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Exposition of the
Costa Rican commission

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EXPOSITION
OF THE
COSTA RICAN COMMISSION

EXPOSITION



Submitted by the Costa Rican Boundary
Commission

TO

Edward Porter
HON. E. P. ALEXANDER

Engineer Arbitrator

PRESENTED ON 30TH JUNE 1897



SAN JOSE.—C. R.

Tip. Nacional

1897

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Honorable Edward Porter Alexander,
Engineer Arbitrator

It being impossible for the Commission of Costa Rica to arrive at a satisfactory agreement with the Boundary Commission of Nicaragua, as to the determination of the starting point of the boundary line, which is the extremity of Punta de Castilla, according to the 2nd. article of the Treaty of limits of the 15th of april, 1858, and decision n^o 1, of paragraph n^o 3, of the Award pronounced by the President of the United States, Mr. Cleveland, the 22nd of march 1888, the Costa Rican Commission, in accordance with what has been established by article 2nd of the Treaty of San Salvador dated march, 27th, 1896, has the honor of submitting to you for the corresponding final decision, the conclusions that according to the best judgement and understanding of the members that compose it, are those which justly and reasonably should serve as a basis in locating the starting point for the operations of survey and demarcation of the boundary line between Costa Rica and Nicaragua. For the sake of clearness this report will be written in two distinct parts, one intended to present

with its principal grounds, the opinion or conclusions of the Costa Rican Commission, and the other with the object of refuting the arguments on which the Nicaraguan Commission bases its opinion.

OPINION OF THE COSTA RICAN COMMISSION

The boundary line between Costa Rica and Nicaragua runs and should be surveyed from sea to sea: thus it has been established by article 2nd of the Treaty of limits of april 15th 1858, where it is expressed in clear terms that the boundary line begins in the North sea at the extremity of Punta de Castilla, and ends in the South sea at the center of Salinas Bay.

In order to have a clear idea regarding what is to be understood as extremity of Punta de Castilla, it is necessary to distinguish three different things; namely: 1st. "Castilla"; 2nd. "Punta de Castilla"; and 3d, "Extremity of Punta de Castilla." By "Castilla" has been understood, and it is so confirmed by the Treaty of limits, article 5th, *the mainland* that to the East of the lagoon to-day called Harbor Head, and bounded by the sea, extends until it reaches the branch of the San Juan river called Taura: for special reasons and purposes the Treaty of 1858, extended said territory as far as the river Colorado.

By "Punta de Castilla", has always been understood the strip of land, or better still, sand-bar, which as appendix or accretion of Castilla, through the lapse of years, has gradually formed between the waters of the ocean and those of the port of San Juan del

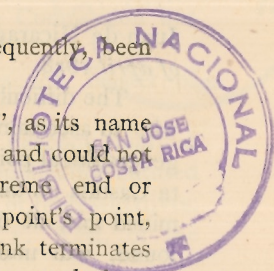
Norte: said strip of land has also, frequently, been called Arenas Point (Puntarenas).

By "extremity of Punta de Castilla", as its name clearly indicates, has been understood and could not be otherwise comprehended, the extreme end or final border of Punta de Castilla, the point's point, that place, in fact, where the sand bank terminates in contact with the waters of the ocean and those of Port San Juan.

On examining any of the maps of said port previous to the year 1858, the difference which has been mentioned can be perfectly and distinctly seen.

In order to refer to a map which can not be objected to by the Nicaraguan Commission, reference will be made to the one which the Nicaraguan Minister presented, with his argument, to the President of the United States, Mr. Cleveland, during the arbitration of 1887-1888: On that map Puntarenas or Punta de Castilla is represented with those identical names, which are the ones that belong to said place, forming a kind of Peninsula or more properly speaking, end or point of long and narrow appearance, slightly curved, which from the eastern mainland, extends to the west, or towards the opening or entrance of Port San Juan.

With precedents of this nature, nothing can be more easy than to locate, from a legal standpoint, the boundary line on the Atlantic side, since it has been conclusively declared by President Cleveland's Award that said line begins at the extremity of Punta de Castilla at the mouth of the River San



Juan de Nicaragua, as they both existed on the 15th of april 1858.

