

**Venezuela-British Guiana Boundary Arbitration.
THE PRINTED ARGUMENTS ON BEHALF OF
THE UNITED STATES OF VENEZUELA BEFORE
THE TRIBUNAL OF ARBITRATION.**

**J.M de Rojas, Agent of Venezuela; Benjamin
Harrison, Benjamin F. Tracy, A. Mallet Prevost,
James Russell Soley, Counsel for Venezuela,
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J. M. DE ROJAS,
Agent of Venezuela.

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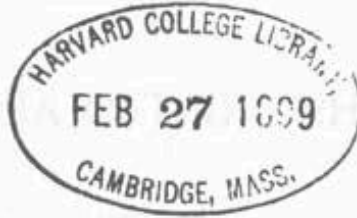
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Am. H. G. Soley.

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CHAPTER XII.

DUTCH SETTLEMENT IN ITS BEARING ON THE QUESTION OF ADVERSE HOLDING.

Having stated the general principles lying at the foundation of the doctrine of adverse holding, it remains to consider how far, under the Treaty, and under the general principles of law apart from the Treaty, an adverse holding for fifty years by the Netherlands of any of the territory in dispute has been established. There is but one condition, specifically mentioned in the Treaty, which is generally sufficient to constitute an adverse holding, namely "actual settlement of a district."

A word may be said here as to the time-limit mentioned in Rule (a).

The period covered by the history of the Dutch colony is from 1648 to 1814, a period of one hundred and sixty-six years. Under these circumstances, and considering the importance which the parties attached to the time-limit, as shown by its insertion in Rule (a) of the Treaty, it would seem that the British Case should be found somewhere to state at what date the claim is made that the fifty-years' period begins to run. But one looks in vain through the whole Case and Counter-Case for any suggestion that at any particular date any fifty-years' period begins to run for any particular locality.

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1. *Actual settlement of a district.*

The question what is sufficient to constitute an adverse holding in respect to actual settlement has been already discussed in the chapter devoted to the interpretation of the Treaty (pp.). As there shown the acts relied upon to establish adverse holding must in all cases be national acts, made under the authority of the adverse holder who claims as sovereign, and must be evidenced by

a continued exercise of sovereignty, in other words, by political control. A settlement, in order to fulfill the conditions of adverse holding as to any particular locality, must be composed of inhabitants in greater or less numbers, who have adopted that locality as a fixed place of abode, and who have established there their homes and occupations with a certain degree of permanence; it must be under a recognized and actual political control exercised over the territory as territory, and over all persons therein; and finally, no such claim can be established beyond the area of actual settlement, nor in a geographical district, by anything less than a settlement of the district.

Starting with the Dutch possession of Kykoveral at the date of the Treaty of Munster, we find that between 1648 and 1814 the Dutch succeeded in making settlements to a certain extent and for a greater or less period

(1) On the Essequibo River, and at the mouth of the Cuyuni and Massaruni, below the falls of those rivers.

(2) At Pomeroon and its immediate neighborhood.

The question of settlement is also to be considered, although only for the purpose of showing its non-existence, in

(1) The Interior Territory, west of the Lower Cuyuni Falls and south of the Imataka Mountains, including the Cuyuni-Massaruni region.

(2) The Coast Territory, west of Moruka, including the Barima-Waini region.

The evidence as to these four localities will be considered in the above order.

(1) ESSEQUIBO.

The history of the Dutch colony of Essequibo is divided into two periods. During the first hundred years or thereabouts, the settlements or plantations were chiefly upon the points of land formed by the junction of the three streams,—Bartica Point, between the Massaruni and the Essequibo; Cartabo Point, between the Massaruni and the Cuyuni; the point where the penal settlement was

afterwards situated, between the Cuyuni and the Essequibo, and the opposite bank of the Essequibo, with a few plantations lower down. This circle of plantations surrounding Kykoveral is the early Dutch colony of Essequibo.

No attempt was made to settle on the Cuyuni, Massaruni or Essequibo above the falls. The latter formed an absolute barrier, as far as colonial development was concerned, both on the Cuyuni and the Massaruni, as has already been shown in discussing the geographical features (Ch. VII, pp.).

The first period in the history of settlement in Essequibo is from

(1) *1648 to 1740.*

The statement is made in the British Case (p. 25), speaking of the period prior to 1648, that "the seat of government was at Kykoveral." This statement is not correct as indicating the condition of affairs at the date of the Treaty of Munster or prior thereto. Fort Kykoveral, on the island of that name, was not the seat of government in the sense that there was any settlement around it which it governed. Kykoveral was the settlement. There was nothing else.

At this date the establishment at Kykoveral was purely a trading establishment. The persons who occupied it were the unmarried employees of the West India Company. There were no free colonists; there were no plantations.

For the first nine years after the Treaty of Munster, these conditions remained unchanged. There is no record of any colonists or of any settlement. The direction of the post at Essequibo was in the hands of the Zeeland Chamber of the West India Company, and their first invitation to colonists was issued in 1656 (V. C. II, 28). A new invitation, granting additional privileges, was published the next year (V. C. II, 30). As a result of these efforts, on March 22, 1657, the first actual colonists arrived in the Essequibo, numbering twelve persons.

The small results of this first undertaking led the Zeeland Chamber to make an arrangement with three Dutch cities which resulted in the settlement of the Pomeroon in 1658. This settlement will be taken up by itself.

In consequence of the energy with which the undertaking of the three Zeeland cities was started, the colony in the Pomeroon attained a rapid, perhaps too rapid development. For the moment all interest was centered in this colony; and although the Essequibo settlement was maintained and its Commandeur remained at Kykoveral, it showed comparatively little progress.

Not until 1664 do we find any indications of new development in this quarter. In that year the first allusion appears in the evidence subsequent to the emigration of the twelve colonists in 1657. This is the petition of Jan Doensen to the Zeeland Chamber, July 3, 1664 (B. C. I, 162), asking for a grant of land which he with several qualified associates had chosen and taken possession of "situated in the River Essequibo at Brauwershoeck, upon which he has placed an agent, one Huibrecht Vinou, a Frenchman, provided with several negroes and other agricultural implements for the establishment of a regular sugar-mill there and of the further plantation needed therefor."

Brauwershoeck was on the point already referred to between the Cuyuni and Essequibo, and therefore within the little circle already described surrounding the island of Kykoveral and in its immediate neighborhood. It was about at the present site of the British penal settlement.

The fact that there was no settlement of colonists in Essequibo at this time is further established by Doensen's petition, which also shows that there was no registry of lands in the colony. He asks that, "inasmuch as there in that country they have or can find no opportunity for having the ownership of their aforesaid plantation recorded and registered," the ownership may be recorded at home.

In 1665, during the war between the English and the Dutch,

an English force from Barbadoes, led by Major Scott, attacked and captured Pomeroon and Essequibo, at both of which places he left garrisons in occupation.

The French, as the allies of the Dutch, harassed and blockaded the English garrisons, which in the following year surrendered, and the Dutch thereupon resumed possession and the West India Company its control.

The settlement on the Pomeroon having come to an end, Essequibo resumed its importance, and in 1669 the first cargo of sugar was sent from the colony, a result no doubt due partly to the fact that all the Pomeroon slaves were turned over to Essequibo.

In the next year, 1670, Hendrik Rol was appointed Commandeur; and in pursuance of the policy which he advocated, three plantations were started for the Company in that year in Essequibo. The colony was still in a primitive stage of development.

In 1674 the States-General chartered the new West India Company, limiting its possessions to Essequibo and Pomeroon.

It early became evident that the fort at Kykoveral was too far up the rivers to serve as a protection from attack by sea, and in 1684 we find the first tendency towards a movement in the direction of the river mouth. In that year the French were in the Orinoco, and in consequence of the alarm created by this invasion a "stronghold" of palisades was built on Stamper's Island, some distance down the Essequibo River (B. C. I, 167).

During the next twenty-five years the plantation increased in number and extent, yet as late as 1691 the whole colony contained not more than one hundred Europeans (Rodway and Watt, Chronological History, pp. 12, 86, 88).

The most complete picture of the daily life of the colony and the occupations of those who had it in charge in the early part of the eighteenth century is to be found in the Journal of the Commandeur from July, 1699, to June, 1701, printed in full in B. C.-C., pp. 47-158. To illustrate this Journal, map of the plantations

was made by the Surveyor, Abraham Maas, in 1706, and sent to the West India Company by the Commandeur.

This map (Venezuelan Atlas, Map 59), taken in connection with the Journal just referred to, shows exactly the extent of the Essequibo settlements. It defines the boundaries of twenty-eight plantations, nearly every one of which is referred to in the Journal. Of these plantations, nine lay on the Essequibo below the junction of the rivers, twelve upon the Essequibo above, and the remainder on the Cuyuni and Massaruni in the immediate neighborhood of Kykoveral. The plantations lay on the river banks, and the land comprised in each grant extended a mile or two inland. None of these plantations were too far from the fort to make the journey, going and returning, in one day.

The plantations on the Cuyuni and Massaruni were much nearer to the island than the most distant plantations on the Essequibo itself. There was not a plantation on these rivers further than ten miles from the fort. All of them were below the falls.

During the next thirty years the plantations gradually increased, but almost wholly on the banks of the Essequibo. The river still remained the only means of communication. No roads were built, and there were no interior plantations. There was no village anywhere; the only part of the settlement which resembled a village was a collection of ten or twelve houses at Cartabo point between the Massaruni and the Cuyuni, opposite Kykoveral. At this point, in 1716, a new Government house was built, directly opposite the island, which was known as the "House Naby" (near by), at which the Court of Policy held its sessions. The few houses which gathered around it were locally known as Cartabo.

The lowest fall of the Cuyuni still remained the extreme limit of the plantations on that river, and it continued to be the limit as long as the Dutch colony existed. At this point the Company had two experimental plantations for raising indigo and coffee. The indigo plantation was begun in 1732 (B. C. II, 14). It was at

the lowest fall in the Cuyuni (*Id.*, 201), where mention is made that a party of Spaniards "in Cuyuni have been down to the lowest fall, where your Lordships' indigo plantation is situated."

At the lowest fall of the Cuyuni an experimental coffee plantation was also established by the Company. From the report of the Commandeur of the Colony in 1730 (B. C. II, 10), this plantation was partly above and partly below the fall. The Commandeur reports that

"on the 29th and 30th of September [*i. e.*, 1729] I inspected the coffee plantations in Cuyuni, both above and below the fall, and found many of the oldest trees withered, and most of them in a bad state, wherefore I ordered the Director, Saigné, to go and inspect the surrounding lands, and to have a new coffee and cocoa plantation laid out towards the next season, in order to see whether it would not be possible to grow the last-mentioned product in Cuyuni (where the ground is best fitted for it)."

About 1738 a number of slaves revolted, and established themselves on an island in the Cuyuni, between the lower falls and the mouth. It was finally arranged that they should continue to occupy the island under the Government, on performing certain work. This continued for a considerable time, the people being referred to as the "Company's half-free creoles" (B. C.).

In the Massaruni there was also a plantation in the immediate neighborhood of the falls. This was the Company's plantation as Poelwyck, which had been on an island near the fort, but which, in 1704, the Commandeur began to transfer to a point above the falls (B. C. I, 228). The British case states:

"The site can be identified by means of the map of 1748 by Storm van 's Gravesande, on which it is numbered 46."

A reference to the map in question shows that plantation No. 46, which is given in the table of references on the same map as Poelwyck, was not more than ten miles above Kykoveral, and therefore just about the lowest fall.

In 1735 an outlying post was established at some distance up the Essequibo River, at or near Arinda. This outlying post was maintained with more or less continuity through-

out the Dutch history of the colony. It was mainly for trading with the Indians. Except the Outlier and Bylier employed at the Post, not a single white man ever lived above the falls of Essequibo.

(2) 1740-1814.

In 1739-40 the garrison and the seat of government was transferred from Kykoveral to Vlaggen (or Flag) Island, afterwards known as Fort Island, fifteen miles from the mouth of the Essequibo. Here there grew up a cluster of buildings, including the fort, the public store houses, the barracks for the little garrison and the dwellings of the officers.

The real growth of the colony dates from this period, or perhaps a little earlier. Until 1735, it had remained nearly stationary. About that date its population began to increase. The trade in Indian slaves first reached considerable proportions about the same time.

At the time of the transfer, a strong tendency had developed on the part of the settlers to establish their plantations nearer the mouth of the Essequibo. After the removal of the fort the tendency was still more noticeable. The upper plantations were abandoned. In 1748 they were considered very remote.

In that year, an attempt was made to sell "the burdensome and unprofitable indigo plantation." The Court said, February 6, 1748 (B. C. II, 55) that "to our sorrow, we must report that in this matter we could in no way attain the desired end, inasmuch as, although the conditions were arranged very favorably, not one person was willing to bid a single stiver thereon, presumably on account of the great distance and the insalubrity of the River Cuyuni."

The old fort at Kykoveral was practically abandoned, though it was occasionally used for local purposes, especially in case of Indian disturbances on the upper part of the Essequibo.

In 1764 the condition of affairs was such that the Director-

General could write, speaking of a movement of Indians from the Cuyuni to the Massaruni, that he had received such a report "from the few colonists who still reside in the upper reaches of the rivers" (B. C. III, 116). In 1770 Hartsinck, in his History of Guiana (I, page 263), states that the village of Cartabo had consisted "of twelve or fifteen houses," but that it was "now in ruins." By 1773 all demands for grants of land upon the river at the former site had ceased.

On December 23, 1773, Trotz, the Director-General, wrote the Company (V. C. II, 221):

"It is now an opportune moment for closing the Court, because there are no longer any grants of land to be made; no one will ask for lands in the upper reaches of the river, and most of them are already annexed as timber grounds for the plantations below."

The allusion here is to the old grants in the three rivers below the falls.

In a letter to the Company June 6, 1777 (V. C. II, 232), A. A. Brown, the Secretary in Essequibo, inquiring whether lands which have been granted "formerly or long ago, or which have been acquired by purchase or inheritance," and which are at present not at all under cultivation cannot revert to the Company, writes:

"If so, then the Company has a right to at least three quarters of this extensive colony since there are several planters who hold thousands of acres of land which are not under cultivation. For most of the old planters, as soon as the lower lands were brought under cultivation, transferred their plantations which lay above this fort or Flag Island, brought off all their slaves, mills, cattle, etc., and practically abandoned the old plantations; but, in order nevertheless to retain their right, as they fancy, to those upper lands, they sent thither all their old and decrepit slaves, who can be of no use on the new plantations.

Thus one finds above this island (which is distant only one tide from the mouth) not one sugar, coffee or cotton plantation except only that of the ex-Councillor S. G. van der Heyden, situated a great tide above this island, at the mouths of the two rivers Mazaruni and Cuyuni.

In these rivers, likewise, just as in the river of Essequibo, properly so-called, there can be found not one plantation which furnishes any products

except a little cassava bread, and this of so slight importance as not to deserve mention.

It is evident from the above statements that there were no settlements or plantations in the rivers above the falls.

Three times in its later history, before the cession of the colony to Great Britain, it was subject to military occupation,—by the British and subsequently by the French, from 1781 to 1784; by the British from 1796 to 1802. and again by the British from 1803 to 1814.

It appears from the official reports of the Dutch Governors themselves that by the close of the eighteenth century the original site of the colony in the neighborhood of Kykoveral had practically become a wilderness. The movement of the colony was toward the east bank of the Essequibo and around the coast to the eastward toward Demerara. A mere inspection of the maps (Ven. Atlas, Maps 66, 67, 68, 70) shows that before the plantations on the west had reached the mouth of the Essequibo those on the east had approached Demerara. At the close of the period, however, the plantations began to fill up the coast to the north of the mouth of the Essequibo on the west, known as the Arabisi or Arabian coast.

In summing up the description of the character and extent of the Essequibo settlement, considered as separate and distinct from that of the Pomeroon, it appears that the limits of the Essequibo colony, as far as actual settlement is concerned, may be fixed with substantial accuracy. They are clearly defined on the side of the Cuyuni and Massaruni by the position of the falls. The meridian of 59 degrees longitude west of Greenwich crosses these two rivers at a point from eight to twelve miles west of the lowest falls. All the territory that can possibly be claimed by Great Britain in this controversy as being within the settlements on the Cuyuni and Massaruni is, therefore, well within this meridian. It may also be remarked of this line that the whole course of the Essequibo during the five hundred miles of its length is to the eastward of it,

except possibly at its source in the mountains of Brazil. It is further to be noticed that to the eastward of this line are the headwaters of all the "little rivers" emptying into the lower Essequibo from the west. A line starting on this meridian, and following it south to the parallel of 6 degrees N., thence along that parallel to the Essequibo, and up the Essequibo to the boundary of Brazil, takes in all the settlements ever possessed by the Dutch on the Essequibo and its tributaries.

(2.) POMEROON.

The Pomeroon is a river comparatively inconsiderable in size, which rises at a point twenty-five or thirty miles west of the Essequibo and flows in a northerly direction on a nearly parallel course. Upon reaching a point five miles from the seashore, it takes a bend to the northwest, and during the remainder of its course runs parallel with the coast line, forming a long peninsula or strip between the river and the ocean, which terminates in Cape Nassau, still twenty-five or thirty miles west of the mouth of the Essequibo. Near its mouth it receives the waters of the Wacupo Creek, a short stream coming in from the west; and another small stream, the Moruka, emptying into the sea, lies a mile or two further west.

The ordinary means of communication between the Pomeroon and the Moruka was by sea. Interior water communication between the Pomeroon and Essequibo is of comparatively recent date, and is accomplished by means of a canal at Tapakuma. During the Dutch period the ordinary communication between the Pomeroon and Essequibo was by sea.

There was no communication between the Pomeroon district and the Berima-Waini region, except through the semi-artificial itabo near Moruca Creek, a means of communication which, according to the best English official authorities, was always exceedingly uncertain, and often impassable for months at a time.

The first settlement in the Pomeroon was in 1653, and lasted

until 1665. The second settlement was in 1686, and lasted until 1689. These are the only settlements which the Dutch made on that river, or in the neighboring territory.

The first of the Pomeroon colonies was known as Nova Zeelandia. It was the result of the agreement made December 16, 1657, between the three Zeeland cities of Middelburg, Flushing and Vere and the West India Company to fit out a colonizing expedition, consisting of two ships, one to carry out the colonists, the other to bring slaves from the coast of Africa. The ships sailed in February, 1658, and arrived at their destination in June.

By 1661 the colonists had occupied sites on the Demerara and also on the Pomeroon; they had divers plantations and a considerable number of settlers; the chief place was called Nieuw Middelburgh. (B. C. I, 148.)

Many documents are attached to the British Case to show the flourishing character of the Pomeroon settlement, which was thus begun in 1658. It is not necessary to dwell upon this point. It is conceded that the Dutch settled on the Pomeroon in 1658, and that they had several plantations and raised what was, for a new colony, a considerable crop. It may well have been at the time the most flourishing of the Dutch colonies in Guayana. Its prosperity, however, and in fact its very existence, came speedily and suddenly to an end.

In 1665, an English force under Major Scott attacked and captured the settlement. (B. C. I, 166). At that time, according to Governor Byam (Journal, B. C. I, 167, which enumerates all the colonies in Guayana), the westernmost of the Dutch colonies was "Bowroom [Pomeroon] and Moroco, alias New Zealand." It is stated to be the greatest of all the colonies the Dutch ever had in America, "16 leagues leeward of Dissikeeb." The colonies in 1666 were recovered by the Dutch.

The resumption of possession by the Dutch had no results in the Pomeroon. The settlement at that point was entirely abandoned. There is no evidence to show that after the English occu-

pation any attempt was made to restore the colony, or that a colonist remained in the neighborhood; on the contrary, all the evidence goes to show that Pomeroon returned to its original condition of primeval wilderness, and that it so remained from 1665 until 1686.

"In 1666 the colony was recaptured by the Dutch, but the settlement on the Pomeroon remained neglected for some time."

It was not only neglected, as admitted in the British Case, but it was entirely abandoned.

The next reference to the locality is thirteen years later, when the Commandeur at Essequibo, October 20, 1679 (B. C. I, 181), writes:

"The River Pomeroon also promises some profit; for, in order to make trial of it, I sent thither in August last, one of my soldiers to barter for annatto dye."

Tidings came, however, of the approach of a fleet of Caribs from the Corentin, which intended to visit the Essequibo and the Pomeroon, with a view to making an attack. No attack took place, but in consequence of the rumor the Commandeur "called into the fort the above-mentioned outlier in Pomeroon, both to save him from being surprised, along with the Company's goods, by these savages, and to strengthen ourselves in case of attack." On the 8th of October, the soldier accordingly came to the fort with the goods. The Commandeur says that, as the scare is now over, he will send him back in four or five weeks, "and, if the trade prospers, it would not be a bad idea to build there a small house for two or three men, so that they may dwell permanently among the Indians and occupy that river."

This intention was carried out about 1683, when Daniel Galle was sent to the Pomeroon as Postholder, his place being taken in 1684 by Abraham Baudaart (B. C. I, 186).

At this time the Essequibo colony was obtaining annatto dye by trade with the natives through its employee in the Pomeroon.

In 1685 Jacob de Jonge, who had been previously in Essequibo, petitioned to be allowed to settle on the Pomeroon. The request led to an examination of the history of the Pomeroon settlement, from which it appeared that one of the three cities which had founded the settlement, as early as 1660, had made default in its quota of contributed capital, and that in 1670 Pomeroon was turned over to the Company (B. C. I, 188-193).

As a result of this examination it was decided in 1685 (B. C. I, 193), to appoint De Jonge Commandeur for the new colony and to send out a ship. In April, 1686, De Jonge arrived, and proceeded to establish himself on the Pomeroon. His reports of 1686 and 1687 (B. C. I, 199 and 202), show that at the time of his arrival the settlement in Pomeroon had been entirely abandoned; that there was no one there except Baudaart, the Outlier, and that of the former flourishing colony of Nova Zeelandia nothing was left. In the former of these reports he says:

"I have no doubt but that the river will shortly become inhabited."

In the latter, he says:

"That here, indeed, there have been some sick is true, at which I am not astonished, as we came into a closed-in wood; but now there are some openings."

The Pomeroon thus became for the time a separate colony entirely independent of Essequibo, and lying between it and Barima. De Jonge received only a half-hearted support from Beekman, the Commandeur at Essequibo. He says (B. C. I, 201):

"The Postholders" [Outliers] "placed in Pomeroon to barter dye I had determined to keep, but the Commandeur Beekman said that he had need of his people, so the Commandeur summoned them and made them stay here at the fort."

The subsequent reports of De Jonge, in 1687 and 1688 (B. C. I, 202, 206, 207), speak of the slow and feeble progress of the colony. This was much delayed by the want of slaves, although a small fort was erected and the beginnings of plantations were made.

All this was brought to an end in 1689, when the Pomeroon

was captured by the French and Caribs from Barima. The colonists betook themselves to Essequibo, having no provisions left in Pomeroon (B. C. I, 210). Thereupon a resolution was passed by the West India Company, November 15, 1689, that everything which had been brought to the Pomeroon on behalf of the Company, both the employees and slaves and other chattels, should be removed from there to Essequibo, there to be employed in the service of the Company, leaving only three men with a flag for the maintenance of the Company's possession at Pomeroon (B. C. I, 211). This ends the history of the second Pomeroon settlement.

The orders of the Company were carried out, and from this time on an "Outlier," with three or four men, two of whom were generally Indians, were maintained at or near that river, chiefly for purposes connected with trade.

The history of the Pomeroon during nearly the whole of the next one hundred and twenty-five years and until the cession of "the Establishment of Essequibo" to the British, in 1814, is a history simply of the post. The position of the post was changed from time to time.

In 1700 it was removed to the Wacupo, a small tributary of the Pomeroon on the west, from one of whose branches a passage through the savanna, not, however, apparently much in use, led to the Moruka. For two years the old post was retained, and in 1704 and 1705 the names of either "Outliers" or "Byliers" at both places are to be found in the Muster Rolls (B. C. VII, 151, 153, 154).

In 1707 the Commandeur suggested to the Company the laying of a toll "in the rivers Moruka and Pomeroon" on the traders from other colonies who pass through these inland waters for traffic on the Orinoco. The plan was not immediately adopted, but duties were subsequently collected at the post.

In 1726 Commandeur Gelskerke advised the removal of the post from Wacupo to the Moruka, on the ground that the

Wacupo was too far out of the ordinary course of boats, which habitually came down the Moruka and passing over the intervening two or three miles, between its mouth and that of the Pomeroon, evaded the attention of the post in Wakupo.

The removal was made, though the new post was still often called by the old name, which leads to some confusion in the documents. The new site was on the right bank of the Moruka, about twenty miles from its mouth.

As all boats coming from the Barima-Waini district by the Itabo entered the Moruka, they had to pass the post.

At this point the post remained with but little interruption during the greater part of the century.

In 1754 it was found that one of the purposes for which the post at Moruka existed, namely, the detection or checking of runaway slaves, was not accomplished by it, for the reason that the favorite route of the runaways was no longer by the inland passages, but by sea, following the westerly current that runs along the coast.

In order to capture the slaves, a subordinate lookout was placed in 1758 at the mouth of the Moruka. It was a house fifteen yards long, with a stockade and gates. It was arranged with a colonist named Beissenteufler to keep the watch at this outpost, and as compensation he was to be allowed to make a plantation at the mouth of the river (B. C.,). Soon after, however, Beissenteufler died, and there is nothing to show that the watch-house was kept up. According to Hartsinck, writing in 1770, it "has since fallen into ruin."

In 1779 the post of Moruca was moved to the site of the watch-house at the mouth of the river, and it was occupied by a handful of soldiers. Here it remained until the British occupation, in 1796.

In 1803, when the Dutch resumed possession for a short time, they found the post in a dilapidated condition.

The plantation upon which Beissenteufler had been allowed to

establish himself in compensation for his services at the watch-house, at the Moruka mouth, passed into the hands of a family named Rousselet, and was in 1769 offered at sheriff's sale, with its belongings. In reply to a complaint of the Rousselets, the Court of Policy stated: "This land was granted without determination of the number of acres, and upon the express condition that the owner or owners should be bound to establish an outpost there," and that it had been "for a considerable time left uncultivated by the petitioner, in a word, fallen to ruin and at nearly every tide under water." (V. C. II, 318.)

This is the plantation of which it is said in the British Case (p. 56) that

"In 1771 a private estate of 2,000 acres in Moruka, with cattle upon it, came into the market, and though it seems to have been in an uncultivated condition, it found a purchaser."

The price paid was two hundred guilders (B. C. IV, 82), or about seventy-five dollars.

The Director-General in a report to the Company, June 27, 1757 (B. C. II., 135), gave his views as to the opening up of the Pomeroon to settlement, which had not been done up to this time. He said:

"I regard the River of Pomeroon as a district bringing no earthly profit to the Honorable Company; and I am, moreover, convinced that if we should at any time be so fortunate as to see this river and Demerary fully inhabited (which is not to be expected for the next fifty years), since quite 300 plantations, and possibly more with a little trouble, can still be laid out, no one would then be kept from settling in Pomeroon by the fact that there was no boureway wood left there."

The report of the Director-General, June 15, 1758 (B. C. II, 142), says that "about ten or twelve years ago the Court of Policy granted permission to one Erasmus Felderman to live in that river and plant his necessary bread, without, however, possessing any land in proderty." At the death of Felderman, his heir wanted to own this land, but his request was denied by the Council.

During this whole period from the extinction of the second

Pomeroon colony, in 1689, there was no settlement in the Pomeroon, with the two exceptions named.

Grants were made at the time of the French occupation in 1784 to French colonists, but before they could begin work the French had withdrawn and the Dutch were once more in possession of the Post of Moruka.

After this resumption of possession, in 1784, frequent applications were made for lands in the Pomeroon, but no action could be taken on these until the district had been surveyed, which was only accomplished in 1794.

In 1796 the British took possession of the Essequibo colony, and at that time nothing had been done towards the settlement of the Pomeroon. This occupation ended in 1802, and for some months the colony was again in Dutch hands, at which time it is possible that the beginning of a settlement may have been made.

The conclusions as to the Pomeroon are as follows:

(1.) The only settlements, properly so-called, in the Pomeroon were those from 1658 to 1665, and from 1686 to 1689, both of which were entirely destroyed by foreign invasion.

(2.) Of isolated plantations, there is one on the Pomeroon (1746 to 1758) of Felderman, who was granted permission to raise bread enough to keep him alive, but without owning any land, and whose plantation reverted to the Colony at his death. In Moruka, there was the case of Beissenteuful, whose plantation really grew out of his employment as the occupant of the watch-house at the Moruka mouth, and which finally also reverted to the Colony. These cannot be said to answer any of the required tests of settlement and they cannot be connected with the colonies of the previous century, by reason of the long lapse of time.

One point remains to be noticed in connection with the Pomeroon: the line of occupation, if occupation it should be judged, which the Dutch maintained or attempted to maintain in this

district is well defined. Its extreme western limit was marked by the upper post on the Moruka. Whatever the occupation amounted to, it never extended a foot beyond this post. A little further to the westward the Moruka itself ceases to have any importance and the savanna begins, through which by more or less artificial means and with considerable interruption and uncertainty a passage in the rainy season was effected to the Coast Territory lying to the west. So far as natural boundaries are concerned, this savanna would seem to be the natural boundary. It so happens that the same meridian to which reference has already been made in speaking of the western limits of settlement in Essequibo crosses this savanna—the meridian of 59° west. It has been already stated that the creeks which are the tributaries of the lower Essequibo on the west all lie to the eastward of this meridian.

It is also to be noticed that the territory to the east of this line includes the whole of the Pomeroon and its tributaries, the whole of the Wacupo, the streams by which the Wacupo and the Moruka are connected, and all of the bed of the Moruka that lay within the confines of the highest Dutch post, as well as a considerable stretch of territory beyond.

If the Pomeroon and Moruka should be decided to be within the limits of Dutch holding, the natural line of demarcation between this holding and that of the Spanish would not be beyond this meridian.

(3.) TERRITORY IN THE INTERIOR.

The large tract of territory between the Essequibo and the Orinoco south of the Imataka Mountains, was, during the whole of the Dutch ownership of Essequibo, divided between forests, and savanna or meadow land. There was no exact line of demarcation between the two, nor was there any exact location that the word "savanna" indicated. The western part of this territory was entirely open savanna, and the extreme eastern part was

a wilderness, difficult of access. The middle region was partly savanna and partly forest.

Through this district the rivers Cuyuni and Massaruni take their course. The Cuyuni is 300 miles long and has many tributaries, so that its drainage basin extends across the whole district and approaches to within 20 miles of the banks of the Orinoco. The Massaruni is 200 miles long, and winds through the interior of the district. The falls, just above the mouths of the rivers, render them impassable to navigation.

The Court of Policy, in a letter to the West India Company, July 14, 1731 (B. C. II, 14), stated:

“The great number of rocks which lie in these two rivers, and which occasion the falls by reason of the strong stream rushing over them, makes these rivers unnavigable for large vessels, wherefore it is impossible to establish any plantations there, although the soil is very well fitted for it.”

This shows conclusively that no settlements had been made in Massaruni or Cuyuni above the falls.

The point of view from which the colonists regarded the Cuyuni is shown by the failure to sell the indigo plantation at the falls in 1748. As Storm said (V. C. II, 55):

“Not one person was willing to bid a single stiver thereon, presumably on account of the great distance and the insalubrity of the River Cuyuni.”

In 1750, Storm advocated more settlers, and said (B. C. II, 66) that:

“Hereby the colony would obtain a flourishing and, in course of time, a formidable state, and the interior (*which is unknown*) could be explored and cultivated, the lands which lie along the river devoted to growing sugar and rice, and those in the interior to other crops, by which many discoveries could doubtless be made which would bring great utility and profit. For this nothing is lacking but able and industrious people, and it is a shame (if I may use the word) for the Dutch, that two nations not to be compared to them for industry, namely, the Portuguese and the Spaniards, who are situated at the right and left of these colonies and who are groaning under so hard, even slavish, a rule, are owners of so many treasures and so fortunate in their discoveries. . . .”

"The reason why so little has been discovered is that the old settlers through rooted habit and those born in the colony through an inborn indifference, so strongly cling to their old way that nothing, not even convincing reasoning can tear them away from it, and nothing in the world can induce them to any new undertaking, there being among them no industrious and enterprising persons."

It is evident from this that no Dutch settlement existed in the interior. The country was, however, frequently traversed by white traders, Spaniards, French and Dutch. The trade there was a trade in provisions, hammocks, annatto dye, and copaiba. If the evidence contains more frequent references to Dutch trade than Spanish, it is because the colonial authorities in Essequibo, being the agents of a trading company, were obliged to report on it, while the others were not. During the years 1680 to 1683 the trade of the Dutch was much interrupted by a war between the native tribes, which is frequently referred to in the reports of the Commandeur. (V. C. II., 40, 41, 43, 44.)

In 1684 Beekman, the Commandeur, complains (V. C. II, 45) that "the copaiba and curcai are much bought up by the Spaniards." In 1685 he complains of the French in the upper Cuyuni, who "gather the copaiba from the trees" (V. C. II, 52). In 1686 he says (V. C. II, 58): "The French scour the country up there and buy up everything."

Many references are made to the horse trade in Cuyuni about the beginning of the eighteenth century, a trade conducted with the Spaniards, by whom the horses were raised. At a later date this trade was, for a time, prohibited to the Dutch by the Spaniards.

In the middle of the century Spanish traders overran the Cuyuni district, and it was their regular practice to come down to the Essequibo colony to trade; so much so that it was necessary to make regulations to induce them not to stop and do all their trading at the upper plantations, but to come down to the Company's Essequibo post at Flag Island. (B. C. II, .)

The present chapter is not a description of settlements in this territory, because of settlements there were none. It is an absolute and incontrovertible fact, as far as the evidence in this proceeding shows, that the Dutch never had a single settlement of any kind whatsoever between the falls of the Cuyuni and Massaruni on the one hand and the Orinoco on the other. There is not the remotest allusion in all the papers here presented to such a settlement. There is, as already stated, considerable allusion to the transit over this territory of Indians and of Spaniards, French and Dutch for trading purposes, the last consisting principally of old negroes familiar with the country, who were used as roving traders by the Dutch for traffic in annatto dye, cassava bread, and horses. Reference is also made to one or two places called "dye stores" or "dyehouses" in the Cuyuni and Massaruni, meaning thereby places where the annatto dye, which was one of the principal objects of trade, was sold by the Indians to the various white traders. Possibly other products of trade were brought there, such as the dried cassava root prepared by the Indians, and generally used both by Spaniards and Dutch as a substitute for bread. The British Case, singularly enough, mentions (p. 81) these "annatto stores" as evidences of Dutch political control. There is not a particle of evidence to show that the Dutch had anything to do with erecting or maintaining them, or that they were otherwise than mere shelters of the Indians to which all traders, Spanish and French, as well as Dutch, resorted for trading.

The only fact which can be connected with a local habitation and a name on the part of the Dutch in the interior territory is the establishment of so-called "posts" in the neighborhood of the Cuyuni River. The first reference to these posts is in 1703, when the Muster-Roll of the colony (B. C. VII, 152-3) refers to various outliers, including one Allart Lammers, as outlier, in the River Cuyuni. Two Muster-Rolls contain this entry, one of June 14, 1703, the other of July 27, 1703. Other Muster-Rolls are given,

both before and after this period, extending from 1691 to 1786, but no further mention of an outlier in Cuyuni occurs until 1755. The entry is confirmed and explained by the pay-roll of 1704 (V. C. II, 71). The pay-roll shows that Allart Lammers was enrolled May 20, 1703, in the Company's service as "outlier in Cuyuni." On October 1, 1703, he was, by sentence of the Court, placed as sailor on the yacht, evidently for misconduct, and his wages from the period of his appointment, namely, four months and eleven days, were confiscated.

It is clear from the above that an intention existed to establish a trading post in Cuyuni, which was to be located somewhere "in the savannas" of that river, six weeks by water "from Kykoveral." It is clear, also, that Lammers was appointed as outlier or trading agent for this projected post; but as he was removed for misconduct on the first of October, he never could have gone to his post. He could not possibly have gone to his post, have been reported for misconduct, and have been recalled in consequence, tried and sentenced and placed on board of the yacht in the four months and eleven days referred to. It is obvious that Lammers never went to his so-called post, and that the post never existed except in the intention of the Commandeur. The office or employment disappears from the muster-roll, and does not reappear for more than half a century.

The explanation of the project and its abandonment is very clear. The most important trade in the Cuyuni valley at this period was the horse trade. The headquarters of this trade were in the savannas near the upper Cuyuni, where the Spaniards raised and pastured their horses. In the previous year (V. C. II, 65) the Commandeur had reported that "the trade in horses up in Cuyuni does not go as briskly as it used to," and it was doubtless with a view to stimulate this trade that he conceived the idea, in the spring of 1703, of sending an Outlier to stay there. In that very summer he reported (V. C. II, 69) that "the Spaniards will no longer permit any trafficking for horses on their territory."

He therefore concluded that it would be of no use to send an Outlier, and Lammers, who had in the meantime shown his unfitness, was placed on board the yacht.

In 1755, fifty-two years after the abortive appointment of Lammers, the first "post" was established in the Cuyuni. This post is located with exactness by a letter of the Commandeur on the subject, in answer to a specific inquiry by the Company as to its location. He said (B. C. II, 180):

"The post . . . was situated about *fifteen hours* above the place where Cuyuni unites with Massaruni."

The "hour" used by Storm, not as measure of time, but always as a measure of distance, had a definite meaning, and it is shown on the map which he prepared for the Company in 1748 (Atlas Ven., map 60) to be about three English statute miles, which would make it about forty-five miles above the junction of the two rivers, or thirty miles above the lowest fall.

This site of the post is confirmed by the statements made by the Outlier and Bylier who were captured at the Post, Stephen Iskes (called in the Spanish Estevan Hiz) and Guilliaam Patist de Bruyn (called in the Spanish Juan Bautista Brum), before the Spanish Magistrate as to its location (B. C. II, 166-167), both of whom stated that it was a place called "Cuiba," on the banks of the Cuyuni, which would be the ordinary Spanish spelling of "Quiva."

The only place bearing this name on the banks of the Cuyuni is at a point about fifteen miles above the Tonoma rapids, where a small stream, the Quive-Kuru, enters the Cuyuni from the north.

Sheet 1 in the Atlas of the British Case places "the probable site" of the Dutch post of 1755 close to the mouth of the Acarabisi, about sixty miles further up the river. For the location there is not the slightest foundation. The name as the Quive-Kuru has also been misspelled on this map of "Querrikuru," and its position has been transposed with

that of the Yanekuru, the adjoining stream. In the same Atlas (British Appendix), however, the correct location and spelling, "Quivekuru," are given in Maps 38 (Hebert—the official map of 1842, prepared in the Quartermaster-General's office), 40 (Mahlmann), 41 (a map prepared, revised and corrected to 1875 by Chalmers, the Crown Surveyor of the Colony, and Sawkins, Director of the Geological Survey of British Guiana), 42 (a map prepared, revised and corrected to 1886 by Chalmers and Sawkins), 44 (Schomburgk—where the spelling is "Quivé Kuru"), 46 (Schomburgk), and 47 (Schomburgk).¹

The muster-rolls show the number of persons employed by the Company at this point. In 1755-56 there was only Neuman, the Outlier or Postholder. In 1757 there was also a Bylier or Assistant. In August, 1758, there were still the Outlier, Iskes, and the Bylier, Bruyn. These are the only entries in reference to the post.

The object of the post was to assist in the recovery of fugitive slaves, to promote the trade with the Caribs in *poitos* or Indian slaves, and to see that the Dutch colonists did not engage in the Company's trade.

In 1758 a detachment from the Spanish garrison was sent, under the order of the Commandant of Guayana, for the purpose of destroying the post and apprehending its occupants (B. C. II, 150). The expedition proceeded in August and September, under Captain Bonalde. Bonalde found the post, consisting of a hut covered with palm branches and without side walls, the ordinary form of the "shelter" or "rest-house" in that country, and taking the Outlier, the Bylier and their servants, carried them off as prisoners to Santo Thome and afterwards to Cumaná. He also destroyed the shelter.

Thus ended the post of 1755, after an existence of three years. It was never re-established.

¹ A complete and conclusive discussion of the locality of this post is to be found in App. Ven. C.-C. II, 160-65.

In a report of February 22, 1763 (B. C. II, 221), the Director recommended to the Company that a new post should be established in the Cuyuni, which recommendation was approved by the Company July 7, 1763 (B. C. II, 225), and men were sent out to be employed for that purpose after a special duty in Demerara was completed. In the same year, the Commandeur referred to it (V. C. II, 154) as "the still-abandoned post in Cajoeny, abandoned since the raid of the Spaniards."

Time passed, but the Post in the Cuyuni was not re-established. The Director reported to the Company, December 28, 1764 (B. C. III, 117):

"I have not been able to get any Indians up to the present to aid me in re-establishing the post in Cuyuni, and without their help it cannot be done."

In 1766 the post was not yet established. In that year Storm wrote (V. C. II, 164):

"I have already engaged a Postholder [for Cuyuni], who is well acquainted with Indian languages, and as soon as some of the buildings are ready I will give him a commando of one under-officer and six men to begin with, until it is well established."

The Director-General was unable to find the men, and concluded to wait for them. In October, 1766, he wrote (V. C. II, 167) that—

"The Postholder of Cajoeny will, in the beginning of September, . . . proceed up that river, in order to build dwellings and lay out bread-gardens, with the assistance of the Indians, after which the work there will be properly regulated."

He was disappointed, however, by the illness of the Postholder shortly after his arrival.

On December 3, 1766 (V. C. II, 167), he reported:

"The Postholder of Cajoeny is, according to the latest reports, lying ill at the Post. This is a great pity, because he makes great progress in his work, and we should lose a great deal in him. But sickness is the fate which overtakes all, without exception, who proceed up the Cajoeny for the first time, especially in the dry season, which still continues."

A week later (V. C. II, 167) he wrote that he had given the Postholder provisionally two assistants, but

"I dare not trust any of the soldiers here to go there. He is at present engaged in putting up the dwellings and in bringing the Post into some order."

On March 9, 1767, the Company (Zeeland Chamber) wrote to the Director-General (V. C. II, 168):

"The transferring of the post in Cuyuni, as also the work at the Fort, appears to us to advance rather slowly, and we shall be glad to learn that both these tasks, in accordance with the hope which you give us thereof, are at last finished."

In this year the post may be said to have been finally established. Its location, below the first post, has been discussed in another place (p.).

In a letter of the Director-General, June 27, 1767, he said (V. C. II, 170):

"From my preceding letter you will have seen that the post in Cuyuni is already in order (except a few soldiers)."

These soldiers were never sent.

It did not, however, work satisfactorily, as will be shown later, when we come to consider it as a factor in political control.

In a report of April 9, 1768 (B. C. III, 164) the Director said:

"Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants . . . In Cuyuni it is now quiet so long as it lasts; I wish I had a competent Postholder for that river."

Early in 1769 the two Assistants or Byliers, Van Witting and Van Leeuwen, were much alarmed by rumors of a threatened attack on the post by Spaniards and Indians from the Massaruni (B. C. IV, 1). These rumors continued to grow until in a panic they decided to abandon the post, without authority, and remove it to an island some miles nearer to Essequibo, in fact but a short distance above the lowest falls (V. C. II, 189). The position

selected at Toenamoeto, an "island," as Van Witting states, "lying between two falls," was evidently selected on account of its obscurity and remoteness from possible attack. The Director-General was obliged to acquiesce, although doubtless realizing that in that position it would be of no use whatever.

In June of that year Van Witting asked for his discharge. He remained, however, during the following year and the next, when his service was cut short by death, as is stated in the payroll for 1772.

The second Bylier seems to have served out his year and then returned to the ranks of the garrison.

This ended the last post in Cuyuni.

The history of the posts in the interior, therefore, shows:

(1.) An intention to create a post in 1703, at a locality which cannot be ascertained, which was never carried out.

(2.) The first post at Quive-Kuru, forty-five miles from the mouth of the Cuyuni, which lasted from 1755 to 1758, when it was destroyed by force, by direction of the Spanish Commandant.

(3.) The second post at a point lower down the river, from 1766 to 1769.

(4.) The third post at Toenamoeto, between the falls of the Cuyuni, from the abandonment of the last-named post, from 1769 to 1772.

Of course these posts were not settlements. That is a question which it is needless to discuss. There was not a single attribute of a settlement about them. Each of them consisted of a rude hut, temporarily occupied by one or two employees for the purpose of attending to matters of trade in which the West India Company was interested. They were not the homes of these employees. They were not places where colonists fixed their abode. Their occupants were not even squatters, for all they did was to reside there temporarily for the performance of their duties. Nor did the posts fulfill the requirement of the rule as to fifty years' duration.

Beyond these posts there is nothing that bears the faintest suggestion of Dutch settlement in this district. There is no evidence that the Dutch were ever present there except individually as traders, and occasionally on the extreme eastern border for the purpose of recapturing runaway slaves. Of course the traders, when they went into the district, spent some time there. The difficulties of navigating the river and the impassable character of the forest made progress necessarily slow. It took six weeks to reach the upper Cuyuni, and trade in those regions was necessarily subject to great delays. Traders were therefore absent for a considerable time, but their presence under such conditions in the territory did not constitute in any sense of the word a settlement.

Not only is there no reference in the evidence to such a settlement, but the whole course of the correspondence of the Dutch Governor shows clearly that there were none. It is not possible that the Director-General could have written the letters of which extracts have been given in discussing the question of boundary if there had been a settlement anywhere in the Cuyuni valley. One reason for this clearly was that the character of the country immediately west of Essequibo, including the river Cuyuni, instead of offering avenues for settlement, presented nothing but obstructions which only the most hardy and enterprising could overcome.

During the same period the interior territory was penetrated from the west by the Spaniards, and numerous settlements were made there in connection with their missions, at which houses were built, plantations cultivated, crops and cattle raised, trade carried on, Indians pacified, converted and civilized, and all of this continued from nearly the beginning of the eighteenth century down to the time of the Venezuelan revolution, in 1817. There is no doubt about the existence of these settlements. The evidence is full of references to them and detailed reports upon them. The numerous lists of them given in the evidence annexed to both cases

show that they numbered about thirty. Their existence and their flourishing character are admitted by the British Case. They began in the territory close to the Orinoco, and they advanced further and further as time went on. The fort established in 1792 at the mouth of the Curumo was on the south bank of the Cuyuni. *Besides those mentioned in the savanna region, three others are named at outlying points, namely, on the Wenamu, a tributary on the right bank of the Cuyuni, on the Massaruni, and on the Siparuni, a tributary of the Essequibo itself. The last three rest upon the concurrent evidence of one of the most prominent Dutch colonists, the Dutch Postholder of Arinda, and of one of the Jesuit mission fathers, all reported by the Director-General himself. (B. C. .)

There would be no need to discuss the question of Dutch settlement were it not for the amazing statements made upon that subject in the British Case. These must be taken up in detail. First of all, however, we must note the effect of placing on the general map of the territory in dispute (Map 1 Br. Atlas) a number of designations, with every appearance of town-sites, to which the name "Dutch residence" is attached. One of these is on the Tocupo, a branch of the Curumo. A second is on the upper Cuyuni, above Uruan. A third is on the Avechica, near its junction with the Uruan. A fourth is near the Wenamu. At the mouth of the Curumo, on the western or northerly bank of the Cuyuni, is what is called a "Dutch Settlement 1750." A casual inspection of this map would lead one to suppose that there was a good deal more in the way of Dutch settlement in this neighborhood than on the banks of the Essequibo. As a matter of fact, there was neither a Dutch settlement nor the abode of an individual Dutchman at a single one of these points. The evidence as to these so-called "residences" and "settlements" will be referred to in detail.

The British Case is also misleading (p. 81) in its reference to the early posts:

"The first muster-roll of the Company's servants which has been preserved, viz., for the year 1691, includes the names of the Postholders at Pomeroon and Demerara. The muster-roll for the year 1703 includes, in addition to the Postholders in the Rivers Demerara, Mahaicony, and the Pomeroon, the name of the Postholder in Cuyuni 'up in the savannah six weeks by water.' The position so described is clearly very distant, the savannah referred to being the Pariacot Savannah. The approximate site, which cannot have been lower than the junction of the Yuruari with the Uruan, is marked on the Map in the Atlas, p. 1."

From the above statement it would appear that the British Case is here giving some general information as to the posts, derived from the muster-rolls. It says in substance that the first one includes the names of those at Pomeroon and Demerara; that for 1703 includes, in addition to the two Postholders named and that of Mahaicony, the name of the Postholder in Cuyuni. It is difficult to read the passage without forming the conclusion that from the year 1691 there were posts at Pomeroon and Demerara and from the year 1703 there was an additional post in Cuyuni. The fact is not stated that no allusion to the Postholder in Cuyuni, or to any Postholder in that region, occurs again after 1703 until 1755, when the post ultimately destroyed by the Spaniards was established. Nor is the very material fact stated that there is no evidence that the Postholder mentioned in 1703 ever went to the post, or that Lammers, who was appointed on the 20th of May, was discharged for insubordination on the first of October—a fact which would have precluded the possibility of his having been at the post at all, and which shows that the post, though proposed, was never established. The climax, however, to the statement about this mythical post is reached when the Case gravely refers to an approximate site which has been marked upon the Map (Sheet 1, Br. Atlas), where we find a location in the neighborhood of Cura, one of the Spanish missions, marked "Dutch post before 1703," with no indication that the locality so marked is a purely conjectural site of a post of which there is no evidence to show the existence.

Again, it is stated at page 48 of the British Case, that "In 1769 the Prefect of the Missions reported that a Dutchman had been eight years domiciled in the River Aguirre, and that Dutch families had been living at the mouth of the Curumo."

It is true that the Prefect states that a Dutchman had been domiciled with the Caribs more than eight years in the River Aguirre, "buying slaves from them" (B. C. IV, 20). He goes on to say:

"There were also others in the same traffic in Purney, Caura, and Parava, from where they used to send to Essequibo and Surinam parties of from twenty to fifty slaves, and they discontinued in alarm at the arrival of the Royal Commission in the Orinoco."

The fact that a Dutch slave trader was eight years in the Aguirre has no bearing upon the present case except to show that the Dutch trade was extended to territory confessedly Spanish. The Aguirre is a tributary of the Orinoco, far outside of the territory in dispute. Even "the extreme British claim" has not included the Aguirre, and the residence there of a Dutch slave trader has no more significance than such a residence in the neighborhood of Cumaná or Carácas. In fact, the mention of Caura, and other points in the heart of Spanish territory, shows that the slave traders were in the habit of carrying on this trade even in remote parts of the Spanish Colonies.

The other statement is more important. It is that "Dutch families had been living at the mouth of the Curumo," and the authority referred to is the letter of the Prefect. (B. C., IV., 28.)

The statement, if true, would have some bearing on the question whether there were any Dutch settlements in the Cuyuni basin. The Curumo empties into the Cuyuni. The mouth of the Curumo is, therefore, on the latter river. If Dutch "families" had been living there it would seem to imply something in the nature of a permanent settlement, especially when this cast was ingeniously given to the phrase by coupling with it a statement that a Dutchman had been domiciled eight years on the Aguirre.

An examination of the passage in question, however, shows that the word "families," which gives all the significance to this citation, does not occur in the Spanish, but has been inadvertently introduced into the English translation. The Spanish phrase is "*otros Olandeses*," "other Dutchmen"; that is all. The British translation is "other Dutch families."

Of course the fact that Dutchmen were once at the mouth of the Curumo is a fact which, taken by itself, has no significance. In the course of the one hundred and sixty-six years, during which itinerant traders were roaming through the forest paths, buying Indian children, Spanish horses, annatto and balsam, no doubt Dutchmen were several times there. Sometimes an old negro trader of the Company was away as long as six months. But his wanderings during this period did not make a settlement. The Dutch did not settle in this region.

That which gives the statement its force, as the statement is made in the text of the British Case, is not that the persons in question were Dutchmen, but that they were Dutch *families*, for which, however, the text of the document cited gives no warrant.

The passage referred to by the British Case as its authority occurs in a description given in 1769 by the Prefect of the Missions of the destruction of the Dutch post at Quive Kuru in 1758 and of his connection therewith. The Prefect was in fact the same Fray Benito whose letter to Don Felix Ferreras, the Acting Commandant at Orinoco, had led to Bonalde's expedition and the destruction of the post.

In reciting the events which took place eleven years before, he states that in the year 1758 he had informed the Commandant at Guayana of the post on the River Cuyuni. He states also that there were at the post two Dutch families settled, and that the Commandant sent a force to apprehend them. What gave rise to the statement that there were two Dutch families at the post was the fact that, in addition to the Outlier, his Assistant and the Company's slave, a half-breed woman was also captured.

In the original letter of Fray Benito to the Commandant written in 1758, which led to the attack on the Dutch post, he refers to the fact that a party of Dutch slave traders was at the mouth of the Curumo (B. C. II, 145). It is to the same party that his letter of 1769 evidently has reference; and thus the Dutch "families" referred to in the British Case as living at the mouth of the Curumo turn out to be nothing more than an ordinary party of slave traders engaged in the prosecution of their business.

It is presumably upon the authority of these facts that the British Atlas has placed what looks like a town-site at the mouth of the Curumo, designated "Dutch Settlement 1750," for there is no other allusion to such a settlement in the evidence. In view of the evidence, it is difficult to find any explanation of the statement of the Atlas.

The British Case also states (p. 48), that in 1758 "Dutch traders were resident on the Tucupo (a branch of the Curumo), the Capi (Essequibo), and Paraman (Barama)."

This statement is founded on a passage in the same letter of Fray Benito to the Commandant in 1758 which led to the capture of the Dutch post. The letter does not say, however, as the text of the British Case would imply, that Dutch traders were resident at these points. The letter, as translated in the British appendix, is as follows:

"We also know that numbers of Dutch, besides those who go to the Paragua [a tributary of the Caroni, entirely outside of the limits of the extreme British claim] remain in the places called Tucupo, Capi and Paraman to buy slaves."

The statement in the British Case that Dutch traders "were resident" at those points, is founded on the statement in the letter that Dutch slave-traders "remained" at these points. There is no doubt that they stopped at these points and at many others. It evidently has nothing to do with the question of settlement. Yet this is also placed on the British map as a "Dutch Residence."

Equally misleading is the description (also on p. 48) of the

destruction of the Dutch post at Quive-Kuru. It is described in these terms:

"In 1758, as already mentioned, there occurred an attack by the Spaniards upon the Dutch on the Cuyuni, and two Dutchmen with their wives and a negro slave were carried off prisoners;"

and the marginal reference calls it "Cuyuni Raid."

The ordinary reader in considering this passage could hardly be blamed for supposing that there was a Dutch settlement in the Cuyuni which had been raided by the Spaniards. Such, as we know, is not the case.

What was attacked by Bonalde was the post of 1755, containing, according to the letter of Director-General Storm (B. C. II, 154), "the chief of the Post [Outlier], his second in command [Bylier], a slave of the company, and a half-bred woman with her children." This was the "attack by the Spaniards upon the Dutch on the Cuyuni," where "two Dutchmen with their wives and a negro slave were carried off prisoners."

The British Case then refers to the letter of Fray Benito detailing the rumors which he had heard about the presence of the Dutch, and the statements of the officers that the expedition started for the purpose of apprehending a Dutchman named Jacobs living on the Island of Curamacuru in the River Cuyuni. "Curamacuru" simply means "Curumo Creek" or "Curumo River," and the persons of whom the expeditions were in search were those whom the Prefect had heard were at the mouth of the Curumo. The case goes on to state that the Commander of the expedition "was unable to find any such island, but that he did ultimately discover and take prisoners two Dutchman living at a place called Cuiba," and it adds that "the position of Cuiba is not accurately known, but it is believed to be high up in the Cuyuni; the position of the Island of Curamacuru is also not accurately known, but it is stated on the authority of living witnesses that it is in the River Uruan and in the vicinity of the most advanced of the Spanish Missions." On the strength of these statements, two

more "Dutch Residences" are marked on the British map. When a difference appears as to whether the post was at one or the other of two places, the British Atlas concludes that it was at both.

