dungeness Point. *Explanations are required establishing clearly the idea of the Argentine Government upon this point.*"

As may be seen, the Government of Chile considered that a frontier line passing at any point over water could only be proposed to them as the result of a mistake, and they supposed that the intention of the Argentine Government must have been that it should not abandon the main land. Consequently they requested an explanation of the idea in order to consider it carefully.

To such a request the Argentine Government would naturally reply with perfect sincerity, clearness and precision, as to what their intention was, and would leave no obscurity whatsoever to mislead the Government of Chile. Their reply, contained in a telegram [from the American

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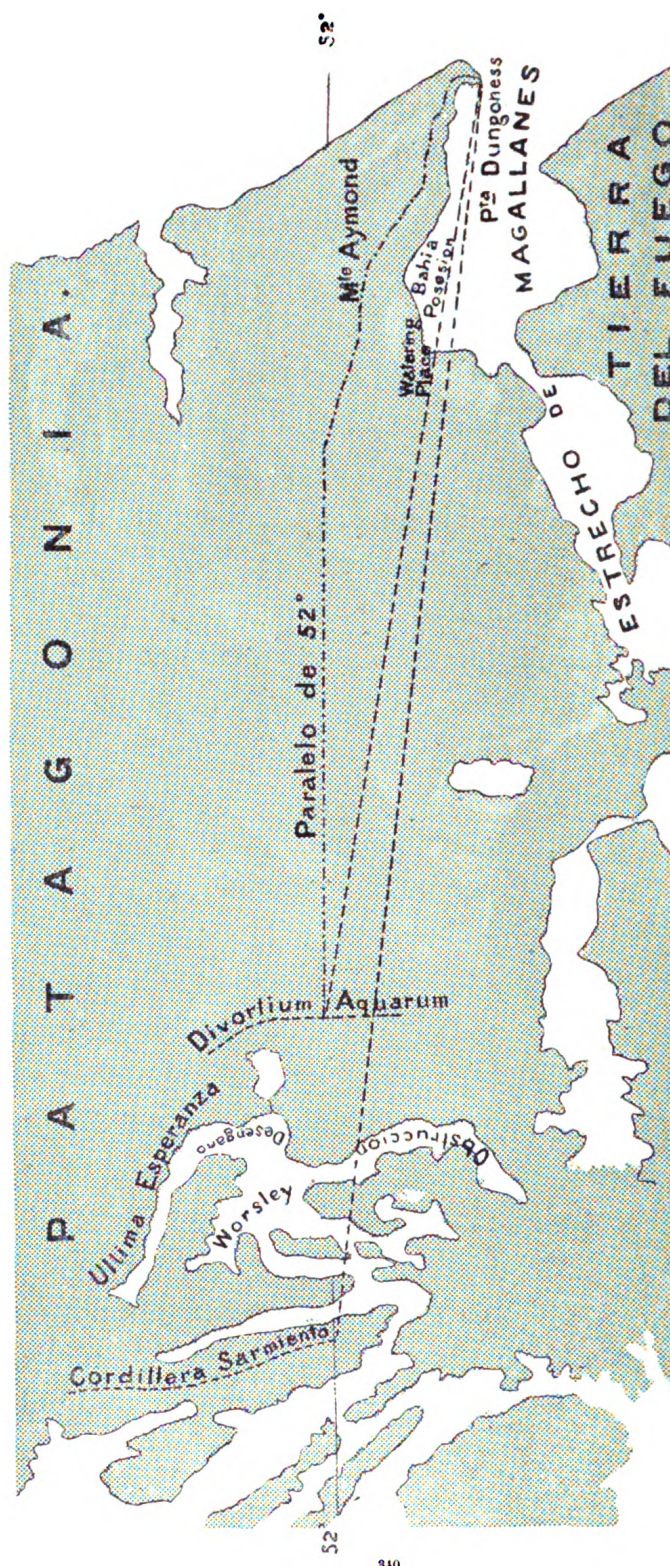
Minister at Buenos Aires dated the 20th of May, was as follows :

“Respecting the doubt which you have regarding the line which shall start from the 52° in a straight line as far as Dungeness Point, it is possible that if the maps give the sinuosities of the ground with accuracy, *the line may enter the water in its prolongation in the vicinity of Watering Place. . . .*”

It appears from this reply that the Argentine Government, examining the objection of Chile with the aid of the maps at hand, found that the line proposed by them would strike the water at one single point,—Watering Place,—towards the eastern extremity of the Straits of Magellan. It may be gathered from this, therefore, that in their opinion and intention the said line should not intersect the channels or arms of the sea through which parallel 52 passes in its western prolongation, but that its point of termination should remain to the east of all those channels. (See sketch map on next page). This conclusion is irrefutable, having regard to the established fact that the Argentine Government made the above reply to the Government of Chile, when invited to express their views in this connexion with all possible clearness.

Subsequently, on the 31st of May, the Argentine Government accepted the proposal that the boundary line should not strike the water at Watering Place but should be traced thence over main land. This being so, it was necessarily understood that the whole line, as far as the intersection of parallel 52 with the *divortium aquarum* of the Andes, should run over land. Therefore, by this agreement between the Governments, arrived at deliberately and with full knowledge of the matter, it was clearly implied that the point of intersection of parallel 52 with the *divortium*

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Sketch map showing that a straight line drawn from the intersection of the *divortium aquarum* with the 52nd parallel to Point Dungeness runs over water only at its Eastern extremity, while a line drawn from the ridge of the Cordillera Sarmiento (in 52°) to the same point crosses no less than four channels or inlets at its Western extremity.

aquarum of the Andes was situated to the east of Disappointment Bay, because otherwise the line would have to intersect water at the western end of its course, thus entailing consequences which would have been much more detrimental to Chile than that which had originated the objection just mentioned.

The inevitable conclusion of this is that the expression "*divortium aquarum* of the Andes" was evidently used in a strictly technical sense, as it was a well known fact that the eastern branches of the Cordilleras are interrupted by a plain to the east of "Disappointment Bay" near the 52nd parallel.

Secret Sessions. It is important to remark here that although Señor Irigoyen's speech appears to have been printed in 1882, it was not known in Chile till several years later. There is reason to believe that, as it was delivered during some secret sessions of Congress, it was withheld, and this supposition is confirmed by the fact that the Argentine writers themselves who upheld the claim to ports in the Pacific never quoted the authority of this statesman previous to the year 1895: an unaccountable circumstance had they been acquainted with his speech.

Be that as it may, we need only add that Dr. Irigoyen's own interpretation of the Boundary Treaty negotiated by him was divested of all authority, and the expectations founded thereon completely swept away in 1893, when a Protocol stated that *both Governments declared that according to the spirit and by the provisions of the Treaty of 1881 the Sovereignty of each State over her littoral was absolute*, and that Chile was entitled to have *a western territory towards the Pacific* precisely as the Argentine Republic had an eastern territory towards the Atlantic, thus confirming the

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original and essential idea that the boundary line must keep within the mainland between both oceans.

**Interpreta-
tion of the
"divortium
aquarum"
rule in
Petermanns
Mitteil-
ungen.** The first pretensions of the Argentine Republic to dominion over the southern Pacific Inlets were graphically expressed in 1882, in a map which escaped notice in Chile, but to which attention was called in *Petermanns Mitteilungen* (1882), wherein the inconsistency of the novel Argentine interpretation of the Treaty of Limits was pointed out as follows (*loc. cit.* p. 278) :

"From Buenos Aires we have received a map of Patagonia : '*Carta parcial de la region austral de la República Argentina que comprende los límites fijados por el Tratado de Octubre de 1881*,' which map, constructed by Lieut.-Col. Fr. Host, Lieut.-Col. Fontana and Capt. Rittersbacher, appeals mainly to our interest on account of the Argentine interpretation of the Boundary Treaty with Chile revealed therein. The frontier line is drawn in such a manner that Obstruction Sound together with Worsley Sound and Last Hope Inlet, which run inland from the west, in 52° south latitude, are shown as belonging to Argentina.

"It is true that in the text of the Treaty of October 22, 1881, it is said that the boundary between Chile and the Argentine Republic is, from north to south as far as the 52nd parallel, the '*Cordillera de los Andes*': but it is afterwards also laid down that : the boundary line shall run over the highest summits of the said mountains which mark the '*water-parting*,' and it is moreover stated in Article 2 that : from the intersection of the 52nd parallel with the 70th meridian to the west, the 52nd parallel shall be followed as far as the water-parting of the Andes. *As the water-parting of the Andes* is indisputably situated east of '*Obstruction Sound*,' '*Worsley Sound*,' etc., it follows logically that *these waters must be adjudicated to Chile.*"

During the years following the ratification of the Treaty, there were many opportunities for travellers, explorers and geographers to show how they practically understood the boundary line that had just been agreed to.

**Quotations
from Señor
Perez
Rosales.** In 1882 Don Vicente Perez Rosales, a well known Chilean statesman, author of a geographical "Essay" on Chile, from which quotations have

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been made in the Argentine Statement (p. 67), published another work ¹ wherein he describes many journeys through the Cordilleras, and in which the boundary line appears as being identified with the division of the waters, thereby clearly giving it to be understood that there is only *one* division of the waters between the two countries, only *one* ridge that divides the waters, and that this is the one which forms the boundary.

App. Doc.
No. 28.

"The Cordilleras Riojanas (he says) exhibit *three principal cordons* crowned by mighty snow-clad mountains, and separated from each other by very high valleys: the Cordon of Sierra Famatina, of more than 6,000 metres; that of Guandacol, and that in which occurs *the separation of the waters between the two Republics*" (page 103).

Speaking of the volcano of Peteroa, he also says that

"its summit with its immense crater *divides the waters* between Chile and the Province of Mendoza" (page 114).

According to the first of these quotations the northern Cordilleras are composed of three cordons or ranges equally important, each of which necessarily divides its own waters, and accordingly bears its own *peculiar* watershed; but only one of them contains *the* water-parting between the two Republics. This can be said simply because, besides being the boundary range, it is nowhere traversed by a river carrying to one of the Republics the waters that have been collected on the territory of the other.

About the same time, Colonel J. M. Olascoaga, **Colonel Olascoaga.** an Argentine geographer and surveyor, who, after undergoing exile in Chile, had returned to the ranks of the Argentine Army, and had been entrusted with a scientific exploring mission in the southern Andean territories, sent in

¹ *Recuerdos del Pasado*, Santiago, 1882.

an official report wherein he states in unmistakable terms what the feature was that *determined the beginning of Chilean jurisdiction and constituted the international boundary.*

The Report to which we allude is dated the 23rd of May, 1882, and contains information regarding the practicability of a public road to Chile through the Paramillos and Maipo Passes. The passages of this Report which in any way relate to the present question are included in the Appendix.¹

It is therein stated that the Rio Diamante flows enclosed between two Cordilleras, in a deep valley eroded out of a large "*plateau that forms the general characteristics of the whole road,*" and at the extremity of which "*are found the first sources of the Rio Maipu,* which determine the Chilean jurisdiction."

App. Doc.
No. 29.

"The line of demarcation between the two countries [he goes on to say] is *almost imperceptible* on this plain . . . the depression of the Cordillera at this pass is so remarkable that it is truly surprising to find the *headwaters of a Chilean river, and the perfect and clear indication of the international boundary,* where it seems that one has not even begun the ascent to the heights where the *anticlinal summit* should be found."

In another Report, dated the 3rd of June, 1883, Señor Olascoaga called the "*cordon central de los Andes*" that which divides the waters at the origin of the River Agrio,² though the said cordon is not that which includes the greatest heights in this region, as he puts it in another document which will be quoted further on. He further said in the Report just quoted :

"I believe it to be unquestionable that the (volcano) Corcovado is a point of the boundary line, as on its eastern slope rises *our river Chuvug*"³ [i.e. Chubut].

¹ Published in Benjamin Vicuña Mackenna's work, *A traves de los Andes*, Santiago, 1885, pp. 239-250.

² *Memoria del Departamento de Ingenieros Militares*, etc., by its Chief, Colonel Don Manuel J. Olascoaga, Buenos Aires, 1883, p. 48.

³ *Loc. cit.* p. 86.

Colonel Olascoaga, moreover, did not confine the terms of his interpretation of the boundary agreement to official documents.

On the 15th of March, 1883, the *Tribuna Nacional* of Buenos Aires published an important article signed by Colonel Olascoaga, entitled "*Lonquimay—the true boundaries*," which was accompanied by a sketch map herein attached. App. Doc.
No. 30.

Plate 11.

Beginning with the remark that in this region, and almost without exception,

"the Cordilleran system which demarcates the jurisdictional boundary between Chile and the Argentine Republic is not indicated by the greatest heights,"

he goes on to say that :

"The Cordilleran chain to which the extinct volcano Lonquimay belongs is the most conspicuous and the highest . . ." and that "a traveller, coming from the east, as he approaches it entertains the conviction that the Chilean frontier must be there, and only perceives that he is in Chilean territory when, before reaching that Cordillera, he finds his way barred by the waters of Lake Hueyeltue or the Rio Bio-bio which issues from it, and flows northwards."

After explaining the mistake made by the Chilean geographer Pissis, who has drawn on his map the boundary line over the Callaqui-Lonquimay range—a mistake due to his being unable to explore the upper Bio-bio valley, which was then occupied by rebel Araucanians and Pampas Indians—Señor Olascoaga complains that further south Pissis had erred in a precisely contrary sense by drawing an "imaginary geographical line which left on the side of Chile many rivers, streams and lakes the waters of which flow into our great River Limay."¹

¹ On this point Olascoaga was mistaken, but this does not diminish the value of his view as to the principle of demarcation.

He also protested against Chilean forces being encamped at Maichin, on the banks of the River Travun-Cura (or Trancura), because, as he believed, this river was also a tributary of the Limay.¹ There can be no shadow of doubt as to the nature of the mistake made by Colonel Olascoaga, for the supposed course of the Argentine River Travun-Cura is plainly shown on his sketch map, together with the Manchanaco and Coyun-Cura, which rise on the eastern slope of a range stretching in a north-easterly direction from the volcano Villarica.

In this sketch the boundary line is drawn strictly according to the water-parting, encircling on the eastern side the Bio-bio valley, and leaving within Chilean territory the lofty range of mountains through which the river breaks westwards.

Some time after, Colonel Olascoaga, having recognized his error as to the course of the River Trancura (Travun-Cura), published a new map in four sheets, wherein the true course of the river is shown towards Lake Villarica, but this time he studiously abstained from indicating any boundary line on the map.

In the month of January, 1883, a circumstance occurred which gave rise to very important declarations. At Huechulafquen, (Lat. S. $39^{\circ} 45'$) on the Argentine side, there existed a garrison, from which the commanding officer had detached some of his troops to two places called Rehueico and Carirriñe, lying on the Pacific slope. At Villarica, on the same side, a Chilean garrison existed, and, on the 17th of the month named, the officer in command addressed himself in writing to the Argentine commander, requesting him to withdraw his troops from the places mentioned,

App. Doc.
No. 31.

¹ This was also a mistake on the part of Olascoaga. The Trancura is a tributary of the Chilean river Tolten.

"in which," he said, "as you may have observed, the waters flow towards the west and fall into our rivers."

The Argentine officer, Colonel Godoi, in his App. Doc.
No. 32.
Colonel
Godoi. reply, dated the 22nd of January, 1883, admitted the possibility that

"Argentine officers might, *without knowing it*, have trespassed beyond the boundary line,"

and proceeded to excuse them on the ground that though such a line was

"determined by the course of the waters, it was very difficult to identify it at first sight, since these streams, as you must have had occasion to note, generally have a course so irregular that the true one can only be ascertained *by a survey*, for often a stream which begins flowing to the west, when descending to the valleys *follows their natural declivity* and, bending, discharges into the rivers that carry their waters to our ocean, or *vice versa*."

We take due note of these two declarations. To recapitulate them: Colonel Olascoaga plainly stated that the Upper Bio-bio valley belonged to Chile, because the Bio-bio was a Chilean river, though its sources were to the east of the most conspicuous and highest chain; and he applied the term *central chain* to the water-dividing ridge, not on account of its central position with reference to other chains, but evidently because it was the centre of distribution of the waters between the two countries. Colonel Godoi proved even more clearly that the boundary was determined by the *true course* of the waters, so that if a survey were necessary, it was not to be an inquiry as to the importance, height or general trend of the mountain ranges, but only as to the true course of the streams, following the natural declivity of the valleys, down to their ultimate outlet into the ocean.

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**Argentine
occupation
at Lake
Lacar.**

Meanwhile, as narrated in the Argentine Statement (pp. 724-732), detachments of the Argentine army penetrated a little further south than the places already named, as far as the eastern borders of Lake Lacar, the waters of which flow into the Pacific Ocean ; and in 1883 an Argentine map was drawn showing this fact.

The occupation of this locality and the erection on it, in 1883, of a small fort, about two miles to the west of the water-parting line, passed unnoticed in Chile. This can be easily explained. The Chilean troops, who were mainly occupied in subduing the rebel Indians, had never reached such a southern latitude, because no Indians existed there to be subdued. As a matter of fact the region west of Lakes Lacar and Pirehueico was uninhabited, and thus it is conceivable that up to that time, and till a much later period, no necessity was ever felt for finding out where the water-parting line, or, in other words, the frontier line of both countries, was situated.

It therefore devolved upon the Argentine officers who reached those places with troops in the year mentioned, to ascertain whether the fort or hut, which they had ordered to be built on the Maipu valley, was situated within the confines of their own country, so as to avoid, in the event of its not being so, a breach of the Boundary Treaty. This was a moral obligation from which they could not consider themselves excused simply because there were no witnesses to the violation of alien territory or authorities to protest against it. It has just been seen in the cases of the occupation of Rehueico and Carirriñe by Argentine troops that the Chilean military authorities of Villarica

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hastened to protest against such an occupation as soon as they had been informed of it, and the commander of those troops acknowledged and excused the violation of Chilean territory, alleging that it was not always easy to know where the water-parting line, which constituted the frontier, was to be found.

The similarity of the topographical features at the headwaters of the Lacar valley, with some other points of the water-parting line, which have been acknowledged as a part of the frontier by Argentine authorities, will be demonstrated further on. At present it may suffice to observe that if the rule of demarcation applied further north by virtue of the Treaty in force was not respected at this particular point by the Argentine army, such action simply implies that the said forces violated the Treaty in this instance.

Moreover, it may be advisable to point out that, throughout the prolix dissertations of the Argentine Statement (pp. 720-739) concerning the Argentine occupation of lands at the Lacar, not a single proof has been adduced that the Chilean authorities positively consented to this occupation, or that any of them accepted as the boundary line some chain to the west of the said lake. On the other hand it has just been seen that the Argentine military authorities had expressly acknowledged, at the headwaters of the Bio-bio and of the Rehueico, that the frontier was determined by "the course of the waters."

**Captain
Rohde.**

In the same year, 1883, and to the south of the headwaters of the Bio-bio and of the Valdivia, some exploring expeditions under Argentine officers reached points hitherto unknown in Chile owing to the difficulty of

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penetrating their dense forests. One of these officers, Captain Jorge Rohde, crossed over the continental divide and advanced till he came in sight—so at least he believed—of Reloncaví Inlet ; and, on returning to Buenos Aires, he gave utterance to certain opinions upon the boundary line which deserve to be placed on record.