The difficulty, if any, is purely one of fact, to wit: to ascertain with mathematical precision, the geographical point occupied by the extremity of Punta Castilla on the 15th of april 1858. Having determined this, all difficulty disappears, and the place found, will undoubtedly be, the starting point of the boundary line, as if in this place the mouth of the river would be open at the present moment, or even though said place should now be found on dry ground, as a consequence of the changes which the neighbouring lands and waters have undergone during the space of nearly 40 years that have elapsed since the signing of the Treaty of Limits up to the present time.

For the practical or material determination of the boundary starting point, the Costa Rican Commission believes that the best and most reliable source of information obtainable, is comprised in the official hydrographic maps of the American and British Navies published before the date of the Treaty of Limits, since said Treaty did not adopt any map the authority of which would to day be indisputable.

By comparing those maps and by duly compensating for their differences until an average be found, which approaches as nearly as possible the absolute truth, the longitude and latitude of the place in question are ascertained: it is then and only then when we can proceed through scientific methods to the material location of the place where must be erected the monument or first land-mark of the frontier.



For this work the Costa Rican Commission has consulted the following maps.

1st.—A map, 1832, by G. Peacock, master of Her Majesty's Ship "Hyacinth."

2nd.—Map referred, 1849, by Peacock enlarged by Rockwell, according to official publication entitled 33d Congress, 2nd-Session, House of representatives.

3d.—A map, 1865, by P. C. F. West, of the United States Coast survey.

4th.—A map, 1872, by Lieutenant James P Miller, assisted by Captain J. B. Briggs, under the command of Chester Hatfield, of the U. S. Navy.

5th.—A map, 1873, by Comander Ch. Hatfield and Comander E. P. Lull, of the American Navy, which is the same map presented by the Nicaragua Minister, with his argument during the arbitration of 1887-1888.

6th.—A map, 1884, by Messrs. Pasemore and Climie, made by order of the Nicaraguan Government, as shown on plate II in the publication entitled Report of the U. S. Nicaragua Surveying Party, 1885, 49th Congress, 1st Session, Ex. Doc. n^o 99.

7th.—A map, 1888, of Ensign W. J. Maxwell, U. S. N., of the Nicaragua Canal Construction Company.

8th.—A map, 1895, by Charles H. Lyman, under the direction of Captain Chas. H. Davis., U. S. N., and of the Nicaragua Canal Commission appointed by the U. S. Government.

With the merit of the preceding documents carefully analyzed and compared, and with the result obtained from the astronomical observations and geodetic operations made by the Costa Rican commission, it

has been able to determine with the greatest possible precision, considering the means at its disposal, the real location of the extremity of Punta de Castilla, and consequently, that of the mouth of the San Juan de Nicaragua River, as they both existed on the 15th of april 1858.

In order to determine the azimuth of a given line, the commission proceeded according to the method of equal altitudes of the sun and proved the exactness of its operations by the method of simple altitudes of stars conveniently selected for the purpose, as represented in the Commission's field Book; thus being able to establish the direction of the true meridian which passes across the place of the old San Juan church, to-day in ruins.

That place whose coordinates are as follows: $83^{\circ} 42' 04'' 6$ Longitude W. of Grennwich and $10^{\circ} 42' 04'' 6$ Latitude North, was adopted as the zero point of all the operations.

The Commission did not forget to rectify and verify said values by means of the Theory of Least Squares, making a careful comparison of those documents which deserve most credit on account of the authority with which they are invested.

In the field book of observations and astronomical calculations, of which the original is herewith attached, on page 25th and 27th can be seen the probable calculated error E, which does not exceed in latitude $\pm 2''33$ ad $1''75$ in longitude.

With every security therefore the Commission has adopted said coordinates for its conclusions.

After having determined the meridian line. in

the manner stated, the Commission proceeded to the Geodetic survey of the principal co-relative points and principally, of the situation of the extremity of Punta de Castilla, in accordance with the bases furnished by the authorities or documents heretofore alluded to, interpolating according to an arithmetical proportion the location of said extremity on the 15th of april, 1858.

The field book of Geodetic studies is herewith attached, so that in the same manner as with the astronomical studies, the respective calculations may be confirmed by comparison, if it is deemed necessary.

According to the studies made by the Costa Rican Commission it is found that the extremity of Punta de Castilla on the 15th of april 1858, answers to the following coordinates:

$83^{\circ} 43' 31''$ O West longitude from the meridian of Greenwich; $10^{\circ} 56' 15'' 5$ North latitude.