The witnesses now living who are referred to in this passage are one Miku, a Carib Indian, who made a deposition September 27, 1897, before Mr. McTurk, the zealous upholder of British interests on the Cuyuni, and Mr. McTurk himself, whose affidavit is dated November 1, in the same year. The depositions are given respectively in B. C. VII, 228 and 234.

The statements of these depositions will be considered first in reference to Cuiba.

It must be remembered that Cuiba or Quive-Kuru, where the post was situated, is only 45 miles or "15 hours" from Essequibo, and that this was the distance of the first post, as stated by Storm, in answer to the Company's inquiry (B. C., II, 180). Ignoring this evidence, however, the British Case seeks to establish for the past a position higher up the Cuyuni, in order to found upon it a more extended claim; in fact, the Atlas (Map 1, Br. Atlas), marks its "probable site" about at the mouth of the Acarabisi, some 80 miles above Quive-Kuru, and the Case, at another place (p. 47) states as to the site of the post:

"It is difficult to fix its exact situation, but an examination of all the evidence upon the subject points to a position somewhere between the . . . mouth of the Curumo and that of the Acarabisi."

It is largely for the purpose of tending to prove the supposed advanced position of the Dutch post of 1755 that the affidavits referred to are introduced into the case.

Miku says in his affidavit:

"I am a Carib Indian, and am at present living at Kalacoon."

Where Miku was living "at present" is the Government station in the Essequibo, on the point between that river and the Massaruni, where Mr. McTurk also resides and discharges his

magisterial and other duties, among which is the appointment of Indian Captains (B. C. VII, 337).

Miku goes on to say:

"I knew a place called Cuiba; it is a creek high up in the Cuyuni, about two days' travelling above the mouth of the Uruan. The land is good to make a place; the land is high at the mouth of the creek, but there is low land behind. I do not know any other place called Cuiba on the River Cuyuni."

Mr. McTurk in his affidavit says:

"I am intimately acquainted with the River Cuyuni as far up as the junction with the River Uruan, having within the last sixteen years ascended it on upwards of twenty occasions. I am informed that there is a place called Cuiba situate on the right bank of the river beyond Uruan, but I have never actually been there. I know a creek called Querri-Kuru, which flows into the River Cuyuni on its left bank; it is the same creek as the one incorrectly marked Yanekuru on the map; the creek Yanekuri is the next creek marked on the map lower down than the Querri-Kuru, and is on the map incorrectly called Quive-Kuru. There is no place of the name of Quive-Kuru, and I do not believe that is the same place as Cuiba, as has been suggested. So far as I have been able to discover, and I have made many inquiries, there is no place called Cuiba on the Cuyuni, other than the one before mentioned."

Upon these affidavits the British Case makes the statement:

"The position of Cuiba is not accurately known, but it is believed to be high up in the Cuyuni."

This statement is somewhat indefinite when speaking of a river three hundred miles in length; and incidentally, as far as the position of this post is concerned, it draws a misleading conclusion from the affidavit of Miku. If Cuiba is situated, as Miku says, two days' traveling above the mouth of the Uruan, the expedition of Bonalde, which came from the mouth of the Uruan and sailed for nine days down the river, and never went above the Uruan at all, could not have destroyed a post at that point.

Notwithstanding the fact that Bonalde went *down* the Cuyuni from the Uruan to reach the Dutch post in 1758, the British Case, on the strength of Miku's statement that he knew a Cuiba two

days' journey on the right bank of the Cuyuni, above the Uruan, has inferred that the Postholder, in stating that his post was at Cuiba, meant a post on Miku's site, and accordingly has marked on the map at that point one of its numerous town sites, designated, as usual, "Dutch Residence." One thing is certain, and that is that the Postholder referred to the post that was raided. If he used the name Cuiba, he used it to designate that post. It cannot by any possibility be inferred that at some point where it was impossible for the post to be situated, which happens to bear, according to Miku, the name of Cuiba, another post should have existed to which the Postholder intended to refer.

As to Mr. McTurk's inability to find out any place of the name of Cuiba on the Cuyuni, and to the variation which he proposes in the name of the Quive-Kuru, the only answer that need be made is that in the Atlas of the British Case there are seven maps based upon actual surveys from 1840 to 1885, all of them by high British Government officials, in which the name of the stream is given as Quive-Kuru, while the alleged name "Querri Kuru" appears for the first time in a British map in the Atlas prepared for this Tribunal; and, secondly, that the position of Quive-Kuru corresponds with the formal and official statement of the distance from Essequibo made by Director-General Storm, in direct reply to an equally formal and official inquiry of the West India Company, addressed to him for the purpose of determining the action to be taken by the Dutch Government in its representations to Spain. As the post was on the Cuyuni 15 hours, or 45 miles from Essequibo, there is not much doubt as to its locality, whether the place is called Cuiba, Quiva, or Quive Creek, or Quive-Kuru, or Querri-Kuru. The fact that the Postholder said it was at Cuiba, is certainly no warrant for placing on the map another Post called a "Dutch Residence," 250 miles up from Essequibo.

Second, as to the supposed Island of Curamacuru. The termination "*cura*," or "*kuru*," seen in Amakuru, Quive-Kuru, Yane-kuru, and numerous other names of this district, means

“creek.” “Curamacuru” means “Curumo Creek,” or “Curumo River.”

Under these circumstances, it is hardly necessary to obtain an affidavit from Mr. McTurk that “there is no island of that name in the Cuyuni.”

The fact that Miku, in September, deposed that there was such an island in the Uruan, and that Mr. McTurk, in November, deposed that he was informed and believed that such an island existed at the same point is entirely beside the question.

In fact, as the locality referred to in the rumors mentioned by the Prefect while writing at Suay, many leagues from the scene of operations, was stated in his letter, though erroneously, to be “the mouth of the Curumo,” and the orders of Ferreras to go to Curamacuru were based upon the Prefect’s information, the proof of identity of the two names is complete.

The reference in the British Case (p. 52) to the second post is equally misleading. It says:

“In 1767 the Cuyuni Post is returned as existing with a Postholder and two assistants; but there appears to have been a difficulty in finding suitable officers for this Post, for in 1785, mention is made of ‘the old Post in Cuyuni, which is at present still without a Postholder,’ and a man was proposed for the place.”

It might reasonably be inferred from this statement that the Cuyuni post of 1767 was still in existence in 1785, but that there was a momentary difficulty in finding suitable officers for it, and that the difficulty was overcome by the selection of a Postholder. The fact, however, was that in 1769 the position of Postholder in Cuyuni was vacant (B. C. VII, 167), and that the Byliers, Jan van Wittinge and Gerrit van Leeuwen, were at the post; that the senior Bylier, Van Wittinge, in that year, in apprehension of a threatened attack from the Spaniards, moved the post down the river, greatly to the disapproval of the Dutch Commandeur; that in 1771 the Byliers, Van Wittinge and Van Leeuwen, were still there without a Postholder (B. C. VII, 168); that in that year Van

Wittinge died at his post (*Id.*, 177); that Van Leeuwen at the same time disappeared from the rolls, and that this constitutes the last mention of an existing post in Cuyuni. All this may be found in the very rolls which are given in the Appendix to the British Case, and which are referred to in that Case as evidence of the only fact in reference to the last Cuyuni post, which the text of the Case mentions.

The reference to 1785, which seems to imply that the post was still in existence, is shown by the evidence to be as follows: in that year, the Court of Policy state (B. C. V, 30-31) that one Arnoldus Dyk had arrived in the colony, claiming he had been appointed by the Company Postholder at Moruka, but that the Court had already appointed an old employee named Bartholi to that place. The Court then proceed to say:

“That, in order not to leave this A. Dyk entirely without employ, the Court would suggest to his Excellency’s consideration whether it would not be best to place this Arnoldus Dyk at the old Post in Cuyuni, which is at present still without a Postholder.”

Dyk never was appointed, and nothing further was heard of the post.

The facts in this, as in many other cases commented upon in the British Case, are so well known that it is impossible to suppose that the British Case intended to represent that the post in Cuyuni existed later than 1772. The only reason for mentioning them here is to guard against the wrong conclusion that might, with considerable reason, be drawn from the manner of statement adopted in the British Case, especially in view of the statement which follows, to this effect, that

“The re-establishment of the Cuyuni Post was followed by a series of rumours as to attempts upon it by the Spaniards, and though these rumours were without foundation, yet certain other acts of the Spanish authorities about this time led the Dutch again to make a formal Remonstrance to the Court of Madrid.”

It might be supposed that both this statement had reference to a re-established post, or a post whose existence was still con-

tinued in 1785. The re-establishment of the post, however, which is spoken of is the re-establishment in 1766, as to the attacks upon which the Dutch are supposed to have made their second Remonstrance—which, however, can hardly be called a remonstrance—occurred to the marginal reference, in 1769.

Another illustration of the infelicity of statement of the British Case is to be found on page 44, where it is said, referring to rumors, in 1754, of projected attacks of the Spanish:

“At this time it must be noted that the Spaniards had no knowledge whatever of the localities into which it was supposed they were about to penetrate. Their only information appears to have been derived from one Nicolas Collaert, a Dutch deserter, who had drawn for the Spanish Colonel a map of the River Cuyuni, ostensibly for the purposes of the Boundary Commission between Spain and Portugal.”

The above is a statement, as plain as words can make it, that the Spaniards were absolutely ignorant—“had no knowledge whatever”—of the locality, not into which they were about to penetrate, but into which it was supposed they were about to penetrate. It is not even stated as a fact that the Spaniards had any idea of penetrating into the locality, but only that the Dutch supposed that they were about to do so. The locality was the valley of the River Cuyuni.

The only authority for this sweeping statement as to the ignorance of the Spaniards, as appears from the reference in the text of the case, is a statement made in a report of the Director-General, October 12, 1764 (B. C. II, 98), as follows:

“Moreover, the Emissary had in Orinoco conversed with one Nicholas Collaert, who fled from here some years ago, who had related to him that the Colonel aforesaid had caused him to be brought to Orinoco, and had let him make to the best of his ability a drawing of the course of the River Cuyuni.”

The statement of the Director-General simply is that he had heard from one Collaert, a Dutch fugitive in Orinoco, that a

Spanish Colonel "had let him make to the best of his ability a drawing of the course of the River Cuyuni."

As to the question how much or how little information the Spanish Boundary Commission may have had besides the map of Collaert, there is no evidence. The fact that the Spanish Colonel had let Collaert make a map for him certainly is no ground for the inference that the Collaert map was all they had; and the inference from the Director-General's letter that "the Spaniards had no knowledge whatever of the Cuyuni" is left entirely destitute of foundation.

One great source of confusion in the British Case, to which allusion has already been made, is the use of the words "Cuyuni" and "Massaruni" in speaking of the extension of the Essequibo settlements. Nowhere is it indicated in the British Case that these settlements, in the Dutch period, stopped absolutely at the falls, and that the falls in question are only ten or twelve miles from the mouths of the rivers. The reader of that Case would be led to infer, from the language used, that plantation extended for an indefinite and certainly very considerable distance on these rivers. The fact that the rivers themselves are, in the one case three hundred miles, and in the other two hundred and fifty miles long, gives to a general statement made in regard to alleged settlements upon their banks a meaning not apparently consistent with the fact that these settlements extended only over a space of ten or twelve miles at their respective mouths.

Thus, when it says (p. 29) that there is evidence "from 1681 onwards, that the area of actual plantation extended along the rivers Cuyuni, Massaruni and Upper Essequibo," it might reasonably be supposed that some considerable part of the three hundred miles of the course of the rivers was meant, or at least some part greater than the twelve-mile stretch at their mouths.

The error is strengthened and magnified by the statement immediately following:

“ But the energies of the Dutch were not confined to the area of actual plantation. Hunting and fishing were carried on, and Posts established in various parts of the territory in question.”

There is very little evidence of hunting or fishing outside of the immediate neighborhood of Essequibo or its adjoining coast, although wild hog meat and fish were bought in considerable quantities from the Indians.

As to the posts, the only posts during the Dutch period were the posts of Demerara and Mahaicony, to the eastward; the post of Arinda, high up on the Essequibo; the so-called “ posts in Cuyuni,” and the posts at Pomeroon afterwards moved to Wacupo and Moruka.

Again on page 32, the British Case states:

“ Their plantations and settlements lined the banks of the Essequibo, Massaruni, and Cuyuni for some distance from the junction of the three rivers.”

This statement is literally true. The plantations and settlements did line the banks of the Cuyuni for some distance from the junction; but it could hardly be fairly inferred from the statement that the “ some distance ” referred to was ten or twelve miles in a river of 300 miles. It may reasonably be said of the suggestion that it is unintentionally misleading.

Again, the British Case states (p. 33) that in 1722 the Engineer Saincterre reported that:

“ The ground was even better above in the Rivers Essequibo, Massaruni, and Cuyuni than below, but that the rocks, falls and islands had, up to that date, prevented Europeans from establishing sugar plantations there ; ”

and it adds:

“ In 1723-24 further plantations of coffee and cassava were established in Cuyuni.”

The natural inference from these statements is that while the rocks, falls and islands prevented the establishment of sugar plantations, they did not prevent plantations of coffee and cassava. The fact, however, is, and the Case might with accuracy have said, that not only up to that date, but to the very end of the

colony the rocks, falls and islands prevented not only sugar plantations, but all other plantations above the point where the falls were situated. The plantations of coffee and cassava to which the Case refers were plantations made in the short stretch of the river, at the falls or immediately below.

The misleading character of the above statements is heightened by the statement made shortly after (p. 34):

“In 1730, there were coffee plantations both above and below the falls in Cuyuni. Experiments were also made in the planting of cocoa and indigo. There was a plantation, in 1732, upon Batavia, an island in the Cuyuni, and, in 1733, the Court of Policy reported that coffee and cocoa were being cultivated to the utmost extent that the number of slaves would permit.”

It is true that the Company had two plantations at the lowest fall of the Cuyuni, one above and the other below that fall, and both in its immediate neighborhood. The Island of Batavia, in the Cuyuni, was an island below the lowest fall and not five miles from the mouth of the Massaruni. It may be true that the cultivation of coffee and cocoa was the utmost which the number of slaves would permit; but it was not cultivation on either the Cuyuni or the Massaruni above the falls.

The same may be said of the novel kind of settlement which was established, in 1738, on an island in the Cuyuni; that is, the settlement of the half-free creoles. This island was below the falls.

It is stated on p. 63 of the British Case that a post existed in Massaruni. From this it might be inferred that the Dutch established some sort of occupation at the upper part of the river. The post, however, was situated at the very mouth of the Massaruni, on the point where it empties into the Essequibo, being the present site of the British penal settlement (B. C. VI, 109-111).

Again it is stated (p. 36):

“Land, however, continued to be taken up there. In 1745 a grant was made in Cuyuni and another applied for in Massaruni, and in 1754 and 1757

grants were made in Massaruni. In 1756 a colonist of the name of Couvreur is mentioned as living on his plantation obviously some way up the Massaruni. There was a transfer of land in Massaruni in 1759, and in Massaruni and Cuyuni in 1761. There was also a new grant in Cuyuni in 1761."

All the above grants were either at or below the falls.

It is stated in the British Case (p. 56):

"About this time (1770) plantation was rapidly extending to the west of Essequibo."

This statement cannot mean, though it would seem to state, that plantation was extending in the interior. It only refers to the west *bank* of the Essequibo. There is no evidence to show extension in other directions.

It should be added that the ambiguity shown by the expressions in the British Case in reference to plantation on the Cuyuni and Massaruni during the Dutch period is avoided in the statement made on page 65, in reference to the condition of the country in 1831, during the British period. Of this the Case says:

"Upon the Essequibo, the Massaruni, and the Cuyuni, plantation was not extended at this period, the soil above the estuary not being sufficiently fertile. But in 1831 the country was described as settled to the falls of the three branches of the Essequibo, namely, the Essequibo, Massaruni and Cuyuni."

The fact is that the citation given is an accurate statement as to the limits of settlement on the Cuyuni and Massaruni, not only in 1831, but during the entire period of the Dutch colony.

(4.) COAST TERRITORY.

The question of settlement in the coast territory, otherwise known as the Barima—Waini district, is narrowed down to a discussion of three occurrences: The establishment of Beekman's "shelter" in 1683; the Rosen incident in 1766, and the La Riviere incident in 1768. During the whole of the Dutch period of over a century and a half there is nothing else in the coast territory to be considered in reference to settlement. There

is no other evidence of settlement than that which is contained in these three episodes.

The attempt has been made to supply the entire want of evidence on this head in the archives by a mass of so-called evidence consisting of depositions made since the Treaty of Arbitration was concluded in reference to "traces" of earlier settlements and to Indian "traditions." The weight to be attached to such evidence, made at least a century after the facts to which it relates, is very slight, especially that as to Indian traditions, which cannot be dignified by the name of evidence at all. As to the traces of previous settlement, these may be referred partly to the three incidents which we are about to consider, and partly to the fact, which is well established, of the presence in the territory during the earlier period of others besides the Dutch. If traces of cultivation belonging to a remote period are to be found at any particular spot in this territory, they cannot be assumed to be evidences of Dutch settlement if others than Dutchmen are known to have been there. Such being the case, our investigation would properly begin with the early relations maintained by the Spaniards and the French with this district.

The territory which is under consideration is the territory north of the Inataka Ridge and east of the Schomburgk line, extending as far as the coast on the north and the Moruka on the east.

Part of this district, about the upper Barima and within the British claim, is by Schomburgk's winding line, almost enclosed in Venezuelan territory. It adjoins the Savanna region of the Spanish settlements, the headwaters of the Barima being within less than ten miles of those of the tributaries of the Curumo. There appear to have been trails which afforded passage to the Indians from the Spanish settlements to and from the upper Barima region, but there is no suggestion that the region ever contained a settlement by the Dutch. There is nothing in the Dutch records that even points to trade, to hunting, to transit, or to anything else in the upper course of the Barima and Waini.

The coast territory, which includes the region watered by the Waini, Barima, and Amacura, and through which the two former rivers run in a course parallel to the coast line, forming part of the series of inland waterways so much referred to, is one of the most vital points of discussion in the present controversy, and upon no part of its case does the British Government lay greater stress. The obvious reason for this is the fact that the Barima and Amacura empty into the Orinoco and form a part of its river system. Barima Point, at the western extremity of this territory, is a marked headland, having an important bearing, as the merest inspection of the map will show, on the control of the lower Orinoco, and in particular on its great ship channel or *Boca de Navios*, which enters the sea at this point.

An additional importance has been given during a very recent period to the Barima-Waini region. Within the last fifteen years discoveries of extensive gold deposits have been made in the Barima and of the Barima. The discovery of these mines, which have been extensively worked, lends peculiar importance to the question of disputed possession in this district.

Before taking up the question of settlement in the coast territory, it is necessary to give a brief outline of the trade conditions prevailing there in the Spanish-Dutch period, chiefly for the purpose of showing by whom it was most frequented, and who probably settled there, in case it should appear that remnants of otherwise untraceable settlements are to be found.

The Spanish were familiar with the Barima at a very early period. The expeditions of Ordaz and Acosta in 1530 and of the Lieutenant of Ordaz, Herrera, in 1537, entered the Orinoco for purposes of exploration and penetrated the country, some of them to a high point on the river, made the Spaniards familiar from a very early period with the territory about its mouth. At a later period, when Berrio became Governor of Guayana, in 1586, the numerous voyages made between Trinidad and Santo Thome necessarily imply an intimate knowledge of the mouth of the

Orinoco; while the frequent practice of going eastward to Essequibo and other points for the purpose of getting food, shows that the navigation of the intermediate district must have been familiar.

These movements of the Spanish about the coast may be briefly referred to. Thus, De Laet, in his description of the West Indies, published in 1625, says (V C., p. 42):

“The Spaniards had there [that is, in the Essequibo] some people in the year 1591.”

In 1596, Keymis, while asserting that “further to the eastward than Desekebe [Essequibo] no Spaniard ever travelled,” reports:

“In this river, which wee now call Devoritia, the Spaniards doe intend to build them a towne.”

Again, Masham, who accompanied Captain Leonard Berrie, the Commander of Raleigh's expedition in 1597, says (V. C. p. 42) that he learned from an Indian that in the Essequibo “there were some 300 Spaniards, which for the most part now are destroyed and dead,” and he adds:

“It was reported that the Spaniardes were gone out of Desekebe, which was not so. . . . The next night wee had newes brought . . . that there were tenne canoas of Spaniardes in the mouth of Coritine . . . who went along the coast to buy bread and other victuals for them in Orenoque [Orinoco], Marowgo, [Moruka] and Desekebe [Essequibo].”

The constant movement and transit of Spaniards between the Orinoco and points to the eastward, referred to by so many authorities, implies of necessity a knowledge of the district which was afterwards generally known as Barima. The strong equatorial ocean current, sweeping to the westward along the coast of Guiana, its strength reinforced by trade-winds, made an easterly journey by sea a peculiarly difficult matter. To avoid it, the natives used the deep and landlocked waters of the Barima and the Waini, where they could take advantage both of tide and

river-current. To suppose that the Spaniards, depending upon this coast and its rivers for the very necessaries of existence, and visiting it frequently to obtain them, did not know of the interior passages, is to suppose that they were destitute of the most ordinary faculties.

When Domingo de Vera y Ybarguen, Maestro de Campo of Governor Antonio de Berrio, returned from Spain in 1595, he proceeded to Trinidad. He states, however (B. C. I, 15), that on his way to Trinidad,

“Before reaching the principal port, I landed at some friendly Indian villages, some 10 leagues from the port, and spoke to the natives, who entertained me well. I left with them 66 men, as well as a man with a good knowledge of the country, whom I brought from Spain with goods for barter, to go to the place where the Governor, Don Antonio de Verrio, was, and tell the natives of the country of my arrival, and to bring me boats to take all my people across to El Dorado.”

As Antonio de Berrio was at this time at Santo Thome, the place where Vera left his party must have been near the mouth of the Barima, from which point they were to make their way upwards.

Not only this, but Vera himself went to the Essequibo two years later. In the same letter, containing his report to the King, of the expedition which had come out under his command, he says, speaking of the year 1597, that he “then went to the River Essequibo” (B. C., I, 17).

In 1613 occurred the celebrated expedition to the Corentin, which destroyed the Dutch settlement on that river. The expedition was commanded by Muxica, the Lieutenant of Guayana, under the Governor-General, Don Juan Tostado, at that time Lieut.-General of Trinidad fitted out a force under Captain Cortes, “that they might go on his Majesty’s service to the assistance of the Lieutenant of Guayana, in whose district certain Dutch Lutherans, rebels against the Royal Crown were settled, and make war upon them and dislodge them.” The detailed report of this

expedition, dated February 16, 1614, is given in B. C. I, 31. Cortes, with the Trinidad detachment, was met by Muxica, with the Guayana detachment from Santo Thome, at the mouth of the river Vauruma (Pomeroon) (B. C. I, 32), a point which he was most likely to reach by passing through Barima.

In 1608 Unton Fisher, an Englishman whom Harcourt had left on the Marowin, reports (V. C, p. 43) that the Spaniards have "cleare left Dissikeebe, and not a Spaniard there," showing that the fact of their having been there was well known; and from the remarkable testimony contained in the letter of the Duke of Lerma, of February 2, 1615 (V. C. II, 263-4), enclosing a report of the Royal agent in the Netherlands, it appears that there were at Essequibo "some persons, from twelve to fifteen Spaniards, who there till the soil to raise the root of *Casavia*, from which bread is made for the Governor of Trinidad and Orinoco, Don Fernando de Borrea."

The above citations show all that is attempted to be shown, namely, that the Spaniards must have been familiar with the coast region between the Orinoco and Essequibo, and were accustomed to use the inland water-communication to the Pomeroon through the Waini and the Barima, at a very early period.

We have, however, still more exact testimony from Raleigh himself, who, writing in 1595 (Raleigh, Discoverie of Guiana, Lond. 1596, pp. 33-35), says:

"Among manie other trades those *Spaniards* used in *Canoas* to passe to the rivers of *Barema*, *Pawroma* and *Dissiquebe*, which are on the south side of the mouth of *Orenoque*, and there buie women and children from the *Canibals*, which are of that barbarous nature, as they will for 3 or 4 hatchets sell the sonnes and daughters of their owne brethren and sisters, and for somewhat more even their own daughters: heerof the Spaniards make great profit, for buying a maid of 12 or 13 yeares for three or fower hatchets, they sell them againe at *Marguerita* in the west Indies for 50 and 100 pesoes which is so many crownes.

"The master of my ship *Jo. Douglas* tooke one of the *Canoas* which came loden from thence with people to be sold. . . . They also trade

in those rivers for bread of *Cassavi*, of which they buy an hundred pound weight for a knife, and sell it at *Marguerita* for ten pesoes. They also recover [get] great store of cotten, brasill wood, and those beds which they call *Hamacas* or brasill beds, wherein in hot countries all the Spaniards use to lie commonlie, and in no other, neither did we ourselves while we were there."

No less important and equally precise is the testimony of Keymis, Raleigh's capable and devoted follower, to the presence of the Spaniards in this district. Keymis relates how he found the Spaniards settled, with their forts, in the Orinoco. In his "Relation,"* Keymis says ("Relation," Sig. C, 2):

"Now the Indians of *Moruga* being chased from their dwellings, do seeke by all means possible, to acorde all the Nations in one, so to invade the *Arwaccas*, who were guides to the Spaniards, in showing their townes, and betraying them."

The above citation is extremely significant. It shows that the Spaniards were from the earliest period, as they were later, in more modern times, the friends of the Arawaks.

With the assistance of the Arawaks, the Spaniards had invaded the coast territory to the very eastern extremity of it in the neighborhood of Moruka Creek, and had conquered and driven away the Indians of that neighborhood "from their dwellings,"—doubtless the Caribs, who naturally resented the intrusion and became thereafter the sworn foes of Spain, seeking to bring about an alliance of all the tribes to punish the Arawaks for their services to the European invaders.

These events, recorded on the spot by a most intelligent English observer, took place at a time when no Dutchman had ever set foot in Guiana. They indicate the original control of the natives to the very creek of Moruka by the Spaniards.

In consequence of these events the Coast Indians became hostile, not only to the Arawaks, but to the Spaniards. Thus, Wareo,

* "A Relation of the second Voyage to Guiana. Perfourmed and written in the years 1596. By Lawrence Keymis, Gent. Imprinted at London by Thomas Dawson . . . 1596."

an Indian chief (whose name strongly suggests the Warows) from the region of the river Moruka, said to Keymis ("Relation," Sig. B, 3):

"The nations farre and neere were all agreed to joyne with us (English) and by all meanes possible to assist us in expelling and rooting out the *Spaniards* from all parts of the land."

But the Spaniards not only conquered Barima and Moruka. They utilized their conquests for purposes of trade. In this Keymis's narrative confirms Raleigh. He says ("Relation," Sig. C, 3):

". . . our intelligencer returned & informed us that ten Spaniards were lately gone with much trade to *Barima*, wher these Indians dwelt, to buy *Cassava* bread, and that within one day two other *Canoas* of Spaniards were appointed to come by the river *Amana* to *Carapana* his porte."

Coming down to the period following the cession to the Dutch, in 1648, we find that during the second half of the seventeenth century, the French as well as the Spanish, were actively engaged in trading with the Indians in Barima. In 1683 this trade was made the subject of querulous comment by the Commandeur at Essequibo, Abraham Beekman, in his reports to the Company. In his letter of January 8, 1683 (V. C. II, 44), he says of the Indians:

"For these people, like irrational animals, listen to no argument. Inducements of every kind—good offices, wares—have no effect upon them. They meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the islands carry on there."

In 1685 he again refers to the activity of the French in Barima:

"The French in the Barima likewise come even to the Upper Cuyuni" (V. C. II, 52).

In 1686 he states, speaking of the country back of the Barima:

"The French scour the country up there and buy up everything" (V. C. II, 59).

Three years later, the French, as already related, aided by the Caribs of Barima, attacked the second Dutch colony on the Pomeroon, making their way in canoes from Barima and Waini to the Moruka, and utterly destroyed the colony, and then, returning to the Barima, fortified themselves in that river (V. C. II, 59-62).

In 1689 Beekman wrote (V. C. II, 59): "The French are daily sojourning in Barima with the Caribs"; and in a letter of the same year he said (V. C. II, 62): "The French are making a strong-house in Barima."

In 1695 he wrote:

"We have been kept here in continuous alarm, since at various times we have had tidings that some French, aided by Caribs from Barima, are staying in the mouth of the River Pomeroon, who say that they will come here to visit us" (V. C. II, 64).

This fort or stronghold of the French in Barima is a fact of great importance in the case. Its position is not known, but the fact is known from these two allusions. The alleged remains of a fort in Barima have been referred to and commented on upon many occasions, and an assumption, totally unwarranted, has been made, especially Schomburgk, that the fort indicated by the remains was a Dutch fort. There is no evidence in the history of the Dutch colony that the Dutch ever had a fort in Barima. It is impossible that a Dutch fort should have existed at any time after 1648 and not have been mentioned. It is impossible that, had it existed, it should not have been mentioned many times. No doubt the Dutch landed on the lower Orinoco in 1637 and 1638, when they made their attacks on Santo Thome and Trinidad during the Thirty Years' War, and it is possible that during that campaign they put up a temporary work; but if there was any such work, it was a mere incident of a military campaign. Any remains that may have been found in modern times are doubtless the remains of the old French fort of 1689. If referable in any way to the Dutch, they must have been connected with the cam-

paign of 1637, which lasted from July to September, and then came entirely to an end.

Besides the French, from the islands, traders from Surinam and other Dutch settlements not under the direction of the West India Company also visited the Barima and traded there. Of one of them, Biscop, the commandeur, reports, in 1683, that the Barima "has been navigated as many as two or three times by Gabriel Biscop and exploited with great success, much to the prejudice of the Company" (V. C. II, 45).

But however extensive the connection in the sixteenth century of the French and Surinam rovers was with trade in Barima, the principal trade there was that conducted by Spaniards from the Orinoco during the whole period. This was a continuation of that current of traffic to which Raleigh and Keymis had called special attention in the earlier period, before the Dutch were even heard of in Guayana. The trade relations between the two colonies were first started by the Dutch in 1673, when the Commandeur of Essequibo "sent some wares to Orinoco for the purpose of trade" (V. C. II, 36). From this date the subject of trade with the Orinoco is mentioned so frequently and so constantly that it is unnecessary to point to any particular communication. It became one of the features of the life of the colony, and remained so during the next century, except for short times when it was interrupted either by war or by the enforcement of narrow commercial regulations on one side or the other. It was first really started about 1679 (V. C. II, 38), and being prohibited by Spanish law, it was carried on only by the connivance of the Governor of Guayana. Such were the inconveniences of the trade when carried on in the Orinoco, by reason of its contraband character, and such were the losses and penalties it involved, that the Company at one time put a stop to it, being of the opinion that "the Company bears all the expenses and burdens, and that others help themselves to the profits" (V. C. II, 50). The field was so tempting, however, that the trade was revived, but the effort

was made to have it carried on by the Spaniards at Essequibo, rather than by the Dutch at Orinoco, so that the actual traffic might be done at the former point. The Barima was still the only route by which the traffic was carried on. As time went on, the Dutch withdrew more and more from the intercolonial trade, leaving it more and more in the hands of the Spaniards, and finally, in 1761, the West India Company concluded that it was "more profitable for the Company, to direct this trade into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards" (V. C. II, 146). The trade still continued active, but was thereafter entirely carried on by the Spaniards. The post of Pomeroun or Moruka became the port of entry for all this trade to the Essequibo. It was the frontier of the Dutch colony on this side, and as the Spanish trade grew and duties were imposed, it became the custom house of the Dutch colony, which necessarily would be established on the frontier.

It, therefore, appears that, as far as trade conditions were concerned, the Spaniards had been in the Barima from a time long prior to the advent of the Dutch in that neighborhood; that they carried on trade there continuously to the end of the eighteenth century, and that the intercolonial trade was chiefly carried on by the Spaniards through the Barima district, the Dutch authorities themselves favoring this policy.

It also appears that early in this period and for a considerable series of years, the French were active traders in the Barima and in more or less constant occupation of points in the district, at one of which they built a fort.

Finally, it appears that the Surinam traders, who were independent of the Dutch West India Company and its competitors in trade, diverted to themselves a large part of the Barima traffic which otherwise would have fallen to the Essequibo colonists.

Having said so much in reference to the general trade conditions

of the Barima, the question is to what, if any, extent actual settlements of the Dutch existed in that region.

The first matter to be considered is the significance, or rather the insignificance, of Beekman's rest-house of 1683.

The first reference to this subject is in a report of the Commandeur of Essequibo, December 25, 1683 (B. C. I, 185), in which he said:

"I have caused one of the Company's servants to reside in Barima, as much annatto and letter-wood is obtainable there, and it lies near to Pomeroon."

He added:

"I wish your Honours would take possession of that river as well" (meaning the Barima), "which has been done by me provisionally, in order to see what revenue it will yield, since I am of opinion that the Honourable Company has the right to trade and traffic there in an open river as much as other private persons."

In March, 1684, he stated (B. C. I, 186):

"Pomeroon begins annually to deliver much and good annatto, and much was supplied from Barima, as appears from the inclosed list. From this their Honours will see how much has been procured and brought to the fort by all the Postholders."

The Commandeur added that Biscop and other interlopers spoil the trade; that they overrun the land right up to the Cuyuni; that

"In order somewhat to check this, I have caused a small station to be made at Barima, and Abraham Baudaart, who is there" [in Pomeroon] "as Postholder in place of Daniel Galle, who is going home, shall occasionally visit those places and encourage the Caribs to trade in annatto and letter-wood, which the French even from the islands in the river frequently come with their vessels to fetch. I submit, therefore, under correction, that it would not be inequitable for the Honourable West India Company to take possession of the River Barima in order to acquire the trade aforesaid, and to command the erection there of a permanent place for a Postholder" (B. C. I, 186).

It might seem from the context that Baudaart was at Barima as Postholder; but this is not the fact. He was the Postholder of

Pomeroon, as is shown in the letter of August 18, 1684 (B. C. I, 187), where he is spoken of as "Abraham Baudaart, Postholder in Pomeroon." The British Case (page 31, line 3) recognizes the correctness of this interpretation.

The two letters above mentioned of Commandeur Beekman have been cited occasionally as showing at this early period something in the nature of settlement or control of the Pomeroon. Their bearing upon the question of control will be considered later. Here the only question is of actual settlement. In the first letter he says that he has caused one of the Company's servants to reside in Barima, and speaks of it as being close by Pomeroon; that is, in December, 1683; and in the following March he complains of the Surinam traders, and says that, in order to check this, he has caused a small station to be made at Barima, and that Baudaart, the Postholder, "shall occasionally visit those places and encourage the Caribs to trade." He also speaks of this in connection with a larger plan, which he recommends to the Company, to take over the Barima, and to which he refers in both letters.

Beekman's suggestion as to taking possession of the river, reiterated in the second letter, shows that up to then no possession had been taken. The two letters together also show that the Company's servant whom he had caused in December, 1683, to reside in Barima, which was stated by him to be a provisional taking possession, subject of course to the Company's approval, did not continue his residence. What it amounted to or what replaced it is explained in the following letter, namely, that a rest-hut or shelter had been put up in the district, and that the Outlier in Pomeroon was to go there occasionally to encourage the Caribs to trade.

Beekman's two letters were answered by the Company on August 24, 1684 (V. C. II, 45). The answer was an angry and reproachful disapproval of nearly every proposition which Beekman had made to them, and was full of caustic comments upon his

management of the colony. His large scheme about the Barima the Company treated with silent contempt, and it only informed him that the trade with the Orinoco must be stopped, intimating that the corrupt way in which it had been managed had deprived the Company of the profits to which it was entitled.

The Company, which was always much more cautious than the Commandeur about making claims to that to which it was not entitled, doubtless had in mind the fact that the charter of 1674, the third which had been given by the Dutch Government to a West India Company, specified as the only places in America under the control of the Company Essequibo and Pomeroon, and that consequently it had no right to the Barima, and that if the Barima was taken into possession by the Dutch it would still not be acquired by the Company. Its extreme dissatisfaction with the management of the Orinoco trade, one of the principal uses to which Beekman had put the Barima, was also so great that it was in no mood to prosecute any schemes of territorial acquisition in that direction. For the next twenty-eight years nothing is heard of Barima in the Dutch records.

From the above it appears that no settlement was made in the Barima in the seventeenth century by the Dutch. The temporary employment of one of the Company's servants there, referred to in the letter of December 25, 1683, already quoted, certainly was not such a settlement.

The only question that remains to be considered is as to the significance of the erection of the shelter spoken of in the second letter. Except two occurrences in 1766 and 1768, this shelter is the very slight foundation for the only claim to Dutch settlement in Barima.

The words used in the Dutch text, which have been translated "a small shelter" in the Venezuelan Case (V. C. II, 45), and, very inaccurately, "a small station" in the British Case (B. C. I, 186) are "*een kleijn pleijsterhuijsje*." "*Huijsje*" is the diminutive of "*huijs*," meaning "house," and "*pleijsterhuijsje*" therefore

means "a little house or hut." A "*pleijsterhuijsje*" is therefore a "rest hut." The insignificance of the structure is additionally enforced by the adjective "*kleijn*," meaning "little." It was, therefore, "a little rest-hut."

Adriaan van Berkel, writing of these Guiana colonies only a few years before (1672), gives us a vivid description of one (p. 16). He is speaking of a trip down the Berbice. "This night for the first time I slept on land, in the forest, with my hammock made fast to two trees. Just before I was ready to go to rest our slaves had built for me a *pleijsterhuijsje*—so called by both Christians and Indians—at the place where the hammock was to be stretched. There are four posts, the front ones somewhat higher than the rear ones, covered over with a roof of leaves, leaves uncommonly large, being usually 4 or 5 feet long and some 2 feet broad. Neither sun nor rain can here vex one, for the leaves lie so close upon each other that not even the rays of that great luminary can penetrate. Such *pleijsterhuijsjes* one sees along the entire river; and one has them built in a moment wherever one will, for an Indian is like the turtle—everywhere at home."

The uses of a "*pleijsterhuijsje*," namely, for a night shelter in the tropical climate, are clearly shown by the Journal of the Mining Engineer Hildebrandt (B. C. II, 36-40).

Thus, there is an entry "Sunday, January 14":

"I at once sent two negroes with six Indians to fetch thatch for the making of a station [*pleijsterhuijsje*], so as to keep dry at night."

Also

"Monday, January 15.—Began having another station [*een ander pleijsterhuijsje*] made up on the mountain for me and my people."

On Thursday, July 18, the writer of the Journal again spends the night in a "station" (*pleijsterhuijsje*), and on Friday, July 19, he makes a new "station" (*pleijsterhuijsje*).

It is further to be noticed that while the Commandeur uses this word "*pleijsterhuijsje*" for the "shelter," he uses a totally

different word in speaking of the house for the Postholder in Pomeroon, namely, "*huijsken*" (B. C. I, 182).

The facts of the case, therefore, amount to this: That the Commandeur, in pursuance of a plan which he submitted to the Company for taking possession of Barima, but which the Company refused to approve, caused his Outlier in Pomeroon to put up a shelter such as persons journeying in those parts were in the habit of putting up for the night, of branches and palm-leaves, somewhere in the district to the west of the Pomeroon. The locality is entirely unknown. The use which the Postholder of Pomeroon made of it is entirely unknown, if indeed he ever made any. His position as Postholder as well as his post came to an end two years later, when the second Pomeroon colony was founded; and after its destruction and the establishment of the later posts in Pomeroon, Wacupo and Moruka, no mention is ever made of the rest-hut.

It is, of course, idle to attempt to connect the remains of any particular rest-hut in the Barima with the shelter which Beekman caused his Outlier to put up in 1684. The structure was of so temporary a character and in such common use for purposes of a shelter for the night that nothing could be predicated upon finding the remains of one at this or that particular spot.

No post was ever established in Barima. A post was proposed by Commandeur Storm in 1744 (V. C. II, 95), and the Company in reply stated: "We are not averse to your making a trial" (*id.*); but two years later, in 1746, Storm reports: "I have not yet established any post in Barima" (V. C. II, 96). No further mention of a post is made in the evidence. In the muster-rolls, which run from 1691 to 1786, in an unbroken sequence, there is no mention of any employee in the Barima of any kind whatever; and as these muster-rolls were most careful to specify the locality in which the employee was occupied, and mentioned every employee in the colony, it is conclusive proof that no one was ever so employed. The whole course of the correspondence and the

whole history of affairs in Barima confirms this conclusion, while so much of it as relates to the posts at Pomeroon and Moruka make it certain that no post ever existed to the west of the latter point.

"The "shelter" has no bearing upon the question of territorial rights. In the famous declaration of 1580 (B. C-C., p. 44) Queen Elizabeth refers the claim that the Pope had clothed Spain with the possession of the New World, "on the ground that the Spaniards have touched here and there, *have erected shelters, have given names to a river or promontory; acts which cannot confer property.*"

Apart from the erection of the "shelter," only two incidents are to be noticed during the whole history of the Dutch colony that bear in any degree upon the question of settlement in the coast territory west of the Pomeroon and Moruka.

The first of these is the Rosen incident, in 1766.

It will be remembered that five years prior to this date the West India Company had suspended the prosecution of the Orinoco trade by the Dutch colonists, the policy of the Company being to encourage the Spaniards to carry on this trade with Essequibo through the post at Moruka. The Barima district was at this time, and during the rest of the century, continually visited and patrolled by the Spanish authorities, whose guard-boats were constantly in the rivers and who exercised frequent acts of dominion throughout the territory, which will be referred to later under the head of Political Control. It appears from the statements of Director-General Storm, of Essequibo, that inhabitants from that settlement, comprising the offscourings of the colony, were at this time sojourning as squatters in some part of the coast territory, in order to obtain freedom from restraint and the opportunity to lead a lawless life. The locality occupied by these squatters is unknown, but it was somewhere in the neighborhood of the Barima River. The doings of these Dutchmen became a public scandal at Essequibo, and are described in vivid language

by Storm, who decided that the good of the colony and the maintenance of friendly relations with Spain compelled him to take notice of what was going on. The singular fact, however, in reference to it is that, while in an uncertain and hesitating way Storm from time to time suggested to the Company the assertion of some Dutch claim to this territory, or part of it, his first step in relation to these particular colonists was to write to the Governor of Orinoco and ask him to take the matter in hand, on the ground that the locality occupied by the squatters was in Spanish territory. He said, April 6, 1766 (B. C. III, 131):

“I shall write to the Governor of Orinoco concerning the state of affairs in Barima, which will become an absolute den of thieves, a rag-tag-and-bobtail party of our colonists staying there under pretence of salting, trading with the Indians, and felling timber, &c. They live there like savages, burning each others huts and putting each other in chains, and I fear that bloodshed and murder will come out of it.

“The west side of Barima being certainly Spanish territory (and that is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint; wherefore I think of proposing to the Governor (who is daily being more highly praised for his friendliness to all foreigners) to carry this out hand-in-hand, or to permit me to do so, or as and in what manner he shall consider best.”

According to Storm's account, the Governor, in reply, sent to Storm a verbal message to the effect “that the best thing to do would be to let those evil-doers fight it out” Thereupon Storm sent the Postholder of Moruka to break up “this nest,” but was careful to charge him to avoid the Spanish bank (B. C. III, 141). The Postholder found the Dutchmen whom he had come to seek on the right bank of the Barima. He found that one of them, Adams, was “bound fast to a tree with a chain, and nearly dead, having been thus kept for over three months by Jan Adolph van Rose” (B. C. III, 132). Both of them belonged to the Essequibo colony, in which Rosen had always borne a bad character. The Postholder liberated Adams and brought Rosen to Essequibo, where

he was tried and punished, and the gang that had established itself in Barima was effectually broken up.

This certainly is not a settlement upon which any claims are to be founded. The action of the Dutch Governor, exercised over Dutchmen, put an end to it; and he took no action in the matter until after he had asked and virtually received permission from the Spanish Governor.

The most significant feature of this episode lies in the fact that immediately thereafter the Court of Policy of Essequibo issued a resolution or decree forbidding all sojourn in Barima. The Director reported this action May 30, 1766 (V. C. II, 165) as follows: "Furthermore, the Court forbade that any one hereafter stay in Barima and charged the Postholder of Moruca to see that this is carried out, because in time this would become a den of thieves, and expose us to the danger of getting mixed up in a quarrel with our neighbors, the Spaniards."

This action of the Dutch authorities effectually disposes of any claim to establish an adverse holding by means of settlement from this time on in Barima. As long as this order of the Court was in force, no such settlement could be established. It would appear from the evidence to have been never repealed. Certainly the Dutch Government would not be in a position to take advantage of the establishment of such a settlement in violation of its own orders; and as far as the control of the Dutch by the colonial authorities was concerned, that control was prohibitory of settlement in this territory. The order of the Court was plainly directed to Dutch subjects alone. Its terms show this. It was to avoid "the danger of getting mixed up in a quarrel with our neighbors, the Spaniards," a danger which could only arise from settlement by its own people.

The fact, however, that the order of the Court of Policy was personal and not territorial in character is decisively established by the statement of Storm himself. When chided by the Com-

pany with inconsistency in his action as to Barima, he justified the order, giving as one of his reasons:

“ Because I think that the Court certainly has the power to forbid its citizens and colonists to go to any places when such is considered to be inexpedient or dangerous for the Colony ” (V. C. II, 169).

This statement is of vital importance in this controversy not only in reference to this order respecting the coast district, but to all the Dutch orders respecting the whole territory in dispute. In the first place, it shows that, as to this particular order or prohibition, it referred only to Dutch subjects, and that it was in no sense an attempt to exercise territorial control. But, in the second place, —and this is a matter so far-reaching, that it applies to all the Dutch regulations—it shows that the practice of the Dutch authorities in making these regulations or prohibitions was to express them in general terms, which, as far as the mere language meant, included all persons; but that the orders so framed, both in their intention and their operation, applied, notwithstanding their general terms, only to Dutch subjects. When we meet with a prohibition as to trade or passports or what not, outside of the confines of the actual settlement on the banks of Essequibo, it means not an exercise of control over such outside territory, but an exercise of control over the persons of Dutchmen.

It is true that Storm also said that the east bank of the Barima was “ in our jurisdiction ”; but in view of his shifting attitude, both before and after the boundary question, and especially in view of his statement to the Governor of Surinam, but little weight can be given to this observation.

However the order of the Dutch Court may be considered in its bearings on political control, there is no doubt as to the question of settlement. The Dutch authorities themselves prohibited Dutch settlement in Barima in 1766. What followed next, however, affords a still more curious illustration of the situation of affairs in this locality.

This is the second of the two incidents above referred to, namely, the case of La Riviere.

So little authority did the prohibition of the Dutch Court have on Barima, even over Dutch subjects, that one of the colonists, Jan La Riviere, in violation not only of the general order, but an express and particular prohibition, actually undertook to settle there, and shortly after died, leaving his widow in possession of the plantation. This fact was reported to the Spanish authorities, and the latter, having a valid claim to the coast territory, which they asserted in the most emphatic manner when occasion demanded, upon learning that the plantation had been established, sent down their coast-guard vessel, early in 1768, under the command of Don Francisco Cierito, Captain of the Company of Pioneers, drove out the occupants of the plantation, burned the buildings and took away the movable property, which was confiscated and sold for account of the State (V. C. II, 358-364, 367). Against this act the Dutch did not even make a protest.

The locality of the La Riviere plantation is not described or reported by Cierito. There is nothing but speculation to guide the investigator as to where it was. A Spanish officer, Inciarte, passed through the Barima in 1779, and found in the Aruka a hill, which he was told had been inhabited for a few years by a Dutchman of Essequibo named "Mener Nelch." He found the hull of a canoe, which an Indian told him had belonged to the Dutchman, and the relics of coffee and fruit trees. The plantation at the time of his visit appears to have been deserted.

It is not improbable that the deserted plantation seen by Inciarte was that from which the La Riviere family was driven eleven years before. Inferences to be drawn from the alleged name are too uncertain to be of any value. A conjecture might be hazarded, however, that the Mener Nelch spoken of by the Indians was intended for Mynheer Nelis or Neels, as he was sometimes called, who was the Postholder of Pomeroon at the time the La Riviere family was driven out. He remained as Postholder

until 1774, as the records show. This was five years before In-ciarte's visit. That his name may have been associated in some confused way with the plantation or with Dutchmen generally is not unlikely. It is certainly less forced than the supposition that Nelis, the employe of the colony who was particularly charged with observing whether the prohibition upon settlement in Barima was carried out should have settled there himself after the expiration of his term of office. If he did so settle it could only have been as a squatter, in violation of the prohibition of the Dutch Government, and for a year or two at most, and his act, if he committed such an act, has no bearing upon this controversy.

The only comments made by Storm upon the destruction of the La Riviere plantation occur in a letter of June 1, 1768 (V. C. II, 176), where he says:

“This did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security I had this inserted in his pass. He was also forbidden by the Court to settle in Barima.”

And at a later date (V. C. II, 187):

“Jan la Riviere (the same who against the absolute prohibition of the Court had gone with his slaves to live in Barima, and, he having died there, the Spaniards have robbed his widow of everything, she being now returned again into this colony).”

This is the last allusion in history to settlement in Barima. In the whole evidence in this case, containing, as it does, a narrative of the utmost minuteness, set forth in official records and correspondence, and embodying the labors and investigations of the Foreign Office, the Colonial Office, the U. S. Commission, and those entrusted with the preparation of this case on both sides, there is no allusion other than those above referred to of a Dutch settlement in the territory in dispute west of Moruka and north of the Imataka Mountains for the period of one hundred and sixty-six years, from 1648 to 1814.

These incidents are not of such a character that any territorial title can be based on them. They lacked all the essential ingredients. They were not national acts; on the contrary, they were expressly disavowed by the Dutch Government. In the first case it broke up the plantation itself, after calling on the Governor of Guayana; in the second case it had made a law forbidding its colonists to settle in the territory, and the settlement had been made in violation of that law and of a further express prohibition as to the individual. Not only did the settlements lack the character of a national act, but the national authorities disowned them. They were in no sense exclusive of Spanish authority and settlement; on the contrary, they were excluded, in the second case at least, directly by Spanish authority. They were not made under a claim of right on the part of the Government, or even on the part of the settlers themselves as representing the Government; in fact, the Government repudiated them. Finally, they had no continuous existence for the time required by the Treaty, as they lasted only a year or two at the most.

In view of the above facts, which cannot be controverted, it is not a little startling to find in the British Case the following statement (p. 51):

“There is little doubt that at this time [1764] there were Dutch plantations in the Aruka, a tributary of the Barima, and at Koriabo higher up on the Barima.”

There is no historical evidence whatever that any settlements of the Dutch existed in 1764 in the Barima district. The explanation of the statement is given in what follows:

“There are still visible traces of settlements at these spots, and they correspond with the description given of Dutch Settlements then existing in the records of secret expeditions made by the Spaniards to the Barima in 1760 and 1768. In the latter year the Spaniards secretly and without previous complaint made a raid upon Barima and destroyed a Dutch plantation, which was probably in the Aruka, but they did not themselves hold or occupy the district of the river.”

The same statement is repeated in the text of the British Case, at p. 68, where it says:

“The traces of cultivation remaining in the Aruka and at Koriabo probably mark the sites of plantations, one of which was probably that destroyed by the Spanish secret expedition in 1768 and another that reported in 1760, but which was situated too far up the Barima for the Spaniards to reach.”

The question as to what these “traces” mean will be dealt with presently. The first question, however, to consider, is the statement made in two places in the text of the British Case, that, as a historical fact, apart from traces, “settlements” (as is stated on page 51) or “plantations” (as is stated on page 68) existed in Barima in 1764, and were reported by the Spaniards, as a result of expeditions made by them in 1760 and 1768.

The expedition of the Spaniards in 1768 was that of Cierito, already referred to, which destroyed the La Riviere plantation. It is possible, though hardly probable, that the plantation left “traces” which were still visible in the present century. The evidence is conclusive, however, that this plantation did not exist in 1764. Storm himself says, in the passage above cited (V. C. II, 187), that La Riviere had gone into Barima after the prohibition of the Court, which, as already stated, was only decreed in 1766. The plantation could not, therefore, have been in existence for more than two years at the outside.

The allusion to the expedition of 1760 merits further investigation. The claim is here made by the very text of the British Case (p. 51) that the traces “correspond with the description given of Dutch settlements then existing” in the record of the expedition “made by the Spaniards to the Barima in 1760.” The statement is reiterated with additional force at page 68 that the traces “probably mark the sites of plantations,” one, that of 1768, “and another that reported in 1760, but which was situated too far up the Barima for the Spaniards to reach.”

The text, therefore, states in terms in one place that a Dutch

settlement was found, and in the other that a plantation was described and reported by the expedition of 1760. It is an intimation that another settlement, which was also a plantation, actually existed as a historical fact, and that it was reported to the Spanish authorities in 1760. The reference in the text of the Case is B. C. II, pages 189-90. These pages contain the report of Flores, a Lieutenant of Infantry, who was in command of a detachment engaged, according to the customary practice of the Spanish authorities, in patrolling the Barima district, under the orders of Don Juan Valdes, the Commandant at Orinoco. The report refers especially to certain seizures of Dutch vessels and canoes in the Barima and Lower Orinoco. Flores also states that he had been obliged to put several of his men aboard of the vessels which he had seized, and that "being informed that it took five days to go up to the place in which traffickers in poitos were; for this reason," and because they would be warned of his coming, "he resolved to turn back."

Turning to the orders under which Flores was acting (B. C. II, 187), it appears that four Indians had recently escaped from a party of Dutch slave traders in Barima, but the traders were waiting at their huts for another batch which they had ordered, "after which they are going back at once to their colony with the product of this illicit transaction," and that Flores was ordered to capture them.

It also appears from the declaration of the Arawak half-breed Yana (who was captured by the expedition), which is annexed to the report (B. C. II, 194), that "the Dutch buyers of poitos were not from the Colony of Essequibo, but from that of Surinam, because the Governor of Essequibo did not allow any Dutchman to go and conduct this traffic."

This is the only reference in the evidence to what the British Case has in two places cited as a historical "settlement" or historical "plantation" of the Essequibo colony in Barima, and of which it gravely asserts that the "traces" found in the Aruka

and at Koriabo may be the remains. It consisted of a party of prowling Surinam slave traders, who were "going back at once to their colony," and who, while waiting for the Caribs to bring in the *poitos*, put up huts for shelter, as did every one else, Spanish, French, Dutch, or Indian, who had occasion to pass a night on shore in Barima. If this is the kind of "plantation" which the "remains" indicate, the only wonder is that there is an acre of clear ground in the disputed territory which does not show "the remains of a plantation."

The historical evidence as to the question of settlement being disposed of, it remains to consider the evidence which has been brought forward in the British Case of what may be classed under the general name of "traces." There is a good deal of this so-called evidence, prepared for the most part by officials and employees of the existing British Colony after Her Majesty's Government had set up their claim to the Schomburgk line. None of it finds any support in the records of either colony prior to 1814, except in so far as the supposed "traces" may refer to one or another of the "settlements" whose history has been followed in this chapter. As the locality and extent of these "settlements" is entirely unknown, they may serve as the explanation of a great many of the "traces."

Apart from the plantation of the La Rivere family, and from the fact so vividly described by Director-General Storm that "a rag-tag-and-bobtail party of our colonists, staying there upon pretence of salting," &c., "live there like savages, burning each others' huts," to the west of Barima, as he had heard, or to the east of it, as he found in the case of two of them, the extent or numbers of whom cannot now be ascertained, the existence of "traces" is entirely inconclusive as to Dutch settlement in a territory in which for a considerable number of years the French were actively trading, and the Spanish for more than a century were constantly present, and exercising on frequent occasions active dominion and control.