App. Doc.
No. 33.

These opinions could scarcely be quoted as an interpretation of the Treaty of 1881, since their author did not appear to know that a boundary line had actually been agreed upon two years before his expedition ; but they are instructive as showing the variability of the Argentine official criterion—studiously mindful of the principles adopted for the demarcation whenever any advantage could be derived from them, but utterly regardless of them in the opposite cases.

On the 3rd of March, 1883, Captain Rohde reached, as he says,¹

“one of the many places that form the limit of the waters between the Atlantic and Pacific Oceans, but I was not at the frontier between the two countries, *as according to my opinion the line of the water parting is not the natural frontier between the Argentine Republic and that of Chile, and never can be their political frontier without great detriment to our side.*”

Later on, going into further details as to his own idea of the characteristics of the frontier line, he says :

“As a natural frontier between the two countries, no other line can be accepted than the *real* Cordillera : that is, *that chain in which the largest number of high peaks are found. It is even now generally believed* that the line which can be traced along the highest peaks is coincident with that which forms the water-parting, and, as a consequence of this widely spread belief, *that where a stream rises flowing to the west, the Chilean territory begins, and in like manner the Argentine territory, where the waters flow to the east.*”

¹ *Boletín del Instituto Geográfico Argentino*, 1883, vol. iv. p. 171.

Captain Rohde says also that

"We Argentine officers have been called ignorant because we did not immediately know, *from the course of the waters*, if we were or were not in Argentine or Chilean territory."

As we are not dealing at present with the geographical aspect of Captain Rohde's explorations, but only with his views and definitions of the boundary line, or the lines which he thought ought or not, to be the boundary, we shall only point out the fact that he acknowledges, a few lines further on, that a line drawn between the headwaters of streams which have a *definitive* opposite course constitutes what is called "*the principal line* of the water-parting" and also "*the true water* [parting] *boundary*."

Captain Rohde's statements give rise to points of considerable importance. In the first place, though he discourses at length upon the boundary question, he does not (we repeat) seem to have been aware that there was a Treaty in force; for, in his lecture, he never makes any reference, direct or indirect, to it. He only gives his "own opinion" as to the detrimental consequences resulting from the acceptance of a zig-zag line as a political frontier, without ever inquiring whether the said line had been agreed upon or not. Nor does he seem, moreover, to have known that, between the Mercedario and the Aconcagua, orographical conditions, the very reverse of those which occur in the latitude of Reloncaví, had led to the adoption of the water-parting boundary leaving within the Argentine territory "*the real* Cordillera, where the largest number of highest peaks were found."

We must also observe that Captain Rohde was well aware that many people in the Argentine Republic held the view

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that the water-parting line *was* the boundary and looked on the "source of a Chilean river as an unmistakable sign of Chilean jurisdiction" or that "the boundary was determined by the course of the waters."

Finally, it appears from Captain Rohde's writings that South American phraseology, as the Argentine Representative terms it, was not yet enriched by such expressions as *highest crest watersheds* or others like it. We call attention to the fact that Captain Rohde did not say, "the highest crest watershed and the continental water-divide are two different lines," but "the line drawn along the highest peaks is different from the water-parting line." Thus, then, even when such bitter enemies of the "inter-oceanic divide" as Captain Rohde mentioned "*the* water-parting line," they did not refer to any high crest watershed, but precisely to the "continental divide" (to which they so strongly objected), though they did not call it by that name.

Hence it is inaccurate to say, as is affirmed in the Argentine Statement, that the Chilean Expert introduced later on a "new doctrine" in this respect. Captain Rohde objected to the continental divide in 1883 under any name; and it must also be observed that he never pretended that a line traced over the highest peaks of the Cordillera ought to be called a water-parting line. On the contrary, he said that this was "quite a different thing," and for this reason, doubtless, he found it advisable, in his investigations as to the frontier line, to take no account of the Boundary Treaty, in the text of which the phrase "water-parting line" is to be found—an expression which he considered neither acceptable nor convenient.

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With the publication of Captain Rohde's opinions, especially those relating to Reloncaví Inlet, coincides the first Argentine attempt to reconcile with the Treaty of 1881 their claims to Argentine ports on the coast of the Pacific. These opinions had already appeared in a newspaper article written at the end of 1883,¹ which we reproduce *in extenso* in the Appendix, although it may have no official character. In this article it was stated that Reloncaví Inlet lies to the east of the line traced over the highest peaks of the Cordilleras, and that it communicated with the Pacific Ocean through a *break in* the backbone of the Andes. *The geographical and diplomatic question to be solved*, according to the writer, was whether the frontier line should be understood to run along the "highest summits" of the Andes, or along the "secondary line" whence streams flow to the west.

App. Doc.
No. 34.

It was argued that "a geographical water-parting line" meant the line where the water-parting would have taken place had no break of the backbone ever occurred, and it was suggested that Argentine diplomacy ought to maintain that *theory*.

This brief quotation suffices to show that the theory expounded at length in the article is precisely the same as that which underlies the entire Argentine Statement.

The inconsistency of Captain Rohde's views with the correct interpretation of the Treaty of Limits was soon pointed out in the Chilean Press, to which articles on the subject were contributed by Señor Bertrand, who some time afterwards had the opportunity of officially explaining his views in regard to that interpretation.

¹ *La Patria Argentina*—La bahía de Reloncaví—December 5, 1883.

Having effected his first geographical exploration in the Puna region during the summer of 1884, in his preliminary report Señor Bertrand stated as follows the difficulties of applying the *divortium aquarum* rule to the region of the Puna, where he had found numerous *sinks*, or interior drainage basins :¹

"This expression (*divortia aquarum*) is a geographical technical expression and means *water-parting line*. Its use implies the previous notion that from a hydrographical point of view a region is considered as divided into basins, to the lower part of which the waters flow from its perimeter. The line on which the perimeters of two conterminous basins coincide, forms their *divortia aquarum*, a more or less sinuous line, determined by the features of the ground. If these happen to form a mountain range, it seems natural that its backbone or crest should be the *divortia aquarum*, and that the highest summits should also be found there. It is not always so, however, and the Andean Geography especially is found to be in opposition to these preconceived ideas. Its highest summits, as Mount Aconcagua, the volcanoes Descabezado, Chillan, and many others, tower, not on the central ridge, but in branches that penetrate either into Chile or into the Argentine Republic. Moreover, it happens that this ridge is, in various places, cut across by deep valleys which carry to one ocean waters having their rise on the opposite side. In such cases there are notable bends in the *divortia aquarum* line, which differs widely from the high summit line."

He further adds :

"The Treaty of limits with the Argentine Republic is more explicit (than the Agreements with Bolivia in 1866 and 1872) . . . as it is said in Article 1 : 'The boundary line shall run in that extent, along the highest summits which divide the waters, and shall pass between the sources that flow down to either side.' Therefore, *the summits which do not divide the waters are not to be included in the boundary line* . . ."

These quotations (where the *divortium aquarum* rule appears stated in unmistakable terms in 1884 as understood and explained by the Chilean Expert ever since 1891) show that the assertion so often repeated in the

¹ *Documentos oficiales*, etc., 1898, pp. 27-30, A. Bertrand—*Informe*, June 21, 1884.

Argentine Statement, that this *doctrine* is a *new one* and of very "tardy appearance" in Chile, is devoid of foundation. But, in order to prevent any mistake or misapprehension on this subject, it is well to point out that if in the Report just quoted, from which longer extracts are given in the documents, references are made to regions of the Andes where the expression *divortium aquarum* lacks any precise meaning, they are only to be applied to the region explicitly referred to, the Puna, between the 21st and 27th parallels, where the intricacy of the connexions between the interior drainage-basins is such that, even with the help of the numerous altimetric data at present available, the location of the general scientific watershed would not perhaps be possible in all its extent.

App. Doc.
No. 35

In 1885 Señor Bertrand explored the ground along the 52nd parallel in order to report to the Government as to the conditions under which the boundary could be marked out along this line.

When dealing with the western extremity of the boundary along the 52nd parallel, he did not for a moment doubt the evident purpose of the Treaty, that the dividing line must, first of all, never leave the solid ground of the continent, and that the expression "*divortium aquarum* of the Andes" meant the general water-divide. At the same time he could not but remark that the peculiar features of the ground in these southern regions, even so far as they were known, did not seem to have been considered or borne in mind in drawing up the Treaty.

Referring to Señor Bertrand's Report on this subject,¹

¹ A. Bertrand, *Memoria sobre la region central Magallanica*, 1885.
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it is said in the Argentine Statement (page 237), that from these observations of Señor Bertrand two facts are deduced which it is advisable to point out to the Tribunal :

"1. That if the negotiators of the Treaty of 1881 overlooked that the continental *divortium aquarum* does not occur in the Cordillera de los Andes, there is no doubt that they did not stipulate that continental *divortium aquarum* ; and therefore the boundary could not be carried along it, as this would necessitate abandoning the barrier agreed upon."

The complete refutation of this conclusion, under the different forms in which it appears in the Argentine Statement, will be made further on.

At this point it will be sufficient to observe :

1. That the conclusions reached by Señor Bertrand in his Report quoted were entirely justified on the face of the text itself of the Treaty, which in its 2nd Article says :

"In the southern part of the continent . . . the boundary . . . shall be a line . . . coinciding with this latter parallel (the 52nd) as far as the *divortia aquarum of the Andes*."

Taking the strict sense of the words of this stipulation and following the same line of argument as employed by the Argentine Representative when he maintains that the boundary cannot leave the Cordillera de los Andes, it would appear that *the boundary in the southern region cannot in any case be traced outside the continent*. It has been further seen in the correspondence between the Ministers of the United States, during the negotiations which led to the signing of the Treaty of 1881, that the intention of the Governments of Chile and the Argentine Republic was that the boundary line should always be traced over *terra firma*.

Were it permissible to arrive at conclusions like that

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formulated by the Argentine Representative, Chile would be perfectly justified on her part in formulating the following conclusion : " If the negotiators of the Treaty of 1881 forgot that the water-divide in the Sarmiento Cordillera, which the Argentine Expert considers to be the *divortium aquarum* of the Andes, cannot be reached along the 52nd parallel without crossing maritime channels and islands, it is beyond doubt that the negotiators did not stipulate that *divortium aquarum*. Consequently the boundary could not be traced along it, since this would imply the necessity of abandoning the continent which was precisely what should be divided by the line agreed to in Article 2 of the Treaty."

2. The Governments of Chile and the Argentine Republic implicitly acknowledged the accuracy of the interpretation given by Señor Bertrand to Article 2 of the Treaty of 1881, since in the Protocol of 1893 (Article 2) they established that according to the "spirit" and "provisions" of the Boundary Treaty, the Republic of Chile retains its dominion and sovereignty over all territory of the littoral of the Pacific and over the coasts of the channels in the vicinity of parallel 52. It is clear therefore that if by mutual assent of the two Governments the right of Chile over an uninterrupted territory along the littoral of the Pacific is acknowledged as a consequence of the spirit of the Treaty of 1881, the Argentine interpretation of the expression "*divortium aquarum* of the Andes" is necessarily erroneous, because it does not admit the existence of such uninterrupted territory. It is also plain that Señor Bertrand did not suggest in his Report "a fresh boundary completely extraneous from that agreed upon in 1881" (Argentine Statement, p. 236), but that, on the contrary, he pointed out the true boundary as it was

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understood by the negotiators of the Treaty of 1881, and as it was later on expressly confirmed by the Protocol of 1893.

3. In the Treaty of 1881 there is no indication whatsoever that the boundary stipulated between the two countries should be "a barrier," and therefore Señor Bertrand, when visiting the southern territories of the continent where the boundary had to be marked out, was not under the necessity of seeking topographical features which, for strategical reasons or considerations of political expediency on the part of either country, might be taken into account for the tracing of the frontier. He rightly assumed that the main object of the Treaty was to establish an unmistakable boundary, and as this boundary was determined by a *simple and invariable* rule, such rule had to be understood in such a way as might be applicable to the whole extent of the boundary for which it had been established. And if this rule of demarcation were to give as a result that in some particular stretch or stretches the water-parting line should abandon the highest summits of the Andes, this would prove, as Señor Bertrand remarks, that this circumstance had been overlooked by the negotiators of the Treaty; but it would nowise prove that this mere fact should invalidate the rule of demarcation stipulated in a clear and imperative manner in the covenant for the determination of the frontier line from the north as far as parallel 52, or, in other words, that it was to be understood in such a manner as would hinder it from being a fixed and invariable rule.

The second conclusion arrived at (page 237) by the Argentine Representative is as follows :

"That Señor Bertrand had two standards by which to interpret the words *divortium aquarum*. In the case of the international boundary

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it is the continental that he adopts and no other; in the case of the internal lines within Chilean territory he adopts the *divortium aquarum* in its usual and logical meaning."

This conclusion is apparently supported by two quotations from a Report in which Señor Bertrand mentions "the *divortia aquarum*, with the Laguna Blanca," of two particular hydrographic regions,¹ the Argentine Representative further explaining that the Laguna Blanca is "*a closed lagoon with no outlet*," and that its "watermark" is "not more than forty metres" below the watershed, etc.

It would be difficult to understand how any of these facts can justify the charge of "having two standards by which to interpret the words *divortium aquarum*." The whole perimeter of a "closed" basin just as necessarily constitutes the *divortium aquarum* of the surrounding basins with the former, as the South American continental divide constitutes the *divortium aquarum* of the Pacific basins with the Atlantic basins. It seems hardly necessary to explain that it is not from its being "open" or "closed," "high" or "low," "long" or "short" that a given line may be properly called a "*divortium aquarum*," but only and solely from the circumstance of its forming an uninterrupted line of separation between two opposite directions of outflow along the

¹ The first of the quotations refers to the watershed between the seaward drainage, on the "eastern coast of Skyring water" on one side and the Laguna Blanca on the other: the second quotation refers to the watershed between "the Patagonian strip whose waters fall into Magellan Straits" on one side, and the Laguna Blanca on the other. That Señor Bertrand referred to these subordinate watersheds, there cannot remain the least doubt when reading the whole description from which the two quotations are taken. Moreover, in the same Report (*Memoria sobre la Region central de las Tierras Magallánicas*) he also mentions (page 75) "the *divortium aquarum* of the rivers Ciaiue and Dinamarquero," and under the heading of "Hydrographic basins," he explains the scarcity of water-courses on the Otway water coast by the fact that (page 84), "the *divortium aquarum* is very near the coast line." No doubt or ambiguity can exist in any of these cases as to which of the subordinate *divortia aquarum* is meant.

whole extent to which the term is applied, whatever may be its form, altitude or length.

The charge of having "two standards" made without foundation against Señor Bertrand might be directed with more reason against the Argentine Representative and Expert, who at times accept the term *divortium aquarum* in its usual and logical sense, i.e. in that of a line which separates waters all along its course; yet when dealing with the *divortium aquarum* established by the Boundary Treaty, seek to apply this term to a succession of independent water-partings, separated by stretches in which the waters, instead of being *divided* by the line, are allowed to *pass through it*.

Pissis' small map.

A very important document, in that it shows what was the official interpretation given in Chile to the Treaty of 1881, was published at Santiago about that time (1883-84). We refer to an edition of Pissis' map¹ on a reduced scale (1 : 1,000,000). On the southern sheets especially where the Rivers Aisen and Huemules were shown, the boundary was marked by a dotted line enclosing the easternmost sources of these rivers. Bearing in mind the sense which the Argentine Statement (pp. 56-60), seeks to put upon Pissis' expression "the anticlinal line of the Cordillera de los Andes" it will be acknowledged that such a graphic illustration of the meaning which, as we have already proved, he gave to that expression, is very important.

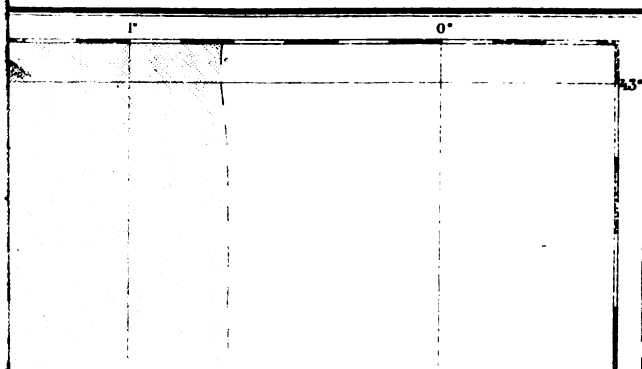
Plate III.

In the same year was published a map of Chile, drawn up by Señor Bertrand, on the same scale, in which the water-parting was indicated as the boundary line, down to the 52nd parallel.

¹ *Mapa de la República de Chile desde el Rio Loa hasta el Cabo de Hornos*, by A. Pissis.

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PLATE III.
To face page 360.



**Serrano's
exploration
of the River
Palena.** At the beginning of 1885, the first official exploration of the lower course of the River Palena was undertaken on the part of Chile by a naval officer, Señor Serrano, and an account of it was published in the *Chilean Hydrographic Annual*.¹

Captain Serrano's boat was wrecked below the junction with the Rio Frio, and consequently in the course of his voyage he did not reach the eastern side of the group of snowy mountains where the Argentine Expert traces his proposed boundary line. Though in his narrative Captain Serrano frequently mentioned these mountains as a "range of Cordillera" he never appears to have considered it as the boundary Cordillera. On the contrary, the opinion which he clearly gives in this respect is that the frontier question would have to be decided by the knowledge of the sources of the river, which, as he correctly supposed, would be found to the east of this snowy Cordillera, at the place visited by Musters in 1870. Captain Serrano attributed such importance to this point that he referred to it at every stage of his narrative.

"Whether the river does or does not cross this range of the Cordillera through a gap not seen by me" (he says), "is a fact that I cannot affirm, but I should certainly think that it took its rise here, were I not led to doubt it by what Captain Musters says about the eastern point of these mountains in his journey to Western Patagonia" (page 97).

And he then quotes Captain Musters' words, italicizing them, that

"after crossing a stream which, flowing from the north, afterwards took a westerly course, thus proving that we had passed the watershed."

In the Spanish version of these quotations Captain Serrano translated "watershed" by "*divortium aquarum*,"

¹ *Anuario Hidrográfico de la Marina de Chile*, vol. xi. 1886. "Reconocimiento del Rio Buta Palena," etc., pp. 74-201.

thus making use of the term employed throughout the Argentine-Chilean controversy to designate the boundary line in the Andes.

Further on (page 123) Captain Serrano adduces new reasons in favour of his belief that the sources of the Palena were to the east of "this range of Cordillera," and in a more open country, as the large size of the tree trunks carried down by the river seemed to indicate, because, as he says,

"Since it is not to be supposed that the size of the trees can change suddenly, it seems probable that the river comes from places still much further off, this being, moreover, shown by its great volume of water."

Without giving a definite opinion, he also adds (page 124) that :

"If the facts observed by the present writer are connected with those given by Captain Musters it seems beyond doubt that the River Buta-Palena has its sources on the eastern side of *the Cordillera*, and I should not fear to leave it at this, if I had not had always in sight *that snowy range of mountains* that seemed to leave no passage to the waters of the river."