These cordinates, be it well remarked, are deducted from the ones already assigned discussed and accepted for the Church in ruins, which church has served, as before said, as Zero point of the operations.

The place indicated as the starting point of the boundary line is not situated to-day as in 1858 with its borders touching the waves of the atlantic ocean; but is a part of the sand bar at some distance from the sea: this is due to the accretions to Punta de Castilla since 1858.

These accretions, according to legal principles too well known to be repeated here, belong to Costa Rica and Nicaragua.

The line of separation between both jurisdictions

shall be the normal to the curve of the coast, in order to distribute said accretions fairly between both countries.

Having thus established the first land mark of the boundary line, we proceed to the demarcation of the second, or in other words, the place on the right hand bank of the San Juan River properly speaking, from which, next to the extremity of Punta de Castilla, the survey of the boundary line is to continue on the right hand bank of said river, to a place distant three English miles from Castillo Viejo measured from the outside fortifications of said Castillo.

In the opinion of the Costa Rican Commission, that second point of the boundary line, is situated at the place marked with the letter L on the adjoining plan. Following the downward course of the San Juan River, on maps which were made near the date mentioned, it will be seen that it is at the point L, where the channel of the river ends, and where the estuary that comprises the Port of San Juan del Norte commences. Downward to that place, marked L, there is a visible current, there is a defined bed, and there are fixed banks; from there onwards, all this disappears and the waters of the river, partially mingled and blended with those of the ocean, form the immense receptacle which on the date of the Treaty constituted the splendid port of San Juan; and although there are several smaller outlets to the river some distance above the point alluded to, these are of no importance, being merely outlets, or branches, but not the principal or main stream; not the navigable San Juan River, the right bank of

which is the one that was established as the boundary line between Costa Rica and Nicaragua.

If the second land mark of the boundary line should be located at any other place, for example: at one of the places marked α , β , γ , etc. on map number XIII of the Nicaragua canal Board herewith attached, the result would doubtless be a surmise in open contradiction to the literal text and manifest spirit of the Treaty of Limits, for it would, regardless of truth, promote to the rank of principal channel of the San Juan River, one of its smaller outlets, neither navigable nor navigated in year 1858; and would leave a considerable portion of the real river, with both its banks within the exclusive territory of Nicaragua, in spite of the Treaty of Limits which expressly declares that the boundary line shall run along the right bank of the San Juan River up to a point three English miles distant from Castillo Viejo.

How are the first and second land marks of the boundary line to be united? Either by means of an ideal straight line to pass across the waters of the Port from the extremity of Punta de Castilla to the point L, or terminus of the southern bank of the river? Or in what other manner? The commission believes that as far as the boundary line in question is concerned, the union of the first and second land marks is entirely unnecessary for the simple reason that the waters of the port of San Juan del Norte, being as they are, those which separate both points, and said waters having been declared, as they have been, by the Treaty to belong in common to Costa Rica and Nicaragua, the union of both points would

not be of any practical object or value. For this evident reason no attention was paid to said line in the Treaty, where all the necessary bases were stipulated so carefully for the object of surveying the boundary line; otherwise, it is clear, that the necessary stipulations would have been made regarding this point either by establishing the straight line referred to, as a boundary line, or else by stating other bases for its determination.

But if it is true that said line is of no object and would even be improper across waters belonging to both countries, it is equally true that all lands to the east of said straight ideal line do belong to Costa Rica, and to Nicaragua all lands laying to the west.

In order to locate the place where the second land mark of the boundary line is to be established the same method previously recommended for the demarcation of the extremity of Punta de Castilla, has been followed. The coordinates of this second point of the boundary line are as follows :

Longitude $83^{\circ} 41' 14''$, 6. O of Greenwich, North
Latitude $10^{\circ} 55' 45''$, 8.

In this manner the Commission believes that it has resolved justly and equitably the first two problems connected with the demarcation of the boundary line on the Atlantic side.

*Refutation of the conclusions of the
Nicaragua Commission.*

The Costa Rican Commission now proceeds to submit the reasons why it cannot accept the conclusions of the Nicaraguan Commission.