It is not here claimed that the "traces" are conclusive of French settlement or of Spanish settlement; although Frenchmen at least, being so much further from home than the Dutch, would probably come for a longer stay, and establish themselves with a greater evidence of permanence. It is only claimed that they afford us no evidence of Dutch settlement.

Out of all the traces cited (and it is to be observed that many of them refer to the same thing) none can be pointed out that have about them marks indicative of any particular nationality.

The attempt has also been made to sustain the evidence of "traces" by "tradition." "Tradition" means in this case either the alleged statements of Indians of a very recent period, reported by some one who professes to have heard them, or the declarations of such Indians themselves, made with the usual formalities and taken under official direction in British Guiana since the present arbitration was provided for by the Venezuelan-British Treaty. Of the latter kind are the depositions of the Warrau Waiakumma, and the Warrau woman Burriburrikutu, printed in B. C. VII, 209. These deponents to "tradition" as a rule cannot write, and their testimony relates to what happened at or before the beginning of the present century. Its value as evidence is not such as to entitle it to any consideration whatever.

The present Argument has taken up, *seriatim*, not only all the historical evidence of settlement in the case, but also all to which the British Case makes allusion as historical evidence.

The question remains as to the significance of the so-called "traces," all of which belong to the present century and are subsequent to the construction of what is known as the Schomburgk line as a suggestion for a boundary claim.

These "traces" are of two classes: first, those discovered by Schomburgk at the time of the invention of his line, and, secondly, those discovered by the authorities of British Guiana subsequent to the Treaty of Arbitration, which set on foot the present proceeding.

In reference to the first, it may be remarked that Schomburgk himself was the only discoverer of these "traces." Thus, at the mouth of the Barima (B. C. VII, 13), he finds evident proofs that the ground had been under cultivation, and notes some cassava plants and shrubs of annatto, which he says do not grow wild on ground subject to the tides. He also states that Colonel Moody, of the Royal Engineers, who reported on the military situation of the Orinoco at the beginning of the century, observed at the mouth of the Barima the remains of a former post, which Schomburgk attributes to the Dutch.

These matters are considered of sufficient importance to be set out at length and with all seriousness in the British Case, at page 67. In reference to the plantation at the mouth of the Barima, and especially the cassava plants and shrubs of annatto, it should be stated that both these valuable products were raised by the Indians, and in fact, as far as the Indians had an occupation at all, the raising of annatto and cassava constituted that occupation. Both of them are mentioned as being bought in innumerable cases by the traders from the Indians, and the fact that plants of this character grew at Barima Point, whether wild or cultivated, signifies absolutely nothing.

As to the post on the Barima, which Schomburgk, without reason, attributes to the Dutch, we only know of its remains through Schomburgk's reference to Colonel Moody's report, which cannot now be found, and Schomburgk's comments upon it give us no clew as to what was actually seen by Colonel Moody. He may have seen the remains of a post or of a fort. He may have seen little or nothing for we have no knowledge from him of what he did see.

As to the remains of a post, as a post may be anything from a palm-leaf hut suitable for a night-shelter, like the first post in Cuyuni, to a stockade, or a blockhouse, or even a fort, it is impossible to predicate anything of the remains of a "post" without knowing of what they consisted. Anybody might have built a

shelter at Barima Point, and doubtless such a shelter was built time after time during the history of the Dutch and Spanish colonies. If the remains were those of a fort, unquestionably it was the fort which, as we know, was built and occupied by the French at the mouth of the Barima in the latter part of the seventeenth century. The matter, however, is purely conjectural, as there is no evidence as to what the "remains" were.

It is also stated that the Indians pointed out to Schomburgk a spot on the River Herena, a tributary of the Barima, not far from Koriabo, where a white man had cultivated sugar and carried on a timber trade (B. C., VII, 21, 237). According to the statement, the place was called by the Indians "the last place of the white man," and traces of cultivation and drainage were still to be found there in 1840.

This statement also is set forth at length in the text of the British Case (p. 67), and Schomburgk on his map designated the place by the alleged translation of the Indian name. Who the last white man was who occupied this spot, and whether he was a Spaniard or a Dutchman, no one knows. He might well have been a Spaniard, seeing that both in reference to the intercolonial trade and in reference to the exercise of physical control in the Barima, the Spaniards certainly were the last white men up to the time of Schomburgk. These particular "traces," therefore, would seem to make for Spanish rather than Dutch settlement.

An exhaustive analysis of all the modern evidence of "traces" and "tradition," with which it is unnecessary to load this argument, shows only two material facts: one, the existence of fruit trees, pointing to some settlement on the Aruka, and of ditches, pointing to some settlement on the Barima, in the neighborhood of Koriabo. The Indian affidavits as to their Dutch origin may be dismissed without comment, the sources of information are so obviously remote and the construction of the affidavits being so obviously open to the suggestion of interest. The mere presence of clearings indicates nothing. It is obvious from the affidavits

that the Indians themselves were in the habit of making clearings. The contention that the presence of fruit trees points to a plantation of white men, is fully disproved by Schomburgk's account of his first exploration near the upper Barima and Acarabisi where he found many Indian plantations containing such trees (B. C. VII,).

As to the ditches, if such methods of drainage were much in use in the Dutch colony of Essequibo, as well as among the Spanish inhabitants of the wide-stretching lowlands of what is now Venezuela and what was formerly the Province of Cumaná, as they doubtless were, it would not be surprising that, in the course of a couple of centuries, some Indians might have learned to dig them, and this, too, although it might be said with truth that, as far as living observers are concerned, such a practice among the Indians is not known. It is difficult for any living observer to say exactly what the Arawaks and Warows, the Caribs and the Accoways, were and were not doing during the whole of the seventeenth and eighteenth centuries in the district of Barima. As they undoubtedly had to enlarge and deepen the "itabos" from time to time in order to pass through them, and as they undoubtedly saw numerous instances of the advantage of opening ditches in a swampy country from their neighbors on both sides, it is more than probable that they made, at one point or another, during these two centuries, half a dozen such ditches. Indeed, from the very fact mentioned by im Thurn, that an Indian name "hokaba" existed, which meant an artificial water-course, their familiarity with the thing itself is evident. Nor is it unreasonable to suppose that these Indians, whose settlements and villages in Barima are well-known, and who certainly were cultivating the soil to raise cassava and annatto, might also have obtained from time to time from their neighbors on one side or the other the seeds of cocoa, coffee or fruit trees.

But even if these were not Indian settlements, there is no more reason to suppose that they were settlements of Dutch from Esse-

quibo than of Spaniards, or Frenchmen, or Dutch from Surinam. All of these were present at one time or another in this territory, some of them, as the French, only for a well-defined series of years; others, as the Spaniards and the Surinamers, through two centuries. It is difficult to predicate from the presence of a few fruit trees in one locality and a few ditches in another anything as to what may have happened in a given territory during a period of two hundred years. Conceding, however, for the sake of the argument, that the "traces" represent settlements of white men, and that these white men may have been Dutch, they still would have no significance in deciding this controversy. In the two settlements which have already been referred to in this Argument as historical, namely, that of Rosen and his companions in 1766, and that of La Riviere and his widow in 1768, the localities of which are unknown, there is quite enough of itself to account for everything, whether visible remains or Indian traditions, that is contained in all of these affidavits. That these two cases of so-called settlement cannot be the foundation for any territorial claims has already been shown. Even if there were other settlements at the same period, the fact that they were made in the face of a prohibition of the Dutch Colonial authorities to settlers in the colony would deprive them of any value in this respect. Settlement, in order to become the foundation of a territorial claim, must be a settlement which in some way bears the stamp of a national act, either by reason of Government grants, or by some other mark of authority and countenance from the Government. Where such a settlement is made not only without the approval and countenance of the Government, but with its distinct and emphatic disapproval and in defiance of its express prohibition, it has no bearing upon territorial claims whatever.

Any settlement made in Barima after the order of the Court of Policy of 1766 is a settlement made not with Dutch authority, but distinctly in opposition to Dutch authority.

The entire evidence on this branch of the subject may be

briefly disposed of. What happened in the district of Barima, as evidenced by contemporaneous statements, documents and records, we may take as evidence of a certain weight, according to the surrounding circumstances. But as to drawing inferences from the presence of fruit trees, or ditches, in two or three places, as to the creation of a settlement by this or that person or class of persons who might at one time or another have passed through Barima during the course of two hundred years, the evidence is entirely worthless. The presence of these vestiges is in no way remarkable. What is really remarkable, and we may say almost amazing, is that, with all the means of investigation in their possession, and with the help of surprisingly zealous and able public officials, backed by a large population of only too willing Indians, the British Case can produce only such shreds of testimony as to settlement of any kind, anybody, in the district of Barima.

The question of Dutch settlement in Barima may be dismissed in a word. The Case shows affirmatively and positively that no such settlement was ever made, during the whole period of the Dutch colony, by Dutch authority, even before the Colony prohibited it in 1766, and that no Dutch settler was even there with a knowledge of the Colonial authorities, except in the case of Rosen, which led to the order forbidding settlement. In the face of such a record, it is idle to attempt to bolster up this Case with suggestions about fruit trees, and ditches, and traditions, and matters of that kind. The Dutch colonial records are here, spread out to interminable length, dealing with every detail of colonial life with a minuteness that would neither have been required nor permitted had not the government been that of a trading colony. With every grant of land set forth, with every occurrence of any moment that happened in its history, there is not one syllable in it from beginning to end to indicate that the Dutch ever knew of any settlement in Barima.

CHAPTER XIII.

POLITICAL CONTROL.

In view of the fact that, under the Treaty, the Arbitrators are empowered in their discretion to consider the exclusive political control of a district sufficient to constitute adverse holding, or to make title by prescription, it becomes necessary to refer to the necessary attributes or requirements of such control.

The general principles and definitions of the phrase "political control," as used in the Treaty, have already been considered, and it has been shown to be the exercise of sovereignty over territory through political or governmental administration; and, further, that "exclusive political control of a district" means such an exercise of sovereignty over the district to the exclusion of all other sovereignty.

Political control or jurisdiction may be either territorial or personal. In general, the political control which is implied in the term "sovereignty" is a control exercised over everybody in the territory of the sovereign, and over the subjects of the sovereign everywhere. In the first sense, it is territorial; in the second, it is personal.

The political control of which the treaty speaks is political control of a district. It must therefore include territorial control. Mere personal control of subjects is not sufficient. It is not enough to show that the Government making the claim exercised control over its subjects either in what were its undisputed territories, or in territories outside of these, whether in dispute or not. The present controversy is not concerned with such control. Such a control as this may be, and generally is, very freely exercised by Colonial Governments in a country as yet not fully settled. An offending subject who has committed an offense against the person or the property of another subject, or who has per-

formed acts injurious to the State, such as quarrelling or meddling with the Indians, or has done anything which is contrary to public policy or of which the law takes cognizance, is in such Governments punished without reference to the place where the offence was committed.

Thus it happened once or twice that the Dutch authorities found a Dutchman stirring up the Indians or ill-treating them in such a way as to provoke reprisals and punished the Dutchman. They also found Dutchmen committing offenses against other Dutchmen which they punished as those of Cauderas and Van Rosen.

The Governor of the Dutch colony, like the Governors of all colonies of the period, and as a matter of necessity under the circumstances, exercised a disciplinary oversight of the colonists. Such an oversight was necessary for the safety of the colony, and was exercised by him freely upon the members of the colony wherever they might be.

The exercise of this personal jurisdiction is fully recognized by International Law. Says Mr. Justice Johnson:

“The jurisdiction of a country may be exercised over her citizens wherever they are, in right of their allegiance; as it has been in the instance of punishing offenses committed against the Indian.”

Cherokee Nation v. State of Georgia, 5 Peters, U. S. Sup. Ct. Rep., 1, at page 31.

Territorial jurisdiction, on the other hand, is a jurisdiction exercised not with reference to the citizenship or nationality of the individual, but with reference to the territory upon which the offender is found, or in which the offense is committed. It operates not only upon the citizens or subjects of the Government which exercises it, but it operates in like manner upon foreign citizens or subjects. No one within the territory is exempt from the operation of the territorial law. That is an elementary proposition. As, therefore, it is hardly to be supposed that in a district promiscuously occupied by the subjects of one State and by the subjects of another State, possibly with numerous others also

coming in from a third State, all the offences are committed only by the subjects of the first State, a political control territorial in its character will be disclosed immediately by the trial and punishment of offenders from among the subjects of the other State. If it turns out, however, that no such jurisdiction is claimed in reference to any but the subjects of one State, who are, if anything, in the minority, it is conclusive evidence that whatever control is exercised is not territorial, but personal.

Applying these principles to the disputed territory, it will be found that the Dutch authority was never exercised, either by way of process and arrest, or process without arrest, or arrest without process, or trial and punishment, or trial without punishment, or punishment without trial, against any Spaniards or against any Frenchmen. It was not until they came within the Essequibo or Pomeroon limits comprising their actual settlements and plantations, that any jurisdictional measures were taken against foreigners, and then only for acts actually committed in such territory, or for offences against the territorial authority at the frontier, such as smuggling and the like. Within these frontiers, within, that is to say, the falls of the Cuyuni, on banks of the Essequibo and Pomeroon, they did exercise this jurisdiction. There they arrested Spaniards, Frenchmen and Englishmen. But they never did anything of the kind outside. Nor did they enforce any authority against Dutchmen unless they belonged to the colony of Essequibo.

There being an entire absence of evidence in the British Case as to any real political control over the territory west of the Moruca and of the falls of the Cuyuni, the Case has attempted to supply the want by an immense mass of material relating to miscellaneous acts in the disputed territory, such as trade, fishing, mining, timber cutting, the relations with the Indians, the capture of runaway slaves and what not. Each of these is considered in its proper place in this Argument, and it is shown that

such of the acts referred to as were performed at all, were in no sense acts of political control.

Even the alleged regulation of trade by the Dutch authorities was merely the enforcement of a prohibition on its own subjects, in order that they might not enter into competition with the Company. The latter never did an act or took a step of any kind whatever to prohibit this trade in its freest form to any person outside of the Dutch colonists. Its monopoly of the trade, so far as it had any, was in the nature of personal control of its subjects, not in any sense of territorial control as to the territory where the trade was carried on.

In order to have any significance, under the Treaty, political control, or the exercise of sovereignty through political or governmental administration, must be to the exclusion, during the entire period, of all other sovereignty and control.

It follows that a political control, even supposing that any such was exercised by the party claiming adverse holding in the disputed territory, which was shared equally by both the claimants to such territory, could not have been an exclusive political control, and could not come within the definition of the Treaty.

Nor is the political control which is required in the one case to prevent the adverse holding from being exclusive any greater than the political control which, under the Treaty, is necessary to establish the adverse holding. If the political control necessary for this purpose rests upon such acts as issuing passports, trading, holding relations with Indians, and the like, the performance of similar acts by another State, although they may fall equally short of political control, is sufficient to prevent the first from being an exclusive political control. However slight may be the control exercised by the other State, it is just as effective a control, it is just as much a political control, as the control exercised by the first, and is all sufficient to prevent the latter from being characterized as exclusive. It is not an exclusive political control, where the control is divided.

The general principles which, as has been already stated, govern all questions of adverse holding, must be applied to political control.

It is for the Dutch or their representative in this controversy, that is to say, Great Britain, to show that a political control was exercised for fifty years in the disputed territory, exclusive in its character and such in all its aspects as would warrant the Arbitrators in accepting it as the foundation of adverse holding.

Great Britain is, under the Treaty, to carve out, if she can, some part of this territory in addition to what was acquired by the Treaty of 1648, by means of the provision as to political control. The only question to be tried out from that point is whether the Dutch got anything more away from Spain than they held and possessed at the date of that Treaty. It matters not whether Spain had thirty or forty mission villages in the territory west of the Cuyuni, where it exercised complete control, so long as the Dutch exercised no such control. If the Dutch exercised no control, the Spanish settlements might be wiped out, and the question would still be the same. So it is with the whole Cuyuni valley west of the falls, of the whole district to the south and to the north of the Imataca range, from the mountains of Brazil to the sea-coast; it is for Great Britain to show an exclusive political control on the part of the Dutch. Failing to prove that, she fails to prove her case.

Political control, in order to constitute adverse holding, must be an actual control. Mere trading regulations are not enough. Mere instructions to Postholders are not enough. In order to support a claim of adverse holding, the control must be actually exercised. The stationing of a man in the neighborhood even of a well-defined district, with the object of observing that district, is not political control in any sense. It is a mere duty of observation.

The claim of the exercise of political control, even more than the claim of settlement, must have some definite limits. If this

claim had any foundation, there should be and there would have been, somewhere in the British Case, which purports to be the statement of facts upon which that Government comes before the Tribunal, a definite statement of the limits, more or less precise, within which, or of the territory over which, the Dutch exercised political control, or a district that can be referred to this source of title. No such statement is to be found. There is no suggestion throughout those documents that any line proposed or any claim made as the net result of its evidence by Great Britain is the line within which or up to which political control was exercised by the Dutch. It all amounts simply to saying: "We went here and there. We traded here and there. We fished here and there. We hunted here and there. We had our traders here and there, buying Indian girls and boys from the Caribs, whom they had captured in their forays upon more peaceable tribes. We had a trading agent here and there, during some portion of the time. But we are unable to say to what district we obtained title by these Acts."

If the British Case had said: "The Dutch Government exercised political control to the falls of the Cuyuni and exercised political control to the Pomeroon, and therefore, as far as political control is concerned, we claim as our boundary a line connecting the Pomeroon and the eastern falls of the Cuyuni," this claim might have had some logical foundation. But the present claim is not a claim to territory defined upon a state of facts, but a claim to territory to which the facts bear no relation and which is defined upon grounds of pure fancy.

The acts of the Dutch which are relied upon as indicating political control should bear some indication that they were done under a claim of the Dutch to sovereignty over the territory in question.

Nowhere do we find that any acts of the Dutch Government were performed in the exercise of a claim of territorial right over the country; and on the other hand, we find from their intimate

correspondence that they did not themselves see any foundation for a claim of right in any territorial extension.

The necessity of continuity, so strongly dwelt upon by all judicial authorities in cases of this character, applies as well to political control as to the question of settlement. That exercise of sovereignty, through the agency of government, which "political control" implies should be continuous.

We find that there was no government in the territory in question on the part of the Dutch; much less was there any continuity of government. The acts which are cited as partaking of the character of political control were spasmodic, fitful and intermittent. That cannot be call a continuous political control which is represented by isolated instances of covert acts of encroachment or minor jurisdiction fifteen or twenty years apart. Such a control as that is not a continuous control, and cannot be made the foundation of adverse holding.

The principle that adverse holding must be open and notorious serves as an additional reason to exclude certain acts cited as acts of political control, which, from their nature or their mode of performance, were so obscure and so absolutely unknown to any one but the agent of the Government immediately engaged in them as to have no significance as far as establishing adverse holding is concerned.

It would hardly be necessary to dwell at any length upon this branch of the subject, were it not for the fact that the effort has been made in the British Case to create some semblance of political control by the citation of such a number of petty acts as might be discovered by searching in the records for a period of a century and a half that it becomes almost impossible to take up every one of these acts for particular mention, and they may be disposed of by reference to the general principle which excludes them from consideration.

In respect to this requirement, the striking contrast between the policy of the Spaniards and of the Dutch has already been

noticed. The keynote is struck by Storm himself, who says of the Spaniards (V. C. II, 157):

“What can we expect from the numerous arrivals of settlers in Cayenne and the removal of the Spanish colonies in Guayana so much nearer to our boundaries? The latter go to work openly, like a proud nation, and they can therefore be better opposed, an open enemy never being so dangerous as a secret one.”

Contrast with this the policy of the Company as disclosed in the correspondence between its Managing Council and its Director. Again and again Storm is cautioned by the Company that he is not to oppose the Spaniards openly. Various reasons for this are hinted at; but the principal reason is the absence of any ground of right. It is suggested to him that he should quietly take measures to have the Spanish missions attacked by the Caribs, which is done; that he should stir up the feelings of the Indians against the Spaniards, which is done; but the greatest pains are always taken that nothing shall be done openly and by way of claim on the part of the Dutch.

In considering the question what, if any, political control was exercised in Guayana by the Dutch colony of Essequibo, we will consider, as in the case of settlements, four separate localities, namely:

- (1) Essequibo.
- (2) Pomeroon.
- (3) Interior Territory.
- (4) Coast Territory.

(1.) ESSEQUIBO.

It is freely admitted that, within the boundaries which have already, in considering the question of settlement, been determined for the Essequibo plantations, namely, along the banks of that river and on the Cuyuni and Massaruni as far as the falls of the latter, as well as to Demerara and other settlements on the east, an active and complete political control was maintained by

the Dutch, not only during the period of fifty years, but during the whole period of their occupation.

The only point to which attention need again here be directed is that the boundaries of political control, as well as the boundaries of settlement, were definitely fixed by the limits of the Essequibo River itself and, on its two tributaries, by the falls, which made an absolute barrier to navigation. They formed a barrier to control for the same reason that they formed a barrier to settlement, for in this case settlement and control were coterminous. The meridian of 59° west, therefore, which has been already referred to as marking with geographical exactness a point well outside the limits of settlement, may also be referred to as marking with exactness a point equally far outside the limits of political control.

During a great part of its history the condition of the colony of Essequibo was such that it had neither the will nor the power to extend its control beyond these limits. Its weakness and the weakness of its garrison are a matter of constant complaint on the part of the Director-General during this whole period. Thus, he reports to the Company, September 2, 1754 (V. C. II, 112-13):

"This being so (and I fear it is only too certain), what is to come of it, or what shall I do? With the small number of soldiers I cannot repel the least aggression in those quarters. It is even impossible for me (however necessary at this conjuncture) to detach eight or ten men to garrison and defend as far as possible the post of Moruca, which will, I fear, see trouble. All that I can do is, with the aid of the Carib nation, whose flight from Barima I daily expect, to cause all possible hindrance to the undertaking; but then I should want ammunition and food and have none of either."

On October 11, 1754, the Secretary in Essequibo, Spoor, reports (V. C. II, 114):

"There being on hand not a grain of powder, except what you sent by the *Esseequebsche Vriendschap*, a barque was hired and sent to Barbados for powder."

On September 1, 1759, Storm reports (V. C. II, 137) that he would be able, if "honored with your orders and only provided

with some reinforcements, both in soldiers and in powder and arms, to procure proper satisfaction."

On August 28, 1762, Storm states (V. C. II, 150-1) that the Postholder of Maroco has asked for reinforcements, and says:

"The garrison being extraordinarily weak, and finding myself compelled to send at least eight men to Demerary, I was unable to give him any men, but instructed him to engage one or two mulattos for three months at soldiers' wages if he could get them, telling him that I would provide them with arms and ammunition."

Two months later, on November 6, 1762, Storms reports (V. C. II, 151) that the same Postholder "is staying up in the bush through fear of the Spaniards, and that he had sent to the post for his belongings."

In 1767, Storm reports (V. C. II, 171):

"Therefore the reinforcement of these two Posts, Cajoeny and Maroco, becoming a matter of greater necessity every day (there being, indeed, *periculum in mora*), I hope that some good soldiers, and especially Protestants, will be sent by the *Laurens en Maria*."

In the same year, at the time of the negro insurrection, Heuvel the Commandeur in Demerara, a part of the Essequibo colony, reports (V. C. II, 174):

"I fear for the day after to-morrow; no resolution will be come to without disputes, because I have heard from outside sources that I shall be sore put to it, and placed in great difficulties how and in what manner I shall be able to protect the upper portion of this river; the citizens are unwilling to go on commando, asking why they should pay an annual poll-tax and duties, &c., if they have to defend themselves. I can send no soldiers because I have only 10 men, with which I have to guard two posts and I am, moreover, destitute of all that a soldier requires when he goes out on commando. I hope the Caraibans will be successful in their undertakings, otherwise it looks very black for this river, for what can we expect from unwilling citizens in time of danger? Nothing but great disorder and confusion; in addition to this there is a lack of everything, and even in the storehouses of your lordships. Not six weeks ago I was obliged to buy nine and a half casks of bacon for the monthly rations, there being no meat either in Essequibo or here."

All this time the Director-General was asking the Company for reinforcements and praying for Germans or Dutchmen. He complained that the Company sent him only Frenchmen, and that the French, being Roman Catholics, sympathized with the Spaniards to such an extent that no reliance could be placed upon them, and that they deserted on the first opportunity. In 1768 when a ship arrived with recruits, the Commandeur informed Storm of their arrival in these words (V. C. II, 175):

“There are twelve soldiers on board who are again good recruits for Orinocque because they are nearly all French.”

And Heuvel, in Demerara, reports of the same detachment (*Id.*):

“The others are all French deserters, so that I conclude that your lordships have been scandalously deceived by the recruiting agents, who are infamous scoundrels.”

On June 1, in the same year, Storm himself complains of this fact, and says (V. C. II, 177):

“This ties my hands completely, and nothing can be done at the Posts, which are daily exposed to pillage.”

He adds:

“The proximity of the Spaniards is a standing danger of desertion, and if the opportunity were embraced by many at once it would have fatal results for some plantations. This was very much feared when those seven deserted together, and we do not dare to send anyone after them, not only on account of the smallness of our numbers, but because it is feared that those who are sent would join the runaways, especially if they have a good boat and provisions.”

In November of the same year, Storm reports to the Company (V. C. II, 179) that four of the French soldiers have run away from the fort at Orinocque, “as I had expected,” and he adds:

“The Commander of Demerary made a very good guess when he wrote to me on the arrival of the last transport, ‘There are again some good recruits for Orinocque.’ In this way they will not require any recruits from Europe, if they are so well provided by us.

“This matter is really getting more dangerous for this colony every day, because the rascals are employed upon the so-called *coast-guards* and

privateers of which I wrote in my last letter, and it has been reported to us by Spaniards themselves that the aforesaid deserters openly threaten that they will not only make a raid upon the Post in Maroco, but that they will also pay a visit to a few of the lowest plantations."

In 1769, Storm, in a report to the Company (V. C. II, 184), after describing the various captures and confiscations made by the Spaniards in Barima and the alarm consequent thereupon, asks: "What can I do with such a small garrison? The burghers are not yet ready for service."

In May, 1769, Storm again reports to the Company (V. C. II, 190-1) the acts of the Spaniards in Barima; that they had attacked the Caribs and captured several of them and carried them off, and that they were making preparations to come to Pomeroon and proposed to attack Essequibo itself. He adds:

"I regard the latter as a vain Spanish boast, but they are quite capable of doing all the rest. Things have now actually reached such a stage that we can return violence with violence, but is it not a sad thing, my lords, that we have such a weak garrison and not six men among them upon whom we can place the least reliance? To send a small detachment of twelve or sixteen men down would really be to *risquer le tout pour le tout*, for if they were all disloyal, as is only to be expected from Frenchmen and Catholics, and went over to the Spaniards all would be lost, because not the least reliance is to be placed upon the citizens."

In July, 1769, Storm again reports (V. C. II, 197):

"But we do not as yet think it advisable to use direct retaliation, for more than one reason, but especially on account of the weakness of the garrison, which it has been absolutely impossible to strengthen by this ship."

At this time the garrison of Essequibo, Pomeroon, Demerara and Mahaicony numbered 39 men (V. C. II, 207).

In 1772, matters were so serious that, on August 29, Storm determined upon the unusual course of writing to the Stadtholder himself, and refers to his action in a report to the Company (V. C. II, 220), saying:

"The very dangerous condition of the Colony, *which has been and still is on the brink of total ruin*, compels me to report the same to His Serene

Highness as speedily as possible, which despatch being enclosed, I take the liberty of humbly requesting your lordships to forward it to him at once."

Of the unfaithfulness of the garrison, small as it was, the Director-General, Trotz, says (V. C. II, 234), in 1778, in a report to the Company:

"2d. Is the Commandant so firmly assured of the loyalty of his soldiers as to plant a command at so great a distance and on so slippery a route to Orinoco—[soldiers] whom for the most part he is now forced to guard at night at the fort by his few trusty soldiers in order that they may not desert?"

In 1802 the condition of the defences of Essequibo is thus described (V. C. II, 253):

"In the river of Essequibo, on Flag Island (the seat of the administration and of the officials of that colony; for the rest, a small barren patch of ground, on which there is not a single plantation), there exists an old, rickety fort, named Zelandia, which has not been kept in repair in order not to waste money unnecessarily; it serves only to hoist the flag there when ships are sighted which wish to go up the river, and to lock up criminal negroes in. On the point of that island is placed a small battery of about twenty rusty iron guns, which, without carriages or rollers, are lying on logs and stones and at most are fit to make the flag respected and to fire salutes."

In the same year the Governor-General reports to the Council at home, of the condition of the Moruca Post (V. C. II, 254):

"While I am finishing this letter, the Postholder of the Post Moruca comes to report that the detachment for that post arrived there three days ago, but that everything is in ruins, and that the battery cannot stand for six weeks more; that an entirely new dike of some sort must be made there and all the buildings set back; that the few cannons found there are lying flat on the ground; that the gun-carriages are rotten, and that the English have cut and slashed everything to pieces; in a word, that things are in a hopeless state."

In a condition of affairs such as has been described above, lasting for half a century, what could the Colonial authorities of Essequibo be expected to do in the way of maintaining efficient control outside of the limits of their immediate settlement?

The West India Company never desired to exercise political control west of the Cuyuni falls, in the interior, or of the Moruka, on the coast, as is shown repeatedly by their instructions to the Commandeur or the Director-General; had they desired to do so they would have provided a sufficient garrison, and paid some heed to the Director-General's complaints of the disloyalty of their soldiers and the incompetency of their employees.

(2.) POMEROON.

Although the settlement of this region was entirely confined to the Pomeroon River, the question of political control must be considered in reference to the Moruca as well, which empties into the sea two or three miles to the westward, because the post of Pomeroon was succeeded by the post of Moruca.

If we should admit that, as far as the actual settlements on the Pomeroon are concerned--that from 1658 to 1665, founded by the three Zeeland cities and destroyed by the English, and that from 1686 to 1689, established by Jacob de Jonge and destroyed, after three years' existence, by the French--political control was complete during the existence of the settlements, the question remains whether the maintenance of the four successive posts constitutes continuous political control.

The post on the Pomeroon, including therein its successors on the Wacupo and the Moruca, was of a different character from the so-called posts that had a fitful and fragmentary existence in the valley of the Cuyuni. It was regarded from the first as a military outpost, as a defensive position placed upon the frontier of the colony for the purpose of checking hostile incursions into the Dutch territory.

The post had also another of the essential and inherent attributes of a frontier post. It constituted a port of entry for the Orinoco trade, which followed the interior route through the Barima and Waini. All this trade had to pass the post at Moruca,

and this post necessarily became the custom-house of the colony upon that side.

These two facts distinguish the post of Moruca from all others.

The history of the post shows its character as marking the boundary of Dutch territory and its employment for defence and for the collection of the customs revenue. The Commandeur, D'Heere, in recommending the removal of the post from Wacupo to Moruca, in 1726, referred to both of these functions when he said that "knowing that the said Post lies far out of the ordinary course of boats which come hither through the inland waters," therefore, "it was his intention to choose a fit place in the river of Marocco to which he might transplant the house and Post, since all vessels which come through the inland waters must pass that way," and in December of the same year the Court of Policy had the same fact in mind when it decided "that the fittest place" for the post was at the landing where those fetching horses coming from the Orinoco usually make a stop, "it being possible to build a house there so close to the river side that a hand grenade can be thrown into the boats, the river being at its narrowest there" (V. C. II, 80).

In May, 1728 (V. C. II, 82), the Court of Policy having learned from the Outlier of the seizure by the Orinoco Spaniards of a Surinam fishing vessel, and hearing of the probability of a war between Holland and Spain, "resolved to reinforce the aforesaid Post of Wacquepo" and to direct Jan Batiste, the Outlier, to keep the necessary lookouts, "so that" they might "receive the earliest information in case the Spaniards should send any armed vessels to this Colony," and the Outlier, in case the post should be attacked, was directed "to defend himself to the utmost." The soldiers were accordingly sent, together with these instructions.

In accordance with its true character, it appears from the Ordinance Report to the Company in 1731 that the post was equipped with four cannon, two two-pounders and two one-pounders.

In further confirmation of the character which distinguished

this post is a statement of the Commandeur, in a report to the Company in 1737, in which he had occasion to notice the fact that the post of Wacupo and Moruca, formerly an important trading place for annatto, "has these last years fallen off in this business"; and he adds: "While I see no way of changing this, we must, nevertheless, keep up this post, because it was established for the maintenance of your frontier stretching toward the Orinoco" (V. C. II, 89).

Its character was also recognized by the Spanish colonial authorities. In 1747 the Spanish Governor, in speaking of Moruca, describes it as "the stronghold called the Post, which the Dutch of Esquivo maintain with three men and two small cannons" (V. C. II, 297).

In 1760, in consequence of Spanish threats, the post at Moruca was again reinforced.

Finally, in 1779, when it was decided to move the post lower down the river, it was put on a distinctly military footing. It was to be equipped with four or five guns.

In 1785 it was put under an experienced soldier as Commandant, and from that time on it retained its military character, although still occupied, as before, by a civil official.

The post was also a custom-house. In 1707 the Commandeur proposed the laying of a toll in the rivers Moruca and Pomeroon on boats, balsam, Indian slaves and cacao brought in from the side of the Orinoco through this passage by the traders of Berbice. In 1726, the plan to put the post "at the landing where those fetching horses coming from the Orinoco into the River Moruca usually make a stop," evidently contemplates a custom-house inspection. Afterwards duties were levied on articles imported into the colony, and they were collected by the Outlier at Pomeroon or Moruca as a part of his regular duties. Thus, the instructions of Director-General Storm of October 7, 1767, state in terms among these duties:

"7. From the Spaniards arriving with tobacco, etc., he shall demand five per cent. import duty, and shall deliver the amount here."

The evidence is, therefore, conclusive that the post at Moruca was established for two purposes: (1) the defense of the frontier, and (2) the collection of duties at the frontier on articles imported into the territory.

On the other hand, the political control, such as it was, which is indicated by the history of the posts, was not without question on the part of Spain, who carried her control of Barima up to the very post of Moruca, frequently threatening the latter, and capturing Indians in its immediate neighborhood.

The results of these expeditions were so complete that the Postholder complained that "there is no longer an Indian to be found in these parts."

The conclusion to be drawn from the history of the Pomeroon and Moruca on the question of political control is that, while a certain amount of control was exercised at the posts, by means of the military and fiscal duties of these posts, it was a control which the Spanish Government did not recognize and against which it repeatedly made a forcible resistance, even to the extent of removing from its neighborhood the entire Indian population, upon which it depended both for traffic and for auxiliary defense.

One thing, however, is clearly established by the history of these posts; that the Dutch themselves considered the advanced point at which they were situated as the frontier of their territory, and that the uses to which they were put were such as are appropriate only to the frontier.

In view of these facts, if it should be decided that political control was maintained by the Dutch for the requisite period at the Pomeroon, and that this control was sufficient to create adverse holding, the boundary of this control could not lie further west than the same meridian which has been already referred to, namely, the meridian of 59° West, upon the eastern side of which is included a somewhat greater extent of territory than that

which by any possible examination of the history of the posts can be found to have been controlled in any degree by the Dutch in this district.

(3.) INTERIOR TERRITORY.

In the interior, meaning thereby the territory south of the dividing mountain range and west of the Cuyuni falls as far as the extreme limit of the British claim, near the Orinoco, the question to be considered is what acts of political control were performed by the Dutch between 1648 and 1814.

The evidence shows that three so-called "posts" were maintained during fragments of this period, namely:

First, at Quive-Kuru, fifteen hours, or forty-five miles, west of the Cuyuni falls, from 1755 to 1758.

Second, at a lower point on the river, from 1767 to 1769; or from 1766, if it is considered that the post was established in that year, although its existence was of the feeblest description.

Third, still further down the river, and near the lower falls, between 1769 and 1772.

The post of 1703, which was clearly never established, may be thrown out of consideration.

This is all, even of a quasi-political character, to be found during the history of the Dutch colony of Essequibo, lasting one hundred and sixty-six years,—the maintenance of a station at one point or another during an aggregate period of nine years, and these years not continuous. These are the only attempts to maintain even a trading station by an employee of the Company in this immense territory. For a period of one hundred and seven years after the Treaty of Munster nothing whatever was done. Then a post existed for three years at Quive-Kuru; then came another interval of eight years, after which for six years there were posts a little above the falls; then, for a period of forty-two years, nothing.

Assuming, in the first place, that these posts could be considered as in any respect a seat of government in the interior from which political control of a district was exercised, which is denied, they fail to come within the fifty years' rule.

There is no doubt that in 1758 the post was brought to an end, and the political control, if any, represented by it was interrupted. It was interrupted by the clearest and most emphatic assertion of the rights of in the forcible destruction of the post and removal of the occupants.

Even supposing, however, that there had been no interruption and that the post had continued from 1755 to 1772, this would have been a period of only seventeen years, and still would have fallen far short of the limits fixed by the Treaty. At the latter year the post was abandoned.

There can be no question that, within the meaning of this Rule of the Treaty, voluntary abandonment, as well as forcible dispossession, puts an end to political control. Nor was it necessary that Spain should do any act in order to resume control.

When the Outlier at the second post finally settled in his hut in 1767, his actual influence on the situation was so slight that, even if the existence of his so-called post was known to the Spaniards, it could not have inconvenienced them in the slightest degree. Its evidently feeble and precarious existence called for no interference, and the Spanish authorities might well wait for it to die a natural death and relieve them of the necessity of hastening its end. Two years later, when the post was threatened, its occupants did not wait for an actual attack, but hastily decamped to an obscure refuge lower down. When the end came by the abandonment, in 1772, of even this nominal station, the Spaniards were not required in any way to reassert possession; their possession revived *ipso facto* on the abandonment, if indeed, it had ever been interrupted.

The evidence of the so-called "posts in Cuyuni" may, therefore, be dismissed as immaterial in this case, for the reason, if for no other, of their short duration.

Apart from the question of time, they must also be disregarded as evidence of political control. The posts cannot be considered as constituting in any sense an exercise of political control. This, as already explained, means the exercise of sovereignty through the agency of political government. There is no evidence that the Outlier in Cuyuni, or exercised any functions such as are implied in political control. He was destitute of all the attributes of such control. His duties were merely the supervision of the movements of the Dutch traders who might pass that way, the promotion of trade, especially the slave trade, with the Indians and the maintenance of friendly relations, and general duties of observation and report. Thus, the instructions under which he acted (B. C. II, 168) were to treat the Indians with kindness, and if they asked his help against other Indians to assist them as far as possible, to capture fugitive slaves and to assist the owners of such slaves. In reference to the Spaniards, he was instructed to "be careful not to cause any injury to be done to the Spaniards, who are our good friends, and in all he will maintain good friendship and correspondence with them; but at the same time he will be most careful about the said Spaniards, and if by chance they are desirous of passing to the River Cuyuni or into any territories of our colony and cause any inconveniences, the chief of said post or guard shall thereupon despatch a man to the Governor's castle to advise him thereof."

These instructions are noticeable in several points.

In the first place, they recognize the fact that the interior territory was frequented by Spaniards, which disposes of the theory that the Dutch were the only white people who traded and traveled there.

Secondly, the fact is recognized that the post on the Cuyuni is not Dutch territory. The instructions speak of the Spaniards who may desire to pass "to the Cuyuni or into any territories of our colony." By the use of the words "the River Cuyuni," the Dutch settlements below on that river were evidently meant. There

could be no stronger intimation that the Cuyuni above the falls was not regarded as such territory.

Finally, no authority was given to the Outlier in reference to the Spaniards. If they caused any inconvenience, the Outlier was to give notice to the Governor; and no doubt the Governor was apprehensive that they might cause such inconvenience, seeing that neither he nor the Company, after years of correspondence and investigation, had been able to discover any foundation for Dutch title to the territory where its post was situated. The duty with reference to the Spaniards was simply a duty of observation and report, a duty which the Outlier might have performed, had it been for the interest of the Dutch Government, at Santo Thome or in the country beyond the Orinoco. As to trade, the Outlier was instructed to see that the traders had their passports, a provision which, of course, like the prohibition of settlement in 1766 in Barima, applied solely to the Dutch colonists, and which would have been inapplicable to anybody else, as nobody else carried a passport in Cuyuni. The Dutch only carried them because of the restriction upon trade, and because when they passed the lower falls, they left their own territory and entered foreign territory. The Spaniards did not carry them because their trade there was unrestricted, and they were on their own territory. Moreover, the express instructions in reference to Spaniards show that this regulation was not intended to apply to them¹.

¹ The only existing copy of the instructions of Storm to the Outlier in Cuyuni, dated November 29, 1757, is in the Spanish translation which is found among the papers in reference to the capture of the post. This Spanish version is a certified translation of the Dutch copy found in the possession of the Outlier. The copy as printed in V. C. II, 127, is taken from British Blue Book No. 3, p. 248, and unfortunately perpetuates a gross mistranslation of the Spanish, originally printed in the Blue Book, especially in reference to the duties of the Outlier in relation to the Spaniards. It says:

"But at the same time, he will be most careful not to permit the said Spaniards to pass to the River Cuyuni, if by any chance they are desirous of so doing, or in any part of the territory of our Colony; and in case they attempt to molest the official of the said post or guard, he will immediately despatch a man to the Governor's castle to advise him promptly of the same."

The errors in translation have been corrected in the document as published with the Spanish text in the B. C. II, 168.

There is nothing in all of this savoring in any degree of political control. The West India Company was a trading company, and it required trade agents at outlying points. Even a Government which does not carry on trade for itself finds it necessary to have commercial agents, residing in foreign countries to look out for the interests of its trading subjects. Much more so a Government whose business is trade. The Outlier in Cuyuni was a Government agent in the sense that he was an employee of the Government.

That his powers and duties, though much less extensive in this direction than those of a modern commercial agent, were exercised more directly upon his fellow-subjects was due to the wild and primitive character of the country. But they did not indicate or imply anything in the nature of territorial claims.

For the second post in Cuyuni (that which was shortly abandoned in consequence of a threatened attack of the Spaniards), "Provisional instructions" were framed in Essequibo before the creation of the post, which were to be replaced by other instructions (B. C. III, 136), "later on, when the post shall be in order." Whether these provisional instructions were ever issued or not we do not know. They are only found in the Court's records, and there is nothing to show, as in the case of the first instructions, that the Postholder ever had them. They say in reference to the Spaniards:

"He shall pay particular attention to the actions of the neighboring Spaniards, take good care to give them no reason of complaint, also see that they do not surprise them, but keep a watchful eye on them, and not allow them on any pretext whatever to pass below the Post, but in case any should be coming direct here to send them to the fort."

Whether these instructions were ever issued or not, one part of them was so carefully carried out that as soon as the "watchful eye" of the Bylier Van Witting, who at that time was in charge of the post, saw a prospect of the coming of the Spaniards, he prevented their surprising him by incontinently abandoning the post.

The closing phrase not to allow them to pass below the post, "but in case any should be coming direct here to send them to the fort," is somewhat ambiguous. How he could obey the instruction not to allow them to pass and at the same time, if they were coming to Essequibo, to forward them on their journey, it is difficult to see. It may have been Storm's intention when he formulated these instructions to have some soldiers at the post, but he never carried out such an intention. Whatever may have been the meaning of the instruction, certainly the two Byliers, Van Witting and Van Leeuwen, were never in a position to carry it out. As far as they were concerned, the Spaniards who passed that way could be neither helped nor hindered. The only duties that they performed in respect to Spaniards were to keep posted as to their movements, and as soon as they found that they were coming to disappear.

Nor was there any political control exercised by the colonial authorities generally, either apart from or in connection with the Postholders. There was not a grant of land in the whole territory; there was not the semblance of a settlement; there was not an arrest of anybody, even of a Dutchman, as far as the record shows, much less of a Spaniard, or even of an Indian; there was not a single case of the trial of any person, even of a Dutchman, who committed any offence in this territory; there was not a law or regulation governing the territory which was applicable to all the persons in the territory, or to any persons as being in the territory. Though the Spaniards overran the district, even to the falls of the Cuyuni, according to the statements of the Director-General of Essequibo, there was not an attempt made to interfere with them; and in abstaining from interference, the Director-General was acting both under the letter and the spirit of instructions from the Company. The Colony of Essequibo had many officials; there were the Director-General, the Commandeur, the Lieutenant, the Sergeants, the Master Planters, the Secretary, and others. None of these officials, during one hundred and sixty-six years, ever

made a visit to, or inspection of, the territory in question, or even set foot in it. The only employees of the Colonial Government that ever went there were its old negro slaves and other itinerants who acted as traders, and during the nine years of the existence of the three posts its Outliers and their underlings.

While the relation of the Dutch Colony with the Cuyuni did not represent control in any sense, it was peculiarly lacking in all that is necessary to constitute political control of a district.

So much has been said about the posts, in treating of alleged Dutch control in the interior, because there is nothing else to speak about. It is manifestly impossible to speak of this control, whatever it was, as in any sense the control of a district.

Least of all, was this an exclusive political control of the district. The district in question, bounded by what is known as the extreme British claim, comprises the Cuyuni-Massaruni Basin. It is the district which is watered by those two rivers and their tributaries. They, in turn, are tributaries of the Essequibo, although the falls, during the two centuries of occupation of Essequibo, proved an all-sufficient barrier to any colonial extension into the territory. The claim of Great Britain to this district is what is known as the extreme British claim.

The control of this district by the Dutch during one hundred and sixty-six years may be summed up by the occupation of two men, with a negro slave and a half-breed woman, in a palm-leaf hut, at Quive-Kuru, some forty-five miles from the lowest fall of the Cuyuni, for a period of three years, at the end of which time the hut was burnt and the party carried off by Spanish troops, acting under the orders of the Spanish Governor of Guiana; by a similar occupation of a couple of employees from two to three years at a point near the fall, whence they were driven by a threatened Spanish attack; and finally, by a third occupation for three years, just above the fall, the existence of the first and second posts being separated by an interval of eight years.

Against these facts are to be placed that remarkable move-

ment which proceeded from the Spanish capital of Santo Thome and which, in the face of singular difficulties, beginning as early as the 17th century, extended over a vast part of this territory a chain of mission settlements, until by the close of the next century they had reached a total of more than thirty towns or villages, numbering a population of fifteen or twenty thousand people, with ranches and herds numbering 200,000 head of cattle and horses; and such was still their condition at the date of the acquisition of Essequibo by Great Britain. These mission settlements filled the valleys of the Yuruari and the Curumo and their tributaries. The territory in which they lay was as much Spanish territory as that in which lie the cities of Barcelona, Toledo and Seville. The Dutch exercised no more control in this territory than they did in the three cities that have been named.

The extraordinary progress of the Spanish settlements was achieved largely through the devotion of the missionaries, and in spite of the secret intrigues among the Indians, by which the Dutch, unwilling to make any open claim, sought to compass the destruction of the settlements. Notwithstanding these conspiracies against Spanish authority upon Spanish territory, the settlements prospered and increased, reclaiming little by little portions of the wilderness and bringing it under cultivation. Beyond the advanced lines of settlement the Spanish uniformly claimed the entire Cuyuni district and enforced their authority in it, whenever it was necessary to enforce it. Here they established themselves in the advanced settlements on the Wenamu, the Mas-saruni, and the Siparuni. Their act in the destruction of the Dutch post at Quive Kuru was as formal and complete an assertion of authority and control in the territory as could be made, and was carried to a point within fifty miles of the Dutch settlements. Beyond this assertion of authority it was not necessary for them to go. Nevertheless, during the whole of the century, they are found, according to the testimony of the Dutch Governor of Essequibo, who took pains to know, patrolling the whole district and

exercising effective supervision and control even to the falls of the Cuyuni.

The extraordinary statement is made in the British Case (p. 48) that "the circumstances attending this Spanish raid upon the Post in Cuyuni rebut any presumption that the Spaniards were acting in assertion of any right," and in support of the statement it is alleged that no objection to the settlement had been communicated to the Governor of Essequibo, and that "the expedition was undertaken in secrecy and followed by a hurried retreat."

It is not a mere "presumption" that the Spaniards were "acting in assertion of any right" that the British Case must rebut. This question does not depend on "presumptions." The instructions issued by the Commandant of Guayana, after reciting that Dutchmen with others had established themselves in the territory in order to carry on the slave trade, say that

" . . . for the purpose of putting a stop to these prejudicial troubles, and in order that the good intentions of His Majesty may be attained, by preventing any extension of the claims which the Dutch are every day advancing further in this part of his dominions, I ordain and command Don Santiago Bonalde as Commandant, and Don Luis Lopez de la Puente as Second, to proceed this day to the interior," etc. (B. C. II, 150).

This is what is called a "presumption" that the Spanish are acting in assertion of a right, which "presumption" the British Case claims is rebutted because notice had not been given to the Governor of Essequibo and because the expedition did not send ahead an envoy to inform the Dutchmen of its coming.

The Spanish Commandant was enforcing a claim of right. He was enforcing it on Spanish soil, and he so stated in the orders to the expedition. Who ever heard of such a proposition as this advanced by the British Case? Who ever heard that alien offenders upon the territory should not be dealt with according to the territorial law, but that a notice and a protest must first be sent to their Government? The result of such a protest would have been either nothing at all, or else an interminable discussion

of rights, during which the post would have remained. There is but one way to deal with an intrusion of this kind, and that is the way in which the Commandant, Ferreras, dealt with it. That the preparations were secret has no bearing upon the case. If they were secret, it was in order that the result might be accomplished and that the act to be done might have some significance. There was nothing secret about the performance of the act itself, or about the participation in it of the Spanish authorities.

Secondly, when Storm complained of the act, not as an invasion of Dutch territorial rights, but simply as an unwarranted attack upon Dutch subjects, the Governor of Cumaná wrote a reply which cannot be said to leave the assertion of right a matter of "presumption." He said (B. C. II, 169)—and this was only a few days after the expedition returned:

"The Commandant of Guayana has forwarded to me . . . a letter which you sent him, claiming the two Dutch prisoners, a negro slave and a half-breed woman with her children, whom the guard dispatched from that fort seized in an island of the River Cuyuni, established there in a house, and carrying on the unjust traffic of slavery among the Indians, in the dominions of the King my Sovereign. As this same River Cuyuni and all its territory is included in those dominions, it is incredible that their High Mightinesses the States-General should have authorized you to penetrate into those dominions, and still less to carry on a traffic in the persons of the Indians belonging to the settlements and territories of the Spaniards. I therefore consider myself justified in approving the conduct of this expedition."

That is a letter which expresses a claim of territorial right. Compare it with that of Storm to which it is a reply, and the difference in the nature of the claims will at once be manifest. Compare it with Storm's application to the Governor of Guayana when he proposed that the latter should take up the case of the offending Dutch colonists in Barima, and the difference between Dutch and Spanish claims will be still more manifest. Compare it, finally, with the Company's instructions to Storm as to make

no assertion of rights as against the Spanish,—instructions that were written after nine years of fruitless investigation and correspondence.

The Dutch in the Cuyuni had not only failed to assert a claim of right, but they had distinctly suppressed any such claim. The instructions of the Company were that the Governor was not to appear openly in any attempt to thwart the plans of the Spaniards in extending their settlements; that he was not to raise the question of jurisdiction; in short, that he was to do what he can to stop them, but absolutely to avoid appearing in the matter. A claim of right must be open and notorious. The action of the Dutch Company consisted in the absolute suppression of such a claim, and this alone is enough to dispose of the question of adverse holding in the Cuyuni.

In March, 1769, Storm reported (V. C. II, 182):

“I also gave orders that they should be well on their guard at the Post against surprise parties (which, according to all appearances, will very probably be undertaken before long), and that they were to come and report to me as speedily as possible.”

In May the report is (V. C. II, 189):

“. . . that the Post in Cajoeny had been attacked by the Spaniards; that Jan Wittinge had been killed, and Van Leuwen carried off.”

They had not been killed or carried off, but had run away to a refuge nearer to Essequibo, where one presently died, the other being shortly withdrawn.

From this time on no attention is paid by the Dutch to the Cuyuni. There is not a suggestion of a claim, much less of control. No attempt is made to re-establish the post. There is no record of its use, even for transit or trade. The Spaniards may come and go as they please in it. The colony suffers enormous losses from runaway slaves, but these make their escape in all directions, to the south as well as to the west, and its efforts are confined to suppressing the insurrections of those who remain

and endeavoring to negotiate some kind of agreement with the Spaniards for the restitution of the others.

The operations of the Spaniards throughout the length and breadth of this district were reported from time to time to the Commandeur at Essequibo; and while his reports cannot have included all the acts of occupation and control of the Spaniards during this period, they include so much, and with such particularity of statement, as to prove conclusively the active assertions of Spanish authority and dominion during this period over the entire territory. Supplemented by later Spanish reports, they present a long series of facts, running through the entire history of this period down to the English occupation of Essequibo. In order to understand fully how complete and all-pervading this control was, it is necessary to summarize at this point the conclusive evidence which is presented by both the parties in this controversy upon the subject.

Attention has been already called to the question of the Cuyuni horse trade which arose at the beginning of the eighteenth century, to the prohibition which the Spaniards placed upon this trade in Cuyuni, and to the admission of the Dutch Governor that the territory was Spanish territory and his acquiescence in the prohibition upon that distinct ground, as stated by himself. There is no question that upon this occasion Spain exercised territorial dominion over the Cuyuni valley and that the Dutch recognized her territorial rights in that region.

During the first half of the eighteenth century the Spaniards were actively occupied in developing their system of mission settlements on the tributaries of the Cuyuni. The great extent and influence of the mission settlements in this region has already been noticed. They were made under the authority and direction of the State, and the Governor of the Province of Guayana exercised a constant supervision over them and their necessities. Under the Royal direction, the territory had been divided among the different religious orders. The settlements with which this

controversy has to do were those assigned by the State to the Catalonian Capuchins.

The missions were under the direct control of the Governor, and visits of inspection were made to them from time to time by him. It is enough to mention as an illustration of these inspections the visit of Governor Espinosa de los Monteros in 1743 (V. C. II, 286-294), in company with the Prefect of the Missions, the report of which mentions the Catalonian Capuchins as having been "appointed by His Majesty for the conversion of the Indians of this Province," and discloses the nature of the supervision exercised over the settlements by the civil, as well as the ecclesiastical, functionaries, each of whom, in their respective departments, were invested with authority by the Spanish crown, and represented and enforced the territorial dominion of Spain.

Of the mission settlements so established by the Catalonian Capuchins, several had been founded and had carried on a flourishing existence for a number of years before we hear any mention of them in the Dutch records. Not until 1746 is an allusion made to them in the voluminous correspondence in the colony of Essequibo. In that year Commandeur Storm writes to the Company to inform it of a mission, together with a small fort, erected by the Spaniards up in Cuyuni (V. C. II, 96), and "that they were busy making much brick there, with the intention next year to found yet another mission and fort some hours nearer, farther down this river, [while] all the Indians coming away from those parts, are fleeing this way and praying for protection," which was doubtless true, as it was in 1746 and 1748 that the missions of Palmar and Miamo were established.

Toward the close of 1748 Storm's attention is again called to the Spaniards in the Cuyuni basin. He says, December 2, 1748 (V. C. II, 101):

"The Spaniards were beginning to approach more and more up in Cuyuni."

In 1750, on the occasion of Storm's visit to Holland, he said (V. C. II, 106):

"It is urgently necessary that the limits of the Company's territory be known, in order successfully to oppose the continual approach of the neighboring Spaniards, who, if they are not checked will at last shut us in on all sides, and who under pretext of establishing their missions are fortifying themselves everywhere. And, because the limits are unknown, we dare not openly oppose them as might very easily be done, by means of the Carib nation, their sworn enemies."