Expressions like these of Serrano and Simpson have been interpreted in the Argentine Statement as an acknowledgment that the *snowy ranges* mentioned should, according to the view of these explorers, be regarded as the *boundary Cordillera* whether they were traversed by the rivers or not, and therefore it is well to point out here that such an interpretation is wholly devoid of foundation. When the whole of Captain Serrano's account is read, it is plainly seen that when he terms "the Cordillera" the range of mountains of which he had spoken before, he does not imply thereby that it is the only Cordillera, or the boundary Cordillera.

According to his instructions (page 75) Captain Serrano was to "investigate the origin of the River Palena," and though the wreck of his boat and the consequent loss of his scientific

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instruments (page 123) prevented him from carrying out this part of his instructions, it cannot be doubted for a moment that the Chilean Government and their explorer considered the whole river basin to be Chilean, as far as the "watershed"—the "*divortium aquarum*"—that had been crossed by Musters in 1870 provided that, as was then rightly supposed, the true limit of the basin should be found at this place.

**Fontana's
exploration
of the
Futaleufu.**

A few months after the return of Captain Serrano, another exploration was carried out by an Argentine party, under Lieut.-Colonel Fontana, Governor of the Chubut territory, as far as the sources of the River Chubut. This expedition crossed the continental divide at the foot of Pico Thomas (lat. $43^{\circ} 5'$; long. $71^{\circ} 8'$), entered a broad valley which they named "Dieziseis de Octubre," and followed the course of the River Futaleufu (which they erroneously called Corcovado, under the impression that it was the Pacific river of that name), for some miles to the westward of its junction with the Rio Corintos.

The first account of this expedition was given in a lecture delivered at the Argentine Geographical Institute in the month of April, 1886, by Dr. Estanislao S. Zeballos, a sentence of whose, quoted in our first Statement, has been commented on in the Argentine Statement (page 182) for the purpose of minimizing its importance. The details into which we are thus compelled to enter will, however, confirm our former assertions.

Dr. Zeballos made the following sketch of Lieut.-Colonel Fontana's expedition :¹

"Starting from Rawson, he travelled west, with a slight deviation to the north. He skirted the bank of the tortuous River Chubut, formed

¹ *Boletín del Instituto Geográfico Argentino*, vol. vii. (1886), pp. 101, 102.

by the junction of two branches, the least important of which [Rio Teca] comes tumbling down from the south-west, pouring forth from the deep recesses of the Andean Precordillera, while the other seems to fall with less impetus from the north. . . .

"They followed the unsuspected course of the southern branch of the Chubut, which led them continuously mounting *the declivities of the Andes* which precipitate it eastwards, to a valley covered with gigantic forests. . . .

"Passing through forest after forest, and meadow after meadow, the travellers reached *a place where the bare Andean ridges sink and the branches thereof form a wide and open valley*, covered with a mantle of splendid vegetation.

"A careful survey of the ground confirmed the existence of a broad river, *the course of which, from east to west, revealed to the travellers that they were treading on Chilean territory.*"

From these words, we rightfully inferred that, according to Dr. Zeballos' opinion (in April, 1886) the *westerly course* of a Patagonian river was in itself a sufficient indication that the lands watered by that river were Chilean territory.

The Argentine Representative alleges (page 182) that, as Dr. Zeballos had always been and continues to be an ardent defender of Argentine claims, it is not possible to represent him as expressing a different opinion "by a few *loose words which represent nothing.*" In reply to this assertion we may simply observe that the Argentine Representative might considerably shorten the present discussion by declaring once for all that every assertion made by Argentine geographers or statesmen in a sense favourable to Chile, "represent nothing," and only those favourable to his views are worth anything.

Moreover, the very foundation for the assertion that Dr. Zeballos was, in April, 1886, an "ardent defender" of the Argentine claims as they are now preferred by the Argentine Republic, and an energetic propagandist against the "continental divide," is not, as will be seen further on, consistent

CHAP. XII.

with facts. On the contrary, it will shortly be shown that in December, 1886, Dr. Zeballos still admitted the plausibility of the Chilean interpretation of the boundary line.

The Argentine Representative then goes on to say :

“ Señor Zeballos could not have meant that the *direction of a river*, from east to west, would be of itself a sufficient indication of Chilean territory. When expressing himself as he did in the words that have been quoted, he meant a certain and determined spot ; otherwise the sentence would have no meaning at all. The rivers of the whole world do not belong to Chile merely because they run from east to west. Señor Zeballos did not wish to show that the Clyde, for example, belongs to Chile.

“ He mentioned a place in which, though the river would run from north to south, from south to north, from east to west, or from west to east, it would be exactly the same, because he was referring to a region washed by the Pacific Ocean to the west of the ridge of the Andes.”

In proof of this some further sentences of Dr. Zeballos' speech are quoted :

“ A step further and the rocks immerse in the blue and smooth waters of a colossal gulf, limited in the distance, in the very distance [very far off], by the dark grey masses of the inaccessible rocks of Chiloe,” etc.

We think it necessary to refute carefully every assertion made and every fact alleged by the Argentine Representative on this subject because they are characteristic of the method of argument continually adopted in his Statement.

In the first place, Dr. Zeballos did not mention the *direction* but the *course* of the Patagonian river to which he alluded, and the two things differ. The *direction* from east to west may change into one from west to south, etc., while the *course* of a river from east to west means that it rises in the east and discharges in the west.¹

¹ There is another misleading translation in the Argentine Statement where the phrase, “ Un levantamiento prolijo del terreno *confirmó* la existencia de un río anchuroso cuyo *curso* de este a oeste revelaba que los viajeros hollaban tierras de Chile ” is rendered thus :—“ A careful survey has *proved beyond doubt* the

To discuss before the Tribunal whether Dr. Zeballos intended to refer to the Clyde when speaking of explorations in Patagonia, would not, we think, be respectful. That, where Dr. Zeballos plainly says "*a broad river, the course of which from east to west revealed . . .*" it should be understood that the subject to the verb *revealed* is not *the course of the river from east to west*, but the fact that "the region was washed by the Pacific Ocean," we think useless to contradict more plainly than by the repetition of the sentence itself.

But it is well to deny that Dr. Zeballos referred to a region washed by the Pacific, and to show that his allusion to "a step further" as being on the shores of the Gulf of Chiloé was but a figure of speech, as may be seen in the Spanish, version, in which the cliffs of Chiloé are referred to as being "far, very far off."

However, the Argentine Expert knows better than any one that Señor Fontana on that voyage did not reach much farther west than the bend of the Futaleufu, at the foot of Mount Situacion, and that he halted 100 kilometres distant

existence of a wide river whose *direction* from east to west *showed* that the travellers were treading on Chilean territory."

It has been remarked in the text that the *course* of a river may *reveal* what the *direction* in a determined spot fails to do. We may also remark that "*to prove beyond doubt* the existence of a river" is different from "to confirm the existence of a river," as the latter form involves the idea that the existence of such river was already known or suspected. Dr. Zeballos, in fact, said "confirmed" because he believed the Rio Corcovado of Fontana to be the same river that Captain Musters visited on the 27th of September, 1869, near the Tehuelche encampment called by him Weekel—as he says (*Bol. I. G. A.*, viii. p. 102) that Fontana identified that spot, in which assertion, however, he was mistaken—after crossing the *watershed* (Musters' own expression, translated as "*divortium aquarum*" by Serrano in his first Palena exploration narrative) at a place that Dr. Moreno in 1878 and Dr. Zeballos in 1886 called a *pass* of the Cordillera.

The Spanish word "*revelaba*," *revealed*, is also much more expressive than the word "showed" used in the Argentine translation. *To reveal* or *to prove*, as we put in our first statement, is more definite and expressive than merely *to show*.

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from the Pacific shores. It suffices to glance at the sketch map of Señor Fontana's expedition to see clearly that he did not believe he had crossed "to the west of the ridge of the Andes," according to the present Argentine meaning, and this is acknowledged in the Argentine Statement (p. 810), where it is stated that "the photograph accompanying the report of Señor Fontana shows that he reached the big river at the bend previously mentioned, *to the east of the Andean summit.*" In the same report it is also stated that the explorers followed the river down stream only fifteen miles, and consequently they were more than eighty miles from the sea by the course of the river¹ and about thirty miles to the east of the actual line of the proposed Argentine boundary. It cannot be seriously alleged that the explorer Fontana said that he had to turn back from the seventy-third meridian and that this falls into the sea, as that would only prove geographical ignorance on his part, or his belief that the Admiralty charts were wrong as to the longitudes on the Pacific coast. Moreover, Fontana's map in question shows that he placed the "Cordillera Real" between the 73rd and 74th meridian, and that he never pretended to have crossed it. The inevitable conclusion is that Dr. Zeballos could not have referred to a "region washed by the Pacific Ocean" when he spoke of the "Chilean territory trodden upon by the Argentine explorers," and consequently that, when he said that *the course from east to west* of a Patagonian river revealed the ground traversed by that river to be Chilean territory, he did not mean to say that the proximity of the ocean revealed the ground trodden upon to be Chilean territory.

¹ Fontana, "Exploracion a la Patagonia Austral," *Boletín Instituto Geográfico Argentino*, vol. vii., 1886, p. 266.

Señor Fontana's report on his own expedition was published at the end of the same year (1886) in the Bulletin of the Argentine Geographical Institute,¹ and affords an opportunity for showing that this was the period at which the Argentine official and scientific opinion on the geographical interpretation of the Treaty of Limits underwent a change, as the explorer no longer believed in December, as Dr. Zeballos did in April, 1886, that he had been treading on Chilean territory when he explored the source of the Futaleufu.

App. Doc.
No. 36.

Señor Fontana states that the region of the water-parting is formed of "very high ridges" (p. 253) with "snowy tops" and calls them "pre-cordillera." He states also, when speaking of the River Futaleufu, which he called Corcovado, that "we have verified the fact that its hitherto unknown sources are in Argentine territory" (p. 266) without giving any reason for this assertion. He acknowledges that what he calls the "pre-cordillera" is formed by "*a chain of high mountains*, though less considerable in proportion to *the real Andean* chain that stretches parallel to it at a distance of about fifteen leagues," adding that

"between these *two enormous barriers* that form *the axis of the American Continent*, there are narrow valleys as well as extensive fields watered by clear streams which flow down from the neighbouring summits, which are always snow-clad."

Here then, as where the River San Juan takes its rise (lat. 31° to 32°), there were *two chains of high mountains*, and between the two, extensive valleys and *pasture lands*. In both cases the *highest barrier* was intersected by the watercourse of which the waters irrigated these pastures, and the question

¹ *Bol. Inst. Geogr. Arg.*, vol. vii., 1886, pp. 223, 242, 265.

was raised: to whom might these pasture lands belong? Further north, tradition, International law (Frias), Argentine advantage (Nicour and Sanchez) had been put forward against the *highest barrier*; the *divortium aquarum* rule was upheld and finally acknowledged by both parties, and the pasture lands of "Los Patos," as well as the southern "Potreros" (lat. 35° to 36°) were allotted definitively to the Argentine Republic by virtue of that rule.

Now the case was reversed, and though at first the chivalrous declaration of Dr. Zeballos seemed to indicate that the rule would be respected in the south and that the Patagonian pasture lands found *between the two chains of high mountains* would be left to Chile for the same reason that the northern pasture lands had been left to the Argentine Republic—that is to say, because they were "watered by Chilean waters" (Nicour and Sanchez, p. 119), and because "the general declivity of the valley was towards Chile" (Bermejo)—these hopes of fair dealing were of short duration. The accounts of the explorers were too enthusiastic, the soil was so rich, "so much like the manured earth of our (Argentine) orchards" (Fontana, p. 253), that the temptation could not be resisted, and without giving a single thought to the existence of a Treaty of Limits, the Governor of the Chubut territory declared the "sources of a Chilean river to be in Argentine territory."

This opinion, however, was not officially acknowledged by the Argentine Geographical Institute as the correct interpretation of the Treaty of Limits. Shortly after the time that the Argentine Geographical Institute Bulletin published in December, 1886, the account of Fontana's exploration, in which "the sources

of the Corcovado" were declared to be in Argentine territory, there was a meeting of the special commission appointed by the Council of that Institute for the compiling of a Map and Atlas of the Republic. The commission was composed amongst others of General Bartolomé Mitre, a late President of the Republic, Dr. Zeballos and Señor Mauricio Schwartz.

From the Record ¹ of the meeting of December 31, 1886, we extract the following :

" . . . an account was given of the matter in hand as follows :

"12. A note from the Head of the Cartographical Office of the Institute, stating that he is sending by mail the originals of Plates xiv. and xxv., representing, the first, the 'Provincia de San Luis,' and the second, the 'Gobernacion del Chubut.'"

The same note contains the following :

"In the map of the Chubut a serious difficulty arises with regard to the boundary with the Republic of Chile. The Treaty of 1881 (already published in the *Boletin del Instituto*, vol. ii. p. 81) says in respect of this: '*The frontier line shall run in that extent along the highest summits of the said Cordilleras which divide the waters, and shall pass between the streams (vertientes) that flow down to either side.*' It is thus permissible to doubt, as many distinguished Argentines do, whether the high contracting parties intended that the boundary between both countries should be traced along the highest summits of the Cordillera without taking into account the valleys of the Rivers Aisen, Huemules, Bodudahue and Puelo, which should be left within Argentine territory, or whether, on the contrary, they have fixed the *true water-parting* ² as the boundary line. I have traced both lines on the map, the first in black ink and the latter in red, leaving the decision of the matter to the better judgment of this Commission.'

"In view of this, it was agreed that General Mitre and Dr. Zeballos should hold a conference with the Minister for Foreign Affairs of the Republic, so as to obtain an official [boundary] line with respect to the complicated points involved."

¹ *Bol. Inst. Geogr. Arg.* t. viii. (1887) pp. 68-71. "Actas i Procedimientos del I. G. A. Comision especial del Mapa i Atlas de la República." Sitting of the 31st of December, 1886. Chairman, Lieut.-General Don Bartolomé Mitre.

² *Verdadera division de las aguas*, literally, "true division of the waters."

The great importance of this document (to which we must refer more than once hereafter) cannot but be appreciated when it is pointed out that the Atlas of the Argentine Geographical Institute was a quasi-official undertaking, published under the supervision and control of the most distinguished Argentine statesmen as well as of the Argentine Government by whom it was largely subsidized.

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No. 37.

We may say at once that it appears that the Argentine Government never gave their opinion on the expected "official line," for in the last edition of Plate xxv. of the Atlas (1889) no boundary line has so far been traced thereon.

It must be borne in mind that when this incident occurred, the narrative of Captain Serrano's expedition had been published (July, 1886) and consequently his opinions as to the probability of the sources of the Palena rising at the *divortium aquarum* or "watershed" crossed by Musters in 1870 were doubtless known to the Argentine Geographical Institute, and no doubt can be entertained as to their having referred to this "watershed" or "*divortium aquarum*" when discussing whether the "*true* partition of the waters" ought to be the boundary according to the Treaty of 1881.

Reverting to the incident as a whole, it shows that the opinion previously expressed by Dr. Zeballos, that the westerly course of a river in Patagonia revealed Chilean territory, cannot be regarded as "loose words"; it shows too that if, between April and December, Dr. Zeballos wavered in his opinion after reading the tempting descriptions of the inter-andean valleys and orchard-like fields recently published in the *Bulletin*, he had not yet become an "energetic propagandist against the continental divide," that he did not object

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when it was referred to as "the *true* partition of the waters," and was not so ardent in defending the incipient Argentine claims to the upper valleys of the Puelo, etc., since he admitted the plausibility of the doubts that had arisen, and even accepted the commission to seek out an official line. Neither did Lieut.-General Mitre, one of the most eminent of Argentine statesmen, give any opinion on the subject. They both acknowledged the difficulty to be a grave and serious one, and it is to be assumed that both of them had far more intimate knowledge of the spirit and meaning of the Treaty of Limits than the Patagonian explorers, Dr. Moreno, Captain Rohde and Major Fontana, who felt so certain as to the Pacific rivers in Patagonia having their sources in Argentine territory. We must finally insist on pointing out that the geographical expression, "la division de las aguas," "la verdadera division de las aguas" (the true partition of the waters)—as emphatically worded in the communication from the cartographer—far from being intended to mean a "normal" or highest crest watershed, was regarded as something different and, we may say, antagonistic to the "line traced along the highest summits of the Cordillera." It was not pretended that the latter should run over ridges or crests, but only from summit to summit. This idea prevailed indeed among the Geographical Institute Geographers as recently at least as 1891, as will be seen further on.

**The opinions
of the Carto-
graphical
Department
of the Argen-
tine Geo-
graphical
Institute.**

In 1885 the Argentine Geographical Institute had begun the publication of its Atlas under the direction of the head cartographer, Señor Seelstrang, who, as we have just shown, entertained in December, 1886, "serious doubts" concerning the

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interpretation of the Treaty of 1881—doubts which his Society was unable to solve. In the face of this, it is maintained in the Argentine Statement (page 186)

“that from 1886 to 1893, this Society has *constantly construed* the Treaty of 1881 in accordance with its true sense and literal meaning, and has rejected the line of separation of the hydrographical basins, as inconsistent with the frontier agreed upon in the Cordillera de los Andes and in its highest crests.”

We have just shown how greatly the facts differ from this assertion. The cartographer, Señor Seelstrang, had “serious doubts” regarding the “true sense and literal meaning” of the Treaty, and far from “rejecting the line of separation of hydrographical basins,” or “real water-parting” as he called it, as being “inconsistent with the frontier agreed upon,” he had marked it out in red ink upon the drafts of the map, as an alternative to be decided upon by the Society, and the only resolution arrived at was to request the Government for a decision which does not appear to have been given.

We have also proofs that the same cartographer, Señor Seelstrang, did not regard the region of the water-parting between the Chubut and Futaleufu (Corcovado) as being outside of the Andes, though he was well acquainted with the character of the country. Alluding to the Súnica opening (landmark No. 294 of the Chilean proposal) he said¹:

“... the fact seems to be confirmed that this is one of the transverse clefts which cross the South American Continent from east to west, like those of the Santa Cruz River and Magellan Straits, for the junction of the Chubut and the Chumate rivers is only 550 metres above the sea level, and the Corcovado Valley only 480 metres; and as only *insignificant heights* are surmounted when going from one to the other, it is clear that also in these latitudes *the Andes do not form*, in any way, *a continuous and well-determined range of mountains*.”

¹ *Deutsche Geogr. Blätter*, Bremen (1887), Band x. (*Fontanas Forschungsreise in Ost Patagonien*, 1885), pp. 42-49.

"And the same thing occurs further south with regard to the Rivers Aisen and Huemules, which discharge into the Pacific."

He also says that the pre-Cordilleras (Vor-Cordillere) are linked by transverse spurs with the principal chain (Hauptkette) and that "this is the *same configuration found in the Chilean Andes*." He recognizes, finally, the *Andine* character of the region west of the 71st meridian, or of the confluence of the Rivers Chubut and Chormate on one hand, and that of the Senguier and Jenua on the other, when he says that

"it seems that the valleys of the Andes, to the west of the said meridian, are capable of cultivation . . . and of easy communication with the inlets of the Pacific Ocean."