The Nicaraguan Commission maintains that the starting point of the boundary line between Costa Rica and Nicaragua, or in other words, the place that the Treaty of Limits denominates, Extremity of Punta de Castilla, is situated on the strip of land which unites the mainland of *Castilla* to the sand-bar which has been distinguished above with the name of *Punta de Castilla*. Said point is marked on the map which the Minister of Nicaragua presented with his statement during the arbitration of 1887—1888, with the letter A. From this place, according to the opinion of the Nicaragua Commission, the boundary line should continue following the southern bank of Harbor Head until it reaches the nearest branch of the San Juan River, and afterwards gives as boundary line the right hand bank of said branch until reaching the San Juan River or principal branch, from which place according to the Nicaraguan Commission, the boundary continues along the right hand bank of the San Juan River.

As a reason for moving backward the extremity of Punta de Castilla from the point P. C. marked on the Costa Rican Commission's map herewith attached, where it belongs as has heretofore been fully demonstrated, to the point A. mentioned above, where it is desired at present to locate said extremity for the purpose of removing as far as possible the Costa Rican boundary line, arguments are presented which it will be convenient to divide into two different classes, to wit. a) Arguments already passed upon and consisting of those which were brought before the arbitrator Presidente Cleveland and which,

after the award of the 22nd of march 1888 cannot, and could not possibly receive any consideration now on account of having been finally disposed of by the Arbitrator; and b) Arguments, which spring out of the intelligence to be given to the award, which arguments are, of course, admissible for timely discussion.

To the first class belong the following:

a)—That Punta de Castilla has disappeared, and it is beyond human power to locate any point pertaining to said place as it existed in 1858, because the strip of land which embodies said place, is constantly changing; and if it were possible through a miracle to locate its position, if the situation of things could be reproduced as it existed when the Treaty was signed, Punta de Castilla, in more than one case, and perhaps in its whole extension, would be found in the ocean or in the Port.

b)—That it is not just or admissible that both banks of the mouth of the San Juan River should to day be situated in Costa Rican territory on account of the changes which have taken place in the system of the River waters since the date of the Treaty.

c)—That since 1860 the entrance to the San Juan River, has become more and more difficult even to such an extent that the entrance is absolutely closed, or but little less than closed.

d)—That the mouth of the San Juan River is subject to unexpected changes, so much so that it frequently happens that when a tug goes out to receive cargo from a steamboat anchored on the out-

side, finds on her return that she cannot cross the entrance for many days and even weeks.

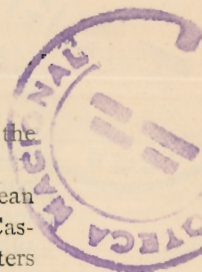
e)—That sometimes the power of the ocean deposits sand along the strip of land, "Punta de Castilla," in such a manner as to prevent the waters from flowing out and a canal must be opened through the bar to enable the retained waters to make an exit.

f)—That the river makes its way to the sea, now in one place and then in another; and that there really is not a single point within the whole distance existing between the extremity of Punta de Castilla and the union of said place with the mainland, where the river has not had an outlet, changing, suddenly even within the space of one month.

g)—That after the Treaty of Limits a complete change has taken place to the effect that there is now no definite entrance to the Port nor mouth of the river, and the waters have made their way to the ocean wherever they have been able to do so throughout the whole extension of Punta de Castilla, from the mainland on one side of the Bay to the mainland on the other side happening that during heavy rains two or three mouths have existed at the same time.

h)—That Punta de Castilla has no exact definition for according to article 5th of the Treaty of Limits that name is given to the Peninsula lying to the North of the Colorado.

i)—That as the boundary line ought to follow the San Juan River until it reaches the sea, it is incumbent according to the Treaty, that said line should



follow the southern coast of the Port known by the name of Harbor Head up to the point where the mainland joins the sand bank called Punta de Castilla.

j)—That as a consequence of the preceding statements the sand bar located between the two extremes of the mainland of the Bay, should be considered as the mouth of the San Juan River; and consequently the starting point of the boundary line on the Atlantic side should be the place where Punta de Castilla joins the mainland, on the southern coast of Harbor Head.

An extensive statement including all these arguments was made by Nicaragua in her reply to the Costa Rican argument presented to the Arbitrator, President Cleveland, on the 2nd of December 1887, pages 77 to 81 of the printed Spanish Edition to which the Costa-Rican Commission makes reference, for the corresponding verification.