On Storm's return, in 1752, he had to report not only the advance of the missions, but the driving away of the Indians in the Cuyuni territory. He said (V. C. II, 109):

"The Spaniards have attacked and driven away the Caribs below Oro-noque, and these have all retreated to our side" (that is, the Dutch side of the territory).

In 1755 he made his sixth appeal to be informed as to the boundary, and reported (V. C. II, 119), that "they [the Spaniards] have now taken complete possession of the creek Orawary, emptying into the Cuyuni, which indisputably is your territory"—always upon the theory that the tributaries of the Cuyuni, as well as the Cuyuni itself, belonged to the Dutch.

It was at this very time (1750) that the missions suffered from the severest blow which they had to encounter during their whole history. The correspondence of the Dutch Commandeur with the West India Company shows at whose instigation the blow was dealt and by what means the attack was brought about. No fouler act of treachery was ever planned by a civilized Government, and the correspondence reveals the entire scheme from beginning to end in all its naked deformity.

But Storm's conspiracy was not an exercise of political control. His secret mode of action negated the idea of political control; even though early in 1750, three of the most flourishing missions, Miamo, Yuruari and Curumo (V. C.-C. III, 374), and later in the same year two others, Tupuquen and Cumamo (V. C. II, 339), were destroyed by the Caribs. Most of these were subsequently

restored, Miamo and Yuruari as early as 1753; some not for several years later.

In view of these facts, it is not to be wondered at that Alvarado, who was a subordinate of Iturriaga in the investigations for the Spanish and Portuguese Boundary Commission, coming to Guiana, as he had, immediately after these occurrences, and while the blackened ruins of the missions he was to inspect were still standing, should have been so deeply impressed by these catastrophes, which it was more than suspected had been instigated by the Dutch, as to have said, in a report of 1755 (B. C. II, 107) that the missions were "more in the hands of the Dutch than in those of their proper owner."

The statement is only important by reason of the reference to it in the British Case, where it is made, as it were, a foundation for a suggestion that in some way or other the political control of the Dutch extended over these missions. Such is obviously not the meaning be conveyed by Alvarado, and such a conclusion is entirely contradicted by the facts of history as disclosed by both Dutch and Spanish authorities.

The next advance of the Spaniards is far more serious. This is reported with great detail in 1756 (V. C. II, 121-2), and bears out the prediction made several years before and already referred to, that the Spanish would extend their settlements in a circle by the headwaters of the Cuyuni and Massaruni. Three "strongholds" were reported as having been established, those on the Wenamu, the Massaruni and the Siparuni. These settlements or posts lay far to the east of the mission valley.

It was just about this time that Storm, in his endeavor to counteract the Spanish control of Cuyuni, set up his feeble post at Quive-Kuru. The attempt was unavailing. In 1758, as we know, the matter was reported by the Prefect of the Missions to the Spanish Commandant, and Captain Bonalde was sent with his troops to repel the intrusion, which he accomplished with thoroughness and despatch. No more conclusive evidence of the

successful assertion of territorial dominion and habitual control could be given. But the matter does not end here.

In the following year Storm reported (V. C. II, 133) that the occupation of the Spaniards continues, and suggests that the conditions of affairs is such that

"the Colony will be ruined immediately there is the least misunderstanding with Spain. Your Lordships will therefore see that this matter is fully deserving of your attention. The Spaniards continue to stay where they are, and to entrap and drive away all the Caraibans living there."

In 1760, speaking of the desertion of the slaves and the impossibility of checking it, Storm says (V. C. II, 142):

"What I most feared was that they might take the road through Cajoeny where, since the raid upon the Post by the Spaniards there are no more Indians, and there was therefore no means of stopping them."

In a later letter, in the same year, he adds (*Id.*, 142):

"The road to Cajoeny was open to them, because since the raid upon the Post there by the Spaniards the river has not been occupied, and the road to Orinoco is an open and easy one."

He concludes (*Id.*, 143):

"To what will this lead, your Lordships? If such acts of violence are not stopped, what will the results be? The River Cajoeny is still unguarded, and presents an easy road to fugitive slaves. I have not yet reestablished the Post there, always hoping that the matter might receive redress in Europe. I could not act in the matter without using violence, and this I would not do without special orders."

In 1761 matters are growing worse. The Spaniards have come down the Cuyuni even to the very borders of the Essequibo settlement. Storm says (V. C. II, 145):

"Everything in the upper part of the river" [meaning the Essequibo River] "is in a state of upset, the people who live there bringing their best goods down the stream. This is because a party of Spaniards and Spanish Indians in Cajoeny have been down to the lowest fall where your Lordships' indigo plantation was situated, driving all the Indians thence, and even, it is said, having killed several. The Indians sent in complaint upon complaint. I fear that bloodshed and murder will come of this because if they come below the fall the inhabitants will surely shoot upon

them and not allow them to approach, and what will the consequences of that be?"

In the next year, 1762, it appears from Storm's report (V. C. II, 147) that expeditions of the Spaniards to the lowest fall of the Cuyuni have become a regular practice, and that they are keeping the valley of that river under such control as to constitute an effective military occupation. He says:

"They are not yet quiet, but send detachments from time to time, which come down as far as *the lowest fall*, close to the dwelling of your Lordships' creoles, by which both the settlers and our Indians are continually being alarmed, and take refuge each time down stream. This is very annoying. They must have great and important reasons to make such attempts to obtain possession of this branch of our river, and I have not the least doubt that such is the case, but I hope, too, that your Lordships may find a means of stopping them."

It is always THE LOWEST FALL that is given by Storm as the boundary of the actual political control of Spain.

In a later letter of the same year he renews these statements, as follows (V. C. II, 149):

"From the reports received from the upper part of the river, I learn that the Spanish Indians of the Missions continue to send out *daily patrols* as far as *the great fall* (just below which your Lordships' creoles live); all the Caraibans have also left that river, and gone to live above Essequibo."

Three months later he is almost in despair. He says (V. C. II, 151):

"The Indians have also informed me that the Spaniards up in Cajoeny are engaged in building boats. Where will all this end, my Lords? I fear that this may lead to the entire ruin of the Colony (which God forbid) unless rigorous measures are taken. Our forbearance in the matter of Cajoeny makes them bolder and bolder. At the time of that occurrence the Caraibans were full of courage and ready for all kinds of undertaking; now they are all driven away from there and have retired right up into Essequibo."

In 1763 Storm reports (V. C. II, 154), of the Cuyuni that "the Spaniards have driven away the Caraibans who lived there, and who could apprehend and bring back the runaways."

Enclosed in a letter of August, 1764, the Director-General sends to the Company (B. C. III, 106), a treatise concerning the Company's trading places, in which he describes at length Mahai-cony, Arinda, Cuyuni and Moruca. He says "the third post was on the River of Cuyuni," and he then refers to the attack of the Spaniards and the destruction of the post.

"The reasons that they had," he says, "for such unlawful proceedings must be best known to themselves, because they cannot have the very least shadow to a claim of possession; or it must have been the chimerical pretensions of the priests in these parts that the whole of America belongs to His Catholic Majesty and that all other nations hold possession merely *precario* and by permission" (p. 109).

In the same report occurs (p. 111) a very significant statement of the Director-General:

"If we ever desired to follow the example of the English and French, the posts of which I have spoken would be absolutely necessary and indispensable; and if this matter is not taken in hand, our neighbors will quietly approach and surround us, and finally, without exercising any violence, drive us from the country. This is what is already beginning to be observed; and what can we expect from the numerous arrivals of settlers in Cayenne and the removal of Spanish people and plantations in Guayana so much nearer to our boundaries? The latter go to work openly, like a proud nation; and they can therefore be better opposed, an open enemy never being so dangerous as a secret one."

Evidently the Spaniards did not find it necessary to suppress their claim of right, and to make opposition "quietly and without appearing therein."

In an undated letter of the same period, he says of the Cuyuni (V. C. II, 157):

"This river is a tract of land along which the Spaniards spread themselves from year to year, and gradually come closer by means of their missions, the small parties sent out by them coming *close to the place where the Honourable Company's indigo plantation stood*, and being certain to try and establish themselves if they are not stopped in time."

Here again we have Spanish control extending to the lowest fall.

In 1764 Storm is endeavoring to re-establish his post, this time, but he meets with difficulties from the start. He says (V. C. II, 159):

“ Whatever trouble I have taken, and whatever promises I have made, I have not been able to get any Indians up to the present to aid me in re-establishing the Post in Cajoeny, and without their help it cannot be done, because with slaves it is not only too costly but also too dangerous, so that I am in great difficulties with this work, and the re-establishment of that Post is, in my opinion, of the greatest necessity.”

After eight years of patrolling and watching the river, the Spaniards might fairly assume that no effort would be made to re-establish the Dutch Post. Of the third post it does not appear that they were ever aware.

In 1765 he reports (V. C. II, 161):

“. . . that preparations are being made to establish a new mission between Cajoeny and Masserouny, that is, in the middle of our land.

“ Should this happen we shall be compelled to oppose them with violence, because the consequences of that could only be harmful, and would finally result in the ruin of the Colony. This is certain, that so long as no satisfaction is given by the Court of Spain concerning the occurrence of the Post in Cajoeny, the Spaniards will gradually become more insolent, and will gain ground on us from year to year.”

Notwithstanding all these reports on the part of Storm, he never opposes the Spaniards with violence or in any other way.

The old cause of complaint as to the destruction of the post at Quive-Kuru still remains unsatisfied; not only that, but the Company's creole who was taken prisoner at that time is employed as smith at one of the missions, and he says (V. C. II, 161).

“ Is it not hard, sirs, that one must look on patiently at such robbery and endure it ?”

One cannot help feeling considerable sympathy with Storm in his anxieties and complaints. The fact is, however, that his course of proceeding in opposing no resistance to the Spanish occupation and control of the Cuyuni basin down to the falls was in pursuance of the deliberate purpose of the West India Company.

Their Director-General fretted and chafed at inactivity, but the wiser and perhaps more conscientious heads that controlled the policy of the colony, knowing that they had no ground of right, refused to permit any action to be taken which would bring on a collision.

The point, however, with which we are concerned here is the completeness and long duration of the Spanish control of the Cuyuni, of which there had been no interruption whatever since the beginning of the century, when the Spaniards first asserted their rights of territorial dominion by prohibiting the Dutch from engaging in the horse trade on their territory. So far from this dominion being interrupted, it was every year increased and strengthened.

The feeble efforts of Storm to oppose the territorial authority of the Spanish crown by the second post were as unsuccessful as those at Quive-Kuru. Even Dutch influence with the Indians, of which so much has been urged, has now disappeared. In June, 1767, Storm had reported (V. C. II, 170-1), the post ready; but he stated at the same time

“that the Indians are being bribed and incited to such a degree that they are unwilling to do the least thing for the Postholder, and that *even* when he orders the passing boats to lie to to see whether there are any runaways in them, they obstinately refuse to do so, and when he threatens to shoot upon them they reply that *they have bows and arrows with which to answer.*”

In 1769 Storm reported (V. C. II, 180):

“It is finished now, my lords; neither Postholders nor Posts are of any use now. The slaves can now proceed at their ease to the Missions without fear of being pursued, and we shall in a short time have entirely lost possession of the river Cajoeny.”

It appears that for all practical purposes the post was absolutely useless. In March, 1769, Storm said (V. C. II, 182) that “the road for the runaways is now quite open and free, it being impossible for the Post in Cajoeny to stop them, there being a number of inland paths; nor can we be warned in any way by Indians, there being no more of these in that river. They did begin to settle there again when the

post was re-established, but the raid made by the Spaniards last year, when a large party of Indians were captured and taken away, has filled the rest with terror, and they are gradually drawing off."

In the same month, a little later, he said (*id.*, 183):

"My opinion has always been that they would gradually acquire a foothold in Cayuni, and try to obtain the mastery of the river, *as they now practically have done at the end of the past year.*"

By his confession, therefore, the Spaniards have practical possession of the river.

Rumors now began to reach the Governor of a projected attack upon the post; in fact, the valley of the Cuyuni was full of them. Storm, however, did nothing to reinforce it, having evidently made up his mind to leave the two Byliers to their fate. Other rumors came, more precise in their character.

The Director-General, March 23, 1767 (V. C. II, 169), wrote to the Company that his creole

"had reported that he had heard from a few Indians that a party of Indians had been sent by the Spanish Mission to make a raid upon the Post, and had completely sacked it, and that he was going to find out how true that was."

As it turned out, no attack was made, because none was needed. The threat of attack was sufficient. Before the attack could be made the two Byliers had concluded that discretion was the better part of valor and had fled precipitately, without waiting for Storm's permission.

Their last refuge was in the neighborhood of the Dutch frontier and in an isolated position on an island between the falls. Here the Spaniards did not interfere with them, if indeed they were aware of their existence. This post was abandoned three years later. While it lasted it offered no opposition to the exercise of Spanish dominion. From this time on, the Dutch archives take no further heed of Cuyuni.

For the remaining period, the evidence must be found in Spanish reports. These show a continuous enforcement of political control.

In 1787 Mariano de Cervera commanded (V. C. II, 446) an expedition to the Cuyuni against certain hostile Indians, of whom he succeeded in capturing a large number as prisoners.

The immediate supervision of the Cuyuni valley was at this time in the hands of the able and intelligent Adjutant-Major of the Spanish forces in Guayana, Lopez de la Puente (V. C. II, 448). In 1788, he made an extended inspection of the mission settlements, from Alta Gracia as far as Cura, on the lower Yuruari, including Upata, Santa Maria, Carapo, Guascipati, Tupuquen and Angel Custodio. Six or seven leagues from Cura the new settlement of Tumeremo had been founded two years before, with a church and a cattle farm (V. C. II, 457).

In the following winter, De la Puente passed three months in Cuyuni. He was there from November 7, 1788, to February 5, 1789, and a minute journal of this expedition is preserved to us (V. C. II, 462-467). In the course of his operations, he apprehended an Indian chief named Manuyari, who was living on the borders of the Dutch colony at the falls of Cuyuni, which here again appears as the frontier. Manuyari was a scout in the employ of the Dutch; and partly on this account and partly because of acts which he had committed in the Cuyuni valley against the Indians living there, the Spanish authorities desired to take him into custody. He had also stolen an Indian woman from Panapana. The expedition had four boats and a corresponding force of troops. It proceeded down the Yururari into the Cuyuni, passed the mouth of the Curumo and continued on its journey, until it reached the Camaria rapids, the head of the lowest fall on the Cuyuni. Here a detachment captured Manuyari, with the woman whom he had stolen and ten other prisoners.

Immediately after de la Puente's return the Governor of Guayana, Marmion, decided to establish a village and fort at the mouth of the Curumo, where it empties into the Cuyuni, and on the southern or right bank of the latter river (V. C. II, 471). His recommendation received the royal approval (V. C. II, 478), and

in 1792-3 the fort was built and occupied, and a sergeant placed in command of the garrison (V. C. II, 479).

From this time on the fort in Cuyuni was regularly maintained. No notice was taken of its establishment by the Dutch.

In 1800 the report of the garrison at Guayana, numbering 357 soldiers, showed the force still at Cuyuni in command of a sergeant (V. C. II, 485), with a detachment of troops as a garrison, and a similar return shows the same condition in 1809 (V. C. II, 486). So matters continued until the war of independence broke out in Venezuela.

The history of Spanish control in the Cuyuni-Massaruni basin has now been traced during the whole period of the Dutch occupation of Essequibo. Side by side with this history we have the history of Dutch movements during the same period. The latter were not in any sense attempts at control. There were no pretensions to territorial rights. The Home Government forbade the making of any such claims. It was the hope of the West India Company that this district might be neglected by the Spaniards; that it might attract the enterprise of the colonists; that the advance of the Spaniards might be checked by the Indians, and that gradually and unobserved the Dutch might succeed in obtaining some footing therein. In all these hopes they were disappointed.

Comparing the insignificance of the measures taken by the Dutch in reference to the Cuyuni-Massaruni basin with the systematic policy pursued and carried out by the Spaniards, we find that the latter maintained throughout the entire eighteenth century close and effective supervision and control over the whole of this territory, a large part of which, certainly ten thousand square miles in extent, they filled with populous and prosperous settlements, which were constantly advancing further and further into the interior. All of it they effectively guarded. They uniformly maintained a claim to the territory, and defined the frontier as being at the Essequibo, exercising authority to the lowest fall of Cuyuni. This frontier they effectively held.

The above facts effectually dispose not only of the question of exclusive control on the part of the Dutch, but of control of any kind whatever. From the time when the Essequibo Governor submitted to the prohibition of trade in the interior territory, on the ground that the territory was Spanish, down to the end of the century, when all reference to this district disappears from the Dutch archives, the story is one of continuous Spanish dominion and control, uninterrupted by any serious resistance on the part of the Dutch.

In view of the above facts, which are here narrated in the very language of the contemporary records, one cannot but read with astonishment the extraordinary statement contained in the British Case (p. 32) that

“ At the time of the Treaty of Utrecht (1714) the Dutch had established themselves as the masters of a great part of Guiana, from various positions on the coast as far as Barima to the Pariacot Savannah beyond the River Cuyuni in the interior of the country, and they were already opening up the higher reaches of the Essequibo.”

The grounds for this sweeping assertion are that

“ Their plantations and settlements lined the banks of the Essequibo, Massaruni and Cuyuni for some distance from the junction of the three rivers. They had established friendly relations with the Indian tribes of the interior, who looked to them as their arbiters in tribal disputes, and offered them assistance in time of hostile attacks.”

Equally surprising is the following statement of the British Case (p. 49):

“ The Spaniards never occupied the Cuyuni. It was expected by the Spaniards that the Dutch would at once reoccupy the post. In fact they did formally reoccupy the Cuyuni with a Post in 1766. They would have reoccupied it sooner had it not been that all their available energies were temporarily diverted to assisting in the suppression of a negro revolt in Berbice. While there was no Post provisional arrangements were made for watching the river.”

As to the statement of the British Case that the “ Spaniards never occupied the Cuyuni,” reference need only be made to the evidence annexed to that case which has been quoted in the foregoing page.

As to the reasons why the Dutch delayed in occupying the post, these are entirely beside the question.

The last statement, that "while there was no post, provisional arrangements were made for watching the river," refers to the fact that one of the Company's old creoles, Tampoko, was directed to stay near the lower falls and observe the operations of the Spaniards. (B. U. III, 131.) How well he observed them, and how complete and extensive they were, the correspondence of the Director-General conclusively shows; and the fact that he was enabled to watch them at the lower falls shows how extensive was the patrol of the Spaniards, and how completely the falls were regarded as the territorial frontier.

The British Case states (p. 61) that the projected erection of a fort at Curumo was approved in 1791 by the King, but that a despatch by Marmion in October, 1793, shows that the erection of the fort had not yet been commenced, and that no part of the scheme was ever carried out. This last statement, that no part of the scheme was ever carried out, is directly contrary to the fact. The fort, as already stated, was built and the garrison maintained there at least as late as 1809.

It is inexplicable that, in view of the conclusive evidence presented, the British Case should still deny the existence of the fort on the southern bank of the Cuyuni at the mouth of the Curumo. This error in the British Case is referred to at p. 66 of the Venezuelan Counter-Case. The persistent error in the note to Marmion's report of 1793, where the word *Orinoco* is substituted for *Curumo*, made it necessary to print in the Appendix to the Venezuelan Counter-Case, vol. 3, p. 147, a photographic copy of the original document, where the name appears plainly as *Curumo*. The statement by Marmion in 1793 is that "a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Curumo," and the existence of the fort is beyond contradiction.

(4.) COAST TERRITORY.

In the discussion of settlement in Barima reference was made to the presence of the Spaniards in this district from a very early period, and it was shown that long before the Dutch had settled in Guiana, even as early as the sixteenth century, the Spaniards were familiar with the region, were trading there in Indian slaves, and were frequently passing back and forth between Orinoco and Moruka or Pomeroun, whence they could go by sea to Essequibo and other points on the coast, where they either had settlements or obtained food supplies for Trinidad and Orinoco.

All these facts belong to a period of history when the records of what was done by individual traders are of the most meager description. Such was the condition of affairs when, in 1648, the Treaty of Munster confirmed to the Dutch their possession of the trading post at Essequibo. From this time on we have the records of that post, and of the colony which grew up around it. These records surpass in extent and fullness, we venture to say, those of almost any other colony in the New World.

It may therefore be assumed that any acts of political control, or even acts not implying such control, connected with a general movement of trade, or with Indian relations, of any consequence, which were performed by the Dutch will find a record in the Dutch archives, and the absence of such a record shows that no such acts took place.

1. *The Dutch trade with the natives did not extend to Barima.*

While the Dutch from the beginning showed considerable activity in trade with the Indians of the interior, they for a long time showed none at all in trade with the Indians of the coast, except on the Pomeroun River. Here their energies for the time being began and ended. Except for a single occasion, in 1673, when Rol reported (V. C. II, 36) that "peace had been made between the Caribs in Barima and the Arawaks," "and he

was going to send a boat after carap-oil," not an allusion is made to Indian trade in Barima until 1683.

Nor, as a matter of fact, did the Dutch ever carry on trade with the Indians of Barima. This singular fact is to be noted throughout the whole history of the Dutch colony.

In 1683 Barima is by implication, but distinctly, referred to as a place where up to that time the Dutch had had no trade. When Beekman, in that year, tried to bring about peace between the warring tribes in Cuyuni, he reported that they threatened to go to Barima if he interfered with them (V. C. II, 44). And early in 1683, in speaking of their repulse of his offer of good offices, wares and other inducements, he said that "they meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the islands carry on there."

It is evident that Beekman had as yet been unsuccessful in establishing satisfactory relations with the Indians of Barima, though he had the development of this trade in mind; and it is not surprising, therefore, to find in this year and the next peculiar attention directed by him to Barima and peculiar efforts made by him to initiate a successful trade there. These efforts have already been considered with reference to settlement. Here they must be discussed on their bearing on political control.

Thus, on December 25, 1683, he reports (V. C. II, 45):

"In Barima I have had one of the Company's servants take up his abode, since there is much annatto and letter-wood there and it is close by Pomeroon."

He goes on to say:

"Recently, too, it has been navigated as many as two or three times by Gabriel Biscop and exploited with great success, much to the prejudice of the Company. I hope this will meet your approval. That trade, both there and in Pomeroon, I have forbidden to him, and to all others as well. I wish you would take that river also into your possession, as has

provisionally been done by me, in order to see what revenues it will yield, since I am of opinion that the Company can do as good a trade there in an open river as can private individuals."

Biscop was a Surinam Dutchman, and Beekman, finding that the trade in Barima was promising, as he had already found about that from Pomeroun, forbade Biscop and other Dutch interlopers like him from engaging in the trade in both places. His prohibition was not enforced; and in his very next letter, written three months later, March 31, 1684 (V. C. II, 45), he said:

"But Gabriel Biscop and other sea-rovers from Surinam not only spoil that trade, but buy up all the letter-wood, which is there fairly abundant and good, together with the carap-oil and hammocks, as a result of which I have obtained this year only very few old and bad ones; they traverse and overrun the land even into the river Ouyuni."

He said:

"I wish you would take that river also into your possession, as has provisionally been done by me, in order to see what revenues it will yield, since I am of opinion that the Company can do as good a trade there, in an open river as can private individuals."

Beekman's meaning here is clear; the river Barima is open to general traffic; anybody can go in there and trade; that being the case, the Company has a right to go in there as much as anybody else; therefore he asks that the Company will take the river into their possession, for purposes of trade.

What Beekman proposes here is evidently not territorial acquisition. All that he is talking about is the operation of trade in a certain locality in Spanish territory which was open to general trade. He evidently did not regard the region as Dutch. His language forbids such a supposition. His idea is to take the river into possession of the Company as against other Dutchmen for purposes of trade, which he has done provisionally. When included by the Company's regulations within the territory restricted to its own trade, it was, in the sense of the charter, "taken into possession" for trade purposes.

In his letter in the following March (V. C. II, 45), he renewed his suggestion about the Barima, and stated his plan of erecting a shelter, to be visited occasionally by the Outlier in Pomeroon. He said:

"It would, therefore, if I may suggest, not be amiss if the West India Company, *in order to obtain the aforesaid trade*, should take that river Barima into possession, and should establish there a permanent outlier-ship."

This is the same suggestion as that previously made, in Beekman's letter of December 25, except that it is more definitely connected with trade.

This authorization was never given. In the petulant answer of the Company to Beekman, dated August 24, 1684 (V. C. II, 48), they condemned nearly everything that he had done or suggested, intimated that he or others "helped themselves to the profits" of the Orinoco trade, and found it advisable "that you stop it."

This ended all Beekman's schemes with reference to Barima, and it therefore is of little moment whether the proposed "taking into possession" related to trade or to territorial acquisition. Two years later Barima was entirely cut off from the Essequibo colony by the establishment of the second colony at Pomeroon, under De Jonge, Beekman's personal enemy. De Jonge gave no attention whatever to Barima, being fully occupied with the wants of his struggling colony at Pomeroon. In 1689 this colony was destroyed by the French from Barima; the property was removed to Essequibo, and there were left at Pomeroon only three men with a flag for the maintenance of the Company's possessions.

It is an extraordinary fact, and one of the utmost significance in this inquiry, that from this time, during the whole history of the Dutch colony, lasting for over a century, hardly another allusion is made in the evidence to trade with the Barima district. A great deal is said about the Orinoco trade carried on through

Barima, which will presently be referred to; occasional allusion is made to fishing near the Waini and in the Orinoco, but, with the isolated exceptions named below, not a word about trade in the Barima district.

This is peculiarly noticeable in the various Journals recording the daily events which came under the notice of the Commandeur, and especially the voluminous Diary of 1699 to 1701, printed in full in B. C.-C., 47-158, where it covers over 100 pages. This "Official Diary" records with extraordinary detail everything that came under the notice of the Commandeur and the Secretary or in which they took part. It records the movements of all the Company's old negro traders, stating when they left the colony, where they went and when they returned; it tells the movements of the Postholders, and what supplies they obtained in the way of trade at their posts, including those at Demerara, Mahaicony and Pomeroun; it mentions the Indians who came with wares of various kinds to Fort Kykoveral, stating what they brought and how they were paid; it details the movements of the Company's yacht, of the coast-guard, of its master planters on the Company's plantations, of the various negro slaves engaged in mechanical work; it tells of the issue of passports to planters and others going out of the limits of the colony, and in several cases of the issue of such passports for the Spanish trade with the Orinoco. It indicates that the three Postholders (Demerara, Mahaicony, and Pomeroun) carried on steadily a trade, not apparently of any considerable volume, however, at their respective posts, and it states that on a single occasion, on November 11, 1699, the yacht "Rammekens" was sent to the Waini (evidently referring to the sea-coast at the mouth of that river) to salt fish and to trade for victuals, but arrived on December 29 "with a very bad catch and without having done any trading" (V. C. II, 65). Except for this, there is no reference whatever to the district between the Moruka, the Orinoco, the mountains and the sea. It is not once mentioned. The name "Barima" does not occur in the Journal,

nor does any substitute or equivalent for it occur. When it is remembered that this Journal has full, minute and extensive daily entries for two whole years, the absence of such a reference is conclusive proof that the colony of Essequibo had nothing whatever to do with trade in that district.

The Journal is mentioned particularly in connection with this subject because its minuteness is such that here if anywhere, reference would inevitably be made to Barima trade, supposing that any such trade existed.

The negative evidence from the whole Dutch correspondence is equally strong and conclusive. It nowhere states a single case of trading, after 1684, by the colony or the colony's agents in Barima during a period of over a century; or, with one exception, by the settlers of Essequibo. The trade with the Spaniards in the Orinoco is frequently mentioned, but this was not trade with Barima; it was merely the use of the district as an avenue for intercolonial Dutch and Spanish trade, a use to which it was put by both the Dutch and Spaniards and, as will presently be shown, much more by the Spaniards than by the Dutch. The trade at the post of Pomeroun or Moruka is also frequently mentioned; but this trade, again, was not trade in Barima, it was a trade carried on entirely at the post itself.

The single exception which has been referred to is the following:

A certain settler named Cauderas in 1735 (B. C. II, 20-21), having received a permit to collect some debts of a deceased comrade which were owed to him by Indians said to have been in the Barima, took the permit, together with some red slaves belonging to his late comrade, and went off to Martinique. Here he associated himself with some Martinique Frenchmen who were in the habit of trading in Barima, and went back with them to that locality. In the course of his wanderings he came into the Essequibo River, whereupon the Commandeur put him in jail.

This is the sole base of Essequibo trade in Barima from the beginning to the end of the 18th century.

In 1744, Commandeur Storm proposed to the Company the establishment of a post in Barima. This is the first proposal of the kind that had been made since that of Beekman in 1683, which the Company had declined to adopt, since which time, as the records show, the subject of Barima had not engaged the attention of the Colony,

The proposal of Storm, in 1744, had a very different origin from that of Beekman, in 1683. Its primary object was the recovery of runaway slaves, who took that course to the Orinoco. He said (V. C. II, 95):

"The chief of the said Indians has offered me to answer for all the runaway slaves of this colony who make their way toward Orinoco, in case I would establish a postholder in Barima."

This, then, was the object of the newly projected post, as it was likewise one of the chief objects, it will be remembered, of the post established eleven years later in Cuyuni.

Storm also said, incidentally, that the post "would be of great utility for the buying up of boats and slaves," and he added: "I have not yet ventured to undertake it without your orders."

It is not necessary to seek far for the reasons why the Indians wanted a post in that immediate neighborhood, when one remembers the rum which was always on tap at a Dutch post for every Indian caller. As Professor Burr says (V. C.-C. II, 127, note):

"This estimate of the persuasive power of Dutch rum rests not alone on the complaints of the Spanish missionaries, but on the solid evidence of the accounts of the Company's plantations against the Company's posts for the supply of this necessity. Its consumption at the Moruca post, which lay nearest the Barima Caribs, was especially large, and was expressly justified by this need of hospitality to the Indians. As at the governor's residence, so at the posts, no Indian was suffered to go thirsty away. Even when in 1803 (April 26) Governor Meertens humanely urged placing

over the Postholders 'Protectors of the Indians,' he suggested that these Protectors be authorized to purchase 'the necessary rum and molasses' for the welcome of the Indians, and pointed out that 'the Postholders should also be put in a position to give a glass of rum to the Indians who should visit them. Even the consoling qualities of spirits were not unknown, for in the same governor's journal (April 9, 1803), we find an order to his quartermaster to deliver 'to certain Indians whose father and brother were lately shot dead in the expedition against the bush-negroes,' two jugs of rum, some codfish and six flasks of wine. The Spanish missionaries complained especially of their powerlessness with the Indians against this Dutch means of allurements."

Numerous references might be given to show the practice of distributing spirits to the Indians at the Dutch posts. Thus, the gratuity delivered in goods, mentioned in the Minutes of the Court of Policy, 22nd February, 1803 (B. C. VI, 180), includes eighteen cases of gin. The Journal of the Commandeur, 1699 to 1701 (B. C.-C. 47-158), frequently refers to the "refreshment" given to Indians; and upon this point the British Case (App. VII, 181-183) gives some statistics, under the head of "Delivery of Kiltum" (rum), from which it appears that the Company's plantations supplied a part of the rum consumed at the posts. Thus one of the plantations in six years supplied 330 gallons to Moruca and Arinda. How much they had from other sources is not shown. An extraordinary statement occurs in reference to the plantation Duynenburg, in 1778, as follows:

"August 8th.—To the Indians in their revels, by order of the Director-General 176 gallons.

"November.—To the Indians who have been fishing 15 gallons."

Other items occur from the other plantations.

It was evident that protection and trade were not the moving considerations in the Indian desire for a post in Barima. When by order of the Director-General, one hundred and seventy-six gallons of rum could have been delivered to the Indians in one day, to be consumed on one occasion, and officially stated in the returns to be for use "in their revels," and when the accounts of a single plantation show frequent shipments of rum

to the Moruca and Arinda posts, amounting in six years to nearly 330 gallons, the fascinations of a "post" near by are not difficult to discover.

In August of the same year, 1744, the Company gave a rather non-committal reply (V. C. II, 95) to Storm's proposal of a post in Barima. It did not in terms approve or disapprove, still less did it order, the establishment of the post. It merely said:

"As for establishing a postholder in Barima for the purpose stated in your letter " [meaning the recovery of runaway slaves], " we are not averse to your making a trial."

Two years later, in 1746, Storm reported (V. C. II, 96) that he had not yet established any post in Barima. This is the last reference of any kind to the project. The post was never established. No muster roll of the colony ever refers to an employee in Barima.

In 1757 Storm reported (B. C. II, 131) that complaints had been made by the Commandant of Orinoco from time to time of "the evil conduct in Barima of the traders, or wanderers, as well from Surinam as from here. I have written circumstantially to the *ad interim* Governor there, Mr. I. Nepveu [the Governor of Surinam]."

This is the only action which Storm took in the matter, and it plainly shows that the Surinam Dutchmen were the offenders referred to. No suggestion is given that any offenders from Essequibo were discovered by him, and the phrase in his report was no doubt derived from the language habitually and somewhat loosely used by the Spanish authorities in speaking of Dutch offenders in its eastern territory, as, for example, in the instructions of Valdes to Flores, in 1760 (B. C. II, 187), to apprehend "the Dutch settlers in the adjoining colonies of Essequibo and Surinam," in which case the evidence shows that no traders from Essequibo were concerned.

If any Essequibo colonists were really the objects of complaint by the Governor, they must have been those engaged in the

Orinoco trade, who, as we know, were not infrequently arrested in the lower Orinoco or Barima by the Spaniards, and as to whose cases the Spanish Governor ingeniously forestalled any complaint on the part of the Director-General by himself complaining in advance of their conduct. This is confirmed by the fact that it was only in January of the following year that the Secretary at Essequibo reported to the Company that a canoe sent to the Orinoco in September for mules did not return for over two months, on account of the drought, and at the same time the quasi-Dutch adventurer Courthial was seized by the Spaniards in the Orinoco and deprived of all he had.

Subsequent to 1684, with the exception above mentioned, not an allusion to the subject of Barima trade is to be found in the evidence down to the transfer of British Guiana to the English in 1814. This fact of itself is sufficient to show that no such trade existed, and there are two or three other facts which confirm this conclusion.

In 1754 Storm reported (V. C. II, 116), in speaking of the Spanish activity in the Orinoco, that several vessels and canoes had arrived there and that "the Surinam wanderers and most of the Carib Indians have retired from Barima, and have departed to the Wayne."

This statement shows that at the time there were no Essequibo traders in Barima. Storm is describing a general movement out of Barima, both of Surinam Dutchmen and of Indians, in consequence of the Spanish activity in that quarter. Had there been any Essequibo traders in Barima at the same time, they certainly would have moved off along with the others, and Storm would unquestionably have mentioned the fact, as a matter of far more importance than the movements of the Surinamers.

In the affidavit dated September 29, 1760, of Yana, the half-breed Arawak from Wacupo, who was captured by Lieutenant Flores in a fishing boat in Barima in that year, the deponent

stated (V. C. II, 30), with reference to the "Dutch settlers from the adjoining colonies of Essequibo and Surinam," who had been reported as buying *poitos* in the river:

"That the Hollanders that purchased Poytos do not belong to the Esquivo Colony, but to that of Surinam, because in that of Esquivo the Governor does not allow any Hollander to come out and make this kind of trade."

It may, therefore, be taken as a fact proved by the evidence in this case that the Dutch of Essequibo did not carry on trade with the natives of Barima in that district; that whatever trade they had with such natives stopped at their frontier, namely, at the post of Pomeroon, Wacupo or Moruca, and that the only exception to this condition of affairs, otherwise lasting over a hundred and sixty-six years, from 1648 to 1814, was during a part of the two years 1683 and 1684, when the Commandeur, Beekman, interested himself in the subject, and when the post at Pomeroon had only just been established, and the isolated case of Cauderas above mentioned.

The statements in the British Case (pp. 80-81) in reference to trade in the Barima which seem to imply that the Essequibo Dutch were in the habit of trading with the natives in that district must be carefully examined.

The statement is first made that:

"In 1673 the Dutch were trading to Barima for crab-oil, and between this date and 1684 there are several other references in the Dutch records to trade carried on between Essequibo and this district."

It is true that Rol, in 1673, stated, at the place named (B. C. I, 173) that:

"Peace had been made with the Caribs in Barima and the Arawaks, and they had intercourse with each other, and he was going to send a boat after carap-oil;"

but it must be repeated, as stated before, that with the exception of this one statement, that Rol was going to send a boat after crab-oil, no allusion is made to Indian trade in the Barima until 1683.

If it can be said from this statement that "in 1673 the Dutch were trading to Barima," then it is drawing a very large conclusion from a very small premise. Rol does not even say that he carried out his intention of sending the boat, and as no mention is made of the fact, it must be inferred that none was sent.

In 1683 and 1684, when Beekman conceived his large project of Barima trade, the project and the projector were so severely snubbed by the Company immediately after that nothing further was heard of it. There is no reference to Barima trade between 1648 and Beekman's project, in 1683, except the proposal to send a boat for crab-oil there, in 1673. The reference given in the British Case (B. C. I, 181-182), as a reference to Barima trade does not refer to that trade at all. It is a reference to the trade at Pomeroon and to the trade with Spaniards in the Orinoco, but there is no allusion whatever to trade in Barima.

The British Case next states (p. 81,) that in 1726 the Postholder of Wakepo was sent to the Governor of Santo Thome to request leave to trade in the Orinoco, and that if he were refused he was instructed to endeavor to obtain the slaves and balsam he desired in the Aguirre.

This is true, but it is entirely beside the question. It is significant that leave was asked to trade in the Orinoco, but not significant of Dutch sovereignty. As to the Aguirre, that river is not in controversy in the present proceeding. It is as much Venezuelan territory as any part of Venezuela, and whether the Dutch traded there or not is immaterial except as showing that they traded in territories confessedly Spanish.

The same may be said of the next statement in the British Case (p. 81) that

"In 1730 a Dutch trader is mentioned in the Aguirre."

The Case, however, goes on to say that

"In 1735, 1754, 1757 and 1760 Dutch traders were in the Barima."

This must be examined. It would not signify much if Dutch traders had been in the Barima in the four years named. The

only astonishing fact would be that this was the only trace of them to be found. But, as a matter of fact, only one of the four cases named is in point. This is the case of Cauderas, in 1735 (B. C. II, 20-21), already mentioned.

The second, that in 1754 (B. C. II, 100), is a reference to the statement that "the Surinam wanderers and most of the Carib Indians have retired from Barima." This is not a case of Essequibo traders in Barima.

The third reference, that in 1757 (B. C. II, 131-132), is to the letter of the Director-General referring to the complaints of the Governor of Orinoco, already mentioned, of the conduct of the wanderers from Surinam and Essequibo.

The fourth, in 1760 (B. C. II, 187), is the case of the slave traders in pursuit of whom Flores was sent on his expedition, and, as has been already clearly shown, in like manner referred solely to the wanderers from Surinam.

The statements which have already been made with reference to the absence of any trade with the natives in Barima of the Essequibo Dutch may, therefore, be reasserted, any statement in the British Case to the contrary notwithstanding. In fact, the very statement in the British Case is the strongest confirmation of the position here taken.

2. *The Barima-Waini district, as a means of transit and traffic, was used much more by the Spaniards than by the Dutch.*

The subject of the Orinoco trade of the colony of Essequibo has been already referred to in speaking of settlement. Whatever this trade was, it was not a trade with Barima. Barima only appeared in it at all as affording the avenue by which it was in part conducted, for it was also conducted in part by sea. Thus, on February 24, 1700 (B. C.-C., 88), the Company's yacht "Rammekens" made a trading voyage to Orinoco and Trinidad, returning on June 21 of the same year (*id.*, 105).

The trade with the Spanish settlements in Orinoco, which,

under the Spanish law, was reserved to Spanish subjects, was a contraband trade, and it was only carried on in collusion with the Spanish authorities, who seem to have derived from it a considerable personal revenue. As might be expected under these circumstances, it was liable to frequent interruptions, and the references to it in the Dutch records, which are numerous, show that its ups and downs followed each other in rapid succession, and that neither the Commandeur nor the Company could well keep track of them.

There is no reference to this trade in the Spanish records, for obvious reasons. Moreover, the Spanish records, being those of an ordinary Colonial Government, are confined almost wholly to matters of military and ecclesiastical administration. Other matters seem to have been treated in general reports, which, made at infrequent intervals, were more like dissertations on general colonial policy than administrative reports in the ordinary sense.

The first reference to the subject is in 1673 (B. C. II, 36), where Rol reports that:

“He had sent some wares to Orinoco for the purpose of trade; by mistake these were carried to Trinidad, and, no opportunity being found to trade there, they had come back home.”

From this time, the trade between the Dutch and Spaniards was pursued under great difficulties and with frequent interruptions.

In August, 1684, the Company became extremely dissatisfied with Beekman, as already related, and sent him its caustic letter of August 24, in which it said (V. C. II, 50):

“Concerning the trade to Orinoco, we find it advisable that you stop it, and neither trade thither yourself, nor permit trade thither, directly or indirectly, until further orders; since we are of opinion that the Company bears all the expenses and burdens, and that others help themselves to the profits.”

Beekman, on January 15, 1685, replied (V. C. II, 52):

“That you stop the Orinoco trade is a good thing; that business has always brought in much glory and little gain.”

Notwithstanding this prohibition, it appears from the Journal of the Commandeur, from 1699 to 1701 (B. C.-C., 47-158), that the trade was then going on. In 1712, however, Commandeur Van der Heyden reported (V. C. II, 74) that the Orinoco authorities had all at once prohibited the traffic in balsam copaiba, which at that time was the article principally traded in, and that the new Governor had vessels cruising in the Orinoco to confiscate all Dutch vessels which might come thither. “But,” he added, “at the present moment the traffic is again free.”

In 1720 and the following years the trade with Orinoco had taken on considerable dimensions, especially the horse trade, and it appears to have been carried on, not as previously, by the Dutch at Orinoco, but by the Spaniards at Essequibo or Pomeroon. Late in 1726 the Court of Policy reported (V. C. II, 80) that the Commandeur, with the Secretary and others, had selected a site for a new post at Moruca, and that “they decided that the fittest place was where the horse-dealers from Orinocque generally moor their boats in the river of Marocco, it being possible to build a house there so close to the river side that a hand grenade can be thrown into the boat, the river being at its narrowest there.”

Very shortly after, in March, 1727, the Court reported (V. C. II, 81) that some Dutchmen having gone to Orinoco, “the Spaniards took all their merchandise, and told them that they had orders from the Governor of Trinidad to stop the trade in that river.”

In 1731 the Company wrote (V. C. II, 83):

“That it is far more advisable for the Company to foster the trade to Orinoco with the Spaniards than to favor this dealing with the English” (referring particularly to the trade in horses).

In 1733 the Commandeur stated (V. C. II, 85) that the need of horses having become great, “I shall by all available means try

to be helped by the Spaniards," although the Court had previously reported that the trade with the Spaniards "in Rio Orinoco cannot be relied upon" (V. C., II, 84).

All this points strongly to putting the trade as far as possible in Spanish hands.

The Commandeur, having occasion, in 1734, to complain, as he thought, of the Spanish Governor's action in reference to one Reiter, who had been sent to the Orinoco to bring back horses, and who had concluded to remain there, alleging that he was a Catholic, concluded that he would not do anything to interrupt intercourse with the Spaniards, because (V. C. II, 86)

"when one duly considers our situation here, how absolutely we depend upon the Spaniards for the horse trade, because the English bring them no more, this consideration alone would suffice for the maintenance of that intercourse."

In 1734 the Spanish Governor notified the Dutch Commandeur (V. C. II, 87) that "from now on the commerce was at an end," while the Commandeur on his part issued an order that "no more passes to Orinoco will be issued by me, and that nobody whosoever will be allowed to set out without one on penalty of a heavy fine."

Nothing is done, however, to prevent the Spaniards coming to Moruka, with reference to whom the site for the post had been especially selected, and it is, therefore, not surprising to find the Commandeur stating, in November, 1734 (V. C. II, 87), that the "Orinoco trade is again under way."

The whole situation is explained by a letter of the West India Company to Commandeur Storm, May 30, 1748 (V. C. II, 101), in which they said:

"It gave us especial pleasure to learn through a subsequent letter from you, dated September 9, how, by the zeal you have shown, the *trade of the Spaniards in the river of Essequibo begins to develop more and more*, and we hope that all further means will be put in operation to make it altogether flourish there."

It appears from this last extract that the trade with Orinoco had been practically transferred to the Essequibo side of the district; that the Spaniards were coming there with their wares, and that no further difficulty need be experienced as a result of the presence of Dutchmen in the Orinoco.

It also appears that this was peculiarly Storm's policy. This is confirmed by a letter of March 27, 1749 (V. C. II, 102), in which he said:

"There should sometime be some profit gained with the Spaniards, though the attempt is made as far as possible to pay attention thereto. But many Spaniards, come and go out of the river without coming under my observation;"

and he added:

"In order not to frighten away the Spaniards, I have until now remained quiet in consequence of pressure, and have only ordered the Postholder of Marocco always to advise me when any come, stating their names, and to whom addressed, so that I have always been informed thereof."

In 1753 the Company enjoined upon him to encourage the trade (V. C. II, 109).

So matters remained until 1761, when Storm reported (V. C. II, 120):

"I have always imagined that it was best for our inhabitants to send few or no boats to Oriuoco, and so compel the Spaniards to come here with their merchandise; in this way our people would not be exposed to the least danger, and the arrangement began to work very well."

But he went on to say that the jealousy of the colonists towards the Spaniards, by reason of allowing the latter to come to Essequibo, was so great that he was "coerced into taking a course which I really believe to be disadvantageous, and into which I am forced because I do not want to have seven-eighths of the colony against me." For that reason, he had ordered that no more Spaniards be allowed to come up the Essequibo River. It does not appear,

however, that he prohibited them from coming to Moruca; and he mentioned the arrival of some of them at that place with a large quantity of tobacco.

To this the Company replied, in November of the same year (V. C., II, 146), suggesting that it would be "more profitable to the Company, to direct this trade into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards;" and the Court of Policy, in reply, March 18, 1762 (V. C., II, 148), reported that the trade carried on by Dutchmen in the Orinoco,

"consists of mere bagatelles, and is considered so risky and precarious that not more than two of our settlers (Persik and Struys) carry on trade with that Spanish river. Their boats are mostly manned by Spaniards, who are intrusted with the business both in cattle and tobacco ;"

and they concluded that it was inexpedient for the Dutch colonists to take up the business.

The facts are correctly stated by the British Counter-Case (p. 80), which says:

"The facts are that though in 1760 the trade was practically open, the Dutch Director-General, in March 1761, reported that everything in Orinoco was in disorder, the Commandant having been summoned to Cumaná to answer several charges brought against him; that in the previous year he had, under pressure from the traders of the Dutch Colony, forbidden Spaniards to come to the Essequibo, but considered this measure to be injurious to the interests of the Company; and that, in his opinion, it was best to send few or no boats to the Orinoco, and to compel the Spaniards to come to the Essequibo.

"In November the Company supported the view of the Director-General, and the Court of Policy reported that the trade was a mere bagatelle and also risky and precarious, particularly as England and Spain were said again to be at war, and Orinoco would probably soon be ruined for many years to come. Consequently the trade was purposely suspended by the Dutch."

From this time on there are numerous indications of the prosecution of this trade by the Spaniards and its abandonment by the Dutch.

In 1763 the Secretary reported (V. C. II, 153) that:

"The uncertainty of how they would be treated by the Spanish is the reason why I have this year sent no boats belonging either to the Company or to myself out salting to the coast of Orinoque."

In the same year Storm reported (V. C. II, 154), speaking of the post of Moruca, that:

"The road of the Spaniards hither leads past this Post, so that no one can go that road without the knowledge of the Postholder, who, therefore, if he wishes, can generally get to know what is going on in Orinoque."

In 1764 he reported (V. C. II, 155):

"Only last week two Spaniards came to me with formal passports from the Governor to come here."

In a memorandum of about the same date Storm (V. C. II, 157), referring to the post of Moruca and to its use in furthering commerce with the Spaniards, said:

"All who do not sail in very large ships having to pass the Post on their journey from Orinoque."

In the same memorandum he added:

"All the Spaniards who come here with mules, cattle, tobacco, hides, dried meat, &c., pass the Post, and stop there for a few days to refresh themselves and their animals. If he [the Postholder] kept a stock of the things that the Spaniards required, the latter would be very pleased to buy them there, and not be obliged to go further."

In accordance with the policy now fully established, Storm, in the instructions issued under date of October 7, 1767, to the Postholder at Moruca (B. C. III, 155) stated:

"7. He shall demand from the Spaniards coming there with tobacco, &c., five per cent. import duty and forward the same."

From this time on not only is nothing more heard of Dutch traders dealing with Indians in Barima, but nothing is heard of them in connection with the Orinoco trade. As will presently be shown, the whole district was effectively occupied and patrolled during the remainder of the century; and as late as

1794, the Governor-General of the Colony, Sirtema van Grovestins, wrote to the Dutch Council of the Colonies (V. C. II, 248):

“That in the rainy season the Spanish lanchas come from Orinoco so far as Moruca by an inland way, passing from one creek into another, and they transport in this fashion their horned cattle and mules, and find on the way the necessary sustenance for the cattle, both grass and water.”

3. *The Dutch exercised no political control in the Barima-Waini district and made there no claim of right.*

It is evident that Commandeur Beekman, when he made his abortive proposal in 1683 in reference to trade in Barima, did not claim any territorial rights in that region. His only idea was to retain his hold on Pomeroon as a frontier. The extensive operations which he records of the French traders in the Barima region at this very time he made no attempt to interfere with. If the territory had at that time been Dutch, he would have put a stop to them, for he records the fact that they were distinctly injurious to Dutch trade.

In 1694, the statement is made by Beekman (B. C. I, 213), that “most of the red slaves come from the Rivers Barima and Orinoco, which lies under the dominion of the Spaniard”—a pretty strong intimation that the *region* referred to is Spanish.

Not a word is heard of Dutch territorial rights in Barima until the administration of Storm van 's Gravesande.

In the chapter of this Argument on the Dutch boundary (Chapter X, p. 309) a detailed history of the boundary discussion as to the coast territory has been given, with citations from the correspondence, and the Counsel for Venezuela would ask that reference may be made at this point to that statement, in order that its significance may be fully considered as showing the entire absence of any claim on the part of the Dutch to territorial control in this district. Without recurring again to those confused and discordant suggestions of claim, it is enough to mention here, as disposing of all such extravagant pretensions as to

the Waini, the Barima and the Amakuru two statements, both of the highest authority—made, one in 1749, the other in 1794. The first is the deliberate professional opinion given to Storm by “the foremost jurists of the province of Holland” that Pechy, a point between the Moruca and the Waini, was in Spanish territory; the second, the declaration of the first Governor-General of the colony of Essequibo, after it had reverted to the Dutch Government that the creek of Moruca “up to now has been maintained to be the boundary of our territory with that of Spain.”

There is no record that a Spaniard was ever tried, punished, or even arrested by the Dutch, for anything done by him in Barima. There is no record that an Indian was ever punished for anything done in Barima. There is no record even that a Surinam Dutchman was ever punished for anything done in Barima. There is no record that a Postholder ever went into Barima in one hundred and sixty-six years, except when Baudaart went there, in 1683, for a brief season, to endeavor to start a trade there, in which he apparently failed, and when the Postholder, in 1766, went to get Rosen. On one occasion, in 1726, Jan Batiste, the Postholder of Wacupo was sent to trade in the Orinoco, but there is no record that he did anything in Barima. There is no record that any official of the colony ever set foot in the territory in question except upon these three occasions. No regulation was ever made in reference to that territory by the Dutch which applied to foreigners. There is no evidence of any trade carried on by Dutchmen in Barima. There is evidence that boats, most of which, the Commandeur says, were manned by Spaniards, in the employ of two or three Dutchmen pursued a trade to Orinoco; but Barima was simply used as a channel of communication, and the traffic was almost wholly conducted by Spanish boats at Essequibo or Moruca.

It appears from that statement that no control was ever exercised by the Dutch in Barima, and that they never asserted a claim of right to the coast territory with the single exception of

the fishery at the mouth of the Waini, and that even this they repeatedly contradicted. Even the personal jurisdiction over Dutchmen was only exercised, as far as we know, in the affair of Rosen, and that was after an application for permission to the Governor at Orinoco. Of territorial jurisdiction properly so called, there was nothing. The whole territorial claim of the Dutch to that region began and ended in the mind of Storm, and his opinions on the subject were so various that it is impossible to say what he did or did not claim. The Company evidently did not know what to claim, as appears plainly enough from its letter of 1766 (B. C. III, 137), where it said:

“ If that place is really Spanish territory, then you have acted very imprudently and irregularly; and, on the contrary, if that place forms part of the Colony, and you had previously been in error as to the territory, then you have done very well.”

Nor was their perplexity remarkable, in view of the fact that at one time or another Storm's correspondence suggested nearly every stream in the region as the boundary, and again with equal emphasis explicitly denied the Dutch claim to each of them in succession.

Such is the character of the Dutch records, that if there had been any jurisdiction over foreigners in Barima, we should have seen the evidence of it again and again. It would not be necessary to discuss the question in reference to one particular incident only; it would have been shown by a multitude of incidents, every one of which would have found its place in the records. The conclusion is irresistible that there was no such thing as political control on the part of the Dutch over the coast territory.

The most positive contradiction of Dutch claims, however, is to be found in the acts performed by the Spaniards in Barima, to which attention must now be given.

4. *Spanish acts of dominion in Barima and the lower Orinoco.*

As the territorial claim of Great Britain in the present controversy includes the right bank of the Orinoco from the Amakuru

to the sea, as being a part of the coast territory, it is necessary to investigate the acts of dominion performed by Spain not only in the coast territory but upon the lower Orinoco itself.

In the lower Orinoco, Spain asserted her right to regulate trade and to deal with those violating her regulations from a very early period. In 1675 the Dutchman Asseliers (V. C. II, 37) was refused permission to trade, at the time of his visit, but was informed that at a later date the trade would be allowed, and the landing which he was to use was designated.

In 1680 the Spaniards were only permitting this trade to be carried on by canoe (V. C. II, 39).

In 1681 the Spanish authorities caused Laman, one of the West India Company's traders, together with one of his negroes, who were trading to the Orinoco, to be arrested, the trade having then been prohibited (V. C. II, 41, 42).

In 1712, on the occasion of the expedition of Mollinay to the Orinoco to discover some buried treasure reported by the Indians, the Governor of Surinam wrote (V. C. II, 73-74):

"No whites are allowed to enter the Orinoco except with a pass. The thing we have in view could be accomplished only under pretext of trading with the Indians, for which we would need the permission of the commander, of the Orinoco. He was favorably inclined towards us, and if he had remained in command we might have expected everything from him; this was why Mollinay had orders to address himself to him. Now there is another commander who is not willing to allow any one there."

The same change is referred to by the Essequibo Commandeur Van der Heyden, in a letter to the Company of July 31, 1712 (V. C. II, 74), who says, speaking of the balsam trade:

". . . they in Orinoco had all at once prohibited the traffic in it to the Hollanders, these changes having come to pass with the arrival of a new Governor at Trinidad, who, with this object, has caused several manned vessels to cruise in the River Orinoco, so as to confiscate and bring in as good prizes all Dutch vessels who should wish to come thither; that has forced me to put a stop to the journey, since of neces-

sity I dared not hazard and put in danger on such like a journey the Company's cargoes, slaves, vessels, and other goods."

In 1713 Van der Heyden reported to the Company (V. C. II, 75):

"For a considerable time it has not been possible to carry it [the trade in copaiba] on, because of some dislike which the Spaniards (on whose territory the copaiba is traded in) have taken to our nation; they also have now been cruising after the Dutch boats which go thither; so that I have not dared to risk so greatly the Company's wares and other effects."