**The maps
of the Geo-
graphical
Institute.**

Moreover, a comparison of the various editions of the maps themselves do not favour the assertion of the Argentine Representative (page 186) that the Society had construed the Treaty in a definite sense. It is to be noted that, in the first issue of maps representing the western provinces (Mendoza, San Juan, etc.), the boundary line with Chile *was located on the water-divide*. In subsequent editions only did they begin to leave the line unmarked and to write instead "*Boundary to be fixed*" (*límite a fijar*). Notoriously on SHEET XXIV, *Gobernacion del Rio Negro* published in 1886, both the *true water-parting* and the supposed *high summit* line, were indicated by dotted lines, the former being thicker than the latter in some places, and in others the two being of equal thickness, such as those encircling the basin of Lake Lacar, of which the ownership was evidently regarded as a doubtful case. In the map of *Neuquen* (SHEET XXIII), issued in 1889, which takes in the southern part of the Cordilleras just mentioned, all indications

Plate IV.

Plate V.

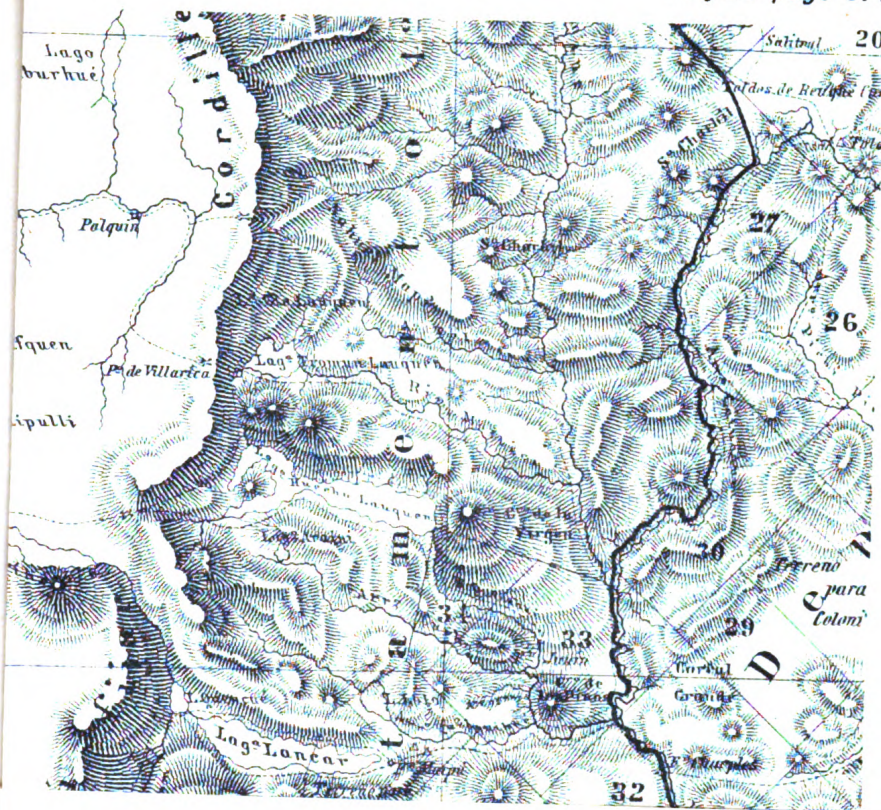
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To face page 374.



ical Institute. *Stanford's Geog¹ Estab² London.*

PLATE V.
To face page 374.





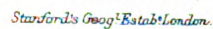
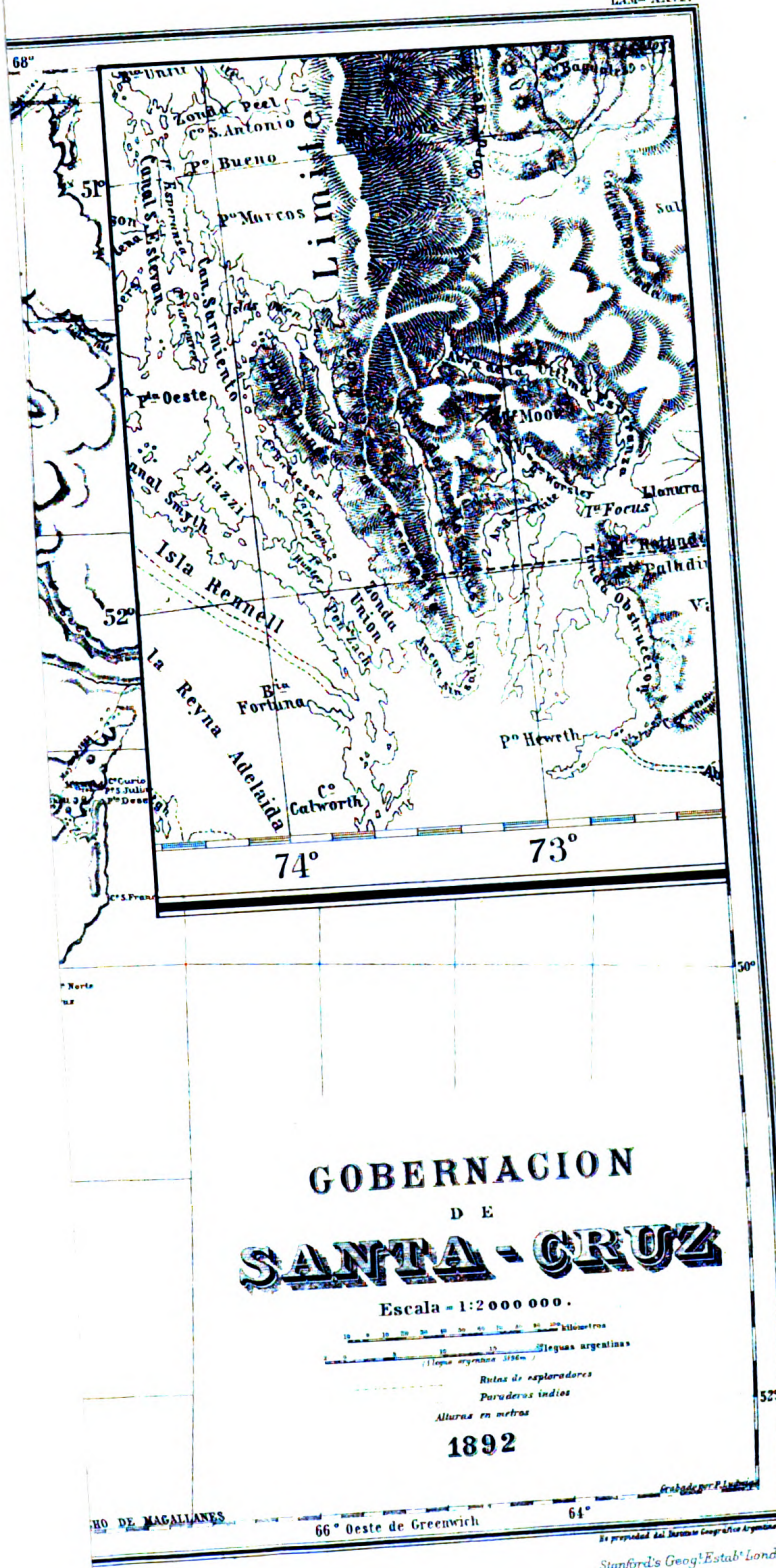


PLATE VII.
To face page 375.

LAM. XXVI.



al Institute.

PLATE VIII.
To face page 375.

67°



as to a definite boundary line have been suppressed, save that suggested by the border of the pale yellow tint which covers the province especially represented.

On SHEET XXV (1889) the pale tint is extended farther west than the Pacific inlets, no attention whatever being paid to the high-crested ranges fantastically depicted between Mounts Tronador and San Valentin. In the *Santa Cruz* map (SHEET XXVI; lat. 46° to 52°), first issued in 1886, Plate VI. the boundary line along the 52nd parallel stopped short of Obstruction Sound, and the dividing line was carried through the Continent northwards. In a second issue of this map (1892) the boundary line along the 52nd parallel was pro- Plate VII. longed westward across Obstruction Sound and three more inlets as far as the Sarmiento Peninsula, whence a beautiful unbroken wall of Cordilleras was depicted, coinciding almost mathematically with the direction of the meridian, at about $73^{\circ} 40' W$.

These alterations of the boundary lines in the maps of the Argentine Institute are in no case more apparent than in that of the *Catamarca* map (SHEET XVIII) issued in 1890. Plate VIII. The inscription in bold black type "*República de Chile*" appears extending over territory of the Puna, where a new yellow patch was subsequently added when it was discovered (after the printing in black was done, no doubt) that it ought to have been shown as Argentine territory. To the usual inscription "*Límite a fijar*," appearing in the middle of the Province, the enigmatical words "*entre provincias*" were added, obviously out of place amongst the crowded inscriptions already engraved.

To sum up, the Maps of the Argentine Geographical Institute, the publication of which was of an official character, App. Doc. No. 37.

were the cause of much hesitation in interpreting the boundary line. Dr. Moreno, subsequently Argentine Expert, doubtless alluded to this when he said in 1895¹ :

“Not a few maps, issued by *National Institutions*, apart from those hereafter mentioned [Brackebusch's Map and a geological map issued by the National Academy of Sciences of Cordoba], have had to be withdrawn, but not without leaving traces of their errors or faults.”

The “highest
summits”
line accord-
ing to the
Argentine
Geographi-
cal Institute.
Finally, as regards the Argentine Geographical Institute, a further proof will be furnished that, so recently as 1891, the Council (Junta Directiva) of that Institution did not even pretend to have construed at all the Treaty of 1881, as to the boundary line not only in the unknown Patagonian region, but even in the most central one, that of Mount Aconcagua.

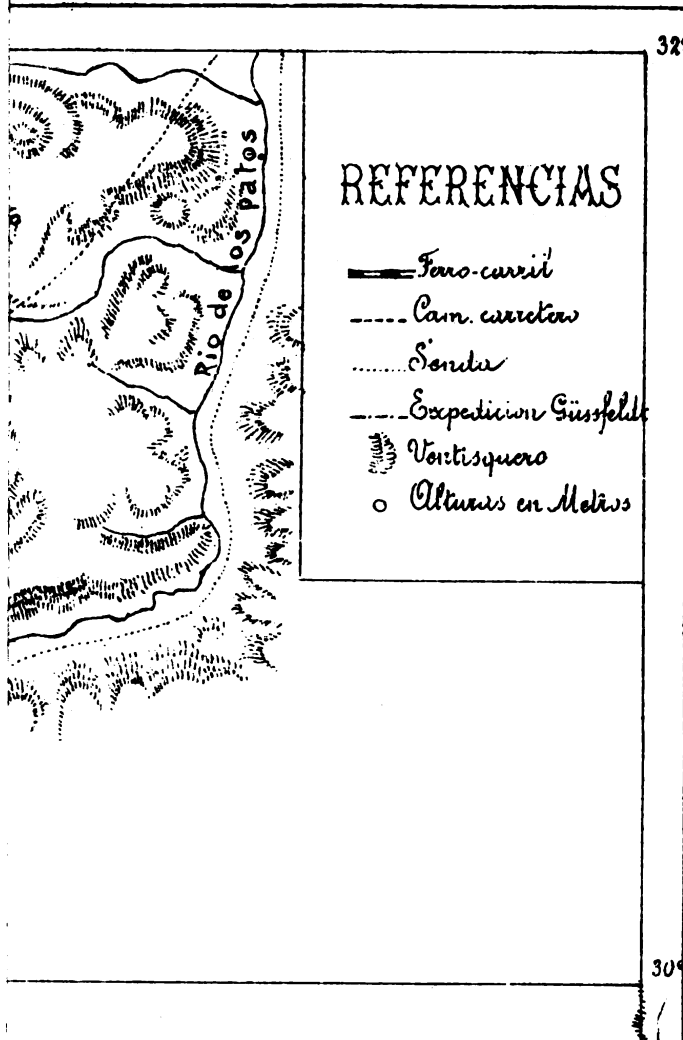
The Council of the Institute, then presided over by an engineer, Señor Sorondo, and composed of Dr. Zeballos, Dr. Leguizamon, surveyor Echagüe, etc., caused several articles, preceded by the following notice, to be published in volume xii. of the *Boletín* under the title “International boundaries” :

“The boundary questions are at present under discussion and actually in process of amicable arrangement. The Instituto Geográfico Argentino has considered it opportune to enlighten the students and the country on the questions which have a bearing on the frontiers of the Republic, dealing with them only from the standpoint of South American Public Law, and of historical precedents. The Directing Committee is actually collecting, or having extracts made from the materials they think advisable, and will publish them successively on their own responsibility.

Signed, ALEJANDRO SORONDO (President),
SABAS CARRERAS (Secretary).”

¹ F. P. Moreno, article in *La Nacion* of Buenos Aires, February 3, 1895.

PLATE IX.
To face page 377.



One of the questions on which it was deemed advisable to "enlighten" the public was the course that the boundary line should follow in the Mercedario-Aconcagua region, surveyed in 1882-83 by Dr. Paul Güssfeldt, who had recently (1888) published a book on the subject. In December 1891¹ the following "Notice" appeared :

"The boundary between the Argentine Republic and Chile in the region surrounding the peak of Aconcagua is one of the problems which the demarcators entrusted with the application on the ground of the Treaty of 1881 will have to solve.

"Is the line bound to include the peak of Aconcagua itself? That is to say, should it run along the *highest summits* of the Andes, or will it descend in search of the *divortium aquarum*, which in this place *does not coincide* with the said summits?

"Such is the question. We only state it. The 'Junta Directiva del Instituto Geográfico Argentino' does not deem it advisable to interfere in a technical discussion, etc."

At the same time that they thus stated the question in words, the Argentine Institute Commission stated it graphically on a map where a red line drawn from the highest peak of the Ramada group to the summit of Aconcagua is intended to represent "the line of highest summits of the Andes," which in this case was depicted as leaving to Chile the Patos Valley. This question will be fully discussed in the chapters dealing with the geography of the Cordillera. Enough has been said now to prove that as recently as 1891 the highest Argentine geographical authority understood that "the line of the highest summits" was a line jumping *from peak to peak*, and that the *divortium aquarum* was the *separation of the hydrographical basins*. It is easy to understand that the map just referred to was issued as a warning of the consequences which the maintenance of the "highest summits"

Plate IX.

¹ *Bol. Inst. Geogr. Arg.*, vol. xii, 1891, pp. 348, 349 (Límites Internacionales).

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line on the part of the Argentine Republic would entail, if fairly applied to the region of Mount Aconcagua. A further consequence may be drawn from the statement of the Commission, viz., that according to their judgment the purely orographical character of the boundary line was not clearly derived from the Treaty, since they considered the selection to be made by the Experts between the line of the *highest summits* and the *divortium aquarum* as a *problem* to be solved; thereby indicating that neither the traditional possession (now alleged) of the Patos Valley by the Argentines, nor the greater difficulty of access thereto by the Espinacito range were to be taken into account. The *problem* was clearly stated to be a *question of principle*, since the question involved was whether the boundary "should run along the highest summits of the Andes, or descend in search of the *divortium aquarum*."

At the same time that the maps of the Argentine Geographical Institute were being issued, accounts of various explorations in the Andes were also being published, wherein the interpretation of the boundary line fixed by the Treaty of 1881 was manifest in one way or another.

Avé Lalle- One of the most important of these was carried
mant's
explora-
tions. out in 1885 by the mining engineer German Avé Lallemand, between the River Diamante ($34\frac{1}{2}^{\circ}$) and Lonquimay ($37\frac{1}{2}^{\circ}$).

The account of the Expedition was published in the Annual of an Argentine Scientific Society¹ in 1885, and the map in 1886.²

¹ *Anales de la Sociedad Científica Argentina*, vol. xix., 1885, pp. 145-261. Separate pamphlet, p. 94.

² *Mapa de la Cordillera entre el Diamante, Lonquimay, etc., etc.*, by G. Avé Lallemand, 1886. Scale of 1 : 500,000.

The author recognizes the existence of three different *axes* in the Cordillera, the *hydrographical axis* (the water-parting), the *orographical axis* (the highest summits) and the *geological axis* (the middle of the granite-porphyrific formation), and says that in the section along the parallel of Aconcagua "the *hydrographical axis* falls 14,205 metres to the west of the orographical axis," and that the "*geological axis*" is 37 kilometres to the east of the latter.

Throughout his geographical and geological descriptions which will be quoted and discussed further on, it will be observed that the expressions "linea de vertientes" (pamphlet, page 6), "division de las vertientes" (page 19) are used exclusively in the sense of the separation of the sources or headwaters of the rivers running in opposite directions. For instance, when comparing the Cordillera of Antuco (western) with that of Pichachen (eastern) he says: "The division of the headstreams (vertientes) lies 25 kilometres to the east of the *highest Cordillera*"; it will readily be seen that any other translation than headstreams or sources of rivers having an opposite course would deprive the sentence of any meaning. Alluding to the same locality, he speaks of "*the Cordillera which divides the waters and the Republics*" as distinct from the other Cordilleras, amongst which he ranges the highest, which do *not* divide the waters. Similarly (page 39):

"This stream (Hualcupen), like the others further south, comes from *the Cordillera which divides the waters* . . . and breaks through the Cordillera of Butahuau by deep and long cañons, etc."

Even this case, in which Avé Lallemant was mistaken—as the Cordillera Butahuau is really the water-parting Cordillera, where the boundary now lies—serves to illustrate

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that only by the recognition of the water-parting rule can errors and confusion be avoided.

Finally, Avé Lallemant constantly used the expression *divortium aquarum*, meaning thereby the unique line of the continental water-parting, not the accident of a particular chain. Speaking of the easternmost Cordillera towards the 36th parallel, he says (page 93) :

“ It is very interesting to have shown that to the east of the high Cordillera of the *divortium aquarum*, there exists another enormous Cordillera which in el Nevado, Palauco, Payen-Matro, Payen and Coihueco culminates in summits as high (as those of the former), etc.”

The same meaning is graphically conveyed in six cross-sections of the Cordillera published by Avé Lallemant in the Argentine Geographical Institute *Bulletin* for 1887 (vol. viii.), where the words “ *divortium aquarum* ” are applied to the points of the continental water-parting, irrespective of the highest summits or of other intersections of slopes shown on the same.

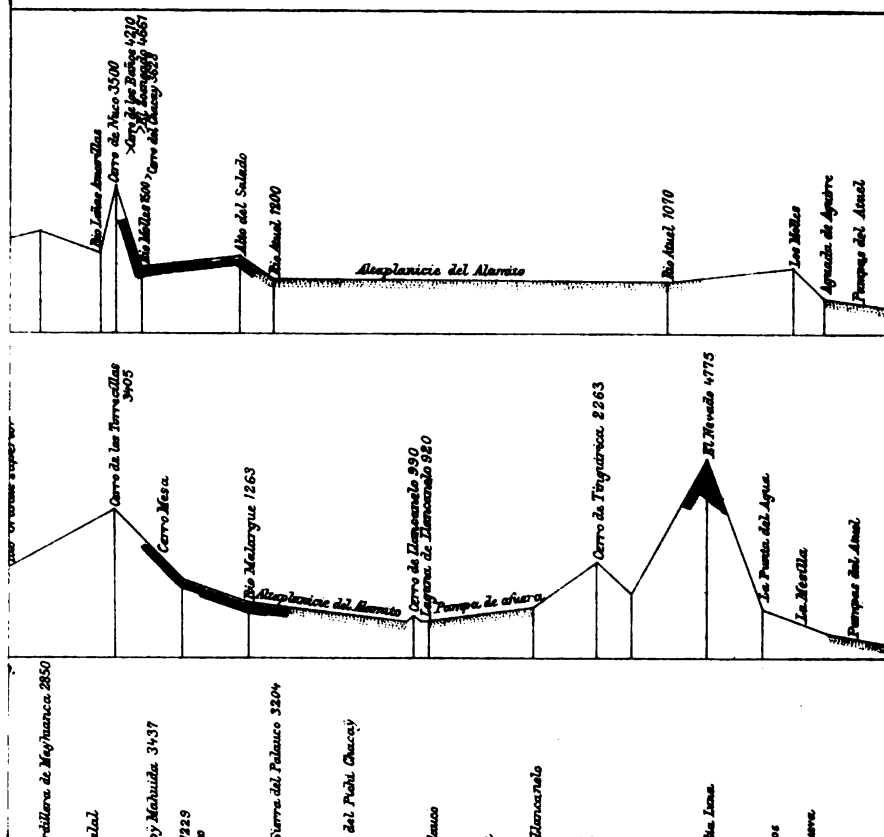
Plate X.