To these arguments the following reply was made in behalf of Costa Rica.

a) That the place called *Extremity of Punta de Castilla*, starting point of the boundary line, should be located at the same place where it existed when the Treaty of Limits was signed, that is under the same degrees of Longitude and Latitude corresponding to the right bank of the mouth of the San Juan river at that time; and the reason is that said place is and always has been permanent and not changeable as the waters.

b) That the starting point of the boundary line, or extremity of Punta de Castilla, has not disappeared,

and no human power could remove said point from its original place; it is perfectly distinguishable now, even though the San Juan river may have changed its mouth and although the place where said Punta de Castilla was situated the 13th of april, 1858 be found at the present time completely dry.

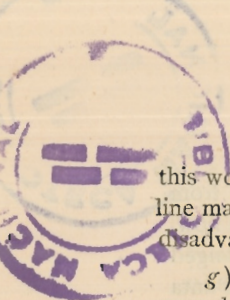
c) That the changes that have taken place in the Port of San Juan del Norte, whatever may have been their nature, do not produce the effect either of changing the situation of Punta de Castilla, starting point of the boundary line, nor the effect of changing the demarcation of said line.

d) That the principle that the boundaries of Countries, when the landmarks or monuments established consist of streams do not change, even in the case of said streams abandoning wholly or partially their old beds and escaping through new ones to the ocean, can not be disputed.

e) That if the sea has receded from Punta de Castilla, it is clear that the land which has been left dry belongs to Costa-Rica according to the right of accession exactly on the same terms that the prolongation of the opposite side, due to the same cause, will be Nicaraguan territory; and likewise, if the sea should have covered a portion or that part which comprised Punta de Castilla the year 1858, the only thing that could be done would be to submit and accept the action of nature.

f) That the whole question can be resolved into one purely of fact: the geographic determination of the extremity of Punta de Castilla; but no matter how difficult such location might result practically,





this would not authorize the moving of the boundary line many miles to the East of said point to the disadvantage of Costa-Rica.

g) That in consequence of all the preceeding remarks the starting point of the boundary line is the place referred to in article 2nd of the Treaty of Limits and no other, the place such as it existed on the date of the Treaty, whatsoever may have been the transformations or changes which may have taken place on account of natural causes.

To support these conclusions numerous quotations of authorities were made on behalf of Costa Rica, which can be consulted on pages 140 to 148 of the English Edition of the corresponding statement dated october 27th 1887.

The arbitrator after having duly considered the arguments of both parties, made the following decision in his award.

“ The boundary line between the Republics of Costa Rica and Nicaragua on the Atlantic side begins at the extremity of Punta de Castilla, at the mouth of the San Juan de Nicaragua river *as they both existed on the 15th of April 1858*. The ownership of any accretion to said Punta de Castilla is to be governed by the laws applicable to that subject.”

The arbitrator, therefore decided that Costa Rica claim was valid.

After considering this it only remains to discuss, *where* the extremity of Punta de Castilla *existed* the 15th of april 1858, and where the right hand bank of the San Juan river existed on the same date.

All the other points have been conclusively and finally decided by the arbitrator's award.

The decision copied above seemed clear to everybody and it was not easy to imagine that the words. "As they both existed on the 15th of April, 1858," could convey another meaning in complete contradiction with the literal text of the decision.

The Nicaraguan Commission has discovered this hidden meaning, and holds that the adverbial expression of manner, "as they both existed" has not in the sentence, the value of the adverb of place "Where", and consequently the award does not declare the starting point of the boundary line to be the extremity of Punta de Castilla *at the same place* where said point existed on the 15th of april 1858 but that said words should be interpreted to the effect that said place is only to constitute the beginning point of the boundary line in so much as said point may keep with the objects that surround it the same relationship that it had with them on the 14th of april 1858.— "Where" in English would signify a determined location, "as" means *in the same manner, in such correspondence in similar or analogous conditions*, which is very different from the first meaning. Therefore in order to comply with the award it is necessary that the extremity of Punta de Castilla should be located really and truly as the award expresses it, on the border of the water and that said place should be the mouth of the San Juan river as it existed in the year 1858.

It is only necessary to make a simple exposition of the Nicaraguan Commission's way of thinking in

order to reveal the fact that, in reality their arguments are simply a reproduction, disguised by different wording of some of the reasons which in 1887 were brought before the Arbitrator, arguments which, as it has been said before cannot be admitted at present.