It was in the following year, May 14, 1714, that the Company wrote an emphatic reply to Van der Heyden (V. C., II., 76), taking the ground that it had the right to forbid the trade of its Dutch colonists, in Spanish territory—in other words that its personal control of its colonists extended to their acts in foreign countries. In this letter the Company especially recognize Spanish sovereignty over the Orinoco.

Again, in the "Memorial of the Free Settlers of Essequibo," May 24, 1717 (V. C. II, 77), Orinoco is spoken of as "a river, which is outside of the territory of the Noble Company, where the same has no more power than a private merchant, which is in the Spanish possession." It added:

"Your Noblenesses are also aware (or at least we suppose so) that Orinoco is a river which is accounted as the property of the King or Crown of Spain, and consequently that nation there master ;"

and it referred to the disadvantage that the colonists of Essequibo were under in trafficking in this territory as compared with the Surinam traders, mentioning as the rivers where the latter traded "Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad."

In 1727 the Court of Policy reported (V. C., II., 80) that Pieter la Riviere, an Essequibo colonist, had gone to Orinoco to claim some fugitive red slaves; that

"on arriving at the usual mooring place in that river, he was attacked by a vessel flying the Spanish flag, and was unfortunate enough to be

killed. Those with him begged for quarter, whereupon the Spaniards took all their merchandise, and told them that they had orders from the Governor of Trinidad to stop the trade in that river."

In 1728 the Minutes of the Court stated (V. C. II, 82) that "the Spaniards of the Orinocque had, with armed force, taken possession of a Suriname vessel fishing in the neighborhood of the aforesaid river." Thus early did the Spanish assert their right to the exclusive fishery in the Orinoco and in the neighborhood of its mouth.

In 1731 the Court referred (V. C. II, 84) to "two inhabitants of this colony who, their goods having been taken from them" [in the Orinoco for violation of trade regulations] "and they sent off in a small boat, have perished."

In 1734 the rumor first came that the Swedes were intending to settle in Barima. The position taken by the two colonies respectively—the Spanish and the Dutch—upon this occasion is significant. The Spanish Governor, Don Carlos de Sucre, wrote to Commandeur Gelskerke (V. C. II, 85) that "he has brought some troops to the Orinoco and is expecting ten or twelve more barques with soldiers," and that the reason for sending these troops was "the intention of the Swedish nation to establish a colony in the river of Barima, situated between the Orinoco and your post Wacupo." The Spaniard does not ask the Dutch to coöperate with him. He does not treat the question as if it was a question that concerned Dutch territorial jurisdiction at all; but he suggests that, as the Dutch probably would not like the Swedes for neighbors, the Commandeur might be willing to inform him (the writer) of any news that he heard with reference to the project. His words were (*id.*, 86):

"And, being unable to persuade himself that the Dutch nation could tolerate in their neighborhood a nation so proud and haughty as the Swedish, he in good faith and frankly declares this to be the cause of his arriving with so much soldiery, at the same time earnestly requesting me, if I should have received any advice thereof, to be so good as to share it with him."

Gelskerke's comment upon this to the Company was that—

“ If the Swedes should undertake to try to establish themselves between the Orinoco and this colony on your territory, it would be my duty to prevent this, which could hardly be done with any chance of success with the small military force we have here.”

Gelskerke gives no intimation as to what the territory so referred to is; indeed, the words “ on your territory ” would appear to refer to “ this colony,” or possibly to the Pomeroon or Moruca, but certainly not to any place west of that point.

The Company, however, paid no attention to his suggestion further than to say that “ they can in case of necessity aid you sometimes with men and material of war ” (B. C. II, 19).

Far different was the action taken by Spain on December 16, 1734, when a royal order (V. C. II, 283), addressed to Sucre, referring to the representation made with respect “ to the settlement which the Swedes were attempting to make in River Barima,” directed:

“ Having considered the matter in my Council of the Indies, and taken the advice of my Attorney-General thereupon, I hereby command you that with what people you have and with the Capuchin Missions, you take all proper measures to prevent the settlement attempted by the Swedish nation from being established.”

In 1742 Storm van 's Gravesande became Commandeur in Essequibo, and he continued to occupy that position for thirty years. It was at Storm's suggestion and in consequence of his persistent references to the subject that the West India Company first conceived the idea of any territorial claim outside of the Dutch settlements; but they never were willing to adopt and carry out Storm's recommendation in the matter. It was during this period also, more than in any other, that the Spaniards maintained an effective supervision and control of the coast territory, and a large part of the evidence of this is to be found in the reports made by Storm himself to the Company. He first brought up the subject in 1747. In a letter of that year, referring to the territory between Orinoco and Moruca, he said (V. C. II, 98):

"But the undertakings of the Spaniards go so far that, if proper provision be not made in that matter, it may cause, in course of time, the total ruin of the colony."

Notwithstanding this opinion, both the Company and Storm, as has been seen, were strongly favorable to putting the trade between Essequibo and Orinoco in the hands of the Spaniards to be carried on at Essequibo or its frontiers (V. C. II, 101), and in 1749 Storm described the frequent goings and comings of these Spanish traders (V. C. II, 102).

About this very period the trade of the Dutch in Orinoco was under the closest prohibition. The Acting Commandeur reported, in 1751 (V. C. II, 108), that Marcand and Schutz, "being on a journey to Orinoco to buy tobacco, * * * they both had the misfortune, the former in April and the latter in May, to be taken by the Spaniards."

No complaint or comment seems to have been made on this act by the Commandeur.

In 1752 Storm reported (V. C. II, 109) that "the Spaniards have attacked and driven away the Caribs below Oronoque, and these have all retreated to our side, and thus their number has considerably increased."

In 1754 Storm reported (V. C. II, 116), speaking of the activity of the Spanish forces in Orinoco,

"that three barques and nine large canoes have arrived there and have sailed up to the fort, and that the Surinam wanderers and most of the Carib Indians have retired from Barima, and have departed to the Wayne."

In 1755 Storm reported (V. C. II, 119):

"The Postholder of Marocco has come, and has brought me a letter from a missionary Father written to him from Orinoque, wherein he has requested him to deliver up and send to him some Indians of the Chiana nation, by us called Shiamacottee, and who have already (over ten years) been dwelling under the Post, adding that, in case of reluctance, he would come with sufficient force to fetch them, and take them away in chains. The letter has appeared to me a very surprising one."

In 1758 Storm reported (V. C. II, 123) that

The adventurer Courthial, "having undertaken another voyage to the Spanish coast, in which he was very successful, was watched for by the Spaniards as he came down the Orinoco, and deprived of all he had. He and his crew (with the exception of two, who are prisoners) managed to escape overland, and have now arrived here. The man is almost entirely ruined."

In the same letter he reported the arrival of some mules from Orinoco, and stated that

" . . . no more can be got for a long while, because one of H. M.'s ships is daily expected from Spain, which will stay at anchor in the mouth of the Orinoco. Thus the trade is stopped and even the salters will have to keep away from there until things take a different look."

In 1759 he reported (V. C. II, 133):

"Two well-armed boats have been kept cruising up and down the river [Orinoco], whereby the Spanish trade is at present wholly blocked."

In 1760 the effect of the patrolling of the Orinoco and the Barima became apparent in the capture by Lieutenant Flores of the five boats taken in those waters. The immediate instructions under which Flores was acting in this cruise will be remembered, and the fact that he received the instructions is important, for it will be found that during the rest of this period the Spaniards, in carrying out police authority in Barima, were very active, but that the Director-General always speaks of their acts as if they were the unauthorized acts of private individuals, mere raids or forays. Thus, he is constantly referring to what is done by "the Spaniards," and often describes them as "privateers," or "pirates." In all this the Dutch Governor was entirely incorrect. The Spaniards who made the seizures in the Barima, who patrolled the rivers, and who exercised control over the district were commissioned officers of the Spanish Government, belonging to the army or the coast guard, and acting directly under the orders of the Commandant of Guayana. The instructions of this Commandant, Don Juan Valdes, who is entitled "Captain Warden of this fort on behalf of His Majesty, Judge General of Confisca-

tions in this Province of Guiana and Commandant of the forces therein, &c.," to the Lieutenant of Infantry Don Juan de Flores are given in B. C. II, 187. From these it appears that some fugitive poitos, escaping from the clutches of Surinam slave traders in Barima, had reported that these slave traders were there and were engaged in their traffic. Flores was accordingly ordered by the Commandant to arrest them.

Owing to the fact that Flores met a number of boats there engaged in salting and fishing, some of them in the Orinoco and some in the Barima, where it was likewise prohibited, his men were needed to man the prizes, and he was unable to go after the slave traders, who, as stated in the affidavit of the half-breed Yana (B. C. II, 194), were from Surinam. The latter therefore escaped.

No more clear and distinct act of territorial authority could be conceived of than these acts of Flores in the Barima. The cargoes of the boats were sold for account of the treasury (V. C. II, 337); the boats were sent to the treasury stores (V. C. II, 338) and subsequently sold for account of the State (V. C. II, 340). The papers show that the whole business from beginning to end was a purely official transaction. No protest was ever made by Storm in reference to these seizures, although in the general remonstrance drawn up by the Dutch Government in 1769 a reference is made to the prohibition of the Orinoco fishery.

In 1762 Storm reported (V. C. II, 148) that the Essequibo settler Dudonjon, having been sent to Orinoco to claim runaway slaves, "the Commandant there, Don Juan Diaz Valdez, not only refused to give him a hearing, but forbade him to set foot on shore, ordering him to depart at once."

In August of the same year, Spoor, the Secretary in Essequibo reported (V. C. II, 150) that

"The Director Pipersberg came and reported to me that his salter's canoe had been seized by the Spaniards near the River of Weyne, with eight and one-half hogsheads of salt-water fish."

It was just at this time that the warning was given by the Warows of Trinidad of the intention of the Spaniards to make an attack upon the post at Moruca, and that, in consequence of which, the Postholder left the post and was "staying up in the bush through fear of the Spaniards, and that he had sent to the post for his belongings."

In 1763 Storm reported (V. C. II, 158):

"The uncertainty of how they would be treated by the Spanish is the reason why I have this year sent no boats belonging either to the Company or to myself out salting to the coast of Orinoque."

This is the sort of Dutch control upon which Great Britain now bases a claim to the territory at Barima Point and the mouth of the Amakuru on the banks of the Orinoco.

In 1765 so little "control" did the Dutch exercise in Barima that Storm reported (V. C. II, 161) that some canoes filled with Spaniards were even in the Pomeroon evidently for hostile purposes.

In 1766 the Rosen affair occurred, which resulted in the order of the Court forbidding Dutch colonists thereafter to stay in Barima. This has already been fully considered. The order of the Court was expressly based on the probability that the acts of the colonists would involve the colony in difficulties with Spain. This is another example of "Dutch control of the Barima."

In 1767 Storm wrote to the Officers of the Militia in Essequibo (V. C. II, 173):

"The Postholder can hardly maintain himself, through Pomeroon, over land."

In 1768 occurred the destruction of the La Riviere plantation. This was described by Storm in his report of June 1 of that year (V. C. II, 176) by the statement that

"our rascally deserters have arrived in Barima with a few Spaniards, and have robbed the Widow La Riviere of all her slaves and property."

What really happened was this: the seizures were made by "Don Francisco Cierito, Captain of the Company of Pioneers, and consequently of the Coast Guard which protects the ports of this said Province" (V. C. II, 361), by order of Centurion, the Commandant-General of Guayana. The report of Cierito says (*Id.*):

"That the Commandant-General there present having received information that in the Creek called the Creek of Barima, which is close to the great mouth of the River Orinoco and falls into it, sundry Dutch families were established, despatched him with instructions to warn them once, twice and thrice to quit the whole of that territory *because it belonged to the said Province*, in virtue whereof the Declarant went in his vessel, with another accompanying him, in search of the said Creek, and having arrived at the mouth he saw several Indians of the Carib nation, and these, before the Declarant could reach the establishments and farms of the said foreigners, gave them intelligence, and thereupon they took to flight without giving an opportunity for the notification; and they only found the deserted houses and the effects, implements and utensils contained in the inventory, which they put on board the two vessels and then set fire to the said houses, in order that they should not form settlements in future, and destroyed the farms as far as they possibly could."

The concluding "*Auto*" in the series of Spanish records is as follows (V. C. II, 364):

"In this City of Guayana, on the 19th April, 1768, We: Don Manuel Centurion Guerrero de Torres, Captain of the Royal Artillery Corps and Commandant-General of this Province, and Don Andres de Oleaga, sole Royal Officer therein, proprietor having seen these '*Autos*' and the result of the four Declarations therein, and whereas the Dutch have unwarrantably sought to take possession of the *Territory of Barima, Jurisdiction of this Province*, where they had established farms and houses to carry on the exportation of woods and other products in a clandestine manner, for which purpose, according to information received, they had likewise gathered together certain runaway slaves, fugitives from the Provinces of Cumaná and Carácas, to act as pilots, and point out the lawless Spanish subjects who only occupy themselves in carrying on clandestine exportation along the creeks and landing-places which are out of the way and unknown; Wherefore, and also seeing that by various laws, and the most recent '*Cedulas*' issued by His Majesty, *it is forbidden under any pretext whatsoever to suffer or permit foreigners to exercise*

the freedom of establishing themselves in these dominions by establishing new colonies, considering the importance thereof, and the repeated pragmatic Codulas which prohibit it, we have had to declare and do declare that the said Dutch by the crime they have committed, and the penalty they have incurred, must forfeit the implements and other things which they were found to possess, and which were brought by the Captain of the Coastguard Vessels."

It would be impossible to find acts of a more formal, official and governmental character than these, nor would it be possible to base such acts more distinctly and expressly upon rights of territorial jurisdiction. No protest was made by Storm in reference to these acts. All that he said was (V. C. II, 176) that it "did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security I had this inserted in his pass; he was also forbidden by the Court to settle in Barima."

The fact was that Storm, by his own acts, had deliberately and intentionally tied his own hands in the matter, and he misrepresented it to the Company, also with evident intention, as a mere raid on the part of "our rascally deserters," "with a few Spaniards." How much the deserters had to do with it appears from the Spanish documents.

In accordance with this deliberate intention, Storm thereafter represents all the acts of the Spanish in the Barima as being done by privateers or pirates, occasionally referring to the vessels as "the so-called Coast Guards" (V. C. II, 179).

Possibly this may have been suggested to him by the fact that a seizure was in fact made in 1762 by a Trinidad privateer. The vessel seized was in this case restored by the Spanish Governor—showing the clear distinction between authorized and unauthorized acts in the view of both parties. The vessels from Orinoco that made seizures were coastguard vessels, commissioned for the purpose by the Government; and as to them, while Storm makes many lamentations, he never disputes the right of Spain to use its agents for this purpose in the territory west of Moruca.

From a report of Centurion, Commandant of Guayana, made in 1770 (B. C. IV, 72), it appears that in 1767 the Commandant had equipped several "cruising *lanchas*" for the purpose of patrolling the Spanish rivers, and he refers in his report to the captures made "in the three years that the privateers for this river have been in service by my orders." The word "privateers" used here in the English translation is incorrect, as the context shows that these vessels were cruising launches, under the command of Spanish officers. The Spanish words are *lanchas corsarias*, which mean "cruising *lanchas*," or "cruisers," as the same word is correctly translated in other places (B. C. IV, 78), where Centurion speaks of "some Dutch captured with their boat by our cruisers [*corsarios*] in the Orinoco and lately brought to this capital."

The patrol maintained by these vessels from this time on was constant. In 1768 Storm reported (V. C. II, 177) that "a Spanish privateer "[evidently one of the *lanchas corsarias*]" from Orinocque cruising along our coast made an attempt to capture your Lordship's salter before the River Wayni;" and he added:

"They are not content with most unreasonably keeping our runaway slaves and with hindering us from carrying on the fishery in Orinocque, which we have always been free to do, but they now wish to prevent us from salting along our own coasts, and will in this manner and by closing our river, and no boats will dare to go out any more. Is this proper behaviour on the part of our neighbors and allies?"

On November 9, 1768 (V. C. II, 179), he wrote:

"According to a report received from the Postholder of Maroco yesterday the Governor of Orinocque is in the mouth of that river with one large and one small boat, both armed, and it is reported that he will stay there for two months, for what reason or object I do not know."

Here was a case at last where Storm could not dispute the official character of the persons exercising dominion in behalf of Spain. Whatever he might say of a Lieutenant of Infantry, a Captain of Pioneers, or the Commander of a Coastguard vessel, in

characterizing them as "privateers" or "pirates," he could not deny that the Governor of Orinoco in person represented the Royal authority of Spain. He adds, however, that he is there "for what reason or object I do not know." One would think, from the citations already given from his correspondence, that by this time Storm might have known pretty well for what purpose the Governor of Orinoco was staying for two months "in the mouth of that river with one large and one small boat, both armed." Certainly the reader of his correspondence has no difficulty in determining. It only adds another to the graphic illustrations which this correspondence presents of the evasive, shifty and cowardly policy of the Dutch Governors in general and of Storm, the one who was there for the longest time, in particular, in their dealings with this territory, which they never settled, which they even forbade to their colonists for purposes either of settlement or trade, which they never made the slightest attempt or movement to control themselves, and as to which they never made the slightest protest against Spanish control.

How flimsy was Storm's pretense that he did not know what the Governor of Orinoco was about, is shown by a letter written only three weeks later, on November 28, 1768, when the Zeeland Chamber of the Company wrote (V. C. II, 180) to the Director-General:

"In the meantime the loss to the colony of the fishery in Orinoco causes us no slight regret, but we know no means of redress against this, unless the people in the colony itself should be able to suggest some means of retaliation."

Early in 1769 the Royal Accountant in Guayana gave a list of confiscations and seizures made *in the Orinoco and Barima* by "cruising *lanchas*." These included, among others, an English sloop, an English boat, a French schooner, a French sloop and schooner, a canoe from Essequibo, a felucca from Essequibo, and a considerable quantity of goods from various places (V. C. II, 366).

In another letter dated March 10, 1769, to the Commandeur in Demerara (V. C. II, 183), the Director-General said:

"I have this moment received a report from Mr. Buisson that the Spaniards are carrying off the Indians from Maroco and have made themselves masters of the post."

What actually happened is described in a letter of the Director-General, on March 15, 1769 (V. C. II, 183), stating that:

"The Spaniards, with two Capuchin Fathers, a detachment of soldiers, and a large party of armed Waykiers, were capturing and taking away as prisoners all the free Indians between Barima and Pomaroon, and that they had actually overpowered the Company's trading place, Marocco, and that they were now there. . . .

"They have captured and taken away all our people that were on the sea-coast. The salter of Luyxbergen has luckily escaped them, but his Indians, his vessels, two large canoes and three single canoes, which he had got by barter, they have taken away. They of Duynenberg returned back early in the morning."

The Postholder reported that they had stated that they had orders from the Governor. He also reported that "the whole of Wacupo and Corey has entirely fled," meaning the Indians about those creeks (V. C. II, 185).

The Dutch Remonstrance of 1769 to the Spanish Government referred to the acts at Moruca, but had nothing to say of Barima.

Not only were the Spanish taking their own fugitive Indians from the neighborhood of Moruca, but they had formed the evident intention to clear the Barima of intruders, and they refused to allow even the recapture of fugitive slaves, which had up to this time been winked at or overlooked both in the interior and in the coast territory.

The Postholder reported in reference to these matters (V. C. II, 168):

"There is a man gone after the runaways of Mr. Volskow; he has luckily caught them, and when here, coming into the Savannah of Marocco, the Spaniards took him, loosed the slaves, and placed the fetters on him and the others with him. But a boy having run away from Miss Persik, came

and told me this, and also that they will come again to come and fetch the Indians of Pomaroon and the remainder of those who were here.

“The negro J. Breek, his vessel and people, are taken, but he has fled. Mr. Trotz’s creole Adrian is taken. They have plundered Joseph Wolff. Jan Domburg they have had twice.”

On March 16, 1769, the Director-General wrote to the Company (V. C. II, 187):

“But, my lords, allow me to ask what is now to be done to get food for your lordships’ slaves? The salting is now entirely stopped, not alone in the mouth of the Orinocque, where we had carried on the fishery from time immemorial, but there are neither canoes nor corrials to be got for the plantations or the Fort along the whole of the sea-coast, and we are shut in on all sides.”

In a letter to the Director-General, May 1, 1769, M. Buisson, Councilor in Essequibo, reported that (V. C. II, 188),

“there was a great panic in Ituribisi, through the Indians’ own fear that the Spaniards had come through Pomeroon and seized Jan Baptist and burned his house and were kidnapping the Indians; all those who lived in Ituribisi fled down-stream upon this rumor.

* * * * *

“As for the Caribs, they are, it seems, abandoning their land Barima, coming every day up to Essequibo, a great number have gone up, and more are going up to-day, and they will then begin their customary murderous performances above.”

In a letter of May, 1769 (V. C. II, 190) to the Company from the Court of Policy and the Director-General, they said:

“The unexpected invasion of the Spaniards, so incompatible with the law of nations and the treaties of alliance, calls for your lordships’ most serious consideration, and requires a speedy resolution for redress. Not only is the colony exposed to the greatest danger from Cajoeny up above, and from the sea-coast below, the plantations being continually open to pillage and plunder (amongst which plunderers the principal are your lordships’ runaway slaves, to whom all the paths, holes, and corners are known), but our fisheries both in Orinocque and on the sea-coast have been entirely knocked on the head and lost, and your lordship’s Post at Maroco has been entirely ruined, all the Indians who still remained having fled, and none now remaining round or near the Post; those in Pomeroon have also departed and abandoned their dwellings, with the excep-

tion of the Caraibans, who hold their ground, and whom up to the present they have not dared to insult."

In a letter to the Company May 12, 1769 (V. C. II, 190), the Director-General lamented:

"What a pity it would be if such a flourishing colony (such as this is now growing) were to be ruined by rogues and pirates, as must inevitably be the case if no powerful measures are adopted to resist the pirates from Orinocque and made them abandon their expeditions!

"According to the last reports from the Postholder and from the Caraibans, they are still all in Barima, having sent their prisoners to Orinocque, and they threaten to come again at an early date. . . .

"The said Owl . . . told me that the Spaniards in Barima, having been reinforced by another boat, had at last attacked the Caraibans themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations; that they continued to make raids all around and along the sea-coast, and that they were making preparations to come to Powaron, and that they said that when they had finished there they would come to Essequibo and attack the plantations and even the Fort itself.

"I regard the latter as a vain Spanish boast, but they are quite capable of doing all the rest. Things have now actually reached such a stage that we can return violence with violence, but is it not a sad thing, my lords, that we have such a weak garrison and not six men among them upon whom we can place the least reliance?"

He added:

"The depredations of the Spaniards from Barima to Powaron continuing daily, we must acknowledge that they are capable of anything, and that we must expect all kinds of violent and piratical acts from them."

Such was Storm's characterization of the acts of the Spanish Government in exercising jurisdiction and control over the territory which it claimed as its own, and whose claim nobody disputed. In view of the presence of the Governor himself for two months in the lower Orinoco, at its mouth, Storm might on this occasion have omitted his usual epithet of "rogues and pirates."

The reports of Spanish acts of dominion in Barima continue. On July 31, 1769, the Director-General informed the Company (V. C. II, 197):

"Three excellent slaves of John Liot, carpenters, have run away to Orinoco; he has been in pursuit, but was compelled to return, the Span-

iards (so he says) having followed to beyond Pomeroon. The man whom Vulschow had sent in pursuit of his slaves, and who, as I had the honor to inform you in my preceding letter, had been seized and put in chains by the Spaniards, has come back.

He told me that he had been treated very badly as soon as he arrived in Orinoco; that the Governor had sold the slaves."

It is a most significant fact that while the Dutch in their Second Remonstrance complain of the prohibition of the fishery, which they allege had been theirs from time immemorial, of the capture of a fishing vessel off the mouth of the Waini, of the attack on Moruca, and of the failure to seize and return fugitive slaves arriving at the Orinoco settlements, they say nothing of Spanish acts of dominion in Barima.

The remonstrance of the Dutch Government was of no avail. On the 30th of November, 1769, Storm reported (V. C. II, 213), that

"The Spaniards continue to cruise along the coast, so that there is no chance of getting anything salted for the plantations, which does both the Honorable Company and the planters a great deal of harm."

In letter of November 30, 1769 (V. C. II, 213), to the Company, the Director-General said:

"The actions of that proud nation are really unbearable, and the more so because they presuppose a considerable measure of contempt, since the Spaniards in Orinocque must be fully convinced that if we chose to use our power with our Indians we could make the whole of Orinocque too hot for them."

He added:

"Meanwhile our fisheries are ruined, and we have lost all our runaway slaves. The slaves cannot live and work without rations, and three pounds of fish once a fortnight is really not much. This has now to be bought from the English. On the 18th I had to buy six barrels of cod; and if the English were not to come here, the colony would be unfortunate indeed; this is very costly, too, both for the Company and the planters."

In a letter of December 3, 1769 (V. C. II, 214), the Councilor in Essequibo reported to the Director-General:

"I can not neglect to communicate to Your Excellency that Pedro Sanchos has come from Orinoco with the bad news that in a month or six weeks 2 boats will come with as many as 50 or 60 men to kidnap the Indians as far as in Pomeroun, and then, I fear, plantations will surely be pillaged; for this Governor sets his boundaries as far as at the bank of Oene."

On December 21, 1769, the Director-General, in a letter to the Company (V. C. II, 214), said:

"I take this opportunity of informing your lordships that Pedro Sanchez having been in chains in Orinocque for some months, had the good fortune to escape. He has informed me that two privateers are again fitted out, with a much stronger crew than the former one, and that in about five or six weeks from now they would come to Maroco and, further, into Pomeroun to carry off all the Indians whom they could get, and that they would probably come as far as the mouth of this river."

In a letter to the Company, July 30, 1770 (V. C. II, 216), the Director-General reported:

"The fishery in Orinocque still being closed, I am compelled to buy cod for the plantations and for the rations of the slaves."

August 18, 1770, the Director-General reported to the Company (V. C. II, 216):

"Young Mr. Tulleken, having asked for a permit to go to Maroco, and having obtained the same, I now hear that he went farther, and that he was arrested and is now a prisoner in Orinocque."

In a letter to the Company, January 6, 1772 (V. C. II, 218), the Director-General, complaining of the refusal of the Governor of Orinoco to make restitution of runaway slaves who escape into his territory, said:

"The former Postholders in Maroco were able to do something to arrest the progress of this evil, they having at least six or seven hundred Indians around that Post, some of whom they could always have out at sea, but the unauthorized attacks of the Spaniards have driven these natives away, and the Spaniards even came to the Post, as your lordships know, sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

This does not speak well for Dutch control of the Indians. If such was Dutch control and protection of the Indians at a Dutch "post" in Moruca, what must it have been in the territory stretching out from 100 to 200 miles to the westward?

So in the next letter to the Company, September 30, 1774 (V. C. II, 222), the Director-General reported:

"We have been continually annoyed by the Spaniards, who, to the number of forty, recently came down as far as the Post of Maroco, carrying off with violence or killing all the free Indians in those parts, by which these people who are of such advantage to our colony are at once driven out of our land, they fleeing in whole troops to the river Coerentyn."

On October 11, 1775, the Postholder in Moruca wrote to the Director-General (V. C. II, 228);

"This serves to inform your Honour that on the 8th of this month the Spanish Captain Mattheo, having with him fifty men . . . [have been here], and taken away all the Indians and boats, going as far as a distance of more than two hours below the Post; they have even carried off the Indians who have come hither to lay out plantations." . . .

"So that there is no longer an Indian to be found in these parts. The Spanish Captain said that they had come to look for the Indians who had killed the Spaniards, and that they had come in two large vessels lying at Biejarra [Biara] at the mouth of the Hittaba, [Itabo] and that he, the Captain, had been sent out from those vessels, and he further said that his lord and master would shortly set a guard in the arm of the Weene called the Barmani, and that the whole of Maroekka belonged to the Spaniards."

"The Spanish Captain Mattheo," referred to for the first time in the letter last cited, was Don Mateo Beltran, for more than ten years Captain in the Royal coast guard on duty in the Barima and Orinoco. He is frequently referred to in later letters of the Director-General, who apparently thought that he was a species of "pirate"; in other places he is called a "privateer," and on one occasion the Commandeur of Essequibo expressed doubt as to whether he had a commission (V. C. II, 236).

Beltran, however, was neither a pirate nor a privateer. In a

journal of one of his cruises (V. C. II, 442), he shows exactly what his relation was to the Spanish authorities, and also gives a description of the cruise which may be taken as typical of his regular occupation of patrolling the Barima, Waini, Amakura, and lower Orinoco. The importance of this document as indicating Beltran's authority and the nature of the control exercised through him was recognized by Her Majesty's Government, in that it was one of the few documents for the original of which they made a call, under the provisions of the Treaty.

The journal opens by the statement (June 23, 1785):

"Having left this capital [Angostura] by order of the Governor and Commander-General Don Miguel Marmion, steering in a straight course to the great mouth of the Orinoco, from thence passing into the Barima creek, on the same day, at ten o'clock at night, we arrived at the Port of San Miguel."

On the following day Beltran arrived at the Presidio, and prepared the cartridges for the cannon and put the arms in order. Thence he set out, having received an Indian, in addition to his force, from the Commandant, Don Antonio de Perella.

Arriving at the Portuguese Islands, Don Mateo learned of a schooner fishing in the mouth of the Waini, and proceeded on his cruise, meeting occasionally with Indians from the missions, some of whom he took on board of his vessel.

One of the parties to which he refers was an expedition composed of four canoes of mission Indians, under the command of the gunner of the Coast Guard, who was also patrolling "by order of the Commander."

After passing the patrol boats of the gunner, he continued down the river, visiting the lowest island in the Orinoco, Cancrejo, directly opposite the mouth of the Barima, where he passed the night.

At Amakuru he sent for three Indian chiefs, two of whom lived between Amakuru and Barima, and gave them some orders.

On the 29th of June, having been out just a week, Beltran an-

chored in the Barima, and sent out the coxswain in a canoe with eight scouts to patrol the river. The coxswain and his patrol were gone all day, and upon their return reported that they had found three canoes "concealed in the bushes, where some Guaranó Indians had a hut inland."

Beltran thereupon ascended some sixty or more miles up the river, passed through the Mora Passage to the mouth of the Waini, but found nothing but the places where the Dutch had been fishing and salting and gathering thatch, but the vessel was gone.

Informing himself wherever he went from the Indian chiefs, as to the condition of affairs in Barima, he heard that some Hollanders had some days previously come down with a few *poitos* to the headwaters of the Barima, and that they had taken them to Essequibo.

Returning down the Barima, Beltran went to the mouth of the Aratura, in the lower Orinoco, and stretched across the *Boca de Navios* to the islands, passing the night at Loran, the large island next but one to Cancrejo.

On the 8th of July, in the evening, he arrived at the Presidio, where he awaited letters from the Commandant; whence, on the 13th, he returned to the capital, having been gone altogether for three weeks.

The above narrative by Beltran of a three-weeks' cruise, may fairly be taken as an example of all his numerous expeditions. It does away entirely with the suggestion that he was not the authorized agent of the Spanish Government. He was as much an officer of that Government as Cierito, or Flores, or the Commandant himself. He starts under the orders of Marmion, the Governor; he has his cannon put in order at the fort at Presidio and fills up his detachment from the force under the Commandant, and he returns at the end of his cruise to the Presidio, where he awaits orders from the Commander-in-Chief. In the meantime he patrols the whole course of the Orinoco River to its mouth, including the large islands in the neighborhood of Barima Point;

issues orders to the chiefs living on the Amakuru; patrols the Barima for sixty miles from its mouth; visits the Waini for the purpose of apprehending vessels engaged in the fishery, contrary to the prohibitions of the Spanish Government, and finding nothing which calls for immediate attention, he returns.

This was Beltran's occupation during the whole ten years, from 1775 to 1785, at the beginning of which period, in 1775, he is first referred to as "Captain Mattheo" by the Director-General of Essequibo, although the Director-General seems to attach more importance to the rumored presence with the Spanish force of some stray deserter from his own garrison than he does to that of the Spanish Captain.

The journal of Beltran also shows what was the nature of the Spanish patrol prior to 1775, when Flores and Cierito were in command of the coast-guard vessels (*lanchas corsarias*), whose movements were precisely similar to those described in the Diary, and included the control of the rivers and the seizure of vessels and of persons not only in the interior of Barima, but in the mouth of the Orinoco and Waini. It explains the meaning of all those reports of Storm, which month after month describe the presence of the Spanish launches in Barima and Waini, and even in the Moruca itself.

In 1779 Don José Felipe de Inciarte was ordered to make an exploration of all the land to the east of the lower Orinoco, included under the general name of Barima (V. C. II, 434), and was engaged in carrying it out during the greater part of the summer and autumn of that year. He traversed and surveyed in detail the Barima, the Aruka, the Mora Passage, the Waini, the Barama, the Baramani with the various creeks at its head, the Biara and the Assacatta, including the itabo running through the savanna, and finally the Moruca, and advised the establishing of a fort in the immediate neighborhood of the Moruca post (V. C. II, 434-8).

Inciarte's report was made direct to the King, and in conse-

quence of it a royal order was issued to him, charging him with the "mission of occupying and populating the lands described in his report," and of erecting two forts on the Moruca.

The order, however, owing to various delays, had not yet been carried out when the Revolution broke out in Venezuela.

In the meantime Beltran continued to be employed on the duties which had been assigned to him in patrolling the Barima, and from time to time the reports of the Director-General show his activity.

On September 23, 1779, the Director-General reported to the Company (V. C. II, 236):

"Having thus replied to your greatly esteemed resolutions on my behalf, I take the liberty to inform you that three weeks ago a party of about 80 Spaniards and half-breeds were for some days in the river Pomeroon, without, however, doing any damage; but the Indians report them as having said that they were coming back in three months and would then establish a fort there."

In the journal of J. C. Severyn, Military Commandant in Essequibo, under date of March 1, 1781 (V. C. II, 236), he said:

"Several reports which came in yesterday and to-day state that the Spanish privateer has already seized some negroes of English planters in this colony who were on the river in boats, and holds them prisoners in his vessel; while he has hailed many others and made them heave to, but, on learning that they belonged to Dutch planters, he allowed them to depart unmolested, he having gone so far as to threaten with musket in hand that he would fire upon them if they were unwilling to come to. This Spaniard's name is Mateo, and it is a matter of speculation whether he has a commission."

April 3 the Journal stated (V. C. II, 237):

"The assistant Luyken, who had set out with a flag of truce and letters for the Governor of Orinoco, returns and says that in the river he had met a boat with Indians, who had told him that Mateo was lying with his craft in the river of Barima, and was carrying off everything without distinction."

May 22 the Journal stated (App. Ven. II, 237):

"The planter Cramer reports to Captain Ingram that in the river Pomeroon Spaniards with boats have again been seen."

In 1785 Don Matheo Beltran's cruises again were made the subject of comment by the Dutch authorities. On October 14 of that year, the Government Journal contained an entry that one of the colonists had heard from Indians that "Matheo, who is a Spaniard on the coast, mentions and threatens that he will overtake and burn our Post at Marrocco" (B. C. V, 40). On October 2 it was reported "that a Spanish barque managed by one Matheo continually cruised by or about the Post, which skipper had expressed himself more than once in a seditious way, threatening to set fire to the Post." In consequence of which, the Commandeur, after deliberating for three weeks, on October 29, gave the Postholder the bold and resolute order "that, if the said Spanish Captain named Mattheo again expressed himself in such seditious terms, he was to make directly a report thereof" (B. C. V, 42).

The Commissioners in their report to the Prince of Orange on the condition of the Colony of Essequibo and Demerara, July 27, 1790, stated (V. C. II, 243):

"Many more lands here could be brought under cultivation if the vicinity of the River Orinoco did not prevent it, for the *Syaniards* there sometimes come with armed boats, called lances [*lanchas*], as far as *Moruca*, and by force carry the Indians who dwell there, enslaving them, while on the other hand our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free."

In 1802 Major McCreagh, of the British Army, made an official reconnoissance of the posts on the Orinoco. He stated (V. C. III, 57):

"In entering the River Orinoco by the southeast, generally called the great channel, Cape Barima forms the southeast point."

And he described "an immense assemblage of flat islands, intersected by innumerable channels," which forms what may be called the north wide side of the great channel. These are the islands of Cancrejo, Loran, and others opposite Barima Point, forming with it the two banks of the Boca de Navios.

He went on thus:

“Having entered the river, you pass close to leeward of this island, and a few miles farther up you come to a second, of nearly the same appearance, on the lower point of which are three temporary huts. It is called the first military post, but is in reality a station for pilots—of whom there are always five, who are regularly relieved. They are native Indians, and are occasionally called either pilots or soldiers. The former, I believe, however, is the only of the two capacities in which they are used to act. This island is called Pagayos.”

In 1802, therefore, the first post of the Spanish on the Orinoco was the pilot station at the Island of Pagayos. This island, though put down on Sheet 1 of the British Atlas, is not named on that map. It is at the mouth of the Arature River, the first branch of the Orinoco above the Amakuru. Many other maps in the British Atlas show the island by name; for example, Map 46 (Schomburgk), where it is marked, “I. Pagagos or Pilot I.”

Major McCreagh went on to state:

“The second post, as it is termed, is named Sacopana, and is situated on this side of the river about 120 miles above Pagayos.”

It consisted of eight houses, and was under the command of a sergeant.

The third post was at Fort Barancas, seventy miles further. It contained a battery of eleven guns, commanded by a lieutenant, with a garrison of three Spaniards and forty-six Indians.

The fourth post was three miles higher up the river, called Upper Barancas. Here were stationed three gunboats, close to the beach, each mounting one heavy gun and some swivels. At this post it was the rule to stop all vessels.

The fifth post was thirty-eight miles further, at the town of Old Guayana. It comprised a battery of six 6-pounders and six smaller guns. The garrison consisted of six officers and twenty-five rank-and-file.

Above these five posts, eighty-two miles further up, was the town of Angostura, the capital. According to McCreagh, it was a well-built town:

“The houses all of stone, the roofs tiled, the streets laid out at right angles, and the whole situated on the sloping side of a hill.”

There were about fifty soldiers at the town. McCreagh's comment on its situation, which he was of course regarding chiefly from a military standpoint, in consequence of which the feature which most impressed him was the weakness of the defences, was

“Except the conversion of the aboriginal natives (which is certainly not the primary motive), the Spanish Government has obviously no other object in occupying the Oronoque than the very important one of excluding other powers from a river which runs along the rear of the Provinces of Popayan, Venezuela, Carraccas, Cumana and Paria; which, therefore, in the hands of a commercial nation would carry away from them the productions, and monopolize the traffic of those rich territories, and which, if possessed by a warlike power, might immediately paralyze the authority and gradually destroy the tenure by which Spain holds her vast Empire in South America.”

Major McCreagh's statement is full of interest. Undoubtedly the defences of Spain in the lower Orinoco were not highly efficient from the standpoint of a great military Power, and such a Power desiring to take the hint conveyed by Major McCreagh's official report and to carry on a war of conquest would have found little difficulty in overcoming them. The evidence of McCreagh may have been valuable at the moment to indicate the military inferiority of the Spanish defences; it is invaluable now as indicating the completeness of the Spanish occupation of the lower Orinoco. At the time it was written it contemplated the divesting of Spanish title by war; now it appears as an inconvenient admission on the part of a British officer to prevent the divesting of that title without war.

If, as the British Case seems to believe, occupation is necessary to establish Spanish or Venezuelan title, nothing could have been more complete for the purpose than the occupation as McCreagh describes it in the lower Orinoco. That occupation began in the 16th Century. As admitted in the British Counter-Case (page 28,

line 30): "The Spaniards entered, explored, settled, and effectively defended the Orinoco." The occupation has been continuous down to the present day, and as early as 1802 it was so complete that, at intervals down the river below the capital to within a few miles of its mouth five posts existed, four of which were military posts, with batteries, in command of an officer, and the fifth was a post of pilots a few miles from the mouth of the river. If occupation of a river is required to establish a title to it, what more occupation can be needed than this, an occupation lasting for over three hundred years? And in the face of such a title, accompanied continuous occupation, what title can possibly be set up by Great Britain to one of the banks of the Orinoco, either up to the Barima or the Amacura? How has this Spanish title been divested, and how has a British title been acquired?

The Spaniards uniformly asserted their rights in Barima. They never made the slightest admission, and they evidently never had the slightest idea that all the territory west of Moruka was otherwise than Spanish territory. They uniformly conducted themselves as if it was Spanish territory. It was visited constantly by Spanish officers, in the performance of their public duties, and the public duty with which they were charged at the time was the duty of prohibiting intrusion from foreigners, of preventing the slave trade, and of enforcing regulations in respect to commerce and fishery. Every one of these was an act of territorial jurisdiction. Look at the orders to Flores, and Cierito, and Inciarte: All of them were expressly based on the Spanish title to the whole region. Look at Beltran's declaration to the Postholder at Moruca, and the statement of the Spanish Governor, twice reported to the Director-General of Essequibo and by him reported to the Company, that the Spanish boundary was at the bank of Oene. The Spanish authorities never hesitated for a moment to enforce territorial jurisdiction them against foreigners as well as Spaniards; in fact, the cases which we have in the records, which are innumerable, are almost

entirely cases of enforcing dominion against the Dutch of Esse-
quibo, their persons and their property.

Notwithstanding all that the Spanish did, no remonstrance was ever really made against the exercise of dominion in Barima as such. There were protests made about the fishery, which the Dutch claimed by use, which claim the Spaniards disputed. There were protests about depredations at Moruca, which the Dutch claimed was the site of their post and was an injury on their territorial frontier. But so far from resenting the acts of which they had the clearest knowledge, and of which the evidence to-day is largely to be found in their own records, they not only did not resent them, but the Colonial authorities were expressly instructed by the Dutch Company to avoid retaliation, and to give the Spaniards no cause of offence.

From the records that have been quoted above, Barima appears, during the latter part of Storm's administration and of that of his successors, to have been as much Spanish territory as any part of the country west of the Orinoco—not settled, it is true, but none the less Spanish, for settlement was not then necessary to establish title any more than it is to day. A settlement was, however, decided on, and its establishment was commanded in a Royal order, and doubtless would have come about in time, had not the Revolution interrupted the plans of the Spanish Crown.

CHAPTER XIV.

ADVERSE HOLDING—TRADE RELATIONS.

An important part in the attempt to establish a political control by the Dutch over the territory in dispute is given in the British Case to Dutch trade. The proposition is thus stated, at page 80:

“The earliest political control exercised over the territory in dispute was connected with trade.

“By the Treaty of Munster the Dutch and the Spaniards, while retaining the ‘commerce and country’ which they then respectively held and possessed, were debarred from trading in the territories held by each other. Even before the Treaty of Munster it had been a maxim of Spanish policy to exclude foreign trade from Spanish possessions, the truce of 1609 having contained a similar provision. In 1612, for example, this rule was enforced upon the Governor and people of Santo Thomé.

“It is, of course, the fact that the Dutch carried on an extensive contraband trade with the Spanish possessions by the connivance of the authorities, but the existence in any region of trade carried on by the Dutch systematically and not on sufferance excludes the idea of Spanish political control, while it naturally, and in fact, led to political control by the Dutch. It is from this point of view that it is important to see over what region the Dutch traded systematically and as of right.”

And on page 155 of the British Case the following important statement is made, in addition:

“Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled, and its resources in their then state of development were effectively appropriated by that Government.”

The subject is dealt with in the Counter-Case of Venezuela at page 73.

It would seem that, after putting forward the claim that is made in the extracts above cited from the British Case, it should

The subject of trade relations is presented in the British Case as one element of title by political control; as a thing not necessarily involving political control, but which led to it. In order that it should have any effect, it seems to be conceded that the trade must have been carried on as of right, and not under any tacit waiver or under any trade convention or concession, or by the connivance of the nation making claim to the territory. According to the theory advanced, the Dutch claim must have been one that, under the trade rules of that day, involved the exclusion not only of the Spaniards, but of the French and of the English, and one that operated not only upon foreign nations, but upon the natives, a right to prevent the Indians from trading with the Spanish, French or English and to punish them if they did.

It seems that, logically, the title to dominion over the territory must be established first and without reference to trade, because no nation can claim an exclusive right to the trade of a region over which it has not acquired sovereignty, except by treaty with the Sovereign. Sovereignty gives a right to the control of trade. Trade cannot of itself lead or give a right to sovereignty. Any pretension to control the trade of a country over which sovereignty has not already been acquired is frivolous. We suppose, however, that it is intended that the assertion and exercise of such a right is given as evidence that the sovereignty had been acquired. If the claim were made without title from any other source, it would not be allowed by any other nation as of right.

The elements that are essential, according to the admission of the British Case in the above citations, to give to trade the effect that is claimed for it are that it should be a "systematic" trade; that it should be "an exclusive right of trading within a specific area surrounding its settlements"; that it should be exercised under a "claim to dispose of an exclusive right"; and that the claim should be enforced. The basis here is not different from that of a prescriptive title based upon occupation. The occupation must

be exclusive; it must be of a specific area; it must be under a claim of right to a specific area, and the occupation must be actual; or, in other words, the claim must be effectively maintained.

These definitions, laid down in precise and accurate terms by the British Case, prescribe the test by which the effect of trade relations is to be weighed as evidence of the acquisition of public title or sovereignty to the disputed territory.

We assert that, upon the evidence, the Dutch trade within the disputed territory fails in every one of these particulars.

Before applying to the evidence in this case the tests laid down by the British Case to determine the value of trade relations as evidence of sovereignty, a word must be said about the character of Dutch trade in the disputed territory. This trade was of several kinds, and they must be carefully distinguished.

First, there was the trade which the Dutch carried on with the Spaniards in the Orinoco, where the Dutch, coming either with money or with trading wares, either across the interior territory or across the coast territory or by sea, bought from, sold to or bartered with the Spaniards in the settlements of the latter.

Secondly, there was the trade carried on by the Spaniards with the Dutch in the river Essequibo, which was simply the reverse of the previous process, and which in the latter part of the period gradually replaced it.

Thirdly, there was the trade between the Spanish and the Dutch where the traffic or barter took place in the disputed territory, either directly or through the intermediary of Indians.

Finally, there was the Dutch trade with the Indians themselves, which must itself be considered in two aspects: First, where it was carried on by the Dutch itinerant traders wandering through the disputed territory; and, secondly, where it was carried on by Indians who brought their wares to the Essequibo River itself.

Great confusion has been caused in the presentation of the

British Case by the entire failure to distinguish between these different classes of Dutch trade.

Of course, nothing can be predicated on Dutch trade as a basis of sovereignty where the Spaniards were the other parties to the traffic. The Dutch could acquire no rights as against Spain, either territorial or of any other kind, by a trade in which Spain took part equally with them. No distinction, however, is apparently drawn by the British Case between these different classes of trade; and the movements of a Dutchman in the territory in question, even though he is only crossing it for the purpose of dealing with his Spanish neighbors, are dwelt upon as being all of equal importance, while the movements of Spaniards in the disputed territory, whether trading with the Indians or with the settlements of Essequibo, are alike ignored.

The only question presented here is as to the effect of Dutch trade with the natives in the disputed territory.

I. WAS THE TRADE SYSTEMATIC?

The Dutch trade fails to fulfill this requirement. It was not systematic in the sense of having definite trade locations or in any other sense. It was fugitive; conducted on the streams by the passing of wares from one canoe to another, or on the banks, or in the paths of the forest, under the shade of trees, or under temporary shelters where shade was not convenient or the exigencies of trade involved some delays.

The trade was carried on either by old negro slaves of the Company or by the "itinerant traders" or "rovers" who roamed through the forest and bought or bartered in defiance of the Company's regulations. There is no locality that can be pointed to as an established centre of trade west of the falls of Cuyuni and west of the post of Moruca. There was no agent anywhere established by the Dutch, either of the Colonial authorities or of private traders, to carry on such trade except in the short-lived post in Cuyuni, which the Spanish speedily brought to an end,

and the "shelter" which Beekman intended for use in the Barima in 1683, but which, if used at all, was used only for a few months, as the undertaking was shortly ended by the Company's refusal to take up Beekman's project and by the cutting off of Essequibo from direct communication with the coast territory by the second colony of Pomeroon planters.

As showing the maintenance of a systematic trade during a period of a century and a half these so-called evidences point rather to the exclusion of the Dutch from a systematic trade than to their maintenance of such a trade. Even if there had been an agent and an agency in the locality, the existence of such an agency merely for trading purposes would not have been evidence of dominion. But where the only attempt that was made to establish such an agency in the disputed territory was frustrated by the capture and imprisonment of the agent, or by his withdrawal under threats of attack in one case, and the abandonment of the project in the other, these facts prove affirmatively the absence of dominion.

That there was a large and important trade with the Spaniards and to regions admittedly Spanish is unquestionable. The trade with the Indians, however, was small in its money value and in its ministry to the colony. The Indians were not producers, but warriors. The Caribs who largely frequented the Barima and Cuyuni regions were in particular a predatory tribe. "Red slaves" were their principal offerings. Food stores were chiefly for their own use, and produced by the labor of the squaws. In the very early period, the Dutch no doubt obtained from the Indians considerable cassava, the dried root which both Spaniards and Dutch used as a substitute for bread. It was not long, however, before the colony had its own cassava or bread plantations within its own limits; certainly before the close of the 17th century. So with the supplies of wild hog and fish, with which the earliest colonists were more or less supplied by the Indians. These supplies were later replaced by the

hunting of the wild hog in the neighborhood of the colony, by the colonists themselves and by the shore fisheries which the Dutch conducted along the coast on both sides of the mouth of the Essequibo. The articles obtained from the Indians were "red slaves," dyes, poison-wood, canoes, fresh and salt fish, balsam, letter-wood and hammocks.

An examination of the entries in the Commandeur's Journal (B. C-C., pp. 47-158) shows the petty character of the trade and the manner in which it was conducted. The first entry shows that the products of the plantations had become large. One hundred and nineteen hogsheads of sugar had been shipped from a single plantation.

The items as to the Indian trade run thus: "Some fish"; "some fresh fish"; "fourteen or fifteen bundles of poison-wood"; "some oriane dye"; "two parcels of bread"; "four female slaves, two children and a boy." And then we have a negro trader returned from the upper Essequibo with "129 pieces of salt fish, 12 calabashes of balsam, 20 logs of letter-wood, and four balls of fine dye." How long it had taken him to collect this cargo we do not know. Another trader comes from the upper Essequibo with "140 pieces of salt fish, making together about two casks full." But the yacht "Rammekens" had to go to the coast "to obtain provisions" for the garrison and slaves.

And so the story goes. The trade with these South American Indians was on a very different footing from that with the North American Indians. The former had nothing to barter that was not the product of manual labor—and the warrior scorned such labor; while the latter, by the chase, accumulated pelts of great value, and so opened the way for a trade that was vast and profitable.

These Journal extracts not only show that the trade was small, but that it was largely conducted by single negroes going out in canoes to find the Indians and to pick up here and there through

the forest the balls of dye or pieces of cassava root, or fish or hammocks that they brought back.

II. WAS THE TRADE EXCLUSIVE?

The use of this territory for purposes of trade was not exclusive. It is manifest from the description which has been given above, without any evidence to that effect, that the trade could not have been exclusive. No measures were taken by the Dutch to exclude anybody. The journeys to and fro of the three or four negro traders, some of whom were occupied in the upper Essequibo, and none of whom had any fixed routes or times for trading, could not have excluded anybody else who desired to enter the territory. Neither could the few itinerant traders or rovers who went in there on their own account. There was not a settlement of Dutchmen west of Cuyuni, in the interior, or west of Moruca, on the coast. There was not, during the whole period of a century and a half a political or military agent of the Dutch in that territory to enforce any exclusion, either with or without the necessary men to carry out such an object. As far as any measures taken by the Dutch were concerned, the region was as open to anybody else as it was to Dutchmen. Moreover, as far as its geographical character was concerned, the region was more open on the west than upon the east. In the interior, the east side, adjoining the Dutch settlement, was a forest wilderness, traversed only by a river whose rocks and cataracts and rapids made its passage dangerous even to the Indians. The west side, adjoining the Orinoco, was an open territory, largely consisting of savannas, watered by great streams, whose accessibility was clearly shown by the advance in the course of the eighteenth century from the Orinoco as a base of more than a score of prosperous settlements and villages. The coast territory could only be reached from the east by sea, going around Cape Nassau and ascending the Pomeroon or Moruca, whence the passage by the itabo through the savan-

nas was frequently interrupted, nearly always in fact during the dry season. On the western side, the entrance, without ever leaving the Orinoco, was made by the mouth of a great and deep river, the Barima, free from rocks or falls or obstructions to navigation of any kind,—a river which gave access to the whole territory at all seasons as far as the itabo itself.

In view of the geographical characteristics of this territory as to accessibility on its eastern and western frontiers, it might be expected, and it was the fact, that the Spaniards did more trade in it than the Dutch. In the interior district south of the Imataka Mountains the Spaniards not only traded in it, but settled in it. The efforts of their Capuchin missionaries, sent out by Royal authority, which were begun in 1686, at converting and Christianizing the Indians paved the way for the establishment of mission settlements, which, beginning in 1724, continued throughout the whole century, the last one being Tumeremo, which the Crown established in 1784.

During this whole period the Spanish settlements were constantly increasing in numbers and importance, notwithstanding the fact that in the middle of the century some of them suffered from the attacks of hostile Indians. In 1813 they numbered twenty-nine settlements, with over twenty-one thousand inhabitants, chiefly Indians. (V. C. II, 487.)

In addition to the settlements directly in charge of the missionaries, other settlements existed in the same territory, such as Upata, with its great tobacco plantations, and the *Hato* or cattle farm with two hundred thousand head of cattle, and the fort on the south side of the Cuyuni at the mouth of the Curumo. Nearly all these settlements and establishments were in the territory washed by the Cuyuni and its tributaries. How great a stimulus they must have proved to inland trade it is not necessary to dwell upon.

Long before the missions were established, however, the Spanish were trading in this district. In 1684 Beekman wrote (V.

C. II, 46) that "the copaiba and curcai are much bought up by the Spaniards." The horse trade was entirely in their hands. In 1693 the Company wrote to the Commandeur (V. C. II, 64):

"No slight advantage, moreover, has been brought to the Company through you by your having found out, up in the river of Cuyuni a trade in horses."

In the official Journal of Fort Kykoveral, August 17, 1699 (B. C. I, 215), it is said:

"This morning a goodly parcel of trading wares was given to the old negro traders so that they might set out for the Upper Cuyuni to-morrow to procure some horses by barter."

In 1701 Beekman reported (V. C. II, 65):

"The trade in horses up in Cuyuni does not go as briskly as it used to."

And in the same year he reported (V. C. II, 68) that horses were bought from a Rhode Island ship, "because all the lands where we carry on our horse trade are under the King of Spain."

In 1702 he again said (V. C. II, 69):

"The Spaniards will no longer permit any trafficking for horses on their territory."

And in 1703 (*Id.*):

"No horses are to be had above here as formerly, inasmuch as those Indians think they stand under the Crowns of Spain and France, and this trade is thereby crippled."

In 1706 (V. C. II, 71) he referred to the report "that the Company's horses purchased up country in Cayuni should always die."

When the British Case (p. 155) refers to a state of things where "the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area," it intended to refer to the Dutch Colony of Essequibo; but it would appear from the instances above quoted that "the colonizing Government," which "enforced a claim to dispose of an exclusive right of trading," was not the Dutch, but the Spanish Government.

Not only did the Dutch fail to enforce an exclusive right, but, on the contrary, the Spaniards did enforce an exclusive right, and the Dutch assented to it, respected the prohibition, admitted the right and admitted the territorial claim upon which it rested, and that, too, in the Cuyuni valley as early as the very beginning of the eighteenth century.