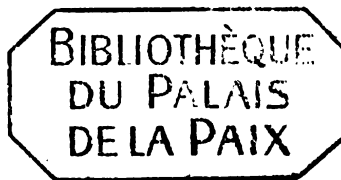
Güssfeldt's exploration. The account and map of an exploration by the German geographer, Dr. Paul Güssfeldt, have been quoted in our first Statement. The Argentine Statement observes that these have no bearing on the question under discussion, (page 186), and that the explorations of the geographer “ comprise a section of the Cordillera where the principal and continuous chain of the Andes is not divided by streams which take rise on one or the other side of it ” (page 187). It will be shown further on that, given the characteristics attributed by the Argentine Expert to the “ principal chain,” he is bound to recognize as such the Mercedario-Ramada-Aconcagua chain, as Señores Nicour and Sanchez, Brackebusch and many others have done. It must

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ra de los Andes.

PLATE X.
To face page 380.





suffice to point out here that, though Güssfeldt marked on his maps the boundary line along the water-parting, he certainly did not consider this same water-parting chain as a formidable barrier between both countries. On the contrary he stated in unmistakable terms, that the *barrier* lay in the eastern chain, when he said ¹:

"The cumbre del Espinacito" [the only pass of the Eastern Cordillera between 31° 30' and 32° 40' south lat.] must be regarded as the *real entrance gate to Argentina*, not the Boquete de Valle Hermoso. The latter, of much gentler declivity, still belongs to the zone of vegetation, and though it forms *the division of the waters between two oceans*, it finally leads the traveller coming from Chile only to a deep depression, which may ALLOW OF THE EXIT OF WATER, but *not of man*."

Thus it appears that the remarks of Güssfeldt have some bearing on the interpretation of the boundary: according to this geographer the boundary line was at the Western Boquete de Valle Hermoso, simply because of the oceanic water-parting being found there; if an arcifinious frontier had been sought, it would have been found at the Eastern Espinacito Pass. The Western Cordillera was the boundary only because it did not allow of the *exit of water*, though it offered easy access to man in several places; while the Eastern and higher Cordillera was not the boundary because it *did allow of the exit of waters*, though it offered only one place for the exit of man.

**Chilean
official
decrees.** Many quotations have been translated in the Argentine Statement from Chilean administrative decrees (pages 225-30) issued in 1885, and presented as an

¹ Güssfeldt, *Reise in den Andes*, etc., 1888, p. 314.

official interpretation of the Treaty of Limits. There are two groups of quotations: the first intended as an appeal

"to the Chilean Confession, which is set forth in its very laws, which declare, subsequent to the Treaty and in consequence of its terms, that the boundary is the '*Sierra Nevada of the Cordillera*,' the '*anticlinal line of the Andes*,' '*the crest of the Cordillera de los Andes*,' the '*summit of the Cordillera*,' the '*culminating line of the Cordillera de los Andes*, etc.'" (page 228).

The second set is intended to prove that

"in the opinion of the Chilean Government, as in the opinion of the Argentine Government, the rivers may be crossed by the watershed of a Cordillera" (page 229).

With reference to the first group, it is hardly necessary to repeat that the expressions "crest," "summit," or "culminating line of the Cordillera," can never be regarded in the light of an interpretation; taken by themselves, they express no precise idea when referring to a cordillera where there are many *crests* and many *summits*, and where each orographic line *culminates* and is *depressed* in its turn; they only acquire their precise meaning when the condition of *culminating* is understood, as in the formula of Pissis' instructions, to take place at the commencement of the valleys and at the separation of the watercourses irrigating either country. The *anticlinal line*, as we have seen, has always been understood in Chile in the sense that Pissis gave to it, strictly "a water-parting line."

Numberless Chilean decrees might be quoted from the terms of which it is clear that when rivers have been given as northern or southern limits for any administrative district as far east as the Cordillera, it is understood that these rivers rise in the Cordillera which forms the boundary, and consequently that, when there are several Cordilleras, the particu-

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lar one where the rivers rise is referred to under the expression "Cordillera de los Andes."

For instance, in the decree for the formation of the Province of O'Higgins, dated the 10th of December, 1883, the boundaries are indicated as follows¹:

"To the north, the Rio Maipo . . . and from this point a southeasterly line running along the summits of the hills, whose sources (vertientes) and drainage waters (derrames) flow to the left bank of the said Rio Maipo, as far as its source; to the east, the Cordillera de los Andes; to the south, the Rio Cachapoal, etc." (page 87).

"Subd. 4, de *Machali*.

" . . . to the south, the Rio Cachapoal, from the *Andes* as far as . . . ; to the east, the Cordillera de los Andes " (page 91).

"District 3, de *Coya*.

" . . . to the south, the Rio Cachapoal *from its headwaters* as far as . . . ; to the east, the Cordillera de los Andes " (page 92).

Moreover, the same terms, or terms similar to these, were adopted long before the Treaty of 1881. As an instance we may quote the first decree (August 20, 1826), which divided the Republic into eight provinces. They were separated from each other by the Rivers Choapa, Cachapoal, Maule, Ñuble, etc. With regard to the latter it was expressly stated²:

"5th. From the southern bank of Rio Maule to the Rio Ñuble, *where it rises in the Cordillera, etc.*"

Usually, however, this circumstance was tacitly implied, as otherwise it would have been stated that the limit from west to east was *not* the whole course of the river; for instance, the decree of the 3rd of October, 1883, ran thus³:

"The department of Llanquihue . . . is to have the following limits: to the north, the Lake and Rivers Rahue; to the east, the Cordillera de los Andes; to the south, the River Puelo and Reloncaví Inlet, etc. . . ."

¹ Echeverría i Reyes, *Geografía Política de Chile*, vol. ii. p. 87.

² *Loc. cit.* vol. ii. p. 255.

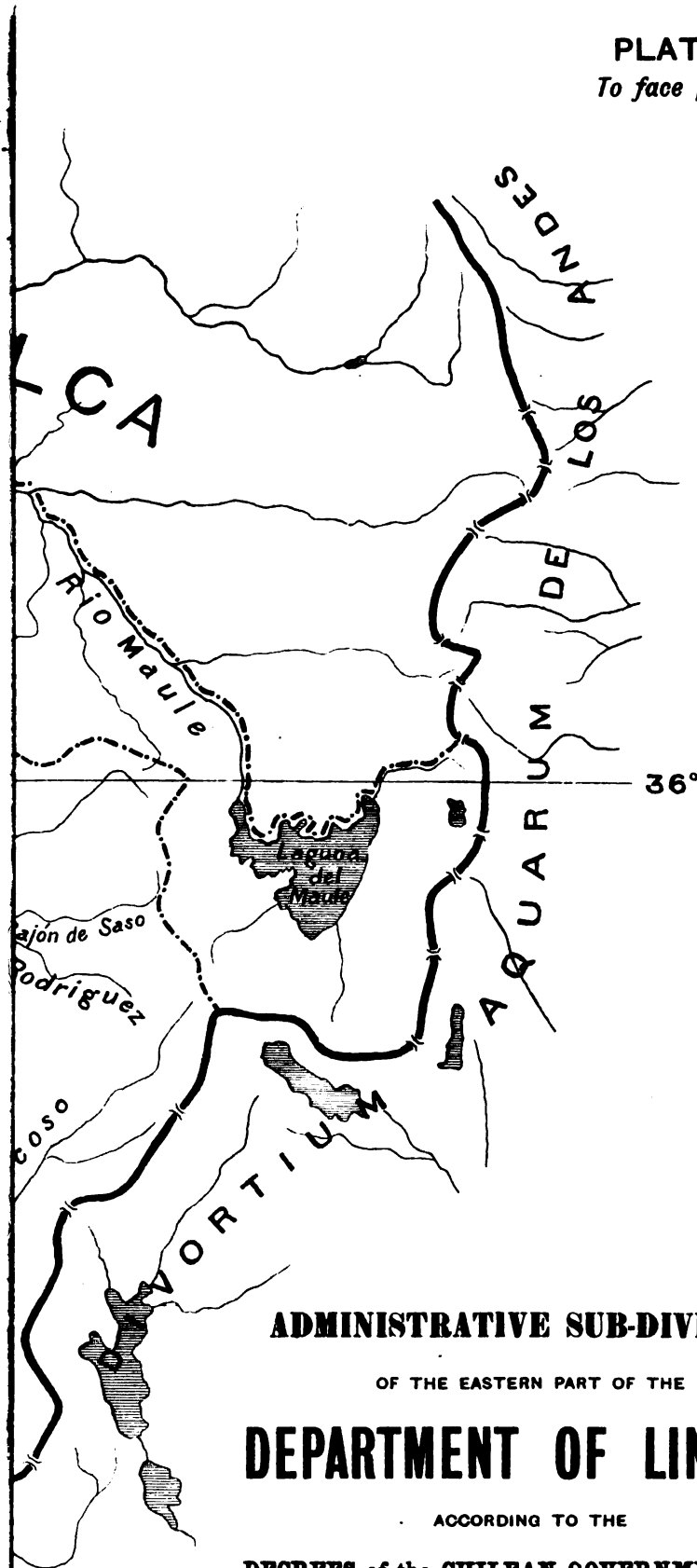
³ *Loc. cit.* vol. i. p. 35.

It is easy to understand that the only case where it was unnecessary to state how far up the river the boundary was to extend was that in which it was supposed to extend as far up as its remotest source. Innumerable decrees similar to the latter, both previous or subsequent to the Treaty of 1881, might be quoted, in which internal limits from west to east are fixed by watercourses, and *in not a single one* can the least trace or hint be found that the boundary is *not* to run as far east as its sources.

It is not intended to imply that this would be an argument for not complying with the Treaty if the cutting of rivers was otherwise prescribed; but it suffices to show that the Chilean Government have never interpreted the traditions or the Treaty in the sense alleged by the Argentine Representative.

Lastly, the Argentine Representative (page 225) has been singularly unhappy in his incomplete quotations of the decree dated the 16th of October, 1885, dealing with the internal subdivision of the Chilean Department of *Linares*, in which the "*Sierra Nevada de la Cordillera*" is referred to so frequently, and in making this reference as a proof of the identification in the mind of the Chilean Government of the said "Sierra Nevada" with the Chilean anticlinal line and the Argentine "highest crest watershed." If the Argentine Representative or his geographical advisers had paid attention to the whole sentence, of which the end only is quoted, and had localized the places on the map, they could not have failed to see that the "Sierra Nevada" referred to *is not* the international water-parting or boundary Cordillera, but only one of the many "high crest watersheds" extending from north to south in this region. The chain called "Sierra Nevada" in the

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ADMINISTRATIVE SUB-DIVISION

OF THE EASTERN PART OF THE

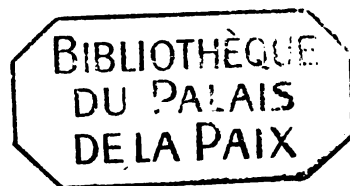
DEPARTMENT OF LINARES

ACCORDING TO THE

**DECREES of the CHILEAN GOVERNMENT dated
October 16, 1885, and September 27, 1888.**

Roman figures indicate "Subdelegaciones."

Stanford's Geog. Estab. London.



decree, as is easily seen on reading the whole text, is a chain lying very close to the 71st meridian, to the west of the Chilean River Melado, and more than 50 kilometres to the west of the water-parting with the Argentine water-courses which forms the international boundary.

Referring to the text of the decree and to the appended sketch map, it will be seen that the "Rio Ancoa" (lat. $35^{\circ} 53'$), the "Rio Achibueno," and the "Rio Longavi" (lat. $36^{\circ} 13'$) have their sources in the above mentioned range, and consequently the "subdelegaciones" and "distritos," whose limits are given as extending along the said water-courses, cannot extend farther east than the range alluded to. Besides, the valleys of Rio Melado, Guaiquivilo, Laguna de Maule, etc., which interpose between the Sierra Nevada and the boundary Cordillera, as acknowledged by the Argentine Expert, are occupied by "Subdelegaciones" No. 7 *Colbun*, and No. 9 *Putagan*, according to the decree quoted.¹ Thus the argument of the Argentine Representative in this case is completely at fault, as the "Sierra Nevada" mentioned by him is simply an internal boundary of minor importance.

The "Sierra Nevada" (snowy range) of the decree dated the 16th of October, 1885, figures on the first Argentine map delivered to the Tribunal in 1898, with three summits called C^o. Castillo, C^o. Biscacha and C^o. Las Torresillas. The highest of all, however, the Nevado de Longaví (3,232 m.), has been omitted. This range, as will be seen, is in fact the northern extension of a "highest crest watershed," nearly parallel and close to the 71st meridian, which coincides with

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Plate XI.

¹ Echeverria y Reyes, *loc. cit.* vol. i. pp. 297, 298.

the continental divide from latitude $36^{\circ} 30'$ as far as $38^{\circ} 45'$, but the continuation of which as an orographical though partly subordinate watershed is much longer, since it stretches from latitude $35^{\circ} 30'$ as far south as latitude $39^{\circ} 45'$.

The water-parting of the Cordillera de la Costa.

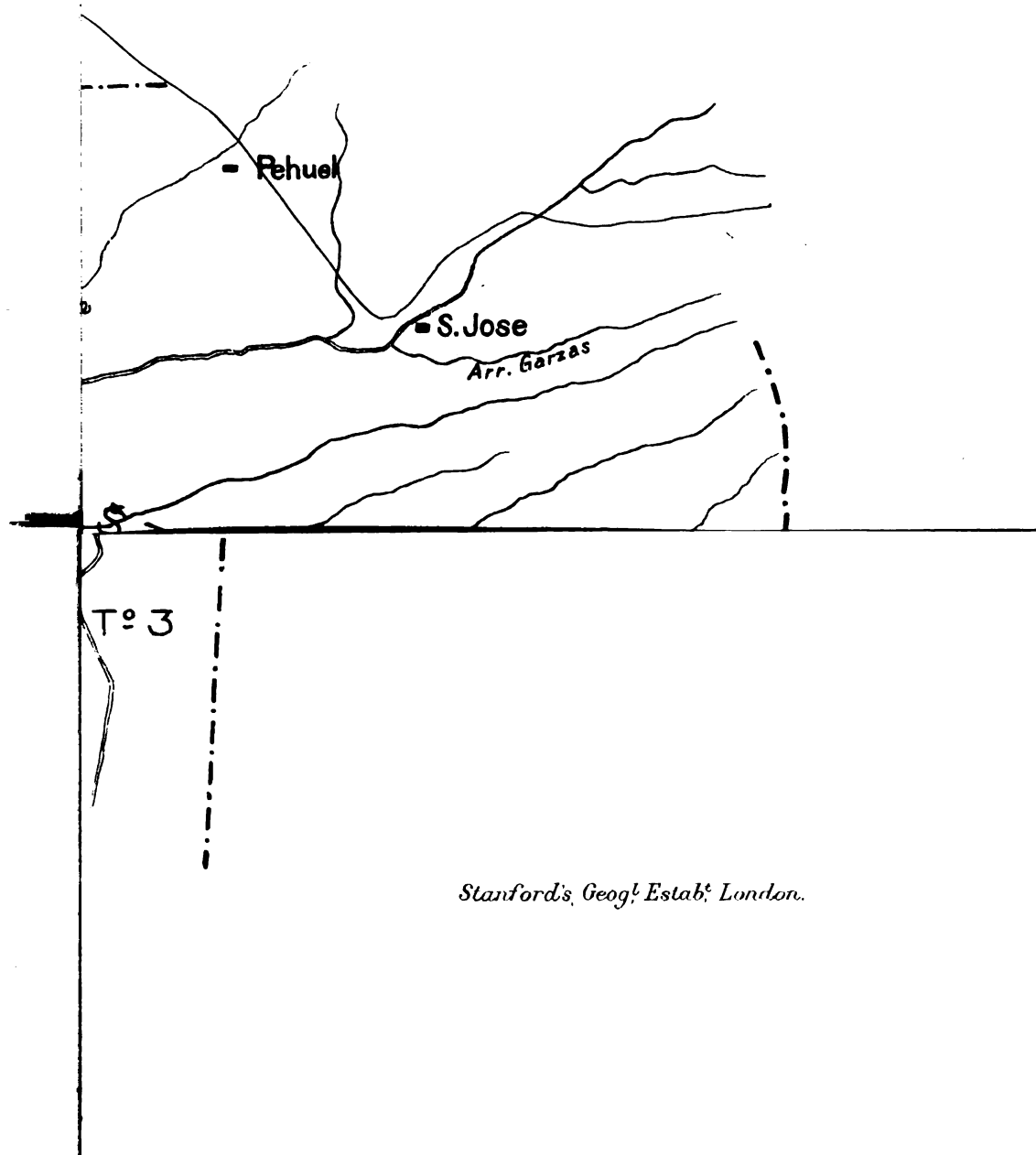
When the second set of quotations referred to and the arguments based on them are taken into account, it will be seen that, far from proving what is intended, they simply go to prove that the Chilean Government have never applied the expression "*Water-parting line*" to a line that is crossed by watercourses large or small. In this case, as in the preceding one of the Sierra Nevada, a wrong impression is produced by quoting incomplete lines of boundary and omitting to give a sketch map whereon such boundaries might be examined; had this been done, it would have been seen that every *water-parting* line given as a boundary *is* a water-parting within the whole extent to which the expression is applied. All doubt in such cases is dispelled by the decree itself which mentions the river basins whose waters are divided, omission of such being allowed only when doubt is impossible.

The Cordillera de la Costa in Chile, though not exactly a *range* of mountains, may be defined as a succession of high lands, seldom showing a well-defined crest-line, separating the "central valley" from the coast, and presenting four general slopes:—two long ones towards the coast and the central valley, and two short ones towards the transverse valleys which carry the Cordilleran and central valley drainage across the coast uplands to the sea, such valleys from latitude 33° to Chiloe being twelve in number.

Naturally within each block of highlands the two long slopes are separated by a *water-parting line*, and each of

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PLATE XII.
To face page 387.



Stanford's, Geog^l Estab^t, London.

these local divides may be referred to as "the water-parting line of the Cordillera de la Costa" within the particular block to which the expression is applied. Such local water-partings are frequently adopted as departmental or district boundaries in Chile, but we fail to see how this fact could be interpreted in support of the contention that Chile has recognized that a water-parting line may be "traversed by other waters" (Argentine Statement, p. 229), unless the line thus denoted as a water-parting line in the decree be *actually traversed by* a watercourse *within* the boundary specified; and we emphatically maintain that this has never happened, as we are about to prove in the case to which reference is made in the Argentine Statement.