Granting *gratia arguendi*, that the text copied cannot be considered clear, the interpretation suggested by the Nicaraguan Commission cannot be sustained as it shall be demonstrated presently without the necessity of profound gramatical disquisitions and legal hermeneutics; it is sufficient in this case, to produce passages from official documents in which the adverb *as* is used in similar and sometimes in identical cases to the one now under consideration with perfect correction and clearness regarding which nobody will entertain any doubt, and with the localizing signification of the adverb "Where" to the effect that the vocable or term *as* signifies with entire propriety "*Where*", *there where*, in the very same place, etc.

The following are the passages in reference. On the 10th of July 1884, Mr. Frelinghausen, Secretary of State of the United States sent a dispatch to Mr. Romero, Minister of the United States of Mexico, in wick the following paragraph is found.

"This position is moreover wholly opposed to the contention of the Mexican Government itself, that the territorial jurisdictions established on behalf of the respective parties to the Treaty of Guadalupe Hidalgo remain forever *as* originally fixed under that compact and are not to be affected by any abrupt changes in the course of the river Bravo.—Digest of

the International law of the United States by Francis Wharton, Volume I, § 30, page 88.

It is evident that in the case of the paragraph in question *Where* could have been used instead of *as* to express the idea of stability and firmness of the boundary line in view of the rapid change in the course of the river; but the use of the word *as* does not in any manner injure the meaning of the phrase, because said adverb conveys the idea of, at the place where, in that same situation, which said phrase should express, and with all propriety does express.

In the official document mentioned the following paragraph may be read:

“It was further agreed between the commissioners that in case the channel changed, the right of navigation should remain unimpaired to both countries but the jurisdiction of the land should remain *as* we had arranged.—Same work, volume I, § 30, page 88.

Here no adverb whatever is used, as for instance “*Originally*” or equivalent words to make more evident the idea of firmness and stability of the territorial jurisdiction; the word *as* is sufficient and more than sufficient for the purpose, and it locates the line in such a manner that nobody on reading the phrase, would suppose that the line in question is similar, analogous, of like conditions and circumstances, but in conclusion, no other than the boundary line agreed upon and such as was established at the beginning.

The document mentioned gives still another example, if anything more precise can be required; “In conclusion, says Mr. Frelinghausen, I have the

honor to inform you, in answer to your several notes that the facts on record of the case warrant and demand that the government of the United States shall regard its territorial jurisdiction over the Island of Morteritos, otherwise Beaver Island (n^o 13), as established by the boundary commission under the Treaty of Guadalupe Hidalgo, and consequently, that the mexican pretension to that island and to accretions thereto from the left or the United States bank of the Rio Grande shall be denied" (1).

As does not imply in that paragraph the idea of resemblance analogy, etc., but it conveys the idea of identity, firmness, immutability.

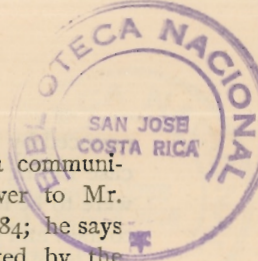
In a note sent by Mr. Frelinghausen to Mr. Morgan, dated july 11th 1884 he says the following:

Under all these circumstances you will formally ask that the Mexican government forthwith cease any claim to territorial jurisdiction over the island of Morteritos, and cause to be duly respected the boundary line to the south of that island, and between it and the Mexican bank, as determined by the United States and Mexican commissioners in the survey; (2) as can be seen at first sight the boundary line is the one which was established when the survey was made, and not a similar line of like and analogous conditions; and the idea of identity, of location, is expressed by the word *as* without the need of any other word to qualify it and without showing any necessity of the adverb *where* to enforce the idea.

To confirm what has already been stated a pa-

(1) Same work, vol 1, § 30, page 89.

(2) Same work Vol. I § 30 page 91.



paragraph will be copied below, from a communication that Mr. Romero, sent in answer to Mr. Frelinghausen on the 9th of October, 1884; he says as follows: As this is the basis presented by the Government of the United States to defend its rights to that island, it thus recognizes that the limits between the two Republics are those fixed by the Treaty of Guadalupe Hidalgo such as were laid down by the mixed commissions without having been altered by the changes occasioned by the current of the river whether in its margins or the deepest of its channels.