The trade of the Spaniards in and through this territory not only existed in the seventeenth century period, but continued from that time on. Not only did they extend their settlements in the territory watered by the tributaries of the Cuyuni, the Yuruari, the Uruan and the Curumo; not only did their traders penetrate the interior district, through which the Cuyuni passed after receiving the waters of these tributaries, but the Spaniards themselves came down the Cuyuni in considerable numbers to the very settlements of Essequibo. The clearest proof of this is given in a document embodying the report of a Committee of the Essequibo Court, dated July 27, 1750 (B. C. II, 68). At this date the center of settlement of Essequibo had been gradually moving down the river. In 1740, it will be remembered, the fort, the Governor's house and the principal offices and storehouses were moved from Kykoveral to Flag Island. It, therefore, became a subject of complaint to the Company and to the planters in the lower Essequibo that the Spaniards who came by way of the interior district stopped at the upper plantations, namely, those about the mouths of the Cuyuni and Massaruni, and did all their trading there, to the prejudice of the Company and of the planters lower down. The Committee said:

"That, furthermore, they, the members of the Committee, were of opinion that the Company's shop there should again be started . . . in view of the *increasing Spanish trade*, it was not unlikely that a reasonable profit might be made of it, especially so if it could be brought about that the Spaniards no longer, as heretofore has usually happened, tarried with their articles of trade among the private settlers living up the river, but came with them farther down and as far as to the fort. To attain this end, a resolution might be passed that no one whatsoever

should be allowed to come into the river, much less make a stay there, unless he beforehand addressed himself to the Commandeur there, and asked him for permission to stay in the Colony for a stipulated period."

This statement lets a flood of light upon the trade conditions of the interior district at the middle of the eighteenth century. It appears that at that time the Spanish traders not only overran this district, but even came down the Cuyuni to the Essequibo settlement itself with their merchandise; and as they reached first the upper plantations near the Cuyuni mouth, they did all their trading there. Nor is the reference here to an isolated act like so many of those upon which reliance is placed by the British Case. It is a practice well developed and evidently long continued, a practice so firmly established that it required the consideration of an official Committee to determine what steps should be taken to obviate it, a proceeding almost unheard of in the history of the colony.

In view of the above facts, attention is called to the remarkable statement in the deposition of June 14, 1898, of Mr. McTurk (B. C-C. App., p. 404) who says:

"There is no record of the Spaniards ever having traversed" the Essequibo and Massaruni, "and only on two occasions in the last two centuries does any record appear of their presence on the Cuyuni."

Mr. McTurk doubtless referred to the capture of the Dutch post in 1758 by Bonalde, and to De La Puente's expedition in 1788. His statement only goes to show that he failed to examine the evidence annexed to the British Case.

As to the coast territory, the trade was even less exclusive than in the interior. This question has been considered at length in the chapter on Political Control in Barima, and it was there shown that the supposed Dutch trade with the Indians of Barima was a fiction totally unsupported by the evidence in the case.

There was substantially no Dutch trade with the natives in the Coast Territory. Dutch trade existed, but it was entirely a trade carried on between the two colonies. This trade was at first carried

on by the Dutch going to Orinoco, and afterward by the Spaniards going to Essequibo. Great difficulties were encountered by the Dutch in its pursuit, owing, as they claimed, to the arbitrary conduct of the Spanish authorities in reference to their traders, or, as the Spanish claimed, to the misconduct and violation of local regulations by the Dutch traders themselves. As far as the present question is concerned, it is immaterial which of these two causes produced the result, although there is no doubt that the Dutch gave frequent cause of offence, especially by attempting clandestinely to pass up the river, and on one occasion at least a Dutch trader in the employ of the Company received explicit orders from the Commandeur that if he was prevented from openly trading at Orinoco he was to evade the prohibition by secretly going into the Aguirre and trading there (B. C. II, 5).

Whatever the cause may have been, the fact was that the Dutch gradually did less and less in the way of prosecuting the trade with the Orinoco, only two of their settlers being at the last engaged in it and their boats being mostly manned by Spaniards (V. C. II, 148). Finally, they abandoned it altogether, and, in accordance with what had been the policy of the Director-General (*Id.* 120) and the express desire of the Company (*Id.* 146), the trade was directed "into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards," instead of, as formerly, by the Dutch from Essequibo to Orinoco.

The Spaniards, however, were not the only nation that traded in the interior and in the coast territory. It appears from Dutch documents that the English and the French also traded within the territory, and that no attempt was made by the Dutch to expel these traders. They bemoaned the loss of trade, but they made no representations either to the British or to the French Government that the trade was an invasion of the exclusive rights of the Dutch. Nor does it appear from the correspondence that such an idea ever occurred to them.

This is shown by the evidence annexed to the British Case as well as to that in the Case of Venezuela.

As early as 1683 the Commandeur wrote (V. C. II, 44), speaking of the trading qualities of the Indians:

“For these people, like irrational animals, listen to no argument; inducements of every kind—good offices, wares—have no effect upon them; they meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the islands carry on there.”

This statement is most significant. It shows that in 1683 trade relations had been established between the Indians and the French, which had not yet been established between the Indians and the Dutch. It shows that the French were freely carrying on a trade in the disputed territory “in Barima and other places,” and that the question of the French right to carry on this trade was a question with which the Dutch did not consider themselves as being concerned. It shows that this trade had existed for some time, and it is spoken of as being carried on as a practice; and, finally, it shows that it was carried on by French who came even from the islands—that is to say, from the West India Islands—for the purpose.

A year later, when the French attacked the fort at Orinoco and captured it and held possession of it for a short time, their intrusion into the trade of the disputed territory became even more extensive.

In 1685 the Commandeur reported (B. C. I, 188):

“Even old hammocks for negroes are scarcely to be found for the prosecution of the annatto trade, as the planters also collect these from far and near for their slaves.

“The French in the Barima come and fetch them even as far as up in the Cuyuni, and have burned there the houses of the Pariacots, and have driven them away; the latter collect the balsam from the trees, and this is the reason that Daentje, the negro, has come back two weeks ago without bringing with him a single pound of balsam.”

Eighteen months later, in June, 1686, the same conditions prevailed. The Commandeur said (B. C. I, 201):

"Just as I am closing this, Daentje, the Company's old negro, comes from the savannah of the Pariakots up in the Cuyuni River. He has been away for fully seven months, and was detained quite three months by the dryness of the river. All that he has been able to obtain is a little balsam oil and hammocks, because the French are making expeditions through the country up there in order to buy up everything."

Notice the particularity of the Commandeur's statement. The French are not raiding the Cuyuni; this is no foray or plundering expedition of which he is speaking, but he says specifically that his man cannot obtain anything but a little balsam oil and hammocks, because the French are making expeditions through the country up there "in order to buy up everything."

In January, 1689, the Commandeur wrote (V. C. II, 59) that:

"The French are daily sojourning in Barima with the Caribs, often with two or three barques, and the English from the islands may do likewise."

In October of the same year he wrote (V. C. II, 62):

"The French are making a *strong-house* in Barima; they come there often with 3 or 4 barques to traffic with those hostile Caribs, and threaten soon to come and pay us a visit."

This is reported to the Company without comment as far as the fact of the maintenance of the trade by the French is concerned; and the Company, in May, 1690, replied (V. C. II, 63), repeating at length, as was their custom, the statement above quoted of the Commandeur; but the Company made no comment upon the fact that Frenchmen were trading in the territory.

In 1695 the Commandeur reported (V. C. II, 64) that "some French, aided by Caribs from Barima, are staying in the mouth of the River Pomeroon."

As late as 1735 (App. Br. II, 21), the Court of Policy in its Proceedings referred to "some Frenchmen of Martinique, who likewise traded there [in Barima]."

Thus, for over 50 years the French had traded freely and at will in the Barima. Their trade was much greater than that of the Dutch ever was.

The colonists from Surinam likewise traded in the territory in question. With reference to their trade, the position of the Esequibo colony was peculiar. The latter was the creature of the West India Company, a company organized for purposes of trade. The original charter of the West India Company had given them exclusive trade rights over the continents of America and Africa, exclusive, that is, as has frequently been said, of other Dutchmen. In 1674 this charter had been modified. The Company, however, still assumed to themselves the trade rights which had been given by the earlier charter—the right, that is, to exclude other Dutchmen from trade in America, even in the territory of other States. This has been clearly shown in the citations that have been made from the correspondence between the colonists, the Commandeur and the Company from 1712 to 1717 (Letter of Commandeur, April 19, 1713, V. C. II, 75; letter, May 31, 1713, *Id.*, 75; letter of West India Company to the Commandeur, May 14, 1714, *Id.*, 76; Memorial of the Free Settlers, May 24, 1717, *Id.*, 77).

In the position of affairs thus described, where the Surinam Dutch were competitors of the West India Company, and were in theory, though not in fact, excluded from trade, not only in the disputed territory, but in the Orinoco and Trinidad, no territorial rights could be acquired by the Company through or by reason of the performance of any prohibited acts by the Surinam colonists. According to the West India Company, the possessions of the Spanish Crown in South America were within the charter of the Company. The Company would not tolerate "that the inhabitants of Rio Surinam carry on any trade at places lying under the charter of the Company" (V. C. II, 71), and issued its order to the Commandeur, in 1704, to prohibit them.

The fact, however, is that the prohibition was totally disregarded at all times by the inhabitants of Surinam. The Essequibo settlers, in their Memorial complaining of the action of the Company, said that the Company's prohibitions were enforced only against themselves and that they were compelled to "see the profits which were to be expected" from the trade "accrue before our eyes to our neighbors, to wit, the colonists of Surinam and Berbice" (V. C. II, 77). They added that the prohibition "favors the inhabitants of Surinam and Berbice, and also encourages them to push on the business more and more to their profit."

They said further, that whenever a canoe of Surinam or Berbice "met any free Indians who have red slaves for sale, they buy the same in," and that they "traffic in the rivers Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad, and wherever it is convenient to them," "being well pleased that the Essequibo inhabitants were oppressed by those who ought to protect them and their gains . . . taken away and driven into the Surinam purse."

It appears from the above, that while the Dutch had a considerable trade with the Spaniards, which the Spaniards equally enjoyed with the Dutch, the Dutch of Essequibo had no trade in Barima, and that what trade they had in the interior was not exclusive either of Spaniards or other foreign nations or of the Surinam Dutchmen.

III. WAS THE TRADE CARRIED ON UNDER A CLAIM OF RIGHT.

Attention has already been called to the fact that the Dutch never made any claims in respect to the disputed territory except in their first Remonstrance, where their only definition of a claim was to the branches of the Essequibo, which was afterwards withdrawn, and in their second, where they complained of the prohibition against fishing, which they claimed by immemorial use, and declared the Waini mouth their territory.

The territorial claim of 1759, whatever it was, was certainly not

a claim based on an exclusive right to trade. It was not a claim to a right to trade, nor had it anything to do with trade. Claims to an exclusive right to trade, if made at all, should have been made long before this, for the trade from the beginning was not exclusive. It was quite as much Spanish as it was Dutch, and during the later period much more Spanish than Dutch. Yet there is in the record no single instance in which the Dutch, officially or unofficially, complained that Spaniards traded within the territory in dispute. Moreover, during a large part of the time trade was carried on in the territory by the French. Repeated allusions in the Dutch correspondence indicate this. Yet no complaint was ever addressed to the French Government on this account. Nor was the slightest attempt ever made to check such trade, either by actual force or threats, or even by persuasion or remonstrance. No claim to exclusive trade was ever made.

Even when the Spaniards went so far as substantially to exclude the Dutch by their organized and systematic patrol, during the second half of the eighteenth century, did the Dutch raise a syllable of complaint against their exclusion from the territory? The whole course of their correspondence shows that they never had a thought of setting up a claim of exclusive right to trade, and where the Spanish trade in horses was concerned, they even went so far as to admit not only that the territory was the territory of the King of Spain, but that he was entitled to prohibit their trading thereon, and they acquiesced in the prohibition.

The position of the Indians in this matter is also to be noted, because the Spanish and foreign traders used not only the territory for purposes of trade, but they used the Indians. They not only traded in the territory, but they traded with the inhabitants of the territory. This has a double aspect, as to trade relations and also as to Indian relations.

It is asserted on the part of Great Britain that the Dutch exercised an extensive control over the Indians. If that were so, why was not a command given to the Indians not to trade with others

than Dutchmen? There is no pretence of any such command. There is no pretence even of any such suggestion. The Indians within the disputed territory traded with whom they pleased. The Dutch never visited them with any penalties for trading with other nations, or attempted so to visit them. In one instance, indeed, when the Dutch meddled with their wars, they threatened to go to Barima and trade with other Europeans. No Indian was ever arraigned by the Dutch for trading with the Spaniards or anybody else. The Spaniards came into the territory with force and patrolled it, interrupting Dutch trade in slaves and other products, yet the Dutch remained silent. The British and the French traded within the disputed bounds, and though the Dutch suffered from the competition no suggestion was ever made to their Governments, or to anybody else, that this was an intrusion upon the Dutch. The agents of the Dutch West India Company, including the Governor of its colony, treated these regions as places which might be freely visited by the Spaniards for surreptitious trade with themselves and for free and open trade with the natives. Finally, while the Dutch West India Company lamented the loss of trade that went to other nations, it never in a single instance set up a claim based upon the establishment of an exclusive right of trading there.

To speak of such a trade as the basis of, or as implying or leading to, political dominion is not only wholly unwarranted, but does not stop much short of the absurd. The Indian who, in the fastness of the wilderness, exchanged a hammock his squaw had made for a Dutch knife, with a man in a canoe whose skin was only a little more shaded than his own, and who was only there by the Indian's will and license, was not put upon any notice of a Dutch claim to sovereignty. He was just as free to barter his hammock to a Spaniard or to a Frenchman. Neither of these was kept out by the Dutch. On the contrary, he often saw Dutch and Spanish "horse kopers" and "cattle kopers" meet and trade on the Cuyuni; and had himself sold hammocks to the French, both in

Cuyuni and in Barima, without being brought to book by the Dutch for doing so. He had tartly told the Dutch that if they meddled with him in his tribal wars, he would go to the Barima and give his trade to others. And the Indian knew other facts: that Spain claimed that region, and had sent her priests and soldiers into it; had summoned him to her missions; had punished him for his acts of disobedience, and the Dutch for their attempts to establish a post there. He knew that Spain asserted and enforced her right to the territory, both in Cuyuni and in Barima; and he knew also that the Dutch had utterly failed to enforce, or even to claim, either against him, or the Spaniard, or the Frenchman, an exclusive right to trade there.

Again, that the Company did not claim Barima as their territory, and therefore did not claim an exclusive right to trade there, would seem to be made certain by the letter of the Dutch Director-General to the Governor of Surinam, where he said that the mention of "the river Barima in those passes causes complaints from the Spaniards, who, maintaining that the river belongs to them, in which I believe they are right, some of these passes have already been sent to the Court of Spain" (B. C. III, 114).

The man who wrote this was the representative of the Dutch Government and of Dutch sovereignty in Guiana. If there was an exclusive Dutch claim to trade in Barima then being asserted, he was the man to assert it; yet we have from him here a distinct admission that, in his opinion, Barima was Spanish territory. It follows that the trade conducted by him there, if any, must have been regarded by him as a trade protected only, as was the trade further up the Orinoco, by the sufferance or connivance of the Spanish authorities.

The Company was even more in the dark in 1761, when it demanded of the Director-General (V. C. II, 143) "the reasons why you deem that everything which has happened on this side

of Barima must be deemed to have occurred on the territory of the Company."

It would seem from this that the Company itself did not regard either the Barima, or even the territory to the east of it, as being in any respect theirs.

Still further, when the Company was finally abolished, and the colony of Essequibo had passed into the hands of the State and was directly managed by the Council of the Colonies, the Governor-General himself, Van Grovestius, stated of the Moruca that it "up to now has been maintained to be the boundary of our territory with that of Spain" (V. C. II, 248).

This is the last word on the subject, uttered by the highest authority in the colony and directly representing Dutch sovereignty.

In reference to Barima, the Company had also admitted that it had no exclusive rights. It was in 1683 that Beekman, referring to Barima, stated that he thought "the Company can do as good a trade there in an open river as can private individuals" (V. C. II, 45).

What does Beekman mean by the Barima being an open river? He means that it is a river open to the Company and to all the rest of the world. He certainly does not mean to assert an existing claim to exclusive trade in the river. His words distinctly negative such an idea. In fact, he goes on to express the wish that the Company would take the river into possession, as he had done provisionally. But the suggestion was never adopted by the Company, and the river, to which the Company certainly at this date made no claim, was never afterwards brought into possession by any act of theirs.

IV. WAS THERE A SPECIFIC AREA?

In view of the history of the boundary question in the correspondence of the Dutch authorities, how can it be said that the Dutch, by reason of trade, have extended their dominions beyond

the limits of the Treaty of Munster within a specific area? What is the specific area of the claim? Storm, the Director-General of the Colony who was longest at its head stated that he did not know the bounds; that he wished the Company would decide; that he wanted information as to where the boundary was; that it was a source of embarrassment to him not to know. On this point the Government could not help him. Storm expressed the opinion, sometimes, that a given point was within the boundaries; in his next letter he moved the boundaries forward; in his third letter he moved them back. Sometimes he would say that as to a particular point it was doubtful. But the final claim made as to the interior was simply a reversal of the previous claim of the Cuyuni basin, and in the coast to a boundary which practically concedes the whole territory west of Moruca to Spain.

Not only was there no claim to a specific area, but the trade itself was not within a specific area. How are we to find the limits of a claim to exclusive trade when that trade paid no regard whatever to acknowledged Spanish boundaries, but crossed them whenever the connivance of a Spanish Governor could be secured, and in those unpeopled tracts where it could not be secured, pursued it furtively and clandestinely?

The limits of Dutch trade were not the limits of Dutch territorial claims. Their trade was extended to all places that they could reach with safety, where attractive commerce offered itself. That the Dutch trade did not involve the idea of any specific area, and that it did not involve a claim to dominion where it was conducted, appears from the whole body of the evidence. It appears first and most conspicuously in the statement of the Company, in 1714, that it had a right to trade to Orinoco and Trinidad, &c., by its charter, and that that right carried with it the right to prohibit the trade with those localities to its Essequibo subjects.

It was shown likewise in innumerable specific cases. In 1726 the Postholder of Wacquepo was instructed to endeavor to obtain

slaves and balsam in the Aguirre, in case he was refused permission by the Spaniards to obtain them from up the Orinoco (B. C. II, 5).

The Aguirre is a tributary of the Orinoco which is beyond the extremest claim ever put forward as to Dutch or British limits. Nobody has ever ventured to suggest that the Aguirre was other than Spanish territory.

So the fact is stated, and even deemed worthy of special mention in the British Case (p. 48), that a Dutchman had been eight years domiciled in the same river, the Aguirre (B. C. IV, 20). If the fact that a slave-trading Dutchman lived for eight years in the Aguirre is a foundation for Dutch dominion, why does the British claim not include the Aguirre? And if there is no claim on the part of Great Britain, as the grantee of the Netherlands, to the Aguirre, why is the fact mentioned that a Dutchman was there? It might with equal propriety be mentioned that a Dutchman once lived for eight years in La Guayra or Caracas.

The West India Company no more limited its trade by the limits of its sovereignty than did the Hudson Bay Company limit its trade with the Indians. The charters under which the West India Company was operating contain a distinct disclaimer that the trade they were to conduct was to be limited by the bounds of Dutch sovereignty. The first charter embraced the whole sweep of the east and west shores of the New World (except north of Newfoundland on the east). It did not assume an exclusive right of trade within the regions described except as against other Dutchmen, and all the trade regulations that are cited in the British Case are to be read in the light of this established fact, that the exclusive trade rights of the West India Company were exclusive only as to other Dutchmen. Certainly England did not treat these charter concessions as limiting her rights to trade to regions not actually settled by the Dutch.

There was no specific area. The wandering tribes were met where they could be found, and unless the word "surrounding"

is given a tremendous sweep, the territories into which they carried their trade cannot properly be described as "surrounding" their settlements.

V. WAS IT EXCLUSIVE?

As against this supposed claim to an exclusive right of trade, we find in the evidence that the French, the English, and above all the Spaniards, traded freely in the territory. When was a claim to an exclusive right of trading within the disputed territory ever enforced against any of them by the Dutch? It is enough to say broadly that the exclusion of the Spaniards from the region west of the Moruca and above the falls of the Cuyuni was never accomplished by the Dutch, whether their coming was for trade with the Indians or trade with the Essequibo Dutch or to patrol the territory in the exercise of a police jurisdiction, or for the special purpose of removing a Dutch Postholder and destroying his post. In fact, so large a part of the earlier Dutch trade to the Orinoco and to the savannas was a direct trade with the Spaniards that it is idle to predicate upon it anything as to Dutch claims to dominion against Spain. The Dutch West India Company's charter contemplated just such trade—trade to be conducted with the natives or with Europeans in the territories assigned to them, and made possible by the absence of other Europeans or by the consent or connivance of the local authorities.

As the Dutch did not make any claim to an exclusive right to trade as against the French during the long period when they were so active in trading in this region, neither did they enforce any such claim. The French came and went at will. The Dutch Governor chronicled their movements, reported to his Company how much damage they were doing by their trading competition, how great the loss of profits was in consequence, and how his negro traders were compelled to return empty-handed, because all the goods were bought up by the French. But the French continued the trade without let or hindrance.

If the Dutch had had that extensive control over the Indians that the British Case pretends, they could have stopped all this trade simply by a word to their Indian subjects. But the word was never uttered. There is not in the whole records for one hundred and sixty-six years, where the facts in reference to the conferences, talks and so-called agreements of the Dutch with the various Indians are minutely chronicled, a single intimation that a Dutchman ever addressed an Indian on the subject of trade with a view to the exclusion of anybody from that territory. On the contrary, it appears that from time to time the Indians did exclude the Dutch. An Indian war put an end for the time being to the Dutch trade. The Indians at their pleasure cut off the Dutch, even from their "provision chamber" in the Cuyuni. The Dutch dared not trust themselves among the Acaways. In 1673 Rol, the Commandeur, had to wait until peace had been made between the Caribs in Barima and the Arawaks to send a boat after crab-oil.

When the conditions that prevailed both in the interior and the coast, as previously described in this Argument, are considered, the assertion that the Dutch enforced in this territory an exclusive right to trade seems little less than grotesque. Take the history of Cuyuni from the time when the Dutch first began to assert anything in reference to it by the establishment of their post. The post was immediately cut off, and from that time on the correspondence of the Dutch Governor about Cuyuni is little more than a record of what his outpost at the falls told him of the occupation of the river by the patrols of the Spanish, and their frequent visits to the falls themselves.

We cannot here repeat all the citations that have been already given from this correspondence. The distress of mind, the despairing tone, the discouragement of the Director-General at the failure of his efforts to "extend the boundaries" by the establishment of the post and at the result which he had so little foreseen, namely that the attention of the Spanish was first

drawn to Dutch encroachments and that from that time on they did not propose that there should be any question there about Dutch dominion, are fully pictured in the letters that passed from Essequibo to Middelburg.

All this time the authorities of Orinoco were making more active and complete their supervision and control of the district, until finally they built their fort on the Cuyuni and sent down their officers to capture Dutch scouts at the very falls themselves.

No less graphic is the picture that is presented as to Barima. After changing front innumerable times, after naming every river in the territory as a possible or probable boundary, Storm gave up the whole subject. His people had never traded to any extent in Barima, except by way of passing through to the Orinoco. Finally, even this was dropped, and the entire trade was carried on by the Orinoco Spaniards themselves, who brought their wares to the custom-house at Moruca, where they paid a five per cent. duty.

In the meantime, and apart from trade, what is the control which is asserted over Barima? Is it Dutch control? The Dutch could not go into the territory even to pursue their runaway slaves. If they did, they were sure to be seized and carried off to an Orinoco prison. In Barima, the patrol was even more active than in Cuyuni. The great facility of approach, the absence of obstructions at the entrance of the great avenue that passed through the whole length and breadth of the territory, made it easy to carry on this patrol exclusively by the coast-guard vessels.

The mobility of the Spanish police force is shown by the reports, which then came thick and fast, of their presence now here, now there, first at one point, then at another point, in the territory; to-day they are in Barima, to-morrow in Waini, next they are in the itabos, then in Pomeroun, then in Moruca. Letter after letter of the Director-General reports their movements and the active measures which they were taking in the ex-

ercise of control. Cierito captures half a dozen boats in the Barima; Flores burns up the plantations of La Riviere and, on the flight of the inhabitants, carries off all the movable property to be sold at Santo Thome. In the same way Flores is reported as driving out the Surinam traders (V. C. II, 120). Finally, Beltran, the "Mattheo" of the Director-General's letters, is appointed to the command of the coast-guard, and for more than ten years his name is the most conspicuous in the annals of Barima.

The mouth of the Orinoco is not neglected. The Governor himself cruises here for a couple of months with two vessels. Every Dutch fishing smack that attempts to go there or to the mouth of the Waini is seized. Contrary to the practice of the Dutch in asserting their so-called claim, the seizures at the mouth of the Orinoco include not only the Dutch, but the French, the English and all other foreigners. Indeed, the one conspicuous fact about the coast territory, from Orinoco to Moruca, during this period is the effective supervision maintained there by the Spanish authorities.

We must once more call attention to the statement in the British Case which opened this chapter, that:

"Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled."

It is the British Case itself which defines all the attributes which are to make a trade claim the foundation of a claim of control or dominion: that there should be a claim; that it is a claim to an exclusive right of trading; that it is a claim to an exclusive right of trading within a specific area; and, finally, that the claim is enforced.

Taken by the test of the British Case itself, the alleged Dutch claim (which the Dutch never made, but which Great Britain now makes) fails in every particular. It was not a claim; it was not exclusive; it was not to a specific area, and, finally, it was not enforced.

CHAPTER XV.

ADVERSE HOLDING—INDIANS.

In view of the paucity of facts tending to show any settlement, either with or without political control, in the territory in dispute, the alleged control by the Dutch is very confidently and more largely rested, in the British Case, upon their relations with the Indian tribes, and the argument is that, by reason of these relations, the occupation of the savage tribes became a Dutch occupation, and as effectual to establish the Dutch title as if every savage had been a Dutchman.

The laxity of the rule here suggested in the British Case is in strong contrast with the technical strictness maintained as to the discoverer's title. He must occupy on the run, and effectively, by actual posts and colonies, lest mankind should be excluded from the use of the lands he has discovered, while an intruding nation may follow the track of the discoverer and establish a wide sovereignty by alliances with savages, without introducing a settler; and even more, he may extend the borders of a settlement he has made by inciting savage hatreds against the settlements of the discoverer and by alliances up to the very doors of such settlements.

The relations with the Indians are divided into two classes: trade relations, and those in the alleged exercise of political control. It is contended that either furnishes an equivalent under the Treaty to actual occupation by the whites. The proposition is put forward in the following extract from the British Case (p. 149):

“Effective occupation means the use and enjoyment of the resources of the country and the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf.”

Effective occupation is here defined to have two distinct elements. The presence of these two elements, it is contended, constitutes effective occupation. These are:

(1) The use and enjoyment of the resources of the country.

(2) The general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf.

Here we have to consider what is meant by "the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

"Inhabitants" clearly refers here to native inhabitants. Of white inhabitants in the disputed territory there were none except the Spaniards about the upper waters of the Cuyuni and its tributaries. There is no pretense that these were controlled by the Dutch, and territorial control, as it relates to white persons found within the territory, has been shown to have been exercised far more completely and more continuously by the Spaniards than by the Dutch. The only general control of inhabitants in the territory to which this doctrine can refer is the control of the native inhabitants.

The principles governing this contention that title by occupation may be acquired by control over Indian tribes must be discussed in the light of the authorities. Upon this particular point the British Case itself makes this statement (pp. 155-6).

"Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled, and its resources in their then state of development were effectively appropriated by that Government.

* * * * *

"Again, where the Government of a settlement acquires the exclusive ascendancy over, and alliance with, surrounding tribes, and by that means excludes foreign influence from the territory which they inhabit, that territory is effectively occupied as against the colonizing enterprise of any other country.

"The American Indians were never treated, as between European nations, as possessing any independent sovereignty, however completely their tribal polity and their occupancy of the soil might be for the time being respected by the Governments under whose influence they came. This is the established view in North America, and it was certainly not less true in South America. It follows that the State controlling the Indians must be recognized as between Europeans as having the sovereignty."

The following, from the Counter-Case of Venezuela (pp. 96-7), makes up an issue of law to which we now address ourselves:

"If it were possible to prove, beyond the peradventure of a doubt, that the Indians had consented to accept the Dutch control and that the Dutch exercised it, Venezuela considers, and will claim, that it could form no foundation whatever for a territorial title. As to such right or title, claimed to be derived by the Dutch or British, either directly or by implication, from or through the Indian tribes, it will be contended, *first*, that these tribes were wanderers, and had not even possessory titles to any defined territories; *second*, that by the law of nations and the universal practices of all European States the American tribes having distinct territorial bounds had only a possessory right to the lands occupied, and that this right they were incapable to transfer except to a nation that had already, by discovery or other acts necessary to the appropriation of wild lands, obtained the ultimate title to such lands—such nation having an exclusive right to extinguish the possessory right of the tribes; *third*, that what such tribes could not do by deed or treaty of cession, much less could they do by any submission or alliance; that the prior right of Spain could not be diminished or affected by any other Power by virtue of any acts or submissions of the tribes; *fourth*, that such acts and submissions of the tribes were equally ineffectual to extend the political control of the Dutch or the British."

In the British Case, all the facts relating to Indian relations are grouped under the head "Political Control," and would, therefore, seem to be addressed to that clause of Rule (a) of Article IV of the Treaty which says:

"The Arbitrators *may* deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription."

But the statements from the British Case given above seem to affirm that political control is not only something that may, by

this special provision of the Treaty, be treated as the equivalent of actual occupation, but that, by the general principles of international law, it is an actual occupation.

The Treaty, however, plainly implies that the case must be especially clear and very strong before exclusive political control can be accepted as the equivalent of an actual adverse occupation, and that but for this provision of the Treaty it could not in any case be so accepted.

We insist that this provision of the Treaty must be interpreted in the light of all the rules of international law bearing upon the subject and not inconsistent with the rule prescribed in the Treaty. It is not to be construed as allowing political control to be derived from acts and sources to which the rules of law and the practice of all nations in America deny that effect.

We assert with confidence that writers on international law deny the right of savage tribes to the dominion of lands they occupy, and their competency to cede sovereignty or dominion to any European nation. Nothing that these tribes can do, by treaties of cession or by alliance, can affect a dispute between two European nations as to the sovereignty of the country occupied by such tribes.

The British Case admits that the American Indians were never treated, as between European nations, as possessing any independent sovereignty. They can have, then, no territorial dominion that they can transfer, and quite clearly none that can be derived from them by conquest. That cannot be taken from one which he does not have, either by deed or by force. A European dominion in America was never, by any nation, rested upon cessions or conquests from the natives. It is a clear *non sequitur*, as well as a perversion of American history, to say that "the State controlling the Indians must be recognized, as between Europeans, as having the sovereignty."

Great Britain would have stopped at the Alleghanies if she had allowed this deduction in favor of the French, and the United

States would have lost the Northwest Territory if it had been allowed in favor of Great Britain in 1811-14. If Indian submissions and alliances could have been made the basis of territorial sovereignty, the map of North America would have been greatly changed. If there had been a single instance in all of the disputes as to American territories and boundaries where any European nation had based a successful claim to territorial sovereignty upon the submission of the Indian tribes or upon a conquest from them, it would have been cited.

In fact, it was never allowed and never before claimed, we think, that a title by discovery might be ousted or terminated by another nation through the acquisition of control of native tribes—effected by paltry presents or by aiding their pursuit of plunder or their taking of European scalps.

The British Case (p. 156) gives an extract from the opinion of Chief Justice Marshall in the case of *Johnson v. McIntosh* (8 Wheaton's U. S. Sup. Ct. Reports, p. 573), and apparently approves the doctrine announced by that great jurist.

The extract does not give a sufficient understanding of the case, and we therefore turn to it to see what it was that Chief Justice Marshall said.

The case presented the question of the validity of a grant of lands in the now State of Illinois by Indian tribes to a certain company of individuals, and the principal question was whether this grant was valid as against the United States.

The Chief Justice declares (p. 576) that the Governments of Europe settling America agreed to this rule:

“ That discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession. The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.”

He declares, as we have seen, that

“No one of the powers of Europe gave its full assent to this principle, [of title by discovery] more unequivocally than England;” and he particularly points out, as we have seen in our discussion of title by discovery, what tremendous sweep was given by Great Britain to this title and to her feeble settlements on the seaboard.

He further says (p. 588), speaking of the Franco-English Treaty of 1763:

“Great Britain, on her part, surrendered to France all her pretensions to the country west of the Mississippi. It has never been supposed that she surrendered nothing, although she was not in actual possession of a foot of land. She surrendered all right to acquire the country; and any after-attempt to purchase it from the Indians, would have been considered and treated as an invasion of the territories of France.”

What the Chief Justice here says as to the actual possession of this country west of the Mississippi by Great Britain is true also of France.

Again, the Chief Justice says (p. 592):

“The absolute ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring.”

This case clearly supports our proposition that nothing done by or through or upon the Indians can affect the question of title as between two European nations; that no nation that has not previously acquired dominion can take from them even their possessory right to the use of the soil. To acquire sovereignty of the territory is the first step, and to this step no act of the native tribes can aid or contribute in any degree.

The title of Spain, the admitted discoverer of Guiana, could not in any way be affected, could not be terminated, nor could any rights against her be acquired through the Indians. If their friendship with or submission to this nation or that is to decide the question of dominion, we have the paradox: Those that have no sovereignty or dominion may assertively cast dominion here and there at their pleasure.

Twiss, in his discussion of the Oregon Question (p. 251), says that the United States Government asserted the following rule:

“Whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants, or conquests of the natives within the limits described.”

This is the principle declared in *Johnson v. McIntosh*. It is that lands occupied solely by savage tribes are *res nullius*, subject to discovery and occupation, and the title is acquired only in that way. Phillimore quotes with approval this rule (1, Sec. 238), and adds, in a footnote:

“In the case of *Johnson v. McIntosh*, decided by the Supreme Court of the United States, A. D. 1823, the practice and law on this subject are fully considered.”

The principle is thus stated by Phillimore, in the section above cited, as one of the principles underlying title by discovery, as follows:

“A third rule is that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European Powers.”

The right of the aborigines, whatever it may be, is vested in the original European occupant by the mere fact of occupancy. Says Twiss (Oregon Question, p. 176):

“A further accessorial right of settlement has, in modern times, been recognized by the practice of civilized nations in both hemispheres, namely, a right of pre-emption from the aboriginal inhabitants in favor of the nation which has actually settled in the country. It is this right which Great Britain asserts against all other civilized nations in respect to New Zealand, and which the United States of America assert against all other civilized nations in respect to the native Indians. The claim involved in it is evidently based upon the principle, that the acquisition of such territory by any other nation would be prejudicial to the full

enjoyment of the existing territorial rights of the nation which has made settlement there."

In the present case this accessorial right appertains to Spain. Her rights as a discoverer and occupant could not be bargained away to the Dutch by the savage tribes. Even if her rights as a discoverer were not perfected to these lands, her inchoate title could not be terminated by any act of the natives. If the British view is to prevail, and these lands were open to the occupancy of any nation, the basis of the title of any incoming nation is settlement and occupation by the whites. Even lands that are *terra nullius* cannot be made Dutch territory by the exchange of some blue beads and a silver-tipped staff with the Indians. If that had been accepted as occupation, it would have allowed the perpetuation of the savage use of the American continent, and have permitted the second comer to have terminated the title of the discoverer, upon the ground that he had not occupied, by continuing the savage occupancy.

Twiss (Oregon Question, p. 252) says that the nation first occupying a territory has the sole right of acquiring the soil from the natives by cession, purchase or conquest.

Twiss (Law of Nations, Sec. 135) quotes Chancellor Kent as saying in his Commentaries (I, p. 258):

"The principle is that the Indians are to be considered merely as occupants to be protected while in peace in the possession of their lands, but incapable of transferring absolute title to any other than the sovereign of the country who has an exclusive right to extinguish the Indian right of occupancy either by purchase or conquest."

That is, the Indian's possession and occupancy is that of the discoverer. He cannot attorn to another. The adverse white claimant who comes in against the discoverer's title must occupy for himself, or there is no ouster. He may not bribe the occupying tenant.

When the Spanish title once attached to this disputed territory, the Indians held for Spain, and they could do absolutely nothing to diminish her title.

The incidents connected with the British settlement of New Zealand in 1840 deserve careful study in connection with this subject.

New Zealand first attracted public attention by the desire of some of the Australians to acquire it and by the formation of a private company for that purpose between 1835 and 1840. This was just at the time when the efforts to secure West Indian emancipation (which took effect August 1, 1838) had aroused a wave of philanthropy towards the dark races. Apparently under the influence of this, and of a disinclination on the part of the Government to assume the burden of acquiring a new continent for the Australian settlers, who had barely occupied the border of one corner of their own, the British Government then in office, somewhat fortified, perhaps, by some previous expressions, undertook to treat the New Zealanders as constituting a sovereign State.

But as soon as they began to put this theory into practice they encountered the evils which naturally flow from proceeding upon a false basis. It involved them in various troubles, and did not help the natives, who either parted with their lands for an axe or a gun, under guise of purchases or treaties, or, if they got a substantial payment, wasted it at once in debauchery.

During the next five years (and indeed later) the resulting troubles led to some very elaborate inquiries by Parliament. The first important result was a Report of July 30, 1840 (Parl. Papers, 1840, *Reports of Committees*, vol. 7).

The colony, says the report, has become involved in difficulties which may require legislation:

“That remedy would, in the opinion of your committee, have been now uncalled for, if the British Government had, from the year 1769 downwards, never lost sight of the principle which was *formerly acted upon by this country and by all other European powers* with regard to their North American possessions, and had refused to recognize any titles to land founded on purchases made by private persons from savages.

“This principle has been adopted by the United States, and it has

constantly guided their government in its dealings with the various Indian tribes inhabiting the North American continent, and it has been solemnly declared by the Supreme Court of Judicature in the United States to be a principle of international law. See particularly *Johnson v. McIntosh*, 8 Wheaton's Rep., 543; Kent's Com. iii, 576. According to this principle, the nation by whose subjects a new country is discovered, acquires thereby a title to its possession as against all foreign powers. That title, when completed by occupation, gives to the discovering nation the sole right to purchase the soil from the natives, to establish settlements within its territory, and to regulate its relation with foreign powers. Upon this principle the governments of Europe, as well as that of the United States, have asserted their right—a right qualified only by the moral obligation of acting with justice to the aborigines,—to grant lands to individuals in territories so acquired by them, and upon it the British Government has recently set aside purchases made by individual settlers from the natives in the neighborhood of Port St. Philip."

Another Parliamentary Committee re-examined the subject. Their report is in Parl. Papers, 1844, *Repts. Committees*, Vol. 13:

"They say (p. v.), that Captain Hodson, under authority from the British crown, made in January, 1840, a treaty in the nature of a protectorate and acknowledgment of sovereignty with the Chiefs of the *North* island; but none with regard to the middle and southern islands. There Great Britain *assumed* sovereignty, without even a nominal 'treaty.'

"It was a mistake to do this. Sovereignty should have been assumed over all the islands. Then the clear rule is (page vi): 'that all unoccupied lands would forthwith vest in the Crown, and that, except by virtue of grants from the Crown, no valid title to land could be established by Europeans.'

"The private interest of the natives in the lands they actually occupied could then have been acquired."

The report then points out the absurdity of applying to natives who have no real idea of *ownership* of unoccupied lands, the rules of English law; and the evils which have arisen from an attempt to do so. It concludes (p. v):

"It would have been much better if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction; and it therefore amounted to little more than a legal fiction."

In a communication of August 18, 1844 (Parl. Papers, 1845, *Accounts and Papers*, Vol. 33), Lord Stanley, the Foreign Secretary, disclaiming responsibility for the mistakes of his predecessors, declares that he takes the same view of the law as applied to savage tribes; but suggests that possibly it might have been open to doubt whether the New Zealanders were "savages."

It has been stated that the general doctrine of the British Case is that (p. 149):

"Effective occupation means the use and enjoyment of the resources of the country and the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

This statement seems to point not only to the general question of control, but also in some way to the more modern principle, if principle it may be called, of protectorates. That this is its intention is confirmed by the marginal title given in the British Case, page 97, "Dutch Protectorate," which is given as one in the enumeration of items, beginning at page 84, by which the Company found it necessary "to exercise control of a political nature of the district in which trade was carried on." The intention is further evidenced by the final statement on this subject (p. 98), that

"The exercise by the Dutch of this restraining influence is in itself an instance of the fulfillment of one of the essential conditions of a Protectorate over native tribes."

The doctrine of protectorates is essentially of recent origin. Hall says of protectorates that "they may be said to be new international facts" (*International Law*, p. 133, note).

"In other words," says Hall, commenting upon the declaration of the Berlin Conference, (*International Law*, p. 119), "while ancient grounds of title are left to be dealt with under the old customary law, old claims of title if not fully established under that law, and new titles, whether acquired by occupation of unclaimed territory, or through the inability of another State to justify a competing claim, must for the future be supported by substantial and continuous acts of jurisdiction. The declaration, it is true, affects only the coasts of the Continent of Africa; and the representatives of France and Russia were careful to make formal

reservations directing attention to this fact; the former, especially, placing it on record that the island of Madagascar was excluded. Nevertheless, an agreement made between all the States which are likely to endeavor to occupy territory, and covering much the largest spaces of coast which, at the date of the declaration, remained unoccupied in the world, cannot but have great influence upon the development of a generally binding rule."

In considering the application of this principle to the present case, three conditions are to be noted:

First, the recognized tests of a protectorate must be complied with in respect to the exercise of control over the territory.

Second, while protectorate is used as a foundation of title in cases where no other Power has a claim of title, no case is known where an attempt has been made to oust a former occupant by means of a protectorate.

Third, the doctrine is yet so recent as to be only of Conventional application, and can be extended neither to questions of occupation of an earlier period, nor to territory outside of the bounds fixed by the Treaty; nor does it bind others than those who are parties to the Treaty.

In respect to all these conditions the present case is clearly one to which the doctrine of protectorates does not apply.

In discussing this doctrine, reference will be largely made to the authority of Mr. Westlake, not only because he is an English writer of high official position and of high authority on questions of international law, but because he is one of those who, on behalf of England, has vigorously contended that a protectorate by treaty need not be accompanied by occupation, while at the same time he discerns and sets forth the limitations of such a protectorate in practice. The question is fully discussed by him in a series of articles in the *Revue de Droit International** which was reproduced by him in a shorter form in his work on International Law (Cambridge, 1894).

Mr. Westlake lays down the general proposition that Indians or "Redskins" (that is, American Indians) "and other similar unor-

* The Series of articles was entitled *Le Conflit Anglo-Portugais*, and appeared in 1891, vol. 23, p. 243; 1892, vol. 24, p. 170; 1893, vol. 25, p. 53.

ganized savages do not count in international law; they do not constitute a State." He says (International Law, p. 137):

"In the early times of international law, when the appropriation of a newly discovered region was referred to the principles which were held to govern the so-called natural modes of acquisition, the occupation by uncivilised tribes of a tract of which, according to our habits, a small part ought to have sufficed for them, was not felt to interpose a serious obstacle to the right of the first civilised occupant. The region was scarcely distinguished from a *res nullius*."

And (p. 143):

"International law has had to treat such nations as uncivilised. It regulates for the mutual benefit of civilised States the claims which they make to sovereignty over the region, and leaves the treatment of the natives to the conscience of the state to which the sovereignty is awarded, rather than sanction their interest being made an excuse the more for war between civilised claimants, devastating the region and the cause of suffering to the natives themselves."

(See also *Revue de Droit International*, vol. 23, p. 246; International Law, p. 147.)

Mr. Westlake quotes as correct statements of the law the decisions of the Supreme Court of the United States in *Johnson v. McIntosh*, quoted above; and summarizing part of them in his own words, he says:

"The Indians possessed nothing which resembled sovereignty, as the term is understood in Europe and Asia, for they were hardly 'united in a society' by a shade of organized government. Such a government alone can add the idea and the reality of sovereignty to the possession which results from occupation under a private title. Possessing neither the conception nor the reality of sovereignty, they could not transfer it to another. The Europeans who were the first to discover the territories and to establish themselves there, acquired the sovereignty of the territories for the States to which they belonged, and it passed to the colonists when the latter obtained their independence. The exercise of this right was not limited in the hands of any of its holders by any legal claim; it was only limited by the respect which conscience imposed for the right of occupation of the Indians."

The treaties at the Peace of Paris, of 1763, virtually assumed the right of the whites to the whole continent, without

any regard to the supposed *rights* of the Indians; and partitioned it definitely, by metes and bounds, between England, France and Spain (*Johnson v. McIntosh*, 8 Wheaton, 583-4).

In the case of the American Indians, and similar savage tribes, without organized government or the capacity to understand it in the European sense, the theory of protectorate does not apply. So Westlake says (*Revue*, vol. 23, p. 264) that "Proctorates" are known to international law. "But the condition itself indicates that the protected States which submit to it are veritable States, and not mere savage tribes."

Mr. Westlake also states (vol. 24, p. 170), the circumstances which attended the making of the "treaties" with African chiefs, and points out their farcical character. He notes (p. 191) that on the so-called installation of a native under alleged Portuguese authority, the presents and tribute were paid *by* the Portuguese, and not *to* them, and says, "the lack of reality is sufficiently apparent."

All his comments upon these circumstances may be applied with equal force, to the alleged Dutch control over the Indians in Guiana. Here, also, the tribute was paid *by* the Dutch and not *to* them, and the lack of reality is sufficiently apparent.

The description of the surrounding circumstances might in many cases answer equally well for what happened in the relation of the Indians with the Dutch of Essequibo, although in the case of the Portuguese in Africa, the ceremonies were more extensive and more significant. Westlake (*Revue*, vol. 25, p. 58) describes the form frequently adopted, which consisted in giving to a native chief rum, guns and a Portuguese flag, which he hoisted on a pole. In one case, a chief returned an English flag, proposing to join the Portuguese. The English official sent him a larger one, telling him that when he hoisted that every one would know that he was a "great chief."*

* Blue Book Africa, No. 2 (1890), p. 220.

One of the so-called "acts of vassalage," on which the Portuguese professed to rely, but which Westlake naturally ridicules and to which the British Government refused to attach any value, is thus described:*

"The 'act of vassalage,' as it is termed, at several of which I have had the pleasure of being present, consists of palaver with the chiefs and headmen, a native war dance in front of the governor's residence, the presentation of a flag to be hoisted at the village, and the subsequent consumption of a large amount of Kaffir rum presented *sub rosa*; money gifts are frequently given to influential chiefs, and the tribe are sometimes called upon to perform slight services, for which, however, they are fully paid at the usual rate of labor. The assertion that the lands are crown lands, and rented to the natives, must appear ridiculous to any one even slightly acquainted with the Portuguese rule on the Mozambique coast, which is carried on entirely on the system of small subsidies to petty chiefs, and fostering animosity among those of more importance."

One of the most significant statements in this connection is that made by the British Consul Buchanan to Lord Salisbury, March 8, 1889:†

"Unquestionably many of the native chiefs are in favor of the Portuguese and against the English, since the Portuguese connive at the domestic or interior slave trade, and supply the natives with spirits and breech-loading guns, while the English refuse to permit traffic in any of these articles."

The above sentence might with truth have been written by any one conversant with the history of Guiana at any time in the eighteenth century, substituting the name "Dutch" for "Portuguese," and the name "Spanish" for "English." The character of the Dutch relations with the Guiana Indians is exactly paralleled in these descriptions, and the learned author who has been quoted would necessarily express the same comments upon the one that he expressed upon the other.

Neither Great Britain nor the United States, as we have seen, admitted the capability of the Indian tribes in the northwest to

* Blue Book Africa, No. 2 (1890), p. 96.

† Blue Book Africa, No. 2 (1890), p. 22.

transfer, in the one case, the title of Great Britain to France, and in the other, the title of the United States to Great Britain.

Nothing would seem to be plainer, upon principle, than the proposition that a Dutch alliance with the Indians within the disputed territory, is inconsistent with the idea of Dutch sovereignty over the territory. It involves a necessary recognition of the sovereignty of the Indians. But, if it were possible in any case to extend the Dutch sovereignty over the lands occupied by the Caribs and other tribes by an alliance with them, there are certain conditions that surely must be observed.

Whatever the relation with the Indians was, in order to become the foundation in the Dutch of public title, or territorial sovereignty, it must answer the conditions generally recognized as necessary to establish a title by exclusive political control. This view is confirmed by the Principle of Law in the British Case (p. 149), giving a definition of effective occupation, one of the elements of which is stated to be:

“The general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf.”

This would seem to be simply another form of definition of “exclusive political control.”

One of the first conditions, as we have already seen, of this foundation of title is that it shall embody actual control. When we come to apply this to the Dutch relation with the Indians of Guiana, we shall find no single element of it present.

The Dutch did not control the Indians, nor did they claim or exercise jurisdiction over them. They bribed, besought and entreated; but the whole history, as we find it in the documents cited both by Venezuela and Great Britain, fails to disclose a single case where the Dutch wishes or purpose were enforced against any of these tribes. The Indians kept or broke the peace as they pleased; they disregarded the plaintive appeals of the Dutch Governor, closed his “provision chamber,” and set his

authority—an authority only pretended by the British claimant to the territory—at naught.

As was the case with the Portuguese in Africa, the presents and the tribute were paid by the Dutch, not to them. It was well said by Governor Codd, of Essequibo, in September, 1813, that

“It is obvious, however, that our Colonies are tributaries to the Indians; while the proper system of policy would be to make them allies, looking to us for protection” (B. O. V, 216).

So far from maintaining the peace within the disputed territory, the order of the Dutch Governor to his subordinates was to maintain neutrality in the wars between the tribes, and that in the face of the fact that these wars were destructive of Dutch trade interests. There could, in the nature of things, be no stronger disclaimer of a right to control the Indians.

Some of the instances of failure to exercise such control may be cited.

In 1764 the Director-General was greatly exercised to establish a Dutch post in Cuyuni. He appealed to the Indians, and reported the result thus (V. C. II, 159):

“Whatever trouble I have taken, and whatever promises I have made, I have not been able to get any Indians up to the present to aid me in re-establishing the Post in Cajoeny, and without their help it cannot be done, because with slaves it is not only too costly but also too dangerous, so that I am in great difficulties with this work, and the re-establishment of that Post is, in my opinion, of the greatest necessity.”

The Dutch control did not suffice to procure the aid of a single Indian in a work that the Director-General thought was essential to the safety of the colony.

In February, 1768, the Dutch colonies were in great distress and fear by reason of the fact that escaping slaves had established a formidable settlement in the interior. The help of the Accaway tribe was needed. Two of their “Owls” visited the Commandeur at Demerara, who gave this account of it (B. C. III, 162):

“After I had welcomed them with a glass of brandy and presented each of them with a suit of my every-day clothes, I asked them (after

having acquainted them with the reason of my sending for them) whether they were willing to attack the negroes, or cut off their retreat if the negroes were attacked by the Caribs and put to flight."

Brandy and old clothes! And were the Indians "willing"? Is this the conduct and language of one who is asserting control of these people as subjects?

But the Caribs, not the Accaways, seem to have done the work. They killed seven men, one woman and a girl, and the Director-General reported (B. C. III, 166):

"They have brought seven right hands to me, and I am just now occupied in paying them."

This, we suppose, is given as evidence that Dutch civilization and political control pervaded the lodges of this tribe.

Some suspicions, however, afterwards arose that a trick had been played and that the right hands the Director-General had paid for were not those of negro slaves, but of Indians. Of this he said (B. C. III, 178):

"There was a report here that Tampoko and the Caribs had not killed negroes but Indians, and that the hands brought down were the hands of Indians. If such were found to be true I have never seen a rascally trick executed more carefully and clothed with more feasible circumstances, and I think that Satan himself might be deceived in this way."

But if the Caribs had not become tricky, it was not for want of a schoolmaster.

In February, 1768, there was a notable incident illustrating Dutch control, an account of which is given in the evidence annexed to the British Case (B. C. III, 161). The Director-General reported that he had been advised of the arrival of twelve soldiers, sent by the Company to reinforce the Dutch post, of whom it was said that they were "good recruits for Orinoco, because they are nearly all French." He reported that they were *all* French, and that all but one or two were Roman Catholics. Frenchmen were not wanted.

The Director-General said:

"In addition to this all the Indians have declared that they will have no French at the Posts, a troop of more than 100 Warouwans, all well armed, having already arrived at the Post, Maroco saying that they came to see whether there was a Frenchman there, and intending to kill him if it were so."

This threat was taken seriously. The Dutch were not even able to control the matter of the personnel of their own posts, as against the Indians. The Frenchman, Pierre Martin, who had been somewhere on the Cuyuni, had been compelled to leave there, as the Director-General (B. C. III, 162) said, "the Indians flatly refusing to come and live anywhere near the post so long as he is there. They will have a Dutchman, they say."

In April, 1768, the Director-General reported (B. C. III, 164):

"Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants. It now remains to be seen whether the Indians of Maykouny, whither Pierre Martin has gone, will exhibit the same feelings, in which case I shall have to discharge the man *nolens volens*. I fear very much that it will be so, because in Maykouny they are mostly Warouws (the nation which commenced and continued the work in Maroco) where they came to the Post in great numbers and well armed with the openly expressed intention of murdering a French Postholder had they found one there."

Here we have Indian control of the Dutch "chiefs." The Dutch trembled before the armed Indians who came to the post, and acknowledged their inability to protect their own Postholders against the Indian demand for their dismissal.

The Dutch West India Company approved of this. In a communication to the Director-General, in July, 1768 (B. C. III, 180), they said:

"It being hard to catch hares with unwilling hounds, you cannot do otherwise than accede to the wish of the Indians in Cuyuni and Moruca, and send no Frenchmen thither as Postholders, and therefore not even Pierre Martin, good and capable though he may be."

But the Company could not have the services of this honest and capable man, because the Indians would not consent.

How thoroughly the Indians were unaware of their subjugation by the Dutch appears in an account given by the Director-General in February, 1769, in which he said (B. C. IV, 3):

“The nation of the Caribs, my Lords, are looked upon as nobles among the Indians. It is a very good thing to have them as allies or friends, for they render excellent services, but they are formidable enemies, capable of more bravery and resistance than one would think. When their principal or great Ows come to me, they immediately take a chair and sit down, and will eat and drink nothing but what I have myself, and they call me by no other name than that of ‘mate’ or ‘brother.’”

These “noble” Indians were not aware that the true mode of address was “Master.” They asserted equality. They were allies, not subjects, of the Dutch.

This distinctly appears again in the report of the Director-General of April 4, 1769. He said (B. C. IV, 11):

“March 16.—The chief of the Caribs, who is now here, goes up the river to-day. He has promised me to attack the murderers of the Postholder, and to hold all his people in readiness in case we might have need of them. Commandant Backer told me this morning that he would like to come up the river, and asked him whether he would then let him be master. He answered, ‘No, I am master of the Caribs. You can be master of the whites and of the other nations, and then we can together become masters of everything.’”

This is rather an impressive declaration. The opportunity was ripe for an assertion by the Director-General that the Dutch were masters of the Caribs, but fear of his own life and of the peace of his settlement made it impossible for him to put forward the pretension that is now urged in his behalf. We do not know whether Commandant Backer went up the river, but we do know that if he did he was not in the command of the Caribs.