From the appended documents, where the boundaries are given in their entirety, and with the aid of the sketch map reproduced, it will be seen that, as regards the "Subdelegacion No. 4, *Corral*," the expression "water-parting line of the Cordillera de la Costa" is only applicable to a very limited extent, from a certain line on the north, as far as the "*source of the Rio Cutipay*" to the south; from this point the boundary between the Subdelegacion No. 4 and No. 11 follows the Rio Cutipay from its source and the Rio Valdivia. From the source of the River Cutipay, southwards, there is no "water-parting of the Cordillera de la Costa," since the highlands called by that name present a slope from which flow several small watercourses towards the River Valdivia.

Similarly, the boundary line between the Subdelegaciones 4 and 6, from the point where the quotation is cut short in the Argentine Statement, is defined as: following along the "River Valdivia," including the River Cutipay, as far as Cantera, the said river as far as Tres Bocas," and "the

App. Doc.
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Plate XII.

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water-parting line of the mountains which, *beginning at this point*, form the separation between the Rivers Futa and Ainaguilan. . . ." In fact, in no part of the Decree is the term "water-parting line" applied to a line which is intersected by a watercourse.

There are both similarities and differences between the Decree establishing the administrative boundaries of the Department of Valdivia and the Treaty fixing the international Chilean-Argentine boundary, which serve to illustrate the correctness of the Chilean interpretation of the latter.

The similarity consists in the fact that in the Decree, as well as in the Treaty, there are sections of the boundary line which are defined as a "water-parting line," or as a line which must pass along certain points "which divide the waters." It is true that in the Decree the sections of water-parting are short, whilst in the Treaty the section of water-parting is very long; but this circumstance cannot justify a different interpretation of the term.

On the other hand, there is no difficulty in appreciating the difference between the Treaty and the Decree so far as concerns the comparison between the eastern boundary of Chile (to 52° S. lat.) as determined by the former, and the eastern boundary of Subdelegacion 4 (Corral). In the Treaty the boundary from its northern extremity to 52° south latitude is determined by a uniform principle of demarcation, while in the Decree the eastern boundary of Subdelegacion 4 is divided into several sections, following alternatively water-partings and watercourses. Thus this latter boundary is to follow the *water-parting of the coast range, from a certain specified point* (its northern extremity) *southward down to*

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another specified point (the source of the River Cutipay); it is also specified that the boundary shall follow the Cutipay and the River Valdivia as far as La Cantera, whence it follows a smaller branch of the River Valdivia as far as Tres Bocas, and from this place, the *water-parting line between the Rivers Futa and Ainaguilan, which begins there*, as far as the departmental boundary to the south. From La Cantera the boundary of Subdelegacion 6 branches off, following the main river Valdivia as far as Peña del Diablo, and then turns to the south along the water-parting between the Rio Valdivia on one side and the Rivers Angachilla and Futa on the other. Thus specified stretches of *water-parting* lines only are to be followed, and from the place where one ends to the place where another begins, if the boundary follows a *water-course*, it also is specified, and is called *a river*, and not a water-parting.

On the other hand, in the Treaty of 1881 the condition of dividing the waters is positively stipulated for *the whole extent of the boundary as far south as the 52nd parallel*, and no indications—even of a negative character—are given of possible deviations from this rule.

To sum up, the Chilean Republic not only has given no “categorical recognition” to the terms “*divortium aquarum*” or water-parting line ever being applied to a line cut by watercourses—a recognition which would amount to a misuse of technical terms—but she has made no such misuse in the case quoted by the Argentine Representative, nor in any other case whatever.

Finally, from the fact of the expressions *summit of the Cordillera* and *water-parting line of the mountains* (not watershed) having been used as equivalents by the Government

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of Chile (Argentine Statement, p. 230), conclusions entirely opposite to those arrived at by the Argentine Representative may be justly drawn, since in every case to be quoted the *absolute summits* have never been taken into account, the *water-parting* alone having been attended to; and no case can be brought forward in which the line designated by either of the two expressions is cut by a watercourse or stream.

Opinions as
to the water-
parting
boundary in
Geographi-
cal Reviews.

Referring again to the opinions on the application of the Treaty placed on record by European geographers, a very significant paragraph may be quoted from *Petermanns Mittheilungen* (1887, page 155), as follows :

“According to a communication of Dr. R. A. Philippi, the Chilean Government is about to send two expeditions in order to fix the Chilo-Argentine boundary between the River Palena and the Pass of Villarica. The fact has been revealed that *the high Cordillera lies entirely on Chilean territory, while the water-parting between the Atlantic and Pacific Oceans runs to the east of the mountain chain, at an insignificant height, about 500 metres above the sea. It (the water-parting) is therefore not very conspicuous, so that sometimes Argentine officers have penetrated into CHILEAN TERRITORY without knowing it.*”

It will be noticed that the last sentence includes a reference to the fact that Argentine officers had trespassed into Chilean territory without knowing it, owing to the inconspicuousness of the dividing range. This proves that the passages of the communications of the Argentine chief officers, Olascoaga and Godoi, in which the fact was recorded, had been understood in 1887 by the German geographical paper in a way perfectly concordant with the explanations given at the beginning of this chapter.

The results of the second expedition to the River Palena,

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conducted by Captain Serrano in 1887, when he reached a point further east than in 1885, gave renewed occasion for certain observations in European geographical publications, now quoted in the Argentine Statement. It appears, however, that the significant purport of the opinions therein given, amounting to an interpretation of the Treaty in a sense favourable to Chile, has failed to attract the notice of the Argentine Representative.

"The remarkable fact has been ascertained [it is observed in the *Scottish Geographical Magazine*, quoted in the Argentine Statement, page 240], that *the water-parting between the Atlantic and the Pacific slopes* in those regions [sources of the Palena] is not coincident with the main chain of the Andes, but is a plateau lying to the eastward. This discovery of the true watershed will affect the boundary line between Chile and the Argentine Republic; for by the Treaty that line 'shall run along the highest peaks of the Andes which mark the water-parting.'"

"These discoveries [it is remarked in the *Proceedings* of the Royal Geographical Society, quoted page 241, alluding to the same fact] will affect the political boundary between Chile and the Argentine Republic which has been fixed by Treaty as *lying along the watershed*."

From these opinions, given by two geographical papers as to the consequences of the watershed not lying where it was thought to be located, important conclusions may be drawn, which are certainly not in accordance with the Argentine views on the matter.

It is apparent that, according to the criterion of European geographers, when the *Andean watershed* or "*the highest peaks of the Andes which mark the water-parting*" were mentioned, the *true watershed* was meant,—the "*water-parting between the Atlantic and the Pacific slopes*."

Otherwise they could not have said that the discovery that the true watershed lay to the east of *the chain*, in which it was formerly thought to lie, *would affect the political*

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boundary. Up to that period, as Dr. Moreno himself has remarked,¹ even the Argentine maps used to draw the Cordillera as an unbroken wall quite close to the Pacific coast line, this unbroken wall being depicted at the same time as the division of the waters and the international boundary. Then, if European geographical publications quoted in the Argentine Statement asserted that the political boundary would be affected by the fact of the River Palena having its sources farther east than had been shown on former maps, it must have been because the said boundary ought *not*, in their opinion, to be traced along the range formerly considered as containing the watershed, if it did not really fulfil this condition.

* * * * *

**Argentine
official views
in 1899.**

The Chilean Government of course regarded the discovery of the true sources of the River Palena in the same light as the European Geographical Societies and Journals did; they had never doubted that the boundary ought to follow the true or real water-parting line, according to the Treaty in force. No Chilean statesman said that the fact that the River Palena crossed such and such range of Cordillera, be it called central or otherwise, revealed that its upper course ran through Argentine territory, as the Argentine statesman, Dr. Zeballos, had said that the *westerly* course of the River Futaleufu revealed that the lands over which it ran were Chilean territory.

On the contrary, Señor Serrano having ascertained in his last expedition that the upper course of the river ran at the bottom of an extensive valley, between the middle

¹ In *La Nación*, February 3, 1895.

and easternmost ranges of the Cordillera, where the lake (General Paz) that gave rise to the river lay, the Chilean Government took steps to promote the settlement of colonists in these places, and made no mystery of their intention.¹

The expression of these intentions attracted the attention of the Argentine Government, (Argentine Statement, p. 241) and was considered as the revelation of a design to remove the boundary from the summit of the Cordillera and to carry it much farther to the east. With reference to this the Argentine Minister for Foreign Affairs, Dr. Zeballos, asked that a Cabinet Council might be summoned for the purpose of calling their attention to

“the difficulties which might arise if, . . ., the Chilean Government considered that the agreed on orographic boundary in the Cordillera de los Andes was to be transformed into a hydrographic boundary which would only take into consideration the sources of the rivers flowing towards the Pacific.” (Argentine Statement, page 242.)

The Minister Zeballos,—the same statesman who, in April 1886, considered that the “westerly course” of a Patagonian river revealed Chilean territory, and who again in December 1886 accepted the commission to lay before one of his predecessors in the Ministry “the serious doubts entertained by many of his learned fellow-citizens as to the boundary being the *real water-parting, or the highest peaks line*,”—had no longer any doubts, in December 1889, as to the answer that he was thus called upon to give as a Minister to the question that he had been entrusted to ask of one of his predecessors three years before on behalf of the Argentine Geographical Institute.

¹ *Memoria del Ministerio del Interior de Chile*, 1889 (pp. lvi. to lx.).

The Argentine Representative has considered it advisable to give a partial translation of a document from the archives of his Government in order to show for the first time what interpretation they gave in 1889 to the Treaty of 1881 (Argentine Statement, pp. 242, 243). We shall reproduce the essential paragraphs of that translation in order to prove that it does not contain the precise and significant rule which the Argentine Representative believes to have discovered in them. They read as follows :

"According to the Treaty, by the line of the most elevated crests is meant that line which runs along the greatest elevations of the mass which forms the backbone of the Cordillera, although said mass may be cut through by transverse clefts or valleys.

"The Treaty refers to crests which must possess two conditions [*caracteres*] : (1) they must be the most elevated; (2) they must divide the waters.

"Said crests are snow-capped, and during the season of thaw they divide their own icy streams, which flow down their flanks and bases.

"If the *divortium aquarum* of the Cordillera always flows into the Pacific, as Engineer Bertrand¹ observes . . . it is none the less true that the said crests are the most elevated crests that divide the waters, referred to by the Treaty.

"If there should happen to be quebradas (gorges) between some of those crests which divide the waters, in such a case the right thing would be to follow the *ideal line* of the massif *until striking the watershed anew*. . . . She [Chile] claims a boundary running through Patagonia over said valleys and lakes, which, although by a *regional accident* they may shed waters, *are not* the *most elevated crests* mentioned in the Treaty."

The paragraphs which we have just reproduced suffice for our purpose of showing that there is absolutely nothing to support this new interpretation of the boundary stipulated by the Treaty.

We only find in them mere assertions as to what the

¹ Engineer Bertrand never observed, and could never observe, anything so absurd as a *divortium aquarum* flowing anywhere.

Argentine Minister understood by "line of the highest summits"; that such and such are "the highest summits which divide the waters to which the Treaty refers"; and that such and such others "although they shed waters, are not the most elevated crests mentioned by the Treaty." But, bearing in mind the text of the Covenant itself, it may readily be seen that such assertions are consequences of an attempt to divide into two parts the one simple principle established in the Treaty according to the textual words of which only "*the highest summits of the said Cordilleras which divide the waters*" are to determine the course of the frontier line.

This interpretation,—according to which by the "highest summits which divide the waters" the highest of all the summits of a mountain must be understood, adding that they "divide the waters," because "they are snow-capped" and during the season of thaw they "divide their own icy streams," etc.—represents a complete inversion of the principal and subordinate terms of the definition, because it transforms "the line of the highest summits which divide the waters" into "the line which divides the waters of the most elevated summits."

Besides, the explanations given by Minister Zeballos in the paragraphs of the report quoted are as inconsistent with the tracing of the Argentine boundary line already proposed in the parts where the latter coincides with the water-parting line, as in those in which it diverges from it. It is sufficient to examine the official maps presented to the Tribunal by the Argentine Representative in order to be convinced that many of the summits of greater absolute height and even many of the highest crests of the Cordillera de los Andes

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are to be found outside the course of the line proposed by the Argentine Expert. This fact, which will be proved in detail in the chapters of our Statement containing the geographical description of the two lines, shows that, were the interpretation to be accepted that "the highest summits" mentioned in the Treaty are "the greatest heights of the organic body forming the backbone of the Cordillera,"¹ it would appear that the Argentine Expert himself, eleven years after Minister Zeballos' declaration, and in spite of all the surveys carried out on the ground, has found it impossible to determine the position of the said "backbone of the Cordillera."

Respecting the second condition with which, according to Minister Zeballos, the "summits" to which the Treaty refers must comply, that is to say with the condition of dividing the waters of "their own icy streams," it is hardly necessary to observe that it is no condition whatsoever, since no summits or crests, snow-capped or otherwise, are to be found which do not divide their own waters.

It appears, therefore, that of the two "characteristics"²

¹ These are the words used by Dr. Zeballos: "las mayores alturas del cuerpo orgánico que forma el espinazo de la Cordillera," according to the text published in Señor Varela's book *Historia de la Demarcación, etc.* (page 257). The perusal of this text also shows that from the final paragraph of the quotation made in the Argentine Statement, the words italicized by us here have been left out where Señor Zeballos said:

"... it will be seen that said Republic [Chile] claims the valleys which extend from latitude 41° S. to 52° S., besides others further north, facing the Neuquen territory, which she may wish also to claim, *and which are placed with regard to the Andes in the same position as those which in San Juan and Mendoza she [Chile] has acknowledged as indisputably Argentine.* . . ."

Thus Señor Zeballos acknowledged officially that the Lacar valley, to which he obviously alluded, is, "with regard to the Andes, in the same position" as the Patos valley (latitude 32° 20' S.), that is to say, that it is an Andean valley, situated in the centre of the Andes, and not on the eastern slope of these mountains, as is now maintained in the Argentine Statement.

² "Caracteres" in the Spanish text.

attributed by Minister Zeballos' interpretation to the "summits" of the Treaty, the first one—that of the greatest absolute height—has not been taken into account when tracing the Argentine line, or has only been partially taken into consideration and in an arbitrary form which prevents it from fulfilling a characteristic condition. The second "characteristic"—that of dividing the waters of their own icy streams—as understood by Minister Zeballos is simply the assertion of a physical phenomenon, the incorporation of which in the Boundary Treaty would have been entirely out of place.

To sum up then : the essential feature of the boundary according to Dr. Zeballos ought to be the *backbone of the Cordillera*, a feature not alluded to in the Treaty, and no rule, either precise or vague, was given for characterizing or finding it. The dividing line was spoken of as leaving and "striking anew the watershed" along "the ideal line of the massif" in a wholly undefined way utterly incompatible with the giving effect to a Treaty authorizing no departure from the water-parting line.

Dr. Brackebusch's opinions. Reference has been made in our first Statement to the geographical works of Dr. Luis Brackebusch, and it has been stated that this scientist and geographer has always marked out the boundary line derived from the Treaty of Limits of 1881 in accordance with the Chilean interpretation, or the *divortium aquarum* rule, save between the 27th and 28th parallels, "where the author considers that the main water-divide (*interoceánica Wasserscheide*) does not exist." To the latter observation the Argentine Representative has replied (Argentine Statement, p. 185) that

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"A copy of Dr. Brackebusch's map is laid before the Tribunal, in which not the slightest indication will be found that the author considers that the main water-divide does not exist between the 27th and 28th parallel, notwithstanding that in the Chilean Statement *it has been thought useful to introduce in brackets the German translation of the words 'interoceanic divide' (interoceanische Wasserscheide) words which do not appear at all in the map.*"

It is thus insinuated that the Chilean Representative attributed to Dr. Brackebusch expressions which he did not use, though the fact of giving them in German should have suggested to the Argentine Representative that Dr. Brackebusch had made use of those expressions in one of his many writings and maps published in that language in Germany. As a matter of fact he *did* use the expression "inter-oceanische Wasserscheide" and clearly stated, both in writing and on his maps, that such a watershed did not exist in the region alluded to, as will be directly shown.

Dr. Brackebusch has been engaged in geographical and geological surveys in the northern portion of the Argentine Republic for thirteen years (1875-1888), and both in that country and in Germany after his return, he published several important works on Argentine geography,¹ extracts from which we reproduce in the Appendix.

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After having published his large map (scale 1 : 1,000,000) of the Argentine Republic in 1891, Dr. Brackebusch contributed articles to *Petermanns Mitteilungen* with other important materials connected with the former work, among which is an hypsometrical map inserted in volume 38, 1893. In this a *blue dotted line* is drawn as far north as 27° 45' (Nevado Gallina Muerta) marked "*Interoceanische Wasserscheide.*"

Plate XIII.

¹ Partly translated into Spanish in *Anales de la Universidad de Chile*, November 1893, February 1894.

BOUN
CHILE A

PLATE XIII.
To face page 398.



Stanford's Geog¹ Estab¹ London.

398. Tafel 10.

From this point starts a forked *red dotted line* marked "*Grenze des abflusslosen Kordilleren Gebietes der Puna und Atacama Hochebene*" (Boundary Line of the undrained Cordillera Region of the Puna and Atacama Tableland).

This would be enough to justify our former statement, but, besides, Dr. Brackebusch had formerly made in writing the very assertion which we quoted, though it was not then considered necessary to lay all these details before the Tribunal.

In an account of his voyage in the Argentine Cordilleras he said : ¹

"The following day at noon we were . . . at Peña Negra Pass [lat. 28° 12'] over which I was much surprised to find a cart track ; this pass is not properly on a saddle but in a low lateral spur, towards which ascend in a gentle declivity the valleys on either side, both Argentine and Chilean, in a northerly and southerly direction respectively. I had accomplished a long cherished wish : for the first time I set foot upon the *real interoceanic water-parting, which does not exist further north* as the vast undrained region of the Atacama desert interposes."

The same idea is again embodied in the paper accompanying the map quoted of the *Mitteilungen* where Dr. Brackebusch explains the results of his survey.² He says :

"The best way of dividing the territory represented in my maps is to select an *hydrographical basis*, viz. :

"1. *Drainless Cordilleran region* of the Puna and Atacama Tableland . . .

"2. Paraná River Basin . . .

"3. *Drainless Central Basin* . . .

"*The Rio Colorado Basin.* The Atacama tableland before mentioned is limited to the west by a high Cordillera, generally clothed with snow, separating it from the Atacama desert, which is of lesser height and whose western drainage goes to the Pacific Ocean. The southern

¹ *Verhandlungen d. Gesellschaft für Erdkunde*, Berlin 1891, p. 70. (Brackebusch, *Reisen in den Kordilleren der Argentinischen Republik*).