The idea of immutability appears here anew, without recurring to the use of the adverb *as*, adverb which with so little cause has been found wanting in President Cleveland's Award, by the Nicaraguan Commission.

On the 12th of June 1886, Mr. Bayard, Secretary of State says the following to Mr. Bowen: It may be proper to add that it has been held in this department that when through the changing of the channel of the Río Grande, the distance of an island in the river from the respective shores has been changed, the line adjusted by the commissioners under the Treaty is nevertheless to remain as originally drawn (1).

Examples of this kind could be given *ad libitum*; in order not to make this exposition tiresome only a few more will be added.

"It was held (says a narrator of a sentence pro-

(1) Same work Vol. I § 30 page 95.

nounced by the Supreme Tribunal of Maine, in the case *Lering Versus Morton* 8 greenl 61) that the lots were to be located by laying off the side lines by the courses and distances from the river, according to the plan, and then drawing the rear lines from one corner to the other thus making them conform to the true course of the river as originally designed, though not so delineated by the surveyor" (1).

In the official work which bears the title, Reports upon the survey of Boundary between the territory of the United States and the possessions of Great Britain, from the Lake of the Woods to the summit of the Rocky Mountains, Washington 1878, the following passages can be read:

Page 261.—“From this method it results that the boundary line as actually traced is an irregular curve affected at each astronomical station by instrumental errors; etc.”—Page 265.—“The first diagram showing the method of tracing the parallel gives the actual line as adjusted and marked between the astronomical stations, etc.”—Page 284.—“The distance by river from Benton to Bismarck as determined by the astronomically checked boat survey made by Lieutenant Green’s parties is eight hundred and five miles.”—Page 303.—“The termination of the sixth or last course and distance being the above said most north western point of the Lake of the Woods as designed by the seventh article of the Treaty of Ghent, and being in latitude forty nine degrees twenty three minutes and fifty five seconds north of the Equator

(1) A Treatise on the law of water courses, by Joseph R. Angell Chapter II page 34.

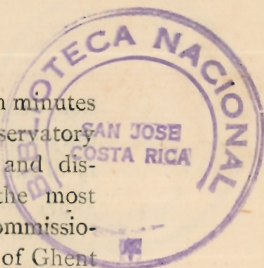
and in Longitude ninety five degrees fourteen minutes and thirty eight seconds west from the Observatory at Greenwich.”—Page 311.—“The courses and distances from the reference monument to the most northwestern point, as established by the commissioners under the seventh article of the Treaty of Ghent are as follows.”

At the risk of appearing profuse the commission will furnish two more examples, one on account of the high authority with which it is invested as part of a Treaty of Limits; and the other for sake of the analogy which it bears to the phrase used by Mr. Cleveland in his Award.

The first example is that of article 1st. of a Treaty celebrated between the United States and The Mexican Republic on the 30th. of December 1853 which reads as follows.

“The Mexican Republic agrees to designate the following as her true limits with the United States for the future: retaining the same dividing line between the two Californias as already defined and established according to the fifth article of the Treaty of Guadalupe Hidalgo, the limits between the two Republics shall be as follows: beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of Rio Grande, as provided in the fifth article of the Treaty of Guadalupe Hidalgo; thence as defined in the said article up the middle of that river to the point where the parallel of $31^{\circ} 47'$ North latitude crosses the same; thence due west one hundred miles,” etc.

The other example is taken from the work ca-



lled, Report on the United States and Mexican boundary survey made under the direction of the Secretary of the Interior by William H. Emory, Washington 1857, which says: "The allotment of all the islands (various islands of Rio Grande numbered from 1 to 13) was made upon the condition of things AS they existed when the boundary was agreed upon"

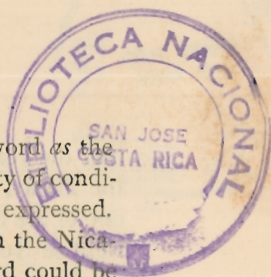
In all these cases the idea of location, firmness and inmutability is expressed by only using the word AS; and precisely what is most striking is the fact that the word AS has been made use of so often and the adverb *where* so seldom or nearly not at all.