The Director-General’s situation at that time was rather full of distresses, which he set forth in the next paragraph:

“But, my Lords, allow me to ask what is now to be done to get food for your Lordships’ slaves? The salting is now entirely stopped, not alone

in the mouth of the Orinocque, where we had carried on the fishery from time immemorial, but there are neither canoes nor corrials to be got for the plantations or the Fort along the whole of the sea-coast, and we are shut in on all sides. I must now, *nolens volens*, buy from the English, or allow your Lordships' slaves to go without rations. . . . There being nothing on the plantations and the out-runners having come back empty-handed after exposing themselves to the greatest danger, and losing their men and boats."

The Director-General was truly not in a position to demand the title of "Master."

In 1767 the Director-General reported (V. C. II, 170) that the Indians "are unwilling to do the least thing for the Postholder, and that even when he orders the passing boats to lie to to see whether there are any runaways in them, they obstinately refuse to do so, and when he threatens to shoot upon them they reply that they have bows and arrows with which to answer."

In 1769 the Director-General narrated his efforts to get a Postholder to go to the "Crystal Mine." Not one of his Postholders at Arinda had been willing to execute this purpose, giving various pretexts; but the true cause, as the Director-General said, was their fear of the savage nations living in those parts, though these fears were "ungrounded," as he, in the security of the principal post, thought. But a man was found to hunt for the "Crystal Mine," "somewhere up in Essequibo." Being a representative of the Dutch power, the nation that "controlled" these tribes and had "sovereignty" over the territory, he thought that he might venture to dig for crystal; but the Director-General reported that "when he wished to dig up the crystal which grows there in many places in a red dry soil, the natives would not allow him to do so" (B. C. IV, 17).

Besides "a few instructions how to behave," this man had been told by the Director-General "to try and obtain, in a friendly manner, *permission* from the Wapissannes to cross the Maho and go to the neighboring nations."

In November, 1770, the Director-General found himself utterly

unable to prevent the desertion of his slaves, and sent to the Postholder of Arinda "to ask the Carib Owls, in my name, to send fifty men to watch the Dutch plantations."

Even as late as 1840, in the correspondence between Viscount Palmerston and Sir R. Ker Porter (B. C. VII, 71), the tribes living near the frontier are correctly spoken of by Lord Palmerston as "independent Indian tribes."

It appears from the above that the Dutch were very far from exercising anything that could be called actual control. Still less was their control exclusive. It was contested from the beginning. The Dutch correspondence is full of accounts of threats and assaults made by the Spaniards against and upon Dutchmen in the territory, their traders or pursuers of fugitive slaves, or employees of the Colonial authorities. They are equally full of accounts of Spanish assertion of control over the Indians manifested in acts of force. The Dutch Indian alliances themselves were based upon a recognition of the necessity of seeking aid to resist the Spaniards within the territory, and the record shows the failure of these attempts. The Spaniards in the disputed territory, both in the interior and in the coast, were continually asserting their right to control the Indians; they pursued, captured, chastised, compelled. Their relation to the Indians was not that of suppliants, but that of masters. It is suggested that this mastery was sometimes cruel, but it cannot be denied that it was the assertion of a right to control, and in sharp contrast to the bribing, coaxing policy of the Dutch.

A few instances may be noted. In 1752 "the Spaniards have attacked and driven away the Caribs below Oronoque, and these have all retreated to our side" (V. C. II, 109). In 1754 "three barques and nine large canoes have arrived there [Oronoque], and have sailed up to the fort, and that the Surinam wanderers and most of the Carib Indians have retired from Barima" (*Id.*, 116). In 1759 "the Spaniards continue to stay where they are, and to entrap and drive away all the Caribans living there" (*Id.*, 133).

“Cajoeny, where since the raid upon the Post by the Spaniards there are no more Indians” (*Id.*, 142). In 1761 “a party of Spaniards and Spanish Indians in Cajoeny have been down to the lowest fall where your Lordships’ indigo plantation was situated, driving all the Indians thence, and even, it is said, having killed several. The Indians sent in complaint upon complaint” (*Id.*, 145). In 1762 “they [the Spaniards] are not yet quiet, but send detachments from time to time, which come down as far as the lowest fall, close to the dwelling of your Lordships’ creoles, by which both the settlers and our Indians are continually being alarmed, and take refuge each time down stream” (*Id.*, 147). In 1762 “the Spanish Indians of the Missions continue to send out daily patrols as far as the great fall . . . all the Caraibans have also left that river” (*Id.*, 149). “At the time of that occurrence [the capture of the Cuyuni post] the Caraibans were full of courage and ready for all kinds of undertaking; now they are all driven away from there and have retired right up into Essequibo” (*Id.*, 151). In 1763 “this [is] not the time to think of the re-establishment of the Post in Cajoeny. That matter will give us plenty of work to do when, with the blessing of God, all is at rest and in peace, because, the Spaniards having driven all the Indians out of the river, it will be no small matter to get all the necessary buildings in readiness there” (*Id.*, 155). In 1768 “The Caraibans of Barima . . . complained that some of our deserters with a party of Spaniards, were continually molesting them in Barima and robbing them of everything” (*Id.*, 178). In 1769 the Spanish Governor “has totally ruined it [the fishery] by driving the Warouws out of the islands” (*Id.*, 181). In 1769 Storm says: “. . . nor can we be warned in any way by Indians, there being no more of these in that river [Cuyuni]. They did begin to settle there again when the post was re-established, but the raid made by the Spaniards last year, when a large party of Indians were captured and taken away, has filled the rest with terror, and they are gradually drawing off” (*Id.*, 182). “The Spaniards are

carrying off the Indians from Maroco" (*Id.*, 183). In May, 1769, "the Spaniards had come through Pomeroon . . . and were kidnapping the Indians. . . . As for the Caribs, they are, it seems, abandoning their land Barima" (*Id.*, 188). "The unexpected invasion of the Spaniards . . . calls for your Lordships' most serious consideration . . . Your Lordship's Post at Maroco has been entirely ruined, all the Indians who still remained having fled, and none now remaining round or near the Post" (*Id.*, 190).

In 1769 "the Spaniards in Barima, having been reinforced by another boat, had at last attacked the Caribans themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations" (*Id.*, 191).

Passages like the above might be multiplied. All of them rest upon Dutch testimony.

Another necessary requirement of this exclusive political control, which the Tribunal are given a discretion to regard as the equivalent of actual adverse possession, would seem to be that, as the territory was at the time claimed by Spain, the acts and verbal intercourse upon which the transfer of dominion is rested should either have been expressly notified to Spain or of such a public character that she would be charged with notice of them.

Surely, it will not be contended that secret intercourse, or intercourse of such a nature that only the parties to it would have knowledge, can be treated as an exclusive political control.

One of the requirements of a good prescription or adverse occupation is publicity or notoriety. The nation against whose claim a title is set up must have had notice or be chargeable with notice of the adverse occupation. It must follow, therefore, that every act of intercourse between the Dutch and the Indians, that was of a character unlikely to be known except to the parties to it, must be put out of consideration in determining this question.

An occasional procedure before a Dutch magistrate, or an occasional visit of a Dutch Postholder to the Indians, or of an Indian

chief to the Postholder, cannot be made the basis of a claim that the Dutch were exercising exclusive political control.

Here the relation, such as it was, between the Dutch and the Indians was studiously concealed from the Spaniards, by the Company's orders to bring about certain acts of the Caribs but "without openly appearing therein."

So, too, political control must be continuous and uninterrupted.

In the case here presented there is no pretence of a written treaty. The results claimed are derived solely from a suggestion of acts or a course of dealing between the Dutch and the Indians. We think it is clear that during the period of the Dutch occupation the Indians never accepted the Dutch as their masters. Individuals of the tribes located themselves in the settlements and took employments from the Dutch, but the tribes never at any time understood that the presents given to them by the Dutch were symbols of Dutch control and of a surrender of their tribal authority; nor were they so intended.

Some of the incidents that appear in the case give positive evidence that the Indians understood their relations with the Dutch to be those of mere friendliness, of which the presents bestowed were evidence, and of agreements to unite in acts of hostility against the Spaniards. In the whole course of the Dutch intercourse with the Indians, we think we may safely say that there was no case in which the Dutch controlled or attempted to control the Indians as subjects. That this was the relation of the colony to the Indians, distinctly appears from the despatch of Governor Carmichael, January 18, 1813, inclosing a letter from "the Protector of the Indians," who said (B. C. V, 203-4) that he had been in the habit of calling "for the assistance of the Indians at different periods since the year 1795, during which space of time I know of no Treaty or Agreement with the Chiefs of Indian tribes implying anything of the nature of subsidy or tribute."

It seems from the Governor's letter that the Chief of the

Caribs had come not long before with 300 savages, with "rather strong language and insolent demands;" that on another occasion "five chiefs of the Arrowauks, with their followers, had come with threats." The "Protector" said: "It was not, I believe, thought expedient to repulse them suddenly." So they were told that presents would be sent for from England.

It remains to examine the facts which are alleged by the British Case in support of the theory that relations with the Indians in the disputed territory amounted to "general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

From the marginal titles borne by these paragraphs of the British Case, they would seem to be very important matters, such as "Maintenance of the Peace," "Protection of Indians," "Jurisdiction over Indians," "Appointment of Indian Captains," "Military Services," and the like. The titles, however, are far away from the evidence to which they relate. The first of these is "Maintenance of the Peace" (B. C., p. 84). "Maintenance of the peace" is a very important feature of police control. None perhaps can be said to be more important in any civilized country. As an evidence of political control, maintenance of the peace, where it exists, is a fact of great importance. "Maintenance of the peace," however, as used in the British Case, does not refer to this familiar exercise of the police power. It means the maintenance of peace between Indian tribes.

These instances are sufficiently dealt with in the Venezuelan Counter-Case, and the comments there made need not be repeated here. Four instances are mentioned, in a period of one hundred and sixty-six years, to prove the fact that during this period the Dutch maintained peace between the Indian tribes. In two of these instances efforts were made to bring about a peace, but the Indians refused to listen to them. In the third case, which was in Essequibo itself, the Dutch commanding officer was ordered "not to interfere directly or indirectly in the quarrels of the In-

dians." This is the evidence in support of the proposition. In opposition to it one conspicuous fact stands out, not as a thing which finds more or less imperfect illustration in four occasions in a century and a half, but as a thing which was illustrated probably every year in the history of the colony, for it was connected with a practice than which none was more characteristic or persistent a feature of the colonial history of Essequibo. This was the trade in "poitos," or Indian slaves.

The manner of obtaining these slaves was very simple; it was by inducing the Indians near the Essequibo to make war on the Indians a little further off and, as an incident of the war, to capture their women and children, who were then bought by the Dutch. This was a form of trade which had many incidental advantages. It was one way in which the adjacent Indians were enabled to profit by their relations with the Dutch, and had a large influence in bringing about that community of interest which was the dominant factor in the friendly relations between the colonists and the natives. Of course, a community of interest is not control, and presents no elements of control. It explains much, however, in the relations with the natives. It gave an outlet to the martial spirit of the Caribs, which otherwise might have expended itself upon the Dutch. It lent an additional zest to their favorite occupation of making war, because they always got an immediate and solid return for the spoils which they brought back. Finally, it was advantageous in developing a hostile spirit towards the Spaniards, as the Spaniards were opposed to this slave trade.

Thus, Storm in 1746 reported (B. C. II, 46) that a fort had been erected by the Spaniards up in the Cuyuni and that they were thinking of founding another, "whereat the inhabitants are very much aggrieved, and the Carib Indians a great deal more so, since it perfectly closes the slave traffic in that direction from which alone that nation derive their livelihood."

This one sentence of the Commandeur throws a curious side

light on the British claim that the Dutch were the maintainers of peace among the Indians.

It is quite possible that the Spanish authorities of the eighteenth century were not in all respects model rulers either of civilized or uncivilized peoples. They have been charged, rightly or wrongly, with an arbitrary mode of exercising power, with cruelty, and with other reprehensible qualities. But one thing they certainly did: they attempted to bring the Indians into a condition approaching that of the civilized races, to train them in agriculture and in useful arts, and to gather them into communities, where they should become peaceful and industrious. The effects of this civilizing are repeatedly testified to by British officials who came in contact with them.

The Dutch, on the other hand, never attempted Indian civilization at all. Their control over the Indians was by means of gifts, by the distribution of ardent spirits, by petty intrigues with one tribe or another, by inciting attacks upon the Spaniards, as in 1750, by the direct orders of the West India Company, and lastly, by the community of interest which they established in reference to the trade in Indian slaves. To call them peacemakers betrays a most extraordinary ignorance of their relations with the Indians. Their whole system of slave-trading was based on making war, for without war not one Indian slave could have been procured. The only way in which an Indian entered into the status of slavery was by hostile capture. Being brought as a prisoner of war to the Dutch, they took him clothed with this status. They never reduced any Indians to slavery themselves. This would have involved them in war, because war was a prerequisite to changing a free man into a slave; but they induced the Indians to do it for them.

Notwithstanding what has been claimed for them, the Dutch authorities were unable, even when it was for their interest, to restrain the warlike spirit of the tribes, or to maintain peace between the tribes themselves.

In 1679 Commandeur Beekman informed the Company of tidings of the approach of a strong fleet of Caribs from the Corentin, with intent to make an attack on Essequibo and Pomeroon, in connection with the Caribs there. The Commandeur rendered thanks to a good Providence that they had escaped (V. C. II, 38).

In 1680, in another letter to the Company, he told of the reported poisoning by the Accaways of one of his agents, and that his voyagers were in such fear that they refused to go among the Accaways. He said that he would bethink himself of "means for conciliating that tribe" (V. C. II, 41).

In 1684 he reported to the Company that the Caribs had set upon Gabriel Biscop, who had come from Surinam to trade in Barima, killed him and fifteen of his men, destroyed his bark, and made threats that they would come with the French and lay waste to the Dutch plantations and fort at Essequibo. To guard against this he proposed to erect a fort on the island of New Walcheren (V. C. II, 47).

In 1685 he said that the Caribs about Barima, Waini and Amakuru alarmed the coast and slew the Arawaks and the Christians.

In 1750 Commandeur Storm reprobated the imprudence of the colonists in trading arms to the Caribs for slaves, and suggested that thereby they put themselves into the hands of that warlike nation and gave them weapons which they might use for the destruction of the Dutch (V. C. II, 106).

In August, 1755, the Director-General wrote (B. C. II, 120):

"The nation of the Acuways, which is very strong in the interior, and some of whose villages both in Essequibo and in Massaruni and Demerary are *situated next to our plantations*, commenced by attacking the dwellings of some free creoles belonging to the plantation Oosterbeek, and massacring those they found there. Thereupon they spread themselves and caused terror everywhere. Most of the planters living in Massaruni retired to an island with their slaves and their most valuable goods, and none of them dared to stay at night on their plantations. A few days after that the aforesaid Acuways attacked the plantation of a certain Pieter Marchal (who according to general report, is the chief cause of this revolt) at half

part five in the morning, killing two of his people and wounding five, most of whom have since died."

He continued that he had been "requested to send an invitation to the Carib Indians to take the field against the Acuways," but that there were many difficulties in the way of this, among which was that "they will come several hundred strong and begin by asking for bread and other provisions, of which we have none." He said that he "sent several orders" to Aruwaks to come to him, as he wished to send them to the Acuways, "to try and establish peace," but that "these Indians have immediately vanished."

In 1756 Storm said:

"As peace has not yet been made with the Accoways of Mazaruni and Essequibo, I am obliged to leave the garrison at the old fort, and cannot yet imagine how this matter will turn out" (V. C. II, 121).

That the colony lived in continual fear of the Indians is shown by the Director-General's letter of April 9, 1768, in which he said that

"The desertion of a serjeant and a few men would (especially in time of peace) be scarcely noticed in Europe, but here it is an entirely different matter, our colonies here on the coast having on the one side *restless neighbors* who cannot long remain still, and on the other side the Spaniards" (V. C. II, 175-6).

Now as to the maintenance of peace between the tribes.

In 1680 the Commandeur told of his fruitless efforts to prevent war between the Caribs and the Accaways; that they refused to yield to his requests, and he was compelled to allow the war to go on, notwithstanding it closed the "river Cuyuni, our provision chamber" (V. C. II, 41).

The Indians threatened, if they were interfered with, to depart in great numbers to Barima and elsewhere, and the meaning of the threat was disclosed by Beekman's letter of January 8, 1683, where he said (V. C. II, 44), in speaking of the obstinacy of the Indians, who, when offered wares and other inducements to do anything, "meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly

squares with the truth, on account of the trade which the French from the islands carry on there."

In the following month, he told of having sent a negro up in Cuyuni, "in order, if it be possible, to make peace between the Accoways and the Caribs, so as by this means to get the wild-hog hunting there" (V. C. II, 44).

Thus, he had been trying for three years, without success, to put an end to this war.

In 1686 the chief of the Caribs in Massaruni sent word to the Dutch authorities that disturbances had broken out in that river, and that the supply of dye would consequently be short. The British Case, in citing this as an instance of maintenance of peace by the Dutch, says (p. 85):

"Upon this occasion also the Commandeur used his influence to prevent a continuance of disorder."

The fact was, as shown by the evidence, that Makourawacke wished to go to war, and the Commandeur sent to dissuade him from it.

The report went on to say (B. C. I, 202):

"This the aforementioned Makourawacke would not comply with, and this is the chief and most principal cause of this misfortune, which now falls upon the innocent."

Here the evidence cited proves exactly the contrary of that for the purpose of which it was cited.

In 1750 the Director-General reported (B. C. II, 64) that one Jan Stok, a trader in upper Essequibo, in company with a band of "Orinoco Caribs," had "attacked the nations our friends close by the Post Arinda, caused all the men to be killed," and carried away women and children, besides committing other enormities.

Steps were ordered looking to the apprehension of Stok, but the Case contains no further mention of him. The Director-General, however, recommended (*id.*, p. 65) that

"to obviate all further misfortunes (for a war with the natives would be the ruin of the Colony), . . . that your Honours should be pleased to

prohibit until further orders traffic with the Indians on the Rivers Essequibo, Massaruni and Cuyuni."

In 1746, as has already been shown, Commandeur Storm (B. C. II, 46) had hinted to the Company that the Caribs were ready to attack the Spanish missions, but that he feared that "such a step would certainly be revenged upon us by the Spaniards."

In the next year the Company replied (B. C. II, 51), in their famous letter of September 9, 1747:

"If in the meantime you can, by indirect means and without yourself appearing therein, bring it about that the Spaniards be dislodged from the forts and buildings which, according to your assertions, they have made upon the territory of the Company, and can prevent them from spreading further in that quarter, you will do well to accomplish this."

This was almost immediately followed by the attack on the Spanish missions in 1750.

In 1757, however, the Essequibo authorities were even afraid to assert themselves in this covert and indirect manner, and when the Caribs in Cuyuni asked for powder and shot to make a raid upon the Spanish settlements, the request was refused, and the Director-General was asked "to give information of this rumor" to the Commandant of Guayana, "in order to avert all suspicions which the Spaniards might form with regard to this Colony." The Dutch authorities were here attempting to get credit with the Spaniards for not doing that which a few years before they successfully though covertly done. (B. C. II, 131).

In 1765 Storm reported (V. C. II, 160) that he had received tidings from the upper Massaruni that the Caribs were at war with the Accaways, and that the latter had massacred all the women and children in a Caraiban village. His comment upon it is:

"Not without reason did I fear that we should again be mixed up in this as we were a few years ago, especially through the indiscretion of some itinerant traders and avaricious settlers, who, without taking any heed of the consequences, allow themselves to be drawn into these quarrels upon the slightest inducement of profit, supporting one or other of the parties

either with arms or with advice, which being discovered by the other side always leads to fatal results, and might be of great danger to the Colony itself."

There is evidently no thought here on the part of the Dutch Commandeur of taking any part in the quarrel then in progress. All that he does, apparently, is to give the situation a passing mention. He not only does nothing to put a stop to the war, but he leaves his Commandant instructions, in case the danger of the settlers requires it, to send soldiers up the river "to give the commanding subaltern strict orders to act simply on the defensive, and not to interfere directly or indirectly in the quarrels of the Indians" (B. C. III, 120).

This is another of the instances cited by the British Case in support of its theory that the Dutch "maintained peace" between the Indian tribes.

In view of the above, it is a wide departure from the facts to assert that the Dutch as a practice maintained peace between the Indian tribes.

Again, in 1768, the Director-General reported (B. C. III, 165) that there was again war between the Accaways and the Caribs in Demerara and Berbice. He said:

"The former nation is thus in continual fear of being unexpectedly attacked by the Caribs, which is certain to happen even if it should be after the lapse of a year. I have written the Commandeur to earnestly warn all the citizens and his soldiers that when this occurs they are not to interfere, directly or indirectly, except to make peace if possible, and especially are they to take care not to provide either party with arms or otherwise to assist them, since such action might bring the other party upon us and have fatal results."

The Director-General was not exercising a very severe control over these tribes, and it is to be remembered that these were tribes living within the boundaries of the Dutch settlements about Demerara. He did not dare to interpose Dutch control even here, for fear of the consequences to his own settlement.

A second class of acts referred to in the British Case as illus-

trating the control of the Dutch (p. 85) over the Indians is denominated "Protection of Indians."

Two instances are cited, and but two, in which it was exercised. One is the fact that "in 1645 the Zeeland Chamber formally referred to the Council of Nineteen a report made by the Commandeur of Essequibo on the subject of the kidnapping of Indians in that neighbourhood." The second is that "in 1686 the enslaving of Indians *by Dutch subjects* was made illegal, and only those Indians might be bought as slaves who were in slavery to the Indians with whom the trade was carried on."

The first of these instances occurred in 1645, when the Dutch were still only in the relation of military occupants of Essequibo, during a war between them and Spain. The Commandeur had reported that a Dutchman had kidnapped some Indians, and the Zeeland Chamber referred the letter to the Council of Nineteen, where, for all that the evidence in this case shows, it may have remained until the Council of Nineteen was abolished.

The second instance refers to the period under consideration. No authority is cited for the existence of the law referred to, nor is any such law mentioned in the evidence. It is said to be an instance of protection of the Indians. In what does this protection consist? In making illegal the enslaving of Indians by Dutch subjects, and in confining purchases of slaves to those who were in slavery to the Indians with whom the trade was carried on.

Having thus allayed all doubts as to moral responsibility for Indian slavery, by providing that the Dutch should not make slaves, but that the Indians should make slaves and the Dutch buy them, the Company for a series of years, and the Dutch colonists during a considerable part of the period, got the benefit of the traffic.

As there is no evidence of any such law, and as its provisions are unknown, it is idle to speculate upon their effect.

It is contended that this law "protected from slavery all the

tribes that inhabited the territory now in dispute, as the Indians of that territory did not enslave one another, but treated as slave nations only certain tribes further in the interior;" the intimation being that the Indians of the disputed territory were protected but the other tribes were not. 'This theory that the slaves were not taken from the disputed territory is entirely incorrect. It is directly contradicted by the one man who was able to contradict it authoritatively, namely, the Commandeur of Essequibo. In a report of March 26, 1694, he states (B. C. I, 212) that "most of the red slaves come from the rivers Barima and Orinoco, which lies under the dominion of the Spaniard."

Some of the instances of "protection," however, that are not cited by the British Case may properly be referred to, as showing that when it came to "protecting" the "protected" Indians against others, the Dutch authorities were quite unwilling to do anything.

In 1748 the Director-General wrote to the Company (V. C. II, 102), of the ill-treatment of Indians by Spaniards, and added:

"I intend to tell the chiefs of the Indians, when they come to me, that I can provide no redress for them, and that they must take measures for their own security."

This letter discloses the fact that the Spaniards were using force against the Indians, and that the Dutch not only failed to respond to any duty of a sovereign, but to perform that of an ally, in return for the aid which they had received.

The Director-General not only left the Indians to protect themselves, but took great care to disclaim any responsibility for the acts done by them in their own defence. He not only failed to protect his "subjects," but he repudiated their acts, when they were the result of his own intrigues, and would not allow that they were done under Dutch authority.

Thus, in October, 1754, the Director-General reported (V. C. II, 114-5), that the Caribs, angered against the Spanish missions for interference with the slave trade, had made an alliance with

the Panacays, and had attacked the Spanish mission in the Cuyuni and had massacred its inhabitants. He had received information that a Dutch colonist had been nearby when this was done; and fearing that the presence of a Dutchman there would involve Dutch responsibility for the Indian attack, he caused the man "to be apprehended and brought to the fort. Because such a matter would be of consequence, and would afford the Spaniards real and well-founded reasons for complaint, I have always taken punctilious care therefor." "However," he adds, "this sad accident for the Spaniards has covered us on that side, so that we have nothing to fear from that direction."

In connection with this statement must be read that of Storm which has just been cited in his report of a few years before (B. C. II, 58):

"I intend to tell the chiefs of the Indians, when they come to me, that I can provide no redress for them, and that they must take measures for their own security. Then I feel assured that in a short time no Spaniard will be visible any more above in Cuyuni."

What paltry cunning and cowardice this was if the Dutch Colonial Government occupied the relation of sovereign to these Indians! It failed to protect them; it put them upon their own defence; it incited them to make attacks against the Spaniards; and when they acted, it apprehended a Dutchman whose presence in the neighborhood might have been construed to lend countenance. And in the same breath the Director-General cannot fail to congratulate himself that these acts, the responsibility for which he laid falsely upon the Indians, had directly and largely contributed to the security of the Dutch settlements.

But it was a game that even the untutored savage did not fail presently to understand, as we find in the report of the Director-General of September 9, 1758 (B. C. II, 143). The Spaniards had made their expedition down the Cuyuni, attacked the Dutch post and carried off the occupants. There was a strong cry now for help from the Caribs; but it does not seem to have been forth-

coming, for the Director-General, in the last paragraph of his letter (p. 144), said:

"As soon as my people have returned, and I am in receipt of reliable information, I will send some one to Orinoco to ask for the reason of this behaviour and to demand satisfaction. It would not be very difficult for me, by making use of the Caribs, to pay them back in their own coin and drive them from their present position. But since the Indians are unwilling to go without having some white men at their head, and since the arms and supplies of such an expedition would cost a great deal, I shall not think of it without having received express authority."

The Caribs did not intend again to be thrust forward to make an attack upon the Spaniards while the Dutch withheld themselves with a view of escaping Spanish wrath. They would not go again "without having some white men at their head." If Dutch work was to be done, it must be done as such. The Dutch ally must have a representative in person with the expedition.

In August, 1761 (B. C. II, 201), the Director-General reported another Spanish force in Cuyuni; that "a party of Spaniards and *Spanish Indians*" had been "down to the lowest fall, where your Lordships' indigo plantation is situated, driving all the Indians thence." The Indians complained, but no aid was sent to them. The Director-General continued: "I fear that bloodshed and murder will come of this, because, if they come below the fall the inhabitants will surely shoot upon them, and not allow them to approach, and what will the consequences of that be?" There was no help here for the Indian; Dutch shooting would not begin until the Spaniards had passed the lowest fall.

Finally, it became necessary that the Dutch should give distinct assurance to the Indians that they would discharge their duty as ally and take part with them. This was necessary in order to secure the aid of the Indians to restore the post on the Cuyuni; and when the West India Company were advised of this, they answered, in a letter of September 19, 1765 (V. C. II, 162):

"We are entirely of your opinion that it is of the greatest necessity to restore the post in Cuyuni, and in consequence we were very much

pleased to learn that you had at last succeeded in getting Indians to give a helping hand in that work, on condition that assurance should be given them of protection against the Spaniards. THIS it was EASY TO PROMISE."

Certainly the "protection" of the Dutch Commandeur was paralleled by that of the West India Company. It was easy to promise; a promise that was never fulfilled, and that was made with no intention of fulfillment. The protection apparently never existed otherwise than as a basis for future claims.

In January, 1772, the Director-General reported (B. C. IV, 101) that the attacks of the Spaniards had driven the natives away from Moruka; that "the Spaniards even came to the Post, . . . sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

The Dutch were not even able to protect the Indians at the very post, which it was contended controlled the whole of Barima, from the assertion of Spanish dominion and control over them; in fact there was no measure adopted for the protection of the Indians until the order of the British Government, after Schomburgk's report in 1839-40, and that order was not based upon any duty of a protectorate or of a control already acquired, but contemplated a boundary to be established on the basis of civilized occupation and settlement.

The Spanish authorities took a different view of their obligations; all the Indians to the falls of the Cuyuni they regarded as subject to their dominion, by reason of their first occupation of the territory. Their rebellious subjects they punished and held in check; their peaceful and orderly subjects they protected. In a letter of the King of Spain to Don Joseph Solano, June 4, 1771 (B. C. IV, 86), it is said:

"The King has been advised of this, as also of the great advantages arising from the new settlements, you being able by means of them to hold the Dutch in Essequibo within their legitimate possessions, and to free the other tribes from the hostilities of the Caribs."

The British Case having claimed some little practice of protection of Indians, interweaves with this subject and introduces

as a branch of it, another subject, which is called "Jurisdiction over Dutch Settlers." One would think at the outset that jurisdiction over Dutch settlers was not a ground for the assertion of control over anybody else; but, according to the British Case (p. 85), it comes about in this way:

"The necessity of protecting the Indians from strangers and from one another gave rise to the exercise of regular jurisdiction by judicial Tribunals, which the Indians themselves became ready to invoke."

In illustration of this the Case cites four instances where Dutch colonists were called to account for ill-treatment of Indians.

That Dutch settlers occasionally ill-treated the Indians, that the Indians complained of it, and that the settlers were punished in consequence, does not show a protection of the Indians on which any political claims of jurisdiction over Indians can be founded. The jurisdiction of the Dutch authorities over its colonists was a personal jurisdiction. The Dutch Courts of course asserted a right to punish the subjects of their own nation for acts against its laws. Still more were such offences cognizable when they put in peril the safety of the colony. This jurisdiction is one familiarly recognized by the courts. If the jurisdiction asserted had been a territorial jurisdiction, it would of course have embraced all those domiciled or being within the district. It would have embraced the French, the English, and the Spanish who might come into the territory now claimed as having been Dutch.

They all did come, and they came in great numbers; but a Dutch jurisdiction over them never was asserted, nor was there ever any attempt to apprehend them upon any criminal process.

A brief examination of the cases referred to will show that the claim of control under this head is destitute of foundation.

The first of them was that of Maillard, a colonist who had abducted an Indian girl, upon a forged order from the Dutch Governor, in 1748. He was ordered to return the girl to her father; and not respecting the order, was summoned. We have here a case of Dutch jurisdiction over a Dutch subject for an

offence against Dutch authority. Moreover, the Indian is described as "belonging to the Company's trading place in Moruca," and the *locus* of the offence seems to have been the Moruca post (B. C. II, 56).

In 1750, Marchal and Bakker (B. C. II, 64), both Dutch colonists, were accused by Indians of not paying for services rendered. They were reprimanded and ordered to pay the Indians their dues. This was an ordinary exercise of personal jurisdiction.

The case of Tonsel (B. C. II, 72) was also that of a Dutch colonist, who was charged with taking away the children of some Caribs as pledges for debt, and with having stolen a slave from another Dutch colonist. Here we have a double offence by a Dutch colonist, against Indians and against a fellow-colonist. The first put in peril the Dutch relations with the Indians, and both were offences against Dutch law, committed by a Dutch subject.

Maillard seems to have been a confirmed offender, for again, in April, 1785, it was reported (B. C. II, 104) that complaints had been received from the upper Essequibo that he had killed two Akawois there. He was summoned, with certain negroes as witnesses. It seems that Maillard had adopted an extraordinary remedy for the collection of a debt. He had placed a pistol at the breast of an Indian, and said: "You must and you can pay me; there are Akawois; kill them;" and that thereupon Maillard's people killed two Indians, an Akawois and an Arawak. Maillard acknowledged placing the pistol at the Indian's breast, and that the Indians had been killed in his presence, but denied that he had any part in the killing.

The conclusion reached at this point was (*Id.* 105) "that the Indians must frequently tell falsehoods for the whites who trade in the Upper Essequibo, and commit many extravagances," and it was "unanimously resolved, in order to prevent all these disorders, which would be very prejudicial to the Colony, to discontinue this trade in the Upper Essequibo," and to send for the Indians implicated,

in order "to examine the case as far as practicable, and then to make such arrangements and fix such orders as will be found necessary." There is no record in the Case of any further proceeding in this matter.

Here, again, we have a Dutch colonist charged with offences against the Indians, leading to disorders prejudicial to the colony. The jurisdiction exercised was that over a Dutch subject. Nor is it clear that the *locus* of the crime was within the disputed territory.

In 1760 Nicolas Stedevelt was arraigned (B. C. II, 182), because he, "without giving any notice, had gone to the Upper Cuyuni, and, making a frivolous use of his Excellency's name, had not only ill-used the free Caribs, but also bound and put them in irons, and taken a woman away." The defendant said that he was prompted to do so to recoup himself for robberies committed by Caribs who had stolen all his goods. The judgment was contained in this very significant resolution:

"That as Nicolas Stedevelt never had any authority to act in such a manner, and as only lately a Law was published prohibiting such proceedings, the Court hereby condemns Nicolas Stedevelt to pay a fine of 250 guilders, cautioning him at the same time that should he not be more prudent for the future, he will be banished from the land."

Here the offence was against the Dutch law by a Dutch citizen—a law having for its object the repression of offences by the colonists against the Indians. It appeared by the testimony that the Carib whom he had put in irons had stolen Stedevelt's goods, but this offence of the Indian was not prosecuted.

Very similar is the case of Pieterszen, in 1783 (B. C. V, 6), an inhabitant of Essequibo, who was accused of killing an Indian, arrested, tried and declared innocent.

This, again, is the case of a Dutch colonist, and the place of the crime seems to have been about the Dutch settlements, and not in the territory occupied by the tribes.

It is further contended by the British Case (p. 86) that a juris-

diction was exercised over the Indians themselves. It is not claimed that any civil jurisdiction was so exercised, and it is admitted that such criminal jurisdiction as is claimed was "only in the case of the more important crimes." The British Case refers to exactly three instances, occurring in a period of one hundred and sixty-six years.

The first of these was closely connected with the case of Marchal above mentioned, where certain Akawois had been murdered by Caribs in 1755. Marchal was to be tried for instigating the murder, and the Carib was wanted as a witness. The British Case (p. 86) thus describes what happened:

"The Council summoned before the Court a Carib Chief from Barima, who had killed certain Akawois in the Massaruni district, and as it appeared that he had acted at the instigation of a colonist, the latter was put on his trial."

This statement is quite inaccurate. The Carib was not "summoned," as the Case states; nor was he summoned to answer for the crime, as the Case would seem to imply. The Council sent a man "to *invite* hither the Chief of the Caribs who murdered the Accuways in Masaruni, to be present at the Session for January next, that we may learn from the same who have been the causers and inciters thereof."

There was no thought here of proceeding against the Carib. There was no summons. It was an *invitation*, and an invitation simply to be present as a witness.

In January, 1756, the Owl appeared and was interrogated. He said (B. C. II, 123-4) that:

"He had committed the murder solely upon the advice and persuasion of the person Pieter Marichal . . . who had told him that if he did not murder the Acuways, the latter would murder him and his people in order to avenge their friends killed some time before, and when he, the summoned one, had thereupon replied that such had been strictly forbidden him by the Commandeur of this Colony, the aforesaid Marichal had encouraged him, and continued to say that he would be answerable for it by writing a letter to

his Excellency (who, moreover, could not judge who were friends or enemies), that he, Marichal had sent Caribs to his help, and for which he, the Owl, had, after the slaughter had been committed, presented Marichal with one of the captured slaves in recognition of that advice."

Marchal threw himself upon his dignity, and refused to be heard "solely upon the accusations of a single Carib, he appealing to Christian witnesses who had heard the contrary out of the mouth of the aforesaid Owl himself." The judgment was "to let this matter remain in *statu quo*."

The Director-General reported that because of the untrustworthiness of Indian testimony (B. C. II, 125) "Marchal was declared innocent of the charges, although I, and many with me, think him really guilty."

Here was a case of the murder of Indians, undoubtedly committed by another Indian. The proceedings were against a Dutch colonist for an offence against the peace and safety of the colony, and nothing could more fully demonstrate that the Dutch were not claiming jurisdiction over the Indians than the fact that this Carib Owl, in the presence of the Court, admitted the killing, and that no process whatever was taken against him for it. He was allowed to go free and left to answer to the Indian law of blood revenge. The colonist was also allowed to go free, and nobody was punished for the murder.

The second case referred to was reported by the Director-General in 1765, but is not very clearly stated. The first information we have of this case (B. C. III, 121) is contained in a report made in the previous August, in which the Director-General said:

"I was obliged to send the Postholder of Moruka away from here very quickly, because the Indians of Pomeroon came to the fort to report that some canoes filled with Spaniards were in the Pomeroon, and because a letter came from his assistant informing us that some murdered Indians had been found in the itaboos. I charged him to go and inquire into these matters as speedily as possible, and, if necessary, to immediately send to Mr. Bakker, who would then send him assistance."

In his letter of December (B. C. III, 126), the Director-General said:

"The reason why the Postholder of Moruka had to depart from here so suddenly . . . was a rumor that he had caused a murder among the Indians, the assistant thinking that certain Spaniards had had a hand therein. This was found to be otherwise, the act having been committed by Indians themselves. One of the murderers, brought here and imprisoned, has killed himself before being brought to trial, wherein he would probably have been acquitted, and his corpse has been hung on the gallows for the satisfaction of the deceased's friends. The principal one has not been apprehended, and I have told the complainants that *they must themselves apprehend him* and bring him here, in which case he should receive his well-deserved punishment."

This is rather a cloudy statement of the case. It seems that it was supposed that the Postholder had caused the murder, and again that the Spaniards had committed it. The place of the crime is not fixed; but it must have been at or very near the Moruca post, so near that the Postholder was suspected of having caused the death of the Indians. This is confirmed by the place where the bodies were found. From the statements, it seems probable that the Indian who was arrested for the murder belonged to the neighborhood of the post. He is reported to have been innocent; nevertheless, for the appeasement of the savages, the body of this innocent man was hung on the gallows. The Indian who was the real culprit, and who had escaped from the neighborhood of the post, was not pursued by the Dutch. The Indians were told that if *they* would find and bring him in the Dutch would deal with him. But nothing further appears to have been done in the matter. The case would really appear to be nothing more than an unsuccessful attempt to exercise jurisdiction in the immediate vicinity of the post, in a region that was not constructively, but actually, occupied by the Dutch.

The third case referred to is that of the Indian Joris, against whom proceedings were had, March 5, 1783 (B. C. V, 7-11), for killing a colonist named Mullert. The Indian is described as

"formerly residing on plantation Engelrust, in this river, and formerly at Fort Zeelandia." On the trial he is described as "living in the Creek Wakkapou." (B. C. V, 9.) In the Memorial of the Deputy Fiscal it is said that he "was living at Supename." In his evidence he said that he met Mullert "paddling up the Creek of Wakkapoe" (*Id.*, p. 10), and that he shot him there. He justified his act by saying that he had been assaulted and his goods taken from him by the deceased. He was tried, found guilty and sentenced to a whipping and hard labor for life. (*Id.*, p. 9.)

In this case it appears, first, that the *locus* of the crime was within the post of Moruka; second, that it was a crime committed on a Dutch colonist; third, that the Indian was an Indian who had settled at a Dutch post; and it would appear from his reference to the goods that he had gone out from the post to trade; moreover, his residence had been at different points, and perhaps was then at some point in the thickly settled part of the Dutch colony. He was, therefore, to all intents and purposes, as much a subject of Dutch law as the Dutchmen themselves, especially in reference to a crime committed within the limits of the colony.

These three cases are all that are mentioned by the British Case as instances of the exercise of Dutch jurisdiction over Indians, and they are all that are disclosed by the evidence. The fact that they are all, occurring in one hundred and sixty-six years, that can be cited in the British Case, absolutely contradicts the suggestion of any Dutch jurisdiction, civil or criminal, for large or small crimes, over the Indians in the disputed territory.

The British Case also refers (pp. 90-1) to the so-called "Appointment of Indian Chiefs." Most of the matters referred to under this head are too trifling to require an answer.

The first (B. C. I, 200) is a statement made by De Jonge, Commandeur of the second Pomeroon colony, to the Company, asking that they "send me five or six red coats and breeches, with some sham gold and silver lace, to keep on friendly terms with the

Chiefs of the Indians." Singularly enough, the British Case refers to this as an evidence of political control. This was in 1686.

The next reference to the subject is in 1765, nearly a century later. This is a statement of the Director-General (B. C. III, 126) that he has received "the ring collars for the Indian Chiefs: they are very pretty; too pretty, in fact, and too heavy for Indians."

The third (B. C. IV, 136) relates to the return of the ring-collars, in order to have them made into "canes with silver knobs."

The fourth references describe the distribution, in 1778 (B. C. IV, 187) of ribbons, looking-glasses, axes, &c., to various chiefs "as a token of friendship," and that "the hats and sticks were given to the Chiefs as a token that they are recognized as such by the Government." (B. C. IV, 188.)

In the following year, 1779, other presents were given, and "commissions as Captains or Owls of their nation were also given to Indians" (B. C. IV, 207), who were doubtless ready to take anything that the Dutch saw fit to give, whether it was a ribbon, a looking-glass, a cane, or piece of paper.

Finally, the last reference (B. C. V, 26) is not a reference to anything that was done, but to a proposed action on the part of the Company, in which, in case the Indians promised to give assistance when called upon, the arrangement should be accompanied "by some presents to the Chiefs or Owls, and particularly a cane with a silver knob, bearing the arms or the monogram of the Company, or something of that sort, and a dozen ring collars of silver with the Company's arms or monogram, and by rum."

The above facts are regarded by the British Case (p. 91), as justifying the statement that

"The Chiefs of the Indian tribes thus became formally accredited officers of the Dutch Colony, and exercised their authority with the sanction of the West India Company."

This statement hardly seems to require an answer.

The same may be said of what the British Case calls "The Dutch Subsidy," meaning thereby presents to the Indians. We

are not going extensively into a discussion of this subject. It is enough to refer to a single instance mentioned by the British Case, where the chiefs were summoned "in March, 1778, to Fort Zeelandia and entertained there." This was the occasion on which the chiefs were given their hats and sticks "as a token that they are recognized as such by the Government." The nature of this proceeding is disclosed by a letter from the Manager of the Duynenberg Estates (B. C. IV, 188), in which he said that orders had been given to the Postholders and Interpreters and those in communication with the different nations that they should attend at the Fortress of Zeelandia,

"that a joeling (revel), or festival as it is called, might be given them, and presents distributed to them from your Honours." "Some of them have attended and received their revels and presents with protestations of the greatest friendship. . . . having regard to the great profit which, in the interest of your Honours (as I hope), the land stood to reap therefrom, I did not dare to hesitate, requesting that your Honours will be good enough to approve favorably of my conduct,—and, at the same time, cause to be given your Honours' orders how the Keltum used by me for this festivity . . . shall be accounted for."

The account for the "*keltum*" is given in B. C. VII, 189:

"1778. From plantation Duynenburg:
August 8. To the Indians in their revels, by order of the
Director-General..... 176 gallons."

With such a supply as this of "*keltum*" to facilitate negotiations, it would not be remarkable if the Indians had consented to anything; and it certainly justified on their part "protestations of the greatest friendship."

This act bears strong indications of a deliberate and systematic purpose to debauch the Indians by wholesale, and its natural result is to be found in steadily diminishing numbers of the tribesmen.

In 1784 the Company devised an elaborate plan (referred to in the British Case, p. 91) for distributing grants of land to the Indians. There is no evidence that this was ever carried out. All

that can be found is that the Indians assisted the colonists in their wars with the revolting slaves, and that they came to the posts to get presents whenever they were distributed.

It is a singular fact that the British Case apparently takes the view that the receiving of presents is an indication of servitude. If the giving of a subsidy is obligatory, the servitude is on the other side. Tributary States or peoples are those who *pay* tribute, not those to whom tribute is *paid*; and it was in view of this fact that Governor Codd, in a passage already quoted, in 1813, said of the Dutch-British colonies that they were "tributaries" to the Indians.

All the other acts which are referred to by the British Case in reference to employment of Indians, in the recapture of slaves, to the military services rendered by Indians, and to the industrial employment of Indians, are simply reducible to a mere question of rendering services for pay. Thus, it is stated (p. 99), that "it was customary to pay rewards for each slave recaptured." Of course, the Indians, under these circumstances, were ready to undertake the recapture of fugitives.

In October, 1785 (B. U. V, 38), the Director-General, speaking of the parties he had sent out into the forest to recapture runaway slaves, said:

"These Commandos cost certainly much, through the manifold presents which we must (give) to the Indians, without which they will not move a step, and especially when we must here purchase goods therefor (as has happened on this occasion), but the entire welfare of the Colony depends thereon."

There was here no levying of forces for the sovereign, no assembling of the *posse comitatus*, but the hiring of tribesmen who did not recognize Dutch sovereignty, and who were moved, not by Dutch command, but by subsidies.

So with military services. The Indians rendered such services to the Dutch in putting down the slave insurrections, and they were paid for their services. But there is no evidence that this

military service was anything more than the service of ordinary mercenaries. There is nothing to show that the Indians were called out as a matter of right, or that the employment of them was regarded on either side as an employment of subjects; on the contrary, the evidence contradicts any such proposition; nor does the British Case assert that it was ever otherwise than an entirely voluntary service, which the Indians regarded as being in their own interest and for which they received an equivalent that made it worth their while.

So with the industrial employment of the Indians. The British Case says (p. 95):

“The Indians, however, acted not only as the allies and soldiers of the Dutch, but also as their servants,”

and it instances such acts as carrying timber, field labor on the plantations, services as boatmen, pilots and guides, and making roads and paths in the neighborhood of the post. It also refers (p. 96) to their preparing annatto and other products, and “in bringing these to the Post to be forwarded to the Dutch markets.” It also refers to their employment in the fisheries.

That the Indians were employed somewhat, although not extensively, by the Dutch is true; but that it has any significance in the matter of political control is difficult to perceive. As to employment at their own homes in preparing annatto, this was simply what they did in preparing their merchandise for sale to the Spanish, Dutch, and other white traders. The fact that they caught fish and sold the fish to the Spaniards and Dutch is equally unimportant.

The employment of Indians at the post of Moruca is equally without significance. None of these things have anything to do with political control. Had the Dutch, as did the Spaniards, gathered together twenty thousand Indians in settlements, where they remained continuously under a civilized and orderly government, devoting themselves in these settlements to tilling of the soil and to useful arts, it might be said to be a step, and a long

step, towards establishing political control over the Indians so employed, but the difference consists in the fact that the political relation which was established by the Spaniards with the Indians never was established by the Dutch.

We think that we can affirm with confidence that up to the time of Lord Palmerston's reference to the tribes living near the fort as "independent Indian tribes," there had been no pretence, either on the part of the Dutch or of the English, that the limits of Dutch Guiana had been extended by reason of any control, political or otherwise, exercised over the Indian tribes. Schomburgk did not allude to it. He was not, according to his own statements, in any way influenced by it in fixing the boundaries he proposed. He based them wholly upon what he claimed were traces of actual occupation by the Dutch and upon considerations as to natural boundaries. It remained for the makers of affidavits in British Guiana, after the adoption of the Treaty, to discover innumerable "Indian traditions" as to the supremacy of the Dutch over the tribes. It is a curious commentary upon the case of these Indian affidavits, taken before Mr. McTurk and other British officials, to prove Indian "traditions" before this solemn tribunal, that it was a common thing, both in Dutch and British practice, for a case to be thrown out of court because the Indian testimony on which it rested was deemed worthless.

CHAPTER XVI.

ADVERSE HOLDING—MISCELLANEOUS ACTS.

It has been shown by the evidence that, notwithstanding the claims made by the British Case, there was no settlement whatever, during the history of the Dutch colony of Essequibo, west of the falls of the Cuyuni, in the interior, or west of Moruca, on the coast.

It has been shown also that, in so far as political control is to be considered a determining factor in the question of adverse holding, no political control was exercised by the Dutch in that territory, but that it was maintained by the Spanish; that the control so maintained by the Spanish included numerous acts of territorial dominion, implying the exercise of the highest rights of territorial sovereignty, and that it were exerted not alone upon subjects, but upon foreigners in the territory, and particularly upon the Dutch; and, finally, that it extended over the whole period of Dutch rule.

Nor is it claimed by the British Case that political control, in any ordinary meaning of that term, was exercised by the Dutch in the territory in dispute, or that anything resembling the exercise of sovereignty by the agency of political government was to be found there or was even thought of by the Dutch colonial authorities. It is not suggested that any territorial jurisdiction was exercised over all persons, as being in a territory subject to such jurisdiction. It is not intimated that a Spaniard, a Frenchman, or even an inhabitant of Surinam, was ever apprehended in this district, or tried at Essequibo for an offense committed there. It is not pretended that a single grant of land was made by the Dutch either west of Moruca or of the falls of Cuyuni. It is not pretended that any right of exclusion was ever exercised by the Dutch over the territory, although such a right was constantly asserted by the Spaniards, both in the interior and the coast.

Of the acts of the Dutch in connection with the territory which the British Case advances as in some sense bearing on political control, those connected with trade and with the Indians have been discussed. A few minor facts, referred to for the same purpose, remain to be considered. They are as follows:

- (1) Transit and passports.
- (2) Timber-cutting.
- (3) Postholders.
- (4) Recapture of fugitive slaves.
- (5) Creole Dutch language.
- (6) Hunting and fishing.
- (7) Mining.

(1.) TRANSIT AND PASSPORTS.

The giving of passports implies nothing with reference to territorial control. Passports, even in civilized countries, are given to subjects leaving the country to travel in foreign countries with the object of affording an official identification, both as to the individuality and as to the nationality of the holder. They served the same purpose in the seventeenth and eighteen centuries in Guiana. They served the additional purpose of a permit on the part of the Government of the person to whom they were issued to make a journey and of a trading Company to trade. In that early state of society and in the situation in which the colonies found themselves, it was necessary for the Colonial authorities to exercise an extensive supervision over the movements of the colonists, and to know at all times where to find them. If they were not at their homes or in the limits of movement of the colony, it was necessary for the Colonial Government to know where they were; and it was substantially the practice of both colonies not to allow individuals to pass out of the colony without passports from their own Government. The passports were of use when the individual came into the territory of the other State, because they afforded a certain indication as to

who the bearer was, and what he was doing, and whether his doings were regular and proper; in fact, if he went without one he ran the risk of suffering arrest.

Thus, it was the regular practice to give passports to colonists leaving the colony by way either of the interior or the coast territory. These passports were required to be shown at the Moruca post. Thus, the Postholder at the latter place was instructed in 1767 (B. C. III, 154) that "he shall allow no one to pass the post without a passport, but arrest and bring up any one coming there without one."

Jan la Riviere in 1768 had a passport to enable him to pass the post at Moruca, though it expressly forbade him to settle in Barima (B. C. III, 176).

In like manner, when, after the destruction of the first Cuyuni post, the Court at Essequibo, in 1761, established a sort of informal post (B. C. II, 202) at the plantation of Crewitz, below the Cuyuni falls, and therefore at the colonial frontier, it resolved, in order to put a stop to contraband trade, especially in slaves, "to order every one trading or going up that river to provide himself with a proper pass, which must be shown to C. Crewitz, at whose residence they are to make a halt."

In the same way, passes were frequently issued to pass the post of Arinda, in the upper Essequibo (B. C. IV, 189).

Thus, Storm reported in 1770 (V. C. II, 216) that a young colonist, "having asked for a permit to go to Maroco, and having obtained the same, I now hear that he went farther, and that he was arrested and is now a prisoner in Orinocque." This would imply that colonists could not even go to Moruca without a passport.

So, the Governor of Surinam wrote in 1712 (V. C. II, 73):

"No whites are allowed to enter the Orinoco except with a pass."

Possibly, however, this may mean a pass from the Spanish Government.

The Dutch found the use of passports particularly necessary on account of the trade restrictions which they had thrown around their colonists; and if one of these left the colony for a time, it was necessary for the Colonial authorities to know that he was not engaged in a forbidden trade, to the prejudice of the Company, and it was not unusual to name in the passport the trade in which the colonist was allowed to engage. Thus, Commandeur Van der Heyden reported (B. C. I., 238), January 6, 1714, at which date, it will be remembered, the reservation of trade in red slaves, annatto and balsam was in operation:

“In the month of September of the past year I received information through an Indian that a certain Christoffel Berkenbosch some little time before had asked for a passport to trade for vessels in Orinoco. There, against the orders given and the prohibition made, he had managed to get ten red slaves and three casks of balsam oil, wherewith he intended to make his way to Surinam, but through severe illness as he was returning had been compelled to land near the River Pomeroon. I immediately sent orders to the Postholder in Wacquepo to arrest the said person and his merchandise, provided they could be got, and to bring them to the fort, which order was promptly carried out. The goods being come into our power have been confiscated to the profit of the Noble Company.”

In 1719 the Court of Policy reported the capture of several Dutch colonists in Orinoco for violation of the trading regulations of the Spanish in that river (B. C. I., 250), stating:

“For this reason, it has been resolved to grant no passes to Orinoco before and ere we shall have received circumstantial information of everything, so as to give satisfaction to the aforesaid Governor [of Guayana], and maintain friendship with our neighbour.”

Passports, however, were given on both sides. They are repeatedly referred to in the correspondence as given by the Dutch, and they are occasionally referred to as given by the Spanish.

Thus, Storm noted, in 1764 (V. C. II, 155):

“Two Spaniards came to me with formal passports from the Governor to come here. Essequibo was not expressly mentioned in them, but the neighbouring Colonies of friends and allies, which is equivalent.”

The Dutch, it will be remembered, had some difficulty about the wording of their passports, and Storm insisted to the Governor of Surinam, in 1764 (V. C. II, 158), that he should not name the river Barima in his passes to Surinam Dutchmen, because the Spanish maintained that that river was theirs, "*wherein I believe they are right,*" and because, taking umbrage at a reference to their territory, they had sent some of these passes to the Court of Spain.

So far from the action of the Dutch authorities in reference to passports being an evidence of Dutch territorial claims, it is, in this instance, a clear absence of such claims. It is all the more remarkable in view of the fact that in 1734 it was certainly the practice of the Dutch to give passports to Orinoco, for Commandeur Gelskerke, in that year, stated (V. C. II, 87) that, as a new departure, "until further orders, no more passes to Orinoco will be issued by me."

Whatever the practice was, it has no significance as indicating territorial control. The requirement that the passports should be presented at the frontier posts of Moruca and the Cuyuni falls, as a permission for colonists to go out of the colony's territory is in the highest degree significant.

The British Case makes a statement (p. 88) that the pass system was applied to Indians. This statement appears to be incorrect, at least in so far as the general granting of passes to Indians was concerned. The only cases which are referred to in support of it are as follows:

First, in 1763 a pass was given by the Commandeur in Demerara to permit a Carib Owl to pass from Demerara to Berbice (B. C. III, 104).

The second (B. C. IV, 189) was a case where the Director-General at Essequibo gave a Carib Owl a passport for Barima, in 1778.

In the third case (B. C. IV, 190), the Director-General gave to another Owl, "who had gone down the first fall with his vessel,

whereby all his goods were lost," a certificate that his tribe "is recognized as our friends and neighbors, and has liberty to do business in our Colony."

In the fourth case (B. C. V, 73), the Commandeur, in 1789, gave a passport to an Indian to go to the coast of Essequibo.

None of these cases indicate what the words in the British Case would seem to imply—any general practice of controlling the movements of the Indians. In fact there was no such practice. The Indians came and went as they pleased. Thus, the instructions of 1764 to the Postholder at Arinda (B. C. III, 112), directing the Postholder to arrest traders of the colony who were not provided with a proper pass, stated: "It is well understood that free Indians are not included in this." In fact, the Indians, coming as they did mainly from the interior, would have no means of obtaining a passport until they reached the Company's capital at Fort Zeelandia.