² *Petermanns Mitteilungen*, 1893, vii., p. 153. "Über die Bodenverhältnisse des N.W. Teiles der Arg. Rep."

extension of this Cordillera forms *the boundary between Chile and the Argentine Republic, and the water-parting between the Pacific and Atlantic Oceans . . .*"

It must be borne in mind that Dr. Brackebusch wrote the latter sentence in 1893, with full knowledge of the Patagonian explorations, from Simpson to Fontana and Serrano, and of the Argentine pretensions as to the interpretations of the Treaty, and of the substitution of the general water-parting or *divortium aquarum* of the Andes by a succession of watersheds *peculiar* to certain chains or crests. He still continued to believe that the boundary of the Treaty of 1881 was throughout its entire extent, as far as the 52nd parallel, *the water-parting between the Pacific and Atlantic Oceans*, as he had marked it out in his map in 1891, the "interoceanische Wasserscheide" of his map of 1893.

In the Argentine Statement (p. 185) it is argued that, as the Chilean Representative acknowledges that

"the southern part of the map is geographically of far less value than the former (alluding to the northern part), therefore the map *need not be further taken into account.*"

It is also stated that the Argentine Government

"who had the same opinion as that just quoted from the Chilean Representative with regard to the inaccuracies in it, disapproved the map by Decree dated March 6, 1892."

With regard to the latter assertion, if we are to go by what Dr. Moreno said in 1895¹ the reason for the official disapproval was not so much "the inaccuracies in it" as that according to it "thousands of leagues were cut out from Argentine territory and delivered up to Chile." However that may have been, the accuracy or inaccuracy of the map

¹ *La Nacion*, February 3, 1895.

had nothing to do with the question of interpretation, provided the intention of the author was clear, so that it cannot be said that such an interpretation was mistaken because founded on erroneous information. It matters little, for instance, whether the water-parting between the headwaters of the Rivers Aisen on the Pacific side and Aayon (Mayo) on the Atlantic side are indicated on Brackebusch's map a little to the east or to the west of their true position; it matters little that respecting other river basins, the water-parting is still more inaccurately shown. The fact remains that a straight and conspicuous or principal chain of the Cordillera is shown intersected by the Rivers Aisen and Huemules, the water-parting taking place on low hills or undulating ground further east, and despite this fact, the very same as is now urged against the *Continental divide boundary*, Dr. Brackebusch still adhered to the latter line as being the rightful interpretation of the Treaty in force.

Chapter XIII.

CONVENTION OF 1888 AND WORK OF THE DEMAR- CATION UP TO 1892.

TO give effect to the Treaty of 1881 the Convention of 20th of August, 1888, was negotiated, its main object being the appointment of the Experts to which Articles 1 and 4 of the said Treaty referred, and to regulate their proceedings. The Articles of this Convention, which are not merely of a formal character, are textually as follows :

“ 1. The appointment of the two Experts to which Articles 1 and 4 of the Boundary Treaty of 1881 refer shall be made by the Signatory Governments within the term of two months from the date of the ratification of this Convention.

“ 2. To assist the experts in the discharge of their functions each of the Governments shall name, within the same period, five assistants. The number of these assistants may be increased in identical proportions by each party whenever the Experts should jointly ask for it.

“ 3. The Experts shall carry out on the ground the demarcation of the lines indicated in Articles 1, 2 and 3 of the Boundary Treaty.

“ 4. The Experts may, however, entrust the execution of the works to Commissions of Assistants, who shall be named in equal numbers by each party. The Commissions shall proceed according to the Instructions given by the Experts by joint accord and in writing.

“ 6. Every time the Experts should not come to an agreement upon any point in the fixing of the boundaries or *upon any other question whatever*, they shall immediately communicate with their Governments so that the latter may proceed to appoint the third party who, according to the Boundary Treaty of 1881, is to settle the difference.”

As may be seen, the principal provisions of the Con-

vention of 1888 were : To entrust the Experts with the demarcation of the whole frontier line north of the 52nd parallel, to give them Assistants, and to authorize the Experts to delegate to the said Assistants the execution of the tasks entrusted to them.

The Argentine Representative denies that the Experts had powers to delegate to the Assistant Commissioners the demarcation on the ground ; he affirms that only the Experts could effect it, and gives one to understand that the Expert of Chile failed in his duty by not visiting the ground. On page 234 of his Statement he expresses himself thus :

“ The Experts, and *only the Experts*, were invested with ‘ the power of fixing by themselves, on the ground,’ the boundary line ; and it is to be deplored that the Argentine Expert, when surveying the Cordillera, should have been unable to study the orography of the frontier regions with his colleague, the latter not having even visited the ground.”

This categorical assertion, that only the Experts themselves could determine on the ground the boundary line, according to the Convention of 1888, is supported by the Representative of the Argentine Republic by means of extracts from an undated note addressed by the Plenipotentiary of that Republic at Santiago, Señor Uriburu. It is said in this note that the Argentine Government proposed the delegation of power to the Assistants, that the Chilean Minister for Foreign Affairs opposed it, that Señor Uriburu himself considered it inconsistent with the text of the Treaty of 1881, and that consequently it was not inserted.

It is to be presumed that Señor Uriburu's note must refer to some draft Convention afterwards modified, because the text of the Convention signed is in open contradiction

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with the assertion that only the Experts were authorized to effect the demarcation on the ground.

To corroborate his opinion the Argentine Representative reproduces Article 3, which certainly says that "the Experts shall carry out on the ground the demarcation of the lines indicated in Articles 1, 2 and 3 of the Boundary Treaty"; but he omits to quote the fourth Article, which decides the question by saying: "*The Experts may, however, entrust the execution of the work to the Commissions of Assistants.*"

Which were the powers conferred on the Experts which it is alleged they could not delegate and which the works that they were empowered to entrust to the Commissions of Assistants, according to the opinion of the negotiators, will be shown shortly by documentary evidence, and the question will be fully discussed in its proper place. In any case, according to the explicit text of the Articles which we have just reproduced, it is clear that all the *work* to be done *on the ground* might be entrusted or delegated to the Commissions of Assistants, and therefore the interpretation given to Article 3 by the Argentine Representative (p. 233) is devoid of foundation, as are also his complaints regarding the Chilean Expert not having personally visited the ground.

**Endeavours
to frame
instructions.** Whether all the theoretical discussions had already been settled by the Treaty of 1881, or whether there were still "abstract differences" to be discussed by the Experts, it cannot be denied that, according to Article 4 of the Convention just quoted, the Experts were bound *to give instructions to the Commissions of Assistants as to the procedure to be followed for the execution of the works entrusted to them by the Experts.* This was the first and foremost duty of the Experts, whether they did or

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did not intend to visit part of the ground personally, for it was agreed from the outset "that the work should commence concurrently in the north in the Cordillera de los Andes, and in the south in Tierra del Fuego" (Argentine Statement, p. 245). As the Experts could not be in both places at once, at least one of the Commissions would have had to receive instructions before undertaking any proceedings at all. Consequently it is evident that the instructions were the first thing to be attended to.

When it is borne in mind that the Treaty of 1881 fixed the boundary line as far as the 52nd parallel by a *single general principle of demarcation* set forth in two sentences, it is difficult to believe in the plausibility of the contention that instructions to carry out that *principle* on the ground could be framed conjointly by two parties, without making sure that they attributed the same meaning to every word of each sentence, and to the principle as a whole. This is still more difficult to believe when it is remembered that the scope of the principle of demarcation had been the subject of debate in Chile and in the Argentine Republic since 1883, and especially in the latter country, where Colonels Olascoaga and Godoi in the Neuquen differed from Rohde and Fontana in the Limay and Chubut, and where the first authorities of the Argentine Geographical Institute had in 1886 been unable to arrive at an interpretation of the Treaty.

This was, however, the procedure suggested by the first Argentine Expert, Señor Pico, who arrived in Chile in 1890 for the purpose of giving effect to the Boundary Treaty. Señor Don Diego Barros Arana had been appointed Expert on the part of Chile.

The first visit to Chile of the Argentine Expert only

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lasted for some three weeks, during which time three meetings were held, and agreements arrived at for the appointment of two mixed commissions for the *demarcation of the boundary*—not merely for projecting it, as is said in the Argentine Statement. Starting points were fixed for their work of demarcation at San Francisco Pass ($26^{\circ} 52' 45''$ Lat.) and Cape Espiritu Santo (Tierra del Fuego). App. Doc.
No. 41.

The Argentine Expert then returned to Buenos Aires. The Chilean Expert deemed it expedient to propose to him that the Instructions should be discussed and drawn up by correspondence, and invited him to do this.

In his communication the Chilean Expert reminded his colleague that it was their duty to issue, with the least possible delay, Instructions for the two Commissions already appointed to carry out the demarcation, since the said Commissions could not begin their work without them. He also said that he would be pleased to receive a draft of Instructions or general bases for the same, adding that he had already laid down in a *Memorandum* App. Doc.
No. 42.

“the meaning that ought, in my judgment, to be ascribed to the provisions of the Treaty of 1881, and the manner in which our assistants must understand the said provisions when marking out on the ground the boundary line between both Republics.”

He further offered to send him a copy of his own *Memorandum*, or await the draft in case the Argentine Expert preferred to take the initiative.

It is impossible to find, either in the sentence just quoted, or in the rest of the document, any justification for the remark contained in the Argentine Statement (page 245) that

“the form in which the desire [of previously discussing the interpretation of the Treaty] was expressed, caused the Argentine Expert

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to think that the invitation to discuss the interpretation of the Treaty might indicate the design of modifying its injunctions in such a way as to elude the fundamental rule."

If the Chilean Expert had any intention of eluding *the fundamental rule* for the demarcation, obviously he would not have begun by inviting his colleague to define clearly this same fundamental rule. It would be justifiable to say that the Argentine Representative here endeavours to throw on the Chilean Expert the blame which he felt attached to the Argentine Expert. If the latter suspected his colleague of such deep designs as are now insinuated, the best way to defeat them would have been to define or formulate at once what he thought to be the "fundamental rule for the demarcation," and in this way many difficulties would have been avoided.

The Argentine Expert, however, avoided all discussion in writing upon those Instructions, saying that the news that his colleague was preparing a *Memorandum* as to the meaning of the provisions of the Treaty had sorely perplexed him, adding that *the period of discussion has been closed* since 1881, there being no boundary question thenceforward.

App. Doc.
No. 43.

After quoting the sentence of Article 1, in which "amicable solutions" are enjoined in cases of bifurcation where the water-parting is not clear, he proceeded :

"Thus the Experts are judges of the facts, and it is as to facts, and with a perfect knowledge of them, that they must arrive at their decisions. The mission entrusted to these functionaries determines clearly their character, and from their character their duties are derived.

"*To study these facts*, to undertake a *survey* including those facts in all their details, carefully and especially *indicating the features laid down by the Treaty as characterising the boundary*, and to mark it out *without hesitation*—that, in my opinion, is the duty of the Experts : *to act, not to discuss.*"

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It will be plain to the most casual reader that the Argentine Expert affected in this communication to consider as solved a question that he merely enunciated, namely, Which were those *features which must, according to the Treaty of 1881, characterize the boundary line?* It did not seem to occur to him that the "hesitation" was not so much to be feared in the marking out of the points when found, as in the operation of finding them, when no rule was given for so doing.

And this was precisely the question which the Chilean Expert invited his colleague to settle.

The boundary question existed in 1880. The Experts, appointed by either Government to mark out on the ground the immovable boundary agreed upon in 1881, should not have been, or have pretended to be, ignorant of the various interpretations which geographers, explorers and diplomatists had from time to time given to the first Article of the Treaty since its signing. Señor Pico surely knew that Señor Bertrand and Señor Serrano, who were the first assistants of his Chilean colleague, had several times, and in official reports, maintained that the oceanic water-parting was the boundary line of the Treaty, and could not suppose that his colleague or the Chilean Government would have selected those assistants if their views had not been accepted. In fact, both the Argentine Expert and his Government knew that there had never been any dissension in Chile as to the interpretation of the Treaty. The Tribunal needs no better proof of this than the words uttered by Dr. Zeballos in the Cabinet Council of the 31st of December, 1889, and quoted as "precise and significant" in the Argentine Statement (page 243):

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"It will be seen that *the said Republic* [Chile] *claims the valleys*, which extend from parallel 41° S. to 52° S., etc."

As to the Chilean Expert and his Government, if they knew exactly how they understood, and how every one in Chile understood *the fundamental rule of the Treaty of 1881*, *they did not and could not know* what that rule was to be according to the Argentine Expert. Nobody could possibly know, because, as shown in the preceding chapter, there was no uniformity of opinion in the Argentine Republic, or, at least, if a degree of uniformity existed, it went no further than the purpose of obtaining possession of certain desirable valleys and sea inlets in the Cordillera, but it never crystallized into a *rule of demarcation*.

Thus, if it could ever be said that there was a case in which the Chilean Expert was justified in trying to bring about an agreement as to the meaning of the provisions of the Treaty referring to the boundary line—or, as the Argentine Expert put it, as to "the features which ought to characterize the boundary line,"—this was precisely such a case : for he did not know which of the many and occasionally contradictory opinions current in the Argentine Republic respecting the boundary line would be sustained by the Argentine Expert.

Moreover, it is easy to detect the sophism into which the Argentine Expert fell when declaring that the discussion on the boundary question had been closed since 1881. As already explained in previous chapters, the main boundary question that had been settled in 1881 was that of Patagonia and Magallanes. The Patagonian question was settled by the 52nd parallel being accepted as an east to west boundary between Chilean and Argentine Patagonia, and the discussion was closed in respect of this boundary because *a parallel* is a

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line that may perhaps give rise to errors of demarcation, but never to errors of interpretation. It may be more or less difficult to mark it out ; but the only discussion that can arise in this respect must refer solely to the means of observation, not as to *which* is the line really agreed upon. From the 70th meridian to Point Dungeness there was not room enough for a serious discussion ; in Tierra del Fuego the only possible discussion regarding the meridian indicated in the Treaty had been already avoided by the conciliatory conduct of the Chilean Expert.¹

But it could not be said that the discussion was closed with respect to the boundary from north to south. Since 1883, as has been seen, an unofficial discussion as to this boundary had been going on between explorers and geographers of both countries, and it was common knowledge that the official discussion was just about to begin. It is most astonishing that the Argentine Expert should have considered the discussion closed, being aware—as he must have been—that even the chief cartographer of the Geographical Institute, *five years* after the Treaty, was unable to give an official interpretation of the boundary line at many places between the 27th and 52nd parallel. How could the Expert, Señor Pico, possibly believe that the Treaty needed no interpretation, when such high authorities as Lieutenant-General Mitre and Dr. Zeballos, then Minister for Foreign Affairs, had recognized in 1886 the need for an interpretation ? It would be the merest waste of time to further pursue this point, especially as the facts have proved that during eight years the text of Article 1 of the Treaty was construed in *one* way by the Chilean Expert and in *two or more* different ways by the Argentine Experts.

¹ See to this effect, *Record of the Meeting of the Experts*, May 8, 1890, partly reproduced in Document No. 41.

To sum up : from the outset the Experts were agreed on the following points :

1. That the Commissions of Assistants should be entrusted with the *work of demarcation* on the ground, according to Article 4 of the Convention of 1888.

2. That the starting points of the boundary line in the north should be the San Francisco Pass, and in Tierra del Fuego, Cape Espiritu Santo.

And they disagreed on these points :

1. While the Chilean Expert deemed it necessary to ascertain if his colleague concurred in his views as to which was the fundamental rule for the demarcation, the Argentine Expert maintained that a survey should be undertaken at once, including *the features that ought to characterize the boundary*, without previously discussing what these features were according to the Treaty.

2. While the Chilean Expert thought that the Experts should specify in their instructions the sense in which the Commissions of Assistants should understand the provisions of the Treaty before applying them, the Argentine Expert held that these instructions should refer to a *purely technical modus operandi*, and should be proposed by the Assistants, thus implying that the boundary might be traced, as it were mechanically, whether the assistants understood what they were doing or not.

It need not be pointed out that both the propositions of the Chilean Expert were almost axioms. When two officials are called upon to apply a *general* principle, how can they *act without discussing*, if they do not understand the principle in the same sense? To quote a case in point : when, after the Treaty of Berlin, the Boundary Commissions

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for the delimitation of the Balkan States began their work, their first meetings were always occupied by *discussions* on the *general principles* of the delimitation.

"I have the honour to inform you (wrote General Hamley to Lord Salisbury on the 24th of April, 1879) that the second meeting of the Bulgarian Commission was held on the 21st, when, after some formal business, *the President invited members to express their opinion on the general principles to be observed in tracing the frontier line of the Balkans.*"¹

Delays in the demarcation. After the fruitless efforts of the Chilean Expert to lay a solid basis for the issue of Instructions in accord with his colleague, the work of demarcation was not started at the time fixed, as the Argentine Expert began by asking for a delay which was extended until the following year, when the civil war of 1891 broke out in Chile.

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When the Experts finally met on the 12th of January, 1892, the Argentine Expert presented to his colleague a draft of Instructions which he embodied on the following day in a communication, of which a translation is given in the Argentine Statement (pages 246-247). This communication, dated the 13th of January, is most important, and is translated in its entirety in the Appendix.

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The first of the instructions of Señor Pico's Minute was merely a recommendation to apply strictly the first two sentences of Article 1 of the Treaty of 1881.

The *second* referred to the case in which the highest summits took the shape of plateaus or high tablelands.

The *third* to that in which "these or any other" (*sic*) highest summits may be inaccessible.

The *fourth* and last to the case of the Cordilleran valleys, where the water-parting should not be clear. In

¹ *Blue Book*, C. 2471, pp. 20 and 21.

this case a survey of the ground was to be made, no definite boundary landmark was to be erected, and an accurate map was to be submitted to the Experts for their decision.

The only comment made in the Argentine Statement (page 248) regarding these draft Instructions, is that they "*contain the rule* for the marking out of the line along the most elevated *crests* of the Cordillera de los Andes."

The Tribunal will see, however, that not only do they contain no rule, but that great care has been taken not to formulate any, a fact explicitly acknowledged by the Argentine Expert when, in a communication to his Government, he says that the Chilean Expert, after agreeing to give Article 1 of the Treaty as an Instruction, "*stated that he wished its meaning to be determined,*" and that he, Señor Pico, pointed out to him "that the first of the bases agreed upon tended to *avoid interpretations*, and that if we entered into discussion we should frustrate all our work."

In Señor Pico's proposal it was said that "*the most elevated summits of the Cordilleras,*" whether they be found on plateaus or on inaccessible peaks, should in any case be the boundary; it also said that "the line should run over the said points," but it is hardly necessary to observe that those phrases do not constitute a rule. Was the expression—"the most elevated"—applied to the summits, to be understood in an absolute or in a relative sense? Was *the line* to be straight or curved? In the so-called Instructions no answer can be found to either question. Señor Pico had thought it more important to specify particulars which had never been called in question, such as that the *inaccessibility* of the mountains should not be an

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obstacle to their forming the boundary, and that the highest points on the plateaus should be determined by level. Meanwhile, the main question at issue remained untouched, and the Argentine Expert affected to believe that the Commissions of Assistants would not meet with any difficulty in applying on the ground, *without its meaning being previously determined*, the very sentence of Article 1 of the Treaty which the chief Argentine Institute cartographer and many other of his most distinguished countrymen considered of doubtful meaning.