Is this owing to the peculiar genius of the language? The commission does not venture to state the affirmative but believes that between the two *as* and *where* Mr. Cleveland used the most proper and correct expression.

In presence of the inserted texts there remains no doubt and none could possibly remain, as to the fact that the intention and the words of the award declare that the boundary line between Costa Rica and Nicaragua begins at the extremity of Punta de Castilla *where said extremity existed on the 15th. of April 1858* no matter what modifications said point or its surroundings may have suffered since the date referred to up to the present time.

The commission believes that it has fully demonstrated that the interpretation given by the Nicaragua Commission to the clause of the Award under consideration cannot be accepted; but the Commission will suppose for a moment that the word *where* would really be indispensable in the phrase,

and that as a result of having used the word *as* the conception of analogy, resemblance, equality of conditions and circumstances would have been expressed. Well, even if this singular manner, in which the Nicaraguan Commission understands the award could be accepted, the Nicaraguan Commission's pretention, that Punta de Castilla shall be declared to be the place that said Commission indicates on the coast of Harbor Head, cannot be justified. First: because even if it does constitute part of the vast territory called Castilla, and even Punta de Castilla, it cannot be affirmed, by any means, that said place comprises the conditions that logical principle, and even common sense, demands in order to enable said place to be considered as extremity of Punta de Castilla, for it has been shown beyond all doubt that to the west of said point there existed before and after 1858 as there exists to day an extension of land, the farther end of which constitutes the place which is correctly denominated *extremity of Punta de Castilla* in the Treaty of Limits.—Second: Because if, as it appears, the Nicaraguan Commission attempts to reproduce as far as possible the conditions and circumstances of the place where it was agreed to locate the first land mark of the boundary line, the first condition to be demanded would be that said place be found on the waters edge, at the mouth of the river, a condition which is by no means found to exist at the place referred to, for said place is bound to the main land at the furthest possible distance from all the mouths that the river has had previous to and after the year 1858. And third: According to the state of things du-



ring the year 1858, in the territorial division object of the Treaty, it was allotted to Costa Rica the whole of one of the head lands, that is, the one lying to the right or North of Port San Juan del Norte, the end of which maintains with regard to the second land mark of the boundary line the distance of 4,157 meters in a straight line with Azimuth 257° , while the place indicated at present by the Nicaraguan Commission deprives Costa Rica of the whole of said Northern head land and removes the extremity of her territorial jurisdiction a distance of 7,171 meters in a straight line with Azimuth $260^{\circ} 30'$ from the starting point, with considerable damage to her rights.

Consequently good judgement has not been used in the selection of the starting point of the boundary line, because said point does not only lack the conditions of likeness that are supposed to be signified by the term AS, but it presents, as if it had been purposely made, conditions as unsimilar and anti-analogous as possible.

The plan of the Nicaraguan Commission is entirely unacceptable: in order to reproduce conditions *similar* to those of Punta de Castilla in 1858, it would be necessary that the river should have a permanent, fixed mouth, on the right bank of which, the monument corresponding to the first landmark of the boundary line might be placed once for all and forever. But it is evident that the river changes its course several times a year, and even in the space of one month; in conclusion, that the San Juan river has as yet not reached its *état de regime*, consequently it is unauthorized and even devoid of any useful result to

withdraw from the place that the award recognizes as the starting point of the boundary line, as long as the river remains in its torrential period, and to adopt arbitrarily another place that perhaps only for a few days would resemble the true Punta de Castilla of 1858.

The duty of the boundary commissions is simply to put into execution the Treaty and the award and they are not permitted to impose their opinions in the guise of an interpretation against clear and decisive provisions in both documents.

The arbitrator, moreover, according to the Treaty of San Salvador is called to perform the duty of settling the difficulties that may arise during the work of the demarcation of the boundary and the establishing of land marks, of course in accordance to what has been established by the Treaty of limits and the Award which declared said Treaty valid and which interpreted some of its stipulations.

With this argument the Costa-Rican Commission submits to your enlightened and imparcial judgement, in your capacity of Arbitrator, the questions that have arisen, for the determination of the first land marks of the boundary line.

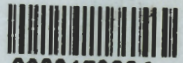
On concluding, the commission feels honored by protesting to you its most profound respect and highest esteem.

San Juan del Norte, 14th june 1897.

Luis Matamoros

Leónidas Carranza

9 FEB. 1992



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