That in a time of great disturbance the Commandeur at Demerara should have given a pass to an Indian chief going to Berbice is not a fact of any significance, as he was travelling from one Dutch Colony to another; and, moreover, his travels are of no particular interest in this controversy, as the localities named were far to the eastward of the territory in dispute.

Nor is it worthy of remark as indicating a general practice that the Director-General at Essequibo should have told the Postholder at Moruca to let an Indian pass his post from the colony into the Barima. Probably the paper was given as a sufficient credential to justify the Postholder in giving the chief "refreshment" as he passed the post. Unfortunately it did not have the desired effect, as, a few weeks later (B. C. IV, 190) the Owl came back, reporting that, instead of the Postholder's having given him the rum he wanted, the Postholder had taken away all his rum, which is duly entered by the Director-General in his journal as follows:

"The Owl Awamerie brings me back again his passport of the 8th May last, and complains that the Postholder Aru. Dijk has taken away from him on the way as he was going two bottles of kiltum, and on his return a corrial, without making any payment therefor,"

which shows how necessary it was, not that the Indians should be protected by the Postholders, but that they should be protected from the Postholders, and of how little avail the passport of the Director-General was to give them this protection.

Still less is any significance to be attached to the certificate given by the Director-General to the unfortunate Indian who lost his wares, as frequently happened in passing the falls, which would enable him to obtain consideration and possibly credit in making up his losses with the colonists.

Nor is it worthy of remark that the Commandeur should have given a chief a passport to go to the coast of Essequibo.

Mere transit over territory cannot give title, even in the case of private individuals; much less can it be the foundation of a public title.

That during a period of one hundred and sixty-six years there was in the aggregate a good deal of passing back and forth over this territory by the inhabitants of the settlements which adjoined it to the east and west cannot be doubted. It might be assumed to be a fact, even without a word of evidence, not only that Dutchmen used the territory for purposes of transit, but that the Spaniards did the same.

There is abundant evidence of the presence of Spaniards: witness the careful instructions to the Postholder at Quive-Kuru, in Cuyuni, a post only forty-five miles from the fall, and, therefore, from the Dutch frontier, in reference to Spaniards who might come that way; and these instructions (B. C. II, 168) were given, it must be remembered, on the establishment of the first post and before the Director-General had any reason to suppose that Spaniards were coming to attack it.

Still more conclusive is the report of the Court at Essequibo,

July 27, 1750 (B. C. II, 68), from which it appears that the Spanish traders were to be found not only in the upper Cuyuni and in the western part of the interior, but that they came themselves to trade among the settlers living in the upper part of the Essequibo plantations, and that this was a practice so well established that the Court appointed a Committee to take steps to induce the Spaniards to come down the river to the Company's stores at Fort Island.

If such was the condition of affairs near the Essequibo frontier at the Cuyuni falls, what must it have been in the western part of the territory which bordered on the farming and mission settlements of the Spaniards, with their score of villages, their thousands of Indians engaged in agriculture, and their vast herds of cattle? Here the Dutch, from the nature of things, must have been comparative strangers; so much so that while the coming of Spaniards and their trading with the settlement at Essequibo is spoken of by the Committee as a frequent practice, the presence of a single party of slave traders at the mouth of the Curumo, or on the Tocado, is considered a matter of sufficient importance to be reported to the Commandant at Guayana by the Prefect of the Missions.

As to the coast territory, we know that it was used much less by the Dutch than by the Spaniards. Of trade of the Essequibo Dutchmen with the Barima Indians there was none, except what was carried on at the frontier post of Moruca. Trade with the Orinoco was conducted, in accordance with the policy both of the Company and of the Director-General, mainly by Spaniards going to Essequibo, especially in the latter half of the eighteenth century.

Even as early as 1762 (V. C. II, 148), the Court of Policy could say that "not more than two of our settlers carry on trade with that Spanish river," and that "their boats are mostly manned by Spaniards, who are entrusted with the business, both in cattle and tobacco."

(2.) TIMBER-CUTTING.

The claim of the British Case in reference to timber-cutting is stated as follows (pp. 83-4):

“Closely connected with trade, but involving still more direct exercise of dominion over the country, is the assertion by the Dutch of the right to control the cutting of timber.

“Upon the foundation of the separate Colony in the Pomeroon in 1686 the Commandeur asked the Company for instructions as to the terms upon which he should allow timber-cutting. He was ordered to forbid it to all foreigners.

“It is clear that before 1706 the cutting of timber above the falls in Cuyuni had become a common occurrence, for in that year a party of runaway slaves were enabled to pass the Indians at the falls by giving out as an explanation of their journey that they were obliged to go right up country in order to cut planks there by the orders of the Commandeur, and that they intended to return again in fourteen days.

“In 1734 a general prohibition of timber-cutting in Essequibo, Pomeroon and Demerara was issued by the Zeeland Chamber.

“In 1735 leave was given to the Company's Director to fell timber in Cuyuni for private building purposes. Permission to cut timber in Waini was given in 1754, and in 1756 a similar application was entertained. There had also, before this time, been timber felled in the Pomeroon under lease of the Company. But in 1752 an applicant for a like grant in Pomeroon was informed that that river was not open, but that permission might be obtained for Waini. In 1755 leave was refused for Capoe Creek. In 1756 an application to cut wood in Pomeroon and Waini was made by one Knott, who proposed the payment of 1,000 guilders annually, besides the usual charge on the vessels in which it was exported. The Director-General and the Court of Policy, however, differed on the expediency of granting the application, and it was referred to the Directors. In 1766 there was a man cutting cedar-wood in Barima on account of Mr. Knott, but during the whole time of office of Storm van 's Gravesande, which lasted till 1772, he opposed the opening of the Pomeroon for timber cutting.

“In 1766 there were saw-mills on the Massaruni, to which land was attached by grant of the Company. In 1773 the Director-General reported that most of the lands in the upper reaches of the River Essequibo had been already annexed as timber-grounds for the plantations below. In 1774 there was a Petition for 2,000 acres of land in Pomeroon for

cutting timber. In 1793 the Commandeur was instructed to give his attention to the management of the timber in the Colony.

"In 1803, the Dutch, who had resumed possession of the Colony in 1802, proposed to make regulations for the protection of the timber, and for making grants for lumbering in Pomeroun, Waini, and Barima."

It would appear from the above statement that the Dutch exercised the right of timber-cutting in the disputed territory to so great an extent as to make it one of the principal features of the British territorial claims. An examination of the facts, however, shows that no such alleged practice existed.

It is freely admitted that the Dutch authorities exercised the right to cut timber within the limits of the Essequibo settlement, just as they exercised other territorial rights there. The territory where they exercised such rights included the banks of the Essequibo and the Cuyuni and the Massaruni up to the lowest falls. The names, as has been already shown, by which the little strips at the mouths of these two rivers below the falls were designated were "in Cuyuni," and "in Massaruni." It cannot be insisted too often that these names, so confusing in their sound, were applied to grants and settlements only in the rivers below the falls.

It is also admitted that the Government controlled timber rights in the Pomeroun. It has been shown that the Dutch regarded the post at Moruca as their frontier in the coast territory, just as they regarded the Cuyuni and Massaruni falls as their frontier in the interior. They had twice established a settlement in this territory. They from time to time discussed the question whether it should be opened for a new settlement.

The only questions, therefore, with which this discussion is concerned are those relating to timber-cutting west of the line which has been referred to as enclosing everything ever seriously claimed or attempted to be controlled by the Dutch, namely, the fifty-ninth meridian.

These simple facts dispose of nine-tenths of the references to timber-cutting, which are set forth at length in the passage above quoted from the British Case.

As to the first occasion referred to, where the Commandeur of the newly established settlement of Pomeroon, in 1686, asked the Company for instructions as to the terms upon which he should allow timber-cutting, and was ordered to forbid it to foreigners, the fact was, as shown by the references (B. C. I, 204 and 207), that, in reply to the inquiry of the Commandeur, the Company forbade him to allow any foreign ships to enter the river Pomeroon for cutting wood or for any business transactions. This was an ordinary exercise of jurisdiction at a Dutch settlement.

The same may be said of the general prohibition of timber-cutting in Essequibo, Pomeroon and Demerara issued in 1734, which was simply a regulation governing Dutch colonies over which the Company exercised territorial rights; of the leave given to the Company's Director to fell timber "in Cuyuni" (and therefore below the falls) in 1735; of the felling of timber in Pomeroon under lease of the Company; of the refusal of leave to cut timber in Pomeroon in 1754, and in Capoey Creek, a small tributary of the Essequibo, near its mouth, in 1755; of the application to cut wood in Pomeroon in 1756; of Storm's opposition to the opening of the Pomeroon for timber-cutting down to 1772; of the saw-mills on the Massaruni (also below the falls) in 1766; of the lands in the upper reaches of the river Essequibo which had been annexed as timber grounds for the plantations below in 1773; of the petition for cutting two thousand acres of timber in Pomeroon in 1774, and of the instruction given to the Commandeur to give his attention to the management of timber in the colony in 1793. This disposes of nearly everything on the subject.

Only one allusion is made, in connection with timber-cutting, to the interior district. This is the statement that in 1706 a party of runaway slaves (B. C. I, 228) succeeded in deceiving the Indians

at the falls, who would have got a reward for bringing them back, by the statement that they "were obliged to go right up country in order to cut planks there by order of the Com-mandeur" and that they were then to return. The fact that this information deceived the party of too credulous Indians is taken by the British Case as conclusive evidence that "before 1706 the cutting of timber above the falls in Cuyuni had become a common occurrence." It is not pretended that there is any direct evidence of timber-cutting in this region, or that there is the remotest allusion made by the documents and correspondence to such an act; it is only assumed that it was done because the slaves deceived the Indians by the story.

The reliance upon such evidence as this to prove the exercise of certain territorial rights by the Dutch as a foundation for the title of Great Britain to the territory in dispute only shows how slight is the real foundation for this claim and to what shreds of evidence the British Case is compelled to resort to sustain it.

Timber was not cut in Cuyuni for a very good reason. Im Thurn said in 1880 (V. C. III, 407), that the timber extended "as far as the lowest cataracts on the various rivers. It is impossible at present to cut timber profitably beyond the cataracts, owing to the difficulty of carrying it to market."

As to the statement made in the British Case that "permission to cut timber in Waini was given in 1754, and in 1756 a similar application was entertained," reference may be made to the reports of the Director-General on the subject of these very grants, in 1758 (B. C. II, 143), where he goes over the whole subject. He said:

"Proceeding now to answer what you are pleased to ask with respect to cutting timber in the River Pomeroon, I have the honour to say that, in the aforesaid river, . . . this E. Ling has taken away from there two ship-loads of timber, after which he, having again left this Colony and having gone to Barbados, this concession was withdrawn, and it was resolved to grant none further; but the making of timber in the River

Waini was left free to those who should apply for it. OF THIS NO USE WAS MADE, NEITHER COULD IT BE MADE, because of the shoals in the upper Waini."

This disposes of every reference in the British Case to timber-cutting, except one, to the effect that "in 1766 there was a man cutting cedar-wood in Barima on account of Mr. Knott."

The man in question, as shown by the reference (B. C. III, 132) was one of that famous "rag-tag-and-bobtail party of our colonists, staying there under pretense of salting, trading with the Indians, and felling timber, &c.," of whom Storm said (B. C. III, 131) that "they live there like savages, burning each other's huts and putting each other in chains, and I fear that bloodshed and murder will come of it." The man who was cutting the cedar-wood was Adams, who had been charged with setting fire to Rosen's hut, and it was of his doings and those of his fellows that Storm had written to the Governor of Orinoco, on the ground that, in his own language, "the west side of Barima being certainly Spanish territory (and this is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint."

The whole claim in reference to timber-cutting in the disputed territory, therefore, comes down to this: that there is no evidence that timber grants were ever issued, or that timber was ever cut, in Cuyuni above the falls by the authorities or the colonists of Essequibo; that there is no evidence that it was ever cut in the coast territory west of Moruca, but, on the contrary, there is the statement of the Commandeur that it never was cut, except upon a single occasion, when the act was done by one of a party of outlaws, against whom Storm was unwilling to proceed without the consent of the Governor of Orinoco, because in his opinion, they were on Spanish territory.

This is the record of Dutch timber-cutting in the disputed territory during a period of 166 years.

(8.) POSTHOLDERS.

The statement is made in the British Case (p. 86):

“The principal officers through whom the Dutch West India Company carried out their general control were the Postholders.”

It is not clear from this statement whether the Case refers to “general control” within the limits of the Colony’s settlements or outside of them.

If it refers to control within the settlements, it is only partially correct; but whether correct or not, it is a question outside the present discussion.

If it refers to control outside the Colony’s settlements, it is entirely incorrect.

In support of the statement, the Case refers to the lists of the Postholders given in B. C. VII, 149-175. It also refers to the instructions for the Postholders, which it says “are extant for each of the principal posts, Arinda, Cuyuni and Moruca.”

The statement that Cuyuni was one of the principal posts is grossly contrary to the facts and in the highest degree misleading. The records of the Company, giving the lists of employees from 1691 to 1786, to which the British Case refers, and which are printed in its Appendix, show that during that period two posts were continuously maintained: one, that at Mahaicony, a creek forty miles to the eastward of the Essequibo; the other, that at Moruca or Pomeroon. No post, as has been repeatedly stated in this Argument, was established at Cuyuni until the post at Quive-Kuru, in 1755, which was wiped out by the Spanish in 1758, to be succeeded, after an interval of eight or nine years, by the feeble post lower down, which was abandoned under a threat of Spanish attack, and, finally, by the so-called post (without a Postholder) kept by the two Byliers on an island not far from the lower falls which was so obscure that the Spaniards never knew of its existence, and which came to an end in 1772 by the death of one

Bylier and the removal of the other. The proposed post in Cuyuni in 1703 was never established.

These facts in reference to the post in Cuyuni are among the most patent facts in the evidence in this Case. During the one hundred and sixty-six years of their colonial history down to the transfer of the colony to the British, the post existed at the outside an aggregate period of eight years; twice it was attacked or put an end to by the actual or threatened exercise of "political control" by Spain. In the last three of these years it could hardly be called a post at all.

The bracketing of it with Arinda and Moruca, as constituting one of the three principal posts, can only be accounted for by a complete ignoring of the facts of the case.

The principal posts of the Dutch during this period, and in fact the only posts, with the exception of the fitful and unsuccessful attempts in Cuyuni, were: Mahaicony and Moruca, which lasted during the whole period; Demerara, until it became a separate Commandeurie under the Director-General, and Arinda, from the time of its first existence, in 1737. Of these, Mahaicony and Demerara were on the east of the Essequibo, and therefore had nothing to do with the question of Spanish boundary, while Arinda was on the upper Essequibo.

The object of the Moruca post has also been fully explained, that of a frontier defence and custom-house. As far as the evidence shows, it exercised no control in the territory west of Moruca.

In the northern half of the disputed territory, which has been designated in this Argument under the name of the Coast Territory, namely, that west of Moruca, there was no post whatever. In the southern half of the disputed territory, which has been designated here under the name of the Interior, there was no post excepting the Cuyuni posts.

On September 27, 1763, the Director reported to the Company

(B. C. II, 226) the posts belonging the Company, which were four in number:

(1) Moruca, which "was of very great importance when trade was still carried on there for the Honourable Company; it then furnished oreane dye and boats, and since the cessation of the trade there is a great want of the latter."

(2) Mahaicony, between Demerara and Berbice. "The chief use of this post," said the Director, "is really to keep possession of the country, for without it Maycouni would already have been inhabited some time from another side" (doubtless meaning Surinam).

(3) Arinda, above Essequibo, "really intended for the trade in red slaves and dye."

(4) The "still abandoned Post in Cuyuni, abandoned since the raids of the Spaniards."

Repeated complaints were made by the Director of the incompetency of the Postholders. As a consequence, the work which the Postholders were supposed to do was only half done, and in most cases not done at all. Storm quoted, May 30, 1766 (B. C. III, 133), one of the leading colonists as saying:

"It is a crying shame that, no matter what pains one takes, one can get no faithful Postholders. If only those fellows can get rum, they never trouble themselves about anything else."

A little later, December 8, 1766 (B. C. III, 139), he said:

"The Postholder of Arinda not having come down the river, in spite of my reiterated commands, and not having executed any of my orders, and everything there being in confusion, I have placed one of the assistants under arrest here, and sent a subaltern officer up the river to bring down the Postholder."

He added:

"If we could only be so fortunate as to get hold of some competent Postholders, we should very soon have good results. But this was impossible up to the present."

August 10, 1767, the Director-General again had to complain of his Postholders (B. C. III, 148). He said that the Caribs from the Upper Essequibo reported that

“There is neither Postholder nor assistant to be found at Post Arinda, and that they have not been seen for fourteen days; that the house is half ruined and the warehouse broken open and empty.”

In a letter of the Director-General, March 20, 1767 (B. C. III, 141), he said:

“It is certain we are gradually becoming more aware how extremely important this matter [incompetent Postholders] is to the service of the Honourable Company and the maintainance of the Colony. Up to the present I have not had a single one that I could call good or even passable.”

In a letter to the Company, December 9, 1767, the Director said (V. C. II, 173):

“It is unfortunate that no competent person can be found here for places of such an importance to the colony; they are nearly all men whose drinking habits would make them unfit for such a post.”

(4.) RECAPTURE OF FUGITIVE SLAVES.

The British Case dwells upon the recapture of fugitive slaves as an evidence of political control, but only in respect to the use of the Indians for this purpose. As has been repeatedly said, the pursuit of runaway slaves was regarded from the same point of view as the pursuit of strayed property,—a pursuit which frequently carries one upon his neighbor's land. The West India Company so regarded them in 1689 when it directed (B. C. I, 211) the removal of “the slaves and other chattels” from Pomeroun. There is, therefore, no significance in the mere recapture of slaves, nor is it so contended. As far as the use of the Indians was concerned, it is stated in the British Case (p. 92) that “it was customary to pay rewards for each slave recaptured.” This admission at the outset puts an end to basing any claim to political control on the services of the Indians in recapturing runaway slaves. Control is not indicated by paying an Indian for services rendered any

more than by paying a white man for services rendered. Judging, however, by the statements made by the Director-General in the latter part of the seventeenth century, there was great difficulty in obtaining the services of the Indians in the interior district for the recapture of runaway slaves even by paying for them.

The British Case (p. 92) states that, to prevent escape by the interior, "the Dutch to a great extent relied on the Posts in the Upper Essequibo and the Cuyuni." Considering that the whole colony lasted for one hundred and sixty-six years, and that the post in Cuyuni lasted altogether for eight years, during the last three of which the Director frequently complained that it was of no use in stopping runaways, this is a rather unwarranted statement.

In order to show a systematic organization of the Indians for this purpose, the British Case (p. 93) refers to the post of Moruca, and says that

"Around the Post was settled a permanent body of Caribs, Warows and Arawaks to the number of 600 or 700, some of whom could be always at sea patrolling the coast for the purpose of preventing the escape of runaway slaves, and facilitating their capture. These Indians were subjected to discipline and organization of a simple kind, and their presence added to the importance of the Post, which, as shown elsewhere, was of great value as securing to the Dutch control of the water-channels leading to the Orinoco frontier."

The authority referred to in proof of this effective organization of the Indians is a report of the Director-General made in 1772 (B. C. IV, 100), which makes the following statement:

"The numbers of the runaways increasing daily, this matter will end in the total ruin of a great many plantations unless efficacious remedies be adopted.

"The former Postholders in Maroco were able to do something to arrest the progress of this evil, they having at least six or seven hundred Indians around that Post, some of whom they could always have out at sea, but the unauthorized attacks of the Spaniards have driven these natives away, and the Spaniards even came to the Post, as your Lordships

know, sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

The only important fact which this citation shows is that the Dutch were unable to maintain their system of a settlement of Indians around the post of Moruca, because the Spaniards drove them away, and that as a result the number of runaways was increasing so fast that it would end in a total ruin of many plantations.

Undoubtedly for a short time there were Indians living at the post or in its neighborhood for this purpose. The letter cited gives no suggestion that the Indians were "subjected to discipline and organization of a simple kind," nor is any other document referred to which discloses this fact; so that the statement would seem to be of a speculative character. It may, however, be based upon the evidence annexed to the British Case, which has been already alluded to, of the accounts of the different plantations charged with supplying rum at this time to the Postholder of Moruca, which sufficiently indicates the simple "discipline and organization" to which the Indians at the post were subjected.

The last statement, that the Post of Moruca "was of great value as securing to the Dutch control of the water-channels leading to the Orinoco frontier," is correct as applied to Moruca Creek, but not as applied to anything else. The post undoubtedly controlled the Moruca and it was possible to go by way of the Moruca to the Orinoco; but the suggestion that the post secured control of the water-channels in general would seem to be misleading.

(5.) CREOLE DUTCH LANGUAGE.

Much stress is laid in the British Case upon the fact that many of the Indians in the disputed territory are familiar with a *lingua franca* in use in that neighborhood, which goes by the name of "Creole Dutch," and which it is alleged, as might be supposed

from its name, is more nearly related to Dutch than to any other civilized language. This fact is referred to as follows in the British Case (pp. 96-7):

“As a result of the constant intercourse between the Dutch and the Indians, there sprung up a language known as ‘Creole Dutch,’ which, when the British came into possession of the conquered territories, formed the best and most convenient form of communication between the settlers and the native population.”

When the British came into possession of the conquered territories, the Indians with whom they came in contact were the Indians bordering upon the Dutch Colony of Essequibo. As these Indians had bordered on the Dutch colony of Essequibo for a period of one hundred and sixty-six years it is not surprising that a mixture of native and Dutch language should have “formed the best and most convenient form of communication between the settlers and the native population.” But when the conclusion is drawn that “the fact that the Indians of a district spoke this language is of itself strong proof that the district in question was Dutch,” as it is asserted in the British Case, at page 97, no impartial mind can subscribe to it. “Strong proof” is something very much stronger than this. It is no proof at all of the fact that the district was Dutch. It is only proof that the Indians in question, or their ancestors, had been in contact with the Dutch. The Arawaks of the upper Cuyuni, who after the Venezuelan Revolution took refuge in the Moruca, were much more thoroughly Spanish than any Indians in the neighborhood of Essequibo were Dutch. They not only spoke the Spanish language and bore Spanish names, but they had an education which placed them, according to the testimony of numerous English observers, far above all the other Indians in the disputed territory.

The Case goes on to say:

“It is therefore worthy of note that this language was spoken by Indians of the Massaruni, Essequibo, and Cuyuni as the language next to

their own best understood by them, and was used by them in their intercourse with the settlers, and that Governor Barkly, when he visited this part of the Colony in 1850, found that this dialect was still spoken by the native Indians in the district of Barima, and that Dutch words had also been incorporated in the native Indian language."

That the Indians of the Essequibo were able to talk broken Dutch may readily be admitted. That the Indians about the Massaruni and Cuyuni below the falls, and even to some extent above them, might have been able to use the same language may also be admitted, for the Dutch slave traders were unquestionably active in this neighborhood.

As to the visit of Governor Barkly to Barima in 1850, his observations are best disclosed by his own affidavit, made in 1897 (B. C. VII, 236). The statement that Indian chiefs bore the names of Jan, Hendrik, &c., may be matched by the fact of such names as Pasquallé, José Rosario, José Robeiro, and many others, among the Arawaks. Clementia, one of the most famous of these captains, lived in precisely the same locality, on the Barima. He was not an Arawak at all, but a Warow (B. C. VII, 209). And many other instances might be found in the evidence appended to the British Case itself.

Nor is it in any way remarkable that, as stated by the Governor, "their conversation and transactions with Europeans were *largely* carried on in the Creole Dutch language." The Governor refrains from saying in what other language they were carried on, and doubtless he had no one who spoke Spanish in his retinue.

Even if they were more in the habit of using Creole Dutch than Creole Spanish, which Governor Barkly is far from saying, the fact would be accounted for by the activity of rovers from Surinam, who were far more frequent visitors to the Barima district than the Dutch of Essequibo. Moreover, it is well known that great numbers of Indians who had formerly resided near Essequibo left that neighborhood when the practice of distribut-

ing presents ceased about 1838, and spread all over the surrounding territory: "By the following year [1839] no Indians were to be found residing at the posts." (B. C. p. 105.)

The Governor, who was alive to the boundary question, seemed to think that the use of a few Dutch words was of great significance. The illustrations which he gives of such words in use among the Indians, however, only show that they gave Dutch names to those articles the use of which had been taught them by the Dutch. He says:

"Even in their own dialects the Dutch names of, for instance, rum, gunpowder, &c., were incorporated."

He certainly could not have happened upon two more felicitous illustrations of the methods and instruments of Dutch influence over the Indians. Of this "influence," so much dwelt upon by the British Case, the main factor was rum; the second was gunpowder. The Spaniards never traded in either of these commodities with the Indians.

If the Governor had pursued his investigations further, he would probably have found in the Indian vocabularies plenty of Spanish words, but they would have related to religious worship, agriculture and the useful arts.

(6.) HUNTING AND FISHING.

There is very little evidence of hunting in the disputed territory. There is hardly a reference to it in a century and a half except a single mention of the wild-hog hunting near the Essequibo River in the early days. It is evident that no general practice of hunting was carried on by the Dutch in the disputed territory during this period; and their salted pork was bought from Indians who did the hunting and brought the meat to Essequibo.

In reference to the coast fishery, the Spaniards prohibited it to the Dutch as early as 1731, and their rigid enforcement of the pro-

hibition not only at the mouth of the Orinoco, but along the coast and at that of the Waini, was one principal source of complaint in the Dutch Remonstrance of 1769. It was only as to the Waini, however, that the Dutch claimed a territorial right. As to the Orinoco fishery, which was carried on in the neighborhood of Point Barima, they asserted no ownership of territory, but only claimed the enjoyment of the fishery on the ground of immemorial use, a fact which the Spaniards disputed.

This claim of immemorial use, advanced in 1769, was made in ignorance of the facts. The Court of Policy in 1728 (B. C. II, 7) recorded the fact that the Spaniards had seized a Surinam vessel fishing in the neighborhood of the Orinoco. In 1746 Essequibo fishing canoes were seized, and again in 1760.

Even if the Dutch hunted and fished during this whole period, or during any fifty years of this whole period, over all the territory in question, it could not give them any rights as an adverse holder. These rights can only be based upon acts which are inconsistent with ownership in another; and hunting and fishing in uninhabited territory and on an uninhabited coast must be presumed to be done under the license of the owner, there being nothing to show to the contrary. Such hunting as was done was too inconsiderable and remote from the Spanish settlements to receive any attention. As was well said by the Court of Appeals of the State of New York:

“It was never supposed that the hunter had possession of the forest through which he roamed in pursuit of game; and no more can a wood-chopper be said to possess the woods into which he enters to cut logs.”

Thompson v. Burhas, 79 New York Reports, 93-99.

(7.) MINING.

Notwithstanding the fact that the disputed territory contained gold mines that were among the richest of the world, these mines were practically unknown until the Spaniards discovered them. The Dutch authorities suspected the existence of mines, and em-

ployed an engineer to do a little prospecting in the Blue Mountains in 1742, who, however, found nothing. After a few months of unsuccessful search he was dismissed from the service of the Company.

There is no other reference to mines except to the so-called "Crystal Mine," near the upper Essequibo. Of this the only report is that a Postholder was on one occasion sent to examine it, but failed to do so, because the Indians "strictly forbade him to search or to dig" (B. C. IV, 18). It never was heard of afterwards. Notwithstanding this fact and the uncertainty of its location, it is put down as the "Crystal Mine of the Dutch" on Map 2 of the British Atlas.

CHAPTER XVII.

EVENTS IN GUIANA FROM 1814 TO 1850.

It has been already stated, in reference to the date as of which the boundary is to be ascertained, that acts occurring since the acquisition of British Guiana by Great Britain in 1814 cannot be considered under any aspect as establishing title in Great Britain. It is nevertheless necessary, in view of the position advanced in the British Case, to take a brief review of these acts to show that there was neither British settlement nor control in the territory in dispute during this period, and that consequently, even under the construction of the Treaty for which the British Case contends, the events of this period do not affect the question of boundary.

In considering the events in Guiana subsequent to the Treaty of 1814, a division must be made at the year 1850, because of the agreement concluded in that year between Great Britain and Venezuela that neither party would occupy or encroach upon the territory in dispute.

The examination of the evidence, from 1814 to 1850, which is of course entirely to be found in the British Case, shows no advance from the position of 1814, in so far as the disputed territory west of the Moruca and Cuyuni falls is concerned.

The geographical divisions will be considered as before in the following order:

- (1) Essequibo.
- (2) Pomeroon.
- (3) Interior.
- (4) Coast.

1. ESSEQUIBO.

Development occurred during this period in the Essequibo settlements, chiefly on the coast. The trend of this development was largely to the eastwards towards Demerara, and culminated

in the establishment of the capital at Georgetown, on that river. A considerable movement was also noticeable on the western bank of the Essequibo.

The mouth of the Essequibo has a peculiar conformation. The line of the left bank of the river is continued far out to sea beyond the line of the right bank, so that the mouth of the river is, properly speaking, a line drawn not at right angles to the river's course, but running diagonally across from the eastern headland to a point where the shore-line begins to trend to the west. This shore-line on the west, where the bank of the river at its mouth merges in the sea-coast, was known as the Arabian (or Arabisi) Coast, and contains the mouths of several creeks, such as Capoey and Oene.

Under the influence of the removal of the capital, the relative positions of the Demerara and Essequibo settlements became reversed, and whereas in the eighteenth century Demerara had been subordinate to Essequibo, in the nineteenth Essequibo became a mere dependency of the other. This effect was most noticeable, as might be expected, in the upper settlements.

In 1816 the boundaries of control were still the falls of the Mazaruni and Cuyuni, and they are mentioned as the limits up to which the militia were mustered, in the letter of Lanfferman, Captain of Militia, May 22, 1816 (B. C. VI, 6).

Even as late as 1831, it appears from the testimony of Quartermaster General Hilhouse in the trial of Billy William (B. C. VI, 41), that there were hardly any settlers in the neighborhood of the junction of the three rivers, and that there were none beyond the falls. He said.

"There is a white settler at the Falls, another at the junction, but grants have been made of the lands on both sides *up to the Falls* of the three branches of the Essequibo, viz., the Essequibo, the Mazarony, and Cayone."

Superintendent King, in his report of September 20, 1841, (B. C. VI, 115), stated:

"There are no new settlers on any of the Crown lands, or, indeed, on any of the private lands up these rivers."

The Crown lands and private lands referred to are those below the falls.

This desolation extended as low as Fort Island, in the Essequibo. Superintendent Baird remarks, March 30, 1844 (B. C. VI, 131), that "Fort Island, the former seat of Government, is now fast merging into the primitive state of bush." During the early part of the period, a post was maintained at the mouth of the Massaruni, but this was abolished some time before 1839 (B. C. VI, 87).

In 1841, Horan, Keeper of the Colonial Jail, made investigation of various points for a penal settlement, and decided on the site of this abandoned post, at the mouth of the combined rivers, on the northern bank, nearly in the angle formed by the Essequibo and Mazaruni, where there was a quarry. He stated that there was no settlement above the post on the same side, except those of a few scattered Indians. The nearest settlement on the same side below the post was the Tiger Creek, in the Essequibo, a distance of twelve miles. (B. C., VI., 110). Here the penal settlement was established, and still remains.

2. POMEROON.

While the plantations in Essequibo receded rather than advanced from the falls of Cuyuni, they showed a growth in the Pomeroon. Twenty years after the British acquisition there were perhaps half a dozen in the latter river.

Singleton, the Postholder in Pomeroon, writing in 1836, enumerates (B. C., VI, 61) five plantations above the Post on the Pomeroon as follows, namely:

Dumbarton Castle, raising cotton, coffee and plantains; Caledonia, in the same cultivation; Chapel; Phoenix Park, for plantains, and Land of Promise, where the cultivation consisted of

coffee and plantains. There were no other settlements except a boat-building establishment, eight hours from the Post, and some wood-cutters above.

The Pomeroon River was now connected with the Arabian Coast at the extreme point of the mouth of the Essequibo by a canal, known as Tapakuma, which was considerably used, after the British acquisition of the Colony, as a route to the Pomeroon. In a return made in 1848 by the Superintendent in Pomeroon (B. C. VI, 168-9) of inhabitants (other than Indians) on the Pomeroon, its tributaries, and Moruca, extending to Tapakuma Lake, the total number of inhabitants, men, women and children, is given as 356.

The Post during this period was on the Pomeroon, Moruca having apparently been abandoned. It was at the mouth of the river (B. C., VI, 88). Its condition seems to have been deplorable. Hilhouse, Quartermaster-General of Indians, in November, 1823 (B. C. VI, 24), said:

“The Post of Pomeroon, in every point of view, is of more consequence than all the other Posts together. Under protectors of Indians it has been miserably neglected, and the only way to restore it to its proper state of consequence and utility is for his Excellency to take it under his own immediate charge and responsibility.

“For three years there has not been a cartridge at the Post, and a piratical canoe with fifteen or twenty men could, without resistance, attack and lay it in ruins. The Indians employed have had their payment withheld till they are exceedingly dissatisfied, and the faith of government sacrificed to the inactivity of individuals.”

Superintendent King reported in 1839 (B. C. VI, 88):

“The Post-house is in a most miserable state, scarcely habitable. Unless something is forthwith done to this Post, it will not be habitable. * * * There are no Indians at the Post, but many are contiguous thereto, viz., in the nearest creeks, Wacapouw and Morocco.”

And again, January 18, 1841 (B. C. VI, 101):

“Relative to the Post-house in Pomeroon, it is not possible for the Post-holder to reside in it. There is no person there at present.”

And yet again, in his report of September 20, 1841 (B. C. VI, 114):

"Your reporter visited the district of Pomeroon on the 1st July, and on arriving at the Post was sorry to find that the Postholder, Mr. McClintock, was labouring under severe inflammation of the eyes and cold, which your reporter attributes in a great measure to the wretched state of the Post-house and Post.

"The back gallery has fallen down, and the Postholder fell through the front gallery and hurt himself a good deal.

"The koker has been washed away; in consequence thereof the whole place is under water every tide, and by reason of which the sills of the house are quite rotten.

"The Post has become so infested with mosquitoes from the tide washing over the land that it is not hardly possible for any person to reside there, and the Indians will not, almost on any terms, call there."

On August 15, 1843, the Postholder, McClintock, again reports the deplorable condition of the post at Pomeroon, which, unless money is expended on it, is in danger of tumbling down upon himself and family; and in 1847, after referring (B. C. VI, 166) to the ill-health of his family at the post, he says that "to preserve their lives he was compelled to remove them from the post to a dry spot up the Pomeroon, which from the post is distant about 53 miles."

3. INTERIOR.

So far as the British were concerned, the evidence as to the interior territory west of the falls of Cuyuni from 1814 to 1850 is an absolute blank. The authorities of British Guiana seem to have had no interest in it and to have made no reference to it. There is no record that anybody ever visited it or ever referred to it. When Georgetown became the capital, it was remote from the centre of authority.

Certain establishments were placed near the mouth of the Cuyuni and Mazaruni, such as the penal settlement and the English mission in 1831 at Bartica Point (B. C. VI, 46), and some interest was taken in the upper Essequibo; but that was all.

Beyond the falls the country was more than ever, to the authorities of British Guiana, an unknown wilderness. There was no semblance either of settlement or of political control. On the other hand, in the western part of the district the Spanish settlements continued to flourish, until their development was for a time interrupted by the Venezuelan revolution.

In 1816 the number of inhabitants of the Spanish missions was officially reported as 21,246, divided among 29 settlements which had been founded at various dates between 1724 and 1788 (B. C., VI, 6).

During the next four years the interruptions caused by the revolution took place, in which, owing to the fact that the missions remained loyal to Spain, they became seriously involved in the revolutionary war. Many of the missionary priests were put to death during this period. By 1820, however, the Venezuelan Government was firmly established at Angostura, and the Congress of Angostura, representing the Government in the Province of Guiana, on January 27, 1820, took measures for the organization of the mission settlements into districts, enumerating 30 villages (B. C. VI., 17).

Blanco governed the settlements for the whole of the year 1820; that when he took charge of them the population was much reduced. He mentions several of the southern villages, namely Piedad, Ayma, and Divina Pastora, as being exceptions to the prevailing tendency (B. C. VI, 40).

Blanco's administration put an end to the retrograde movement at the settlements in the mission valley, and from that time on, they recovered steadily, though probably not rapidly. The evidence fortunately gives a graphic statement of their condition in 1850, from an unquestionable authority.

Mr. Kenneth Mathison, British Vice-Consul at Angostura, in a report of June 14, 1850, to Mr. Wilson, the British Minister at Caracas, referring to the fact that gold had just been discovered

at Tupuquen, makes the following observations upon the condition of that country as to settlement (B. C. VI, 182):

“From Upata, at the distance of 10 miles to the east, the road abruptly descends about 400 feet into the vast valley of the Missions. The distance from Upata to the Missions or village of Tupuquen is 140 miles over extensive tracts of undulating open pasture-lands, through occasional large patches of woods, and narrow but deep streams. There are no regular roads in this part of the country, and it requires great attention on the part of a stranger to find his way without a guide, from the numerous cattle-paths that intersect the whole distance.

“The direction of the road from Las Tablas to Upata goes south and by east, and from the latter village to Tupuquen east-south-east. The journey from Las Tablas to Tupuquen is generally performed in four days on horseback in the dry season, and on the whole route there are cattle estates at moderate stages from each other that serve as places of shelter and rest for man and beast.

* * * * *

“The village of Tupuquen is composed of about thirty houses, covered with tiles; in its vicinity and along the borders of the whole Yuruary there are plenty of materials quite at hand for building huts, with abundance of cattle, at a low rate, and wild game can be obtained at all times and seasons. Indian corn, pease, rice, yuca for making cassava, and good-tobacco, can be procured at a moderate price in the surrounding villages.”

He adds:

“In December it is the Governor's intention to station a party of soldiers at Tupuquen.”

4. COAST TERRITORY.

As to the Coast Territory, during the period referred to, the British made no attempt at settlement. Except for the isolated and unimportant fact that one Sutton lived for a few months, in 1843, on the shell-bank at the Waini (B. C. VI, 128), no allusion is made to a settler in that district.

This isolated act, of course, has no bearing upon the question of settlement.

The report of Crichton, Superintendent of Rivers and Creeks in 1839, who traveled through the coast territory at that time,

and who was an ardent advocate of the British policy of territorial extension, testified that there were no settlements. He said (B. C. VI, 76):

"Your reporter had communication with the Indian Captains of the various nations inhabiting that portion of the country, who all concurred in declaring that there were no persons except Indians resident in either of these rivers or any of the creeks their tributaries, and as he found no deviation in their statements, he feels perfectly convinced of their truth. . . ."

"The district in question contains a numerous population of Indians, viz., Warrows, Accaways, Carribese, and Arrawaks, the former the most numerous, and in the humble opinion of your reporter, it would be good policy to secure the *absolute possession of it to this Colony.*"

Great Britain certainly cannot claim that at the date of this report (1839) she was in possession, adverse or otherwise, of Barima.

Nor was there any post in the district.

Mr. Singleton, Postholder, writing from what he significantly calls the "Indian Post of Pomeroun," August 15, 1836, states:

"Thirdly, there are no Posts to the westward of this Post, and the nearest to the eastward is the Essequibo Post." (B. C. VI, 61).

On July 5, 1845, Postholder McClintock writes to the authorities (B. C. VI, 138):

"A Postholder situated in Barima could not only furnish the estates with plenty of Indian labourers, but also induce others from the Orinoco to follow their example."

Down to the signing of the Agreement of 1850 no attention had been paid to McClintock's suggestion.

Nor is there anything in the evidence to show that during this period the coast territory was used in the slightest degree by the English colonists for purposes of trade. They did not find, any more than the Dutch, that trade in the Barima was a profitable occupation for their time or capital. An extensive trade was carried on with the Spaniards from Orinoco, but, as in the Dutch period and particularly in the latter half of the eighteenth cen-

tury, the trade was now wholly carried on by the Spaniards. The Pomeroon or Moruca post preserved its character of a frontier post and custom-house. Numerous illustrations may be given of the fact that the trade was entirely in the hands of the Spaniards and that the use of the post was that of a frontier custom-house.

Quartermaster-General Hilhouse, who was an excellent authority, in a report made in 1834, advocating the abolition of the posts, advised the retention of that of Pomeroon alone, on the ground that it was a frontier post, and therefore necessary. He said (B. C. VI, 52):

“I have further to remark that a Post *definitory of the jurisdiction westward* is indispensable, and that the Post of Pomeroon ought to be maintained on a most respectable footing, for weighty moral and political reasons.”

In a report dated April 20, 1839, Superintendent Crichton opposed a projected removal of the Pomeroon post to Ara Piakka Creek,

“because placed at the mouth of the Ara Piakka it could only be useful in observing those who pass and repass by the Tapacooma Lock, whereas in its present situation all travellers from the Morocco, Wyena, and Barima, whether proceeding through the Tapacooma Lock or by the sea-coast, must pass it in either going or coming, and the most efficient site, in the opinion of your reporter, if removal at present be deemed necessary, would be the mouth of the Morocco Creek” (B. C. VI, p. 76).

The Superintendent opposed the removal backwards towards Essequibo, because the post would lose its character and efficiency as a frontier post, by reason of the fact that vessels coming from Barima would not necessarily pass it. Crichton, who was a decided advocate of territorial extension, proposed instead a site on the Moruca, which even he considered as being the extreme point at which such a frontier post and custom-house should be placed.

This character of the post as a custom-house at a port of entry is more fully shown by the next extracts.

In a report of Sept. 30, 1841, Mr. King, Superintendent of

Rivers and Creeks, referring to the fact that an Orinoco trader had left one of his crew at Moruca, who had died of the small-pox, says (B. C. VI, 114):

“As for the Oronoko traders, your reporter respectfully would suggest that a Custom-house officer or aid waiter ought to be sent down to this district, as these traders bring many articles into the country which are liable to pay duty, but which they dispose of readily in the Pomeroon and Essequibo coast. If such an officer was appointed down there, such an occurrence as these traders leaving any of their crew behind could not happen, as they would be obliged to give security to take back their crew, and observe all the colonial laws, as merchant-vessels are compelled to do in Georgetown.”

Postholder McClintock called attention, in 1843, to the importance of the post being just at the entrance of the Pomeroon. He says that the Spanish Indians of Moruca, passing on the way to the Arabian Coast and upper districts of Pomeroon and “the Spanish traders from the Orinoco, who come through the creeks and savannas of the interior, arriving at the sea by the Morocco Creek, cannot pass to town, or to the Arabian coast, without being also seen.” (B. C. VI., p. 126.)

In his report of September, 1843 (B. C. VI, 127-8), Postholder McClintock refers to the fact that the post is a custom-house. He says :

“Your reporter begs to observe that on the 8th August, two traders from the Oronoko arrived at the post. Their cargoes consisted of salted fish, cigars, and cheese. Neither party being prepared to pay duty in money, your reporter (sooner than allow them to pass without arranging) was obliged to take it out in the articles they had with them.

“10th. Another Oronoko trader arrived; cargo, blackeye peas and cigars, duty paid in money. 10th, went to Morocco Creek to overhaul a sloop from the Oronoko; cargo, forty 150 lb. bags blackeye peas, ten full-grown hogs, and ten young ditto. The owner of the vessel, who was on board, not having money to pay the duties, produced documents which proved that he was regularly cleared out at Angostura for Demerara, consequently allowed him to pass.

* * * * *

“Your reporter, on the 20th September, was visited by Jose Rodinze, Postholder of Corioppo [Kuriapo], a village in Rio Oronoko. The gentleman

in question, after paying duty on his cargo, which consisted of salted fish, cigars, and dried meat, proceeded on his way to town.

* * * * *

"Your reporter, on the 28th September, received information of the arrival of a cargo of salted fish in Morocco from the Oronoko. Proceeded without delay to the village as far as the Rev. Cullen's, where he remained for the night. 29th, went further up the creek to where the fish was housed. Found 500 lbs. The duty was paid in money. Returned to the post on the 30th September."

The Venezuelan trade by way of Pomeroon was very active in-1843. The quarterly report of the Postholder says (B. C. VI, 129):

"During this quarter there have been twenty-three arrivals from the Oronoko. These cargoes consisted principally of salted fish. There were also a few M cigars, some dried meat, and three head of cattle.

"The amount of duty, King's and Colonial, is 187 dollars, which, with a full statement of the same, has been rendered to the Colonial Receiver-General.

"Your reporter begs to chose [*sic*] that he experiences great difficulty in collecting the duties from the Oronoko traders, owing to their neglect in not providing themselves with money previous to quitting home."

The Postholder also reports "that two Indian families have quitted Morocco and gone to reside in the Oronoko" (B. C. VI, 129).

On September 30, 1845, Postholder McClintock reports (B. C. VI, 140) that since the post-house has been undergoing repairs he has been compelled to reside a considerable distance up the river, "which prevented the possibility of attending as strictly as was necessary to the numerous Spanish traders that came up from the Oronoko in large canoes laden with fish and other articles, on which there is duty to be collected. Formerly, when he lived at the Post, the Oronoko duties amounted in one year to a sum bordering on 500 dollars; but since that period, now upwards of twelve months, the collections have been very inconsiderable," due apparently to the fact that the Postholder lived up the river.

In 1847, Postholder McClintock petitioned (B. C. VI, 149), in reference to his district (the Pomeroun), saying that:

"he made frequent tours through the district, directing his particular attention to Morocco, having from time to time received information that in all the month of June several Spanish traders were expected, but unfortunately, he could not remain any length of time in the creek; consequently, all those who had cigars sold almost all they brought up to the inhabitants of Morocco, which he did not learn until the parties had already reached the coast. To try and prevent a recurrence of this kind it will be requisite that your reporter erect a house in the upper part of Morocco Creek beyond the village, and on a spot by which all cor'als, &c., would be compelled to pass. Unless a precaution similar to what he has proposed be established, it is totally out of his power to be responsible or to collect duties from the Oronoko traders. Your reporter considers it almost unnecessary to add that it would be contrary to the duties of his office, *even admitting he was made welcome by the Morocco people, Spaniards, which is quite the reverse, to occupy any part of their dwellings while in the performance of his duties as Commissary.* Consequently, to enable him to act independently, which he feels himself, by oath as well as principle, bound to do, there is but one step to be adopted, and that is, to erect a building in the upper part of Morocco Creek, on a site such as he would select."

From the above letter it appears that there was a considerable settlement of "Spaniards" about the Moruca. The language does not seem to refer to the Spanish Indians, a party of whom, as is well known, went to the neighborhood of the Pomeroun at the time of the Venezuelan Revolution and during the next half century or more dwelt in the neighborhood of Moruca and sometimes on the Orinoco, going back and forth as the fancy suited them. Whether McClintock refers to whites or Indians he is obviously referring to a population not acknowledging themselves to be British subjects. In his view and in their own, they are evidently "Spaniards," a phrase which can only be taken to mean Venezuelan subjects.

McClintock's recommendation as to the building of a house in Moruca was not carried out, at least not until long after the Agreement of 1850 went into effect.

In a letter of April 9, 1849, to the Secretary, Superintendent McClintock dwells on the importance of Pomeroon and Moruca as points for a custom-house. He says (B. C. VI, 174):

"I have therefore to state that all Spaniards who trade to the Colony in coreals, canoes, and sometimes small sloop boats, are obliged, from the peculiar build of the crafts, to pass through Morocco Creek to reach the sea, the mouth of which is distant from the post-house about 3½ miles, and from whom, according to a special order from Sir Henry Light, I am compelled to receive duties; and, for that purpose, as also to prevent smuggling, said order directs me to reside at the mouth of Pomeroon River."

He adds:

"When once the present protection be removed or withdrawn, smuggling in rum, sugar, coffee, tobacco in roll, oil, &c., will be carried on by the Spaniards of the Oronoko."

These extracts show not only the character of the post as a custom-house, but incidentally they show the great extent and variety of the Venezuelan trade carried on entirely by the Venezuelans and its importance to the Colony of Essequibo. The statement given by McClintock is a picture of a constant succession of Spanish boats coming through the Barima from the Orinoco to Moruca. There is not a suggestion that any of these innumerable cargoes were brought in by English traders; there is not an intimation that an Englishman ever engaged in such trade. No notice is taken of this trade at all, and no supervision of it is attempted until it reaches what the British officials obviously regard as their frontier at Moruca. No supervision is ever attempted or even dreamt of in the Barima, where this constant stream of navigation, day in and day out, year after year, is to be found. Viewed in the light in which the British Case regards trade as leading to political control, the Venezuelan control of the coast territory at this time was complete.

Superintendent McClintock, December 31, 1849, again speaks of the importance of the custom-house, and says (B. C. VI., 177):

"for several months past many of the Spaniards who at one time were

in the habit of sending up cargoes of fish, cigars, and tobacco, in roll, from the Oronoko, through the inside passage, . . . have lately preferred the cattle-vessels, which go direct to town,"

but since the publication of a recent ordinance,

"several Spaniards have it in contemplation to renew the former practice of coming up through the creeks."

Superintendent McClintock, December 31, 1855 (B. C. VI., 199) again calls attention to the importance of Moruca and Pomeroun as a custom-house. He says:

"That during this and the preceding quarter several cargoes of salted fish, dried meat, &c. came from the Orinoko, upon which the import duty should have been paid, but owing to the distance of reporter's residence from Moruca (upwards of 50 miles), the traders—all of whom coming prepared to reach the coast by sea, declined the journey, consequently, the duties which should have been collected for the Colony were utterly lost to it."

Here we have a curious illustration of the situation at Pomeroun. The English were maintaining their post on that river. The Moruca, however, afforded the Venezuelan vessels engaged in trade an outlet to the sea without touching the Pomeroun at all, and they of course went that way. As the post at the mouth of the Pomeroun was uninhabited and the Postholder was living fifty miles up the river, they naturally did not take the trouble to perform this additional journey of one hundred miles for the purpose of seeking out the Postholder and paying the duties, in consequence of which the duties were lost. Instead of an assertion of British control over Barima, it would appear that this was an abandonment of British control on the Moruca.

In his report for the quarter ending September 30, 1848, Postholder McClintock says:

"The Worrows, as well as every other tribe of Indian inhabiting the Rivers Winey, Bareema, and Amacuru, and also various other streams of less note within this extensive district, are up to the present moment totally

unprovided with any kind of instruction, left entirely to themselves to indulge in all the horrors of a savage life.

* * * * *

“It may be well to observe here that it is by the extraordinary skill and unerring aim with the arrow of the Worrows that the noted Morococo [Maracot] fishing of the Lower Oronoko is kept up, and, although introduced into this province by Spaniards, the fish are only salted by them, but on all occasions caught by the Warrow Indians” (B. C. VI., 170).

The fact last stated is very noteworthy, in view of the contention in the British Case that trade is an element of political control. The trade in maracot was carried on in this way: the fish were caught by the Warows of the lower Orinoco and Barima, who were experts in the business. The Venezuelans traded with the Indians for the fish on the spot, and then brought the fish to Essequibo to sell. Thus, they not only carried on a trade with Essequibo, but they carried on the Indian trade in the disputed territory as well, and they carried it on with the knowledge of the British authorities, and without any attempt at interference or supervision by such authorities. British colonists, on the other hand, carried on no trade in Barima, either with Venezuelans or Indians.

The question of a boundary in this territory is the subject of frequent suggestions on the part of the various Colonial authorities, and they throw considerable light upon the way in which the question was at this time regarded. The physical configuration of the district remained the same that it had always been. An open and easy access to it from the Orinoco by way of the deep channel of the Barima, the Mora Passage and the Waini, were the conditions on the west, while on the east the frontier post of Pomeroun was separated from it by the savanna, through which the passage, ten miles long (V. C. p. 27) was difficult and uncertain.

Thus, in February, 1839, when Superintendent Crichton made his first trip to Barima from Pomeroun, he “learned also that I could not proceed through the savannah, as it was almost dry, and totally impassible except for very small corials. Prepared to

return down the creek, and proceeded by the sea-coast" (B. C. VI, 68). On starting for his return, in March, from Mora Creek, he learned "that the rollers were at present so heavy that a corial could not proceed by the coast, and the inland communications were all nearly dry." Therefore, as a choice of evils, he took the same passage, by which, after a journey lasting for two days, "and in repeated danger of being swamped," he came to Moruca (B. C. VI, 72).

In a report of Postholder McClintock for the quarter ending December 31, 1848 (B. C. VI, 171), he states:

"The want of a canal through this part of Upper Morocco forms a complete barrier for several months of the year to all communication with the Rivers Winey, Barima, and Oronoko, thereby cutting off, although for a time only, that intercourse so essential to the general welfare of the Pomeeroon district, but more especially to the Arabian coast."

This is strong testimony by McClintock, not only to the natural barrier west of Moruca, but incidentally to the importance of the trade exclusively carried on by the Venezuelans from Orinoco through the coast territory to the British settlements in Essequibo.

Such being the physical configuration of the country, and in the absence of any steps taken by the Colonial authorities to exercise control over the region, the suggestions of the officials of British Guiana as to the question of boundary are somewhat speculative. They serve, however, to throw light on the present British contention.

Governor Light, in a dispatch dated September 1, 1838, wrote:

"The Pomaroon river, at the western extremity of Essequibo, may be taken as a limit to the country, though there is a mission supported by the colony on the Maracca river or creek, a short distance westward, where 500 Spanish Indians are collected in a settlement under a Roman-catholic priest" (V. C., p. 167).

It is suggested that the word "country" is or should be "county," though the context seems to imply the contrary. It

does not make much difference, however, as there was nothing of the country beyond the county.

We have seen that Quartermaster-General Hilhouse in 1834 regarded the post of Pomeroon as "definitory of the jurisdiction westward" (B. C., VI, 52).

Of the various advocates of the extension of British territory, none was more earnest than Crichton, the Superintendent of Rivers and Creeks in the Pomeroon district. We have seen how, in April, 1839 (B. C., VI, 76), referring to the whole district west of Moruca, he said: "It would be good policy to secure the absolute possession of it to this Colony." This is at least evidence that possession of it had not been secured to the colony at that time.

Crichton had given evidence of his uncertainty on the subject a couple of months before, in his first journey to Barima, where complaint was made to him that one Manoel, an Indian, had murdered his wife. He said (B. C., VI, 71): "Finding that this unfortunate transaction had taken place . . . on the left bank of the Barima River, *where the Government has never claimed jurisdiction*, I felt the difficulty of taking a decided step in the matter, and endeavoured to restore peace among them by reason and persuasion first and then threats, and imagined that I had succeeded." As he was about to leave the settlement he found that Manoel was making a disturbance, and notwithstanding his doubts he took him away with him. Manoel was not tried, however, but shortly after returned to his home.

In a report dated April 20, 1839, Crichton discusses the boundary question from the speculative or political standpoint (B. C., VI, 76-7):

"The unfortunate case of the Indian, Pero Mauvel [Manoel], as stated in the journal of your reporter, would seem to point out the necessity of concluding an arrangement with the Republic of Columbia respecting the western boundary-line of this Colony, which, in the humble opinion of

your reporter, should include the mouth of the Barima River, and all its tributary creeks from the sea to the Cayoni River.

"The internal communication by water which commences with the Tapacooma is entirely cut off by the Barima River, and commences again, with the Amacoora Creek to the Orinoco, thus marking the natural boundary of the province between the Barima and Amacoora.

"If the right bank of the Barima River were taken as the boundary, and all the extensive creeks which enter that stream on its left bank remain subject to the Columbian State, this Colony would be subjected to the danger of having all the runaways from either Government congregating on that fertile region without the right of control, and it is too distant from the seat of the Columbian Government for its influence to be otherwise than only partially felt, especially as the aborigines look to this Colony for protection.

"If the Wyena were selected as the boundary-line, the evil would be greatly increased by leaving a wider field of operation unoccupied