But, however desirous the Argentine Expert appeared to avoid discussion, he could not but acknowledge very soon that it was necessary to *interpret* the Treaty; and although in his communication of the 13th of January he did not sufficiently define his interpretation, he could not conceal the fact that the foundation of it was the *suppression* of the only precise rule of demarcation which the Treaty contained. Alluding to his draft Instructions he said to the Chilean Expert :

“You have observed to me that in order to avoid every doubt or difficulty that might occur, it would be advisable to establish clearly that the *boundary line must follow the water-parting*, even if it should be necessary, in order to do so, to deviate from the highest summits.

“I then deemed it my duty to observe that, in my opinion, this criterion could not be applied to the text of the Treaty of 1881 and that, on the contrary, we ought chiefly to carry out the stipulation of the said Article 1, where the *general rule* is that the highest summits of the Cordillera de los Andes are those which determine the boundary line between both countries.”

It is important to observe that the Argentine Expert did not then pretend ignorance as to *which water-parting was alluded to*. He did not say that he agreed to a *high crest watershed*, though he could not accept an *interoceanic*

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watershed; he frankly stated that he did not accept the idea of the boundary following the *water-parting line*, thereby showing that he well knew what was meant by *water-parting*, and did not find any lack of clearness in the expression. Likewise, when the Chilean Expert called his attention to the case of *the high summit of Aconcagua*, which would only remain in Argentine territory conditionally on the *water-parting* being accepted, the Argentine Expert tacitly agreed to this conclusion, and made no attempt to give to the word "cumbre" the meaning of *crest*, as it is translated throughout the Argentine Statement.

**Views of
the Chilean
Expert.**

The Chilean Expert replied to his colleague's Note of the 18th of January, 1892, in a detailed communication, the translation of which is given in the Appendix. The Argentine Statement (page 248) alludes to it, though only one of its least important paragraphs is quoted for the purpose of observing that the Chilean Expert merely remarked upon the absence of *one Article* in Señor Pico's draft Instructions, and consequently, that "nothing of a *fundamental nature* was objected to."

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It is true that the Chilean Expert requested the insertion of *one Article*; but it is impossible to explain why the Argentine Representative infers that this Article was not of a fundamental nature. The contrary seems to have been very well understood by Señor Pico, when he said at the close of his Note, that he submitted the question to his Government in view of the "*very different standard*" proposed by both Experts in applying the Treaty of 1881; and in a Note dated the 19th, reproduced in the Appendix, he alluded once more to the "very firm and diametrically opposed declarations which had been exchanged on the 13th."

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The Tribunal will judge for itself whether the objections of Señor Barros Arana to the Argentine draft were of a fundamental nature.

"I then stated to Your Excellency (says Señor Barros Arana) that as the line of demarcation must be drawn along the highest summits of the Cordillera which divide the waters and between the streams which flow down to either side, it was advisable to state that the demarcating engineers should not take into account the peaks, heights and chains which are situated outside the water-parting line."

It is further stated in the same Note that the reluctance of the Argentine Expert to accept the above proposition was

"based on the expressions 'highest summits of the said Cordilleras,' suppressing the qualifying and explanatory phrase, 'which divide the waters.'"

Referring to this communication the Argentine Statement alleges that the conclusions *lack the necessary clearness*, as it was not established positively "whether said watershed was the continental one or that of the Cordillera de los Andes." The Tribunal will now decide whether the conclusions referred to were wanting in clearness. They were three :

"1. As the line of demarcation must pass *over the highest summits which divide the waters*, it is clear and beyond all doubt that it ought not and could not pass over the summits of the Cordilleras, however high they may be, which do not divide the waters.

"2. As the line of demarcation must pass between the streams which flow down to either side, it is clear and beyond all doubt that such line should not and cannot cut any stream, whether a river or mere brook ; which could not be accomplished *if any other system of demarcation was employed*, and especially that of seeking for the *absolute highest summits* . . . etc.

"3. The only difficulty foreseen in the Treaty in the demarcation of the boundary, is that which might arise owing to the existence of inland valleys of the Cordillera where the *water-parting line* should not be clear, and in this case the Treaty itself stipulates that the difficulty must

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be solved by the Experts, whose duty is and can be no other, than to seek for the *water-parting line*."

As the Argentine Representative, whilst condemning these conclusions for *lack of clearness*, has nevertheless quoted the second conclusion which establishes that the line *cannot cut any watercourse*, great or small, and as he is necessarily aware that between Chile and the Argentine Republic *it is not possible to trace more than one line which does not cut any stream*, it is difficult to assign a plausible meaning to his objection. Señor Pico had perfectly well understood what "water-parting line" means, since he objected to it without asking for any explanations, and Señor Zeballos, to whom the conclusions of Señor Barros Arana were forwarded, certainly found no lack of clearness in them when he said :

"The Chilean Expert proposes to incorporate in the Instructions of the Assistants the general and theoretical rule of the *divortia aquarum* for the tracing of the boundary."¹

and later on that

"according to the Chilean Expert's absolute criterion," the boundary "ought to descend from the silvery slope of the Andes in order to follow those [Pacific] waters *and surround their sources* . . ."²

Moreover, the Argentine Government and *a fortiori* their Expert were unmistakably aware that Chile understood by *divortium aquarum* of the Andes the watershed of all the rivers "tributaries to the Pacific," as had been clearly stated in an official communication from the Government of Chile which Dr. Zeballos quotes in his Ministerial Report of 1892, and to which we shall have to refer more extensively later.

¹ *Memoria de R.E. de la R.A.*, 1892, p. 300.

² Luis V. Varela, *Historia de la Demarcacion, etc.*, vol. i. p. 260.

Not only did Señor Pico ask for no explanation regarding the Chilean interpretation, as simple then as it is now, but he could give no explanation of any sort respecting his own line, nor as to whether the highest summits to which he alluded were *absolutely the highest*, or whether the condition of height was, in his judgment, subordinate to some other hitherto unspecified; nor did he contradict the Chilean Expert when the latter assumed that the superlative "highest" was meant in its absolute sense, when the qualifying condition was suppressed.

As we are informed by the Argentine State-
Argentine
Cabinet
Council,
1892. ment (p. 249), the Argentine Government called a Cabinet Council to consider the matter submitted to Señor Pico. Señor Zeballos then, as he had done in 1889, laid down as a rule his own interpretation of the Treaty :

1. That when a Cordillera exists between two countries, the boundary runs over the *central massif*.
2. That the rule for the demarcation within the massif is the *division of its own waters*.
3. That it is not possible to confound such division with *water-sheds of minor chains*, nor with the *divortia aquarum* of the eastern plains.

The President, Señor Pellegrini, accepted these assertions, and gave them as the Argentine official interpretation of the Treaty.

No attention was paid by the Argentine Government to the fact that the "central massif" and "division of its own waters" are expressions without any precise meaning in a Cordillera formed of several parallel chains, and that, consequently, *no rule of demarcation whatsoever* could be based thereon.

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**Proposal for
preliminary
surveys.**

It being impossible to deduce from their own interpretation of the Treaty a given rule for the demarcation, the Argentine Government instructed their Expert to confine himself to a proposal for a general preliminary survey of the region comprising the water-parting line as well as the highest summits, and the construction of maps upon which the boundary might be amicably discussed.

This proposal was apparently based on instructions issued in 1890 by Dr. Zeballos, no discrimination being made between the *difficulties* foreseen by the Treaty in cases where the water-parting should not be clear (the only case in which the Experts were authorized to seek for an amicable solution) and the more important *difficulties* due to the different interpretations of the Treaty, respecting which the Experts had no authority to come to any such arrangement.

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Señor Barros Arana and his assistant, Señor Bertrand, opposed this proposal, alleging that the only case that required maps for its solution was that of the bifurcations of the water-parting ridge of the Cordilleras.

Meanwhile the season suitable for the carrying out of the works in the Cordillera was far advanced, for it was already the month of February, and the differences between the Experts as regards the Instructions which were to be given to their assistants did not seem to be approaching a solution. The Governments, however, wishing to use the time still available for the work, thought it advisable that the demarcation should be carried out at points where difficulties would not arise, and gave the Experts directions to that effect. The result was that the Commissions started, taking with them general instructions which did not decide the controverted points in the interpretation of the Treaty.

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These Instructions, the text of which is published in the Appendix, together with other documents taken from the Report of Foreign Affairs of the Argentine Republic, 1892, bear the date of the 24th of February. They were merely confined to instructing the Commissions to proceed

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“to the demarcation of the frontier line, with the starting point, extent and conditions agreed to between the Experts on the 24th and 29th of April and 8th of May, 1890, and to draw up, at the points at which they might be in accord, the record which the Experts must sign in conformity with Article 1 of the Treaty.”

To this the following was added :

“This delegation is made for the object expressed by Article 3 and by virtue of the powers which Article 4 of the Convention of the 20th of August, 1888, gives to the Experts.”

These Instructions yield conclusive testimony upon two points : (1) That the question of interpretation of the Treaty was set aside for the moment, since the Assistants were instructed only to carry out its provisions ; and (2) That those same assistants were to act as *delegates* of the Experts, by carrying out the operations of demarcation which Article 3 of the Agreement entrusted to the latter, and which the Experts deputed to their Assistants by virtue of the power conferred on them by Article 4 of the said Agreement.

Consequently the line was not to be *investigated* by the Experts on the maps, but *effectively and practically demarcated on the ground by the Assistants, who were empowered for that purpose*. This same interpretation was given to these Instructions by the Argentine Expert who subscribed to them. When communicating them to his Government in a note of the 24th of February, he expressed himself thus :

“Your Excellency will see that, in substance, this formula for the Instructions is the same as that proposed by me, as the first basis at the

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Conference held on the 12th of last January ; and that it *simply consists in authorizing the assistants to determine the frontier in conformity with the corresponding articles of the Treaty* and Agreements arrived at between the Experts in the year 1890."

In view of the preceding facts, we fail to see what foundation the Argentine Representative can have for asserting (page 251) that "What the Chilean Expert has refused to accept was accepted by the Chilean Government, by the President and his Ministers," and amongst other things the "project of investigating the geographical features by drawing up the necessary plans for that purpose" (page 252), i.e. for the tracing of the frontier line. The documents quoted flatly contradict these assertions, since they testify, we repeat, that the solution given to the incident of the Instructions, leaving all the questions relative to the interpretation of the Treaty pending, was confined to the finding of an expedient which would allow the carrying out of the demarcation of the frontier line at those points on the ground where no disagreement had arisen.

The San Francisco Pass demarcated. The San Francisco Pass was designated as the starting point for the delimitation in the Andes, at the suggestion of the Argentine Expert, and was accepted by the Chilean Expert, because it was known since 1855 to be a "Pass" or "Col" of the Andes in the technical sense of the word, and consequently a point in the water-parting line. The scientific aspect of this fact will be dealt with further on. No difficulty whatsoever was experienced in identifying the place ; but the Assistants could not agree upon the terms of the Minute of Proceedings, as the Chilean Commissioner insisted on recording therein the topographical conditions which characterized the boundary

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on the map made out in accordance with the Treaty, while the Argentine Commissioner considered that all references to the Treaty involved the danger of renewing the difficulties which had arisen between the Experts. We call attention to the fact that the Argentine delegate had no objection to offer to the application of terms involving the technical interpretation of the Treaty contained in the Chilean Record.

The joint Record of the erection of landmark at the San Francisco Pass is reproduced in the Appendix. Its context shows that neither party considered it as a provisional landmark, and therefore it was not necessarily subject to the approval of the Experts. App. Doc.
No. 49.

Antecedents as to the San Francisco landmark. In connexion with the designation of the Pass of San Francisco as the starting point of the demarcation, several authorities quoted by the Argentine Representative render it necessary to insist on re-establishing the facts as briefly set forth in our previous Statement.

The Argentine Representative, stating the points on which the Experts subsequently disagreed, says (page 259) that the third point was

“whether the San Francisco landmark was placed in the Cordillera de los Andes as provided by the Agreements, or whether it was necessary to remove it after a fresh survey,”

and further adds (page 260) that

“the third question was the unfortunate outcome of a *mistake* due to the precipitation of the surveyors.”

In another place (page 579) he says that

“the insistence of Chilean geographers in carrying out the frontier line to the San Francisco Gap . . . had its explanation” in the Chilean contention as to the possession of the Puna. “Therefore [he continues] *the Chilean Expert proposed the abandonment of the Andean crest and the*

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planting of a definite landmark in San Francisco gap, because if the Argentine Republic retained her dominion over the region surrounding that mount, it would have been difficult to reach the Southern Puna starting from Copiapó, without crossing in part through Argentine territory."

Thus the Argentine Representative chooses to ignore entirely the true antecedents of the case, introducing a mysterious mistake which never occurred, and the necessity of communications which have never been taken into account.

On this point the Argentine official documents, however, will establish the truth beyond all possibility of error. The Argentine Minister of Foreign Affairs in 1890, Dr. Zeballos, has made a complete statement of the antecedents of the San Francisco proposal in his official Report for 1892, which is reproduced in the Appendix. He said that

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"the Argentine Government understood that, according to the text of the Treaty, the demarcation should begin in the north,"

and gave it as a special reason that

"on account of the very detailed and accurate surveys which have been made of that region (the northern) chiefly by *Chilean Geographers, the points which have to determine the boundary*, as well as the ground over which the line ought to run, are best known and practicable; so that in proceeding from north to south the less difficult shall be done before the more difficult."

He further records that "the Chilean Expert made no objection to beginning the demarcation from the north," and that on the 1st of May (1890) the Argentine Expert had communicated to his Government that as soon as the conferences with his colleague began at Santiago,

"*Upon my proposal* it was agreed and specified that the *Pass of San Francisco*, in the Province of Atacama, *should be the starting point of the works of demarcation*; also that the latter should be continued from north to south until their termination, etc."

And the Minister Zeballos says, after quoting this:

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"Between the Pass of San Francisco which crosses the Andes between Catamarca and Atacama and the Bolivian frontier, there remains a portion of Argentine-Chilean boundary that shall be traced when the Argentine Republic and Bolivia have agreed on their definite boundary. The Argentine-Chilean frontier shall then be prolonged to the north of San Francisco, for a short distance, until it meets the Argentine-Bolivian line."

This statement of the Minister Zeballos is important because it shows that there was no "error" about the designation of the San Francisco Pass; the Minister wrote with a complete knowledge of the data communicated by the Experts, amongst which was the Record of the Meeting of the Experts of the 29th April, 1890 (the communication of the Argentine Expert is dated May 1st). In this Record it is said :

*"The discussion being brought to an end, it was agreed that a joint Commission of Assistants should be entrusted next dry season with the demarcation of the boundary, from the Portezuelo or Pass of San Francisco, which is situated between the 26th and 27th parallels of south latitude, and proceed from this point southwards. With reference to the selection of the starting point for the work, the Experts agreed to declare: That in fixing on the Pass of San Francisco the initial point for the boundary work, they do not mean to imply that this place is the northern extremity of the frontier which separates Chile from the Argentine Republic; but that it (the pass) is a point of the said frontier; that if the operations of demarcation are not extended further north for the moment, it is with the object of leaving untouched the territory of Bolivian sovereignty which has been subject to Chilean law by Treaty of Truce on the 4th of April, 1884, and which in no case could be affected by the Boundary Treaty of 1881 or by the Convention of 1888; and that both Experts understand that the northern extremity of the frontier which divides their respective countries can only be fixed definitely by subsequent agreement among the three nations with regard to the said extremity."*¹

When it is borne in mind that this Record is dated 29th of April, 1890; that the "planting" of the San Francisco landmark took place on the 15th of April, 1892, and that the

¹ Published in Bertrand, *Estudio Técnico, Documentos*, p. 99.

Ministerial Report of Dr. Zeballos was published after the Chilean and Argentine Commissioners had returned and "the Experts of both countries had been informed of the work that had been done,"¹ it is impossible to understand how the Assistants could have made an "error" when carrying out such precise instructions, and how it was that this error was only discovered on the 20th of September, 1892.

And this is more incomprehensible when it is clearly shown that the Chilean and Argentine Experts, as well as their Governments, were in possession of information which they rightly considered sufficient for regarding the Pass of San Francisco as the summit which divides the waters of the Cordilleras between the two countries.

As far back as 1855 a British resident in Chile, Mr. Wheelwright, had entrusted the study of the Cordillera to different engineers, in the latitude of 27°, in order to ascertain the possibility of a railway being constructed there.

The results of the surveys made by Mr. E. A. Flint and Señor Naranjo were published in 1861 in England,² in 1864 by Dr. Burmeister in Germany,³ and in 1873 in France by the publishers of Moussy's Atlas.⁴ The first and last of these publications were accompanied by profiles,⁵ which were a sufficient demonstration that the Pass of San Francisco was the highest point of the passage, and marked in consequence the true separation of the general slopes, since it could

¹ *Loc. cit.* p. 97.

² *Journal of the Royal Geographical Society*, vol. xxxi., 1891, pp. 155-162 (Proposed Railway Route across the Andes, etc.).

³ *Geographische Mitteilungen*, 1864, p. 865.

⁴ Text of the Atlas, p. 19; also Plate xv., where the altitude of Portezuelo Tres Cruces (4,540 m.) and Portezuelo San Francisco (4,871 m.) are taken from Flint. Also sections in Plate xxvi. and Map xxx.

⁵ These profiles are reproduced further on.

San Francisco Pass is the northernmost of our (the Chilean) Cordilleras." ¹

In view of all these recognized facts it is impossible to understand how the Argentine Representative could think himself justified in attributing the "insistence of the Chilean Geographers" respecting the San Francisco landmark to mere political motives, and affirm that "the Chilean Expert proposed" the planting of the said landmark. It was proposed by the Argentine Expert, acting on instructions from his Government, or at least with their approval; and such approval was fully justified, since not less than four professionals, Señores Flint, Naranjo, Sayago and San Roman had surveyed the region and fixed the intersection of the general slopes, the culminating point of the railway section at the Pass of San Francisco.

All the above information was at the disposal of the Argentine Expert and his Assistants during the two months January and February, 1892, that they stayed at Santiago and attended at the Joint Boundary Office. The Joint Sub-Commission travelled together from Santiago to Copiapó and stayed there a fortnight on account of delays in the transport arrangement of the Argentine Sub-Commission; this circumstance is mentioned only because it afforded an opportunity of completing the already abundant geographical information that the Commissions possessed. Several maps and sections of the Cordillera for railway purposes were copied at the offices of the "Compañía del Ferrocarril de Copiapó," and an original copy of a large map (on the scale of 1/200,000) by the Argentine surveyor,

¹ Benj. Vicuña Mackenna, *A Traves de los Andes*, Santiago, 1885, pp. 93-105.
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BOU
CHILE

PLATE XIV.
To face page 429.



Stanford's Geogr. Estab. & London
"PROVINCIA DE CATAMARCA,"
which was drawn up from the
session of the Joint Boundary

Señor Gunardo Lange, between parallels the $26^{\circ} 30'$ and 28° was obtained, and copies made for both Commissions.

A copy of this map (which was included in the "Mapa ^{Plate XIV.} de la Provincia de Catamarca" issued by the "Museo de la Plata" in 1893), on a reduced scale, is submitted, together with a copy of San Roman's map,¹ to the Tribunal, in order to enable them to decide whether it can be reasonably contended that the Joint Sub-Commissions who possessed this information could possibly be mistaken as to the situation of the San Francisco Pass with respect to the Cordillera de los Andes.

¹ San Roman's map is inserted in the Chapter dealing with the geographical description of the Puna.

Butler & Tanner, The Selwood Printing Works, Frome, and London.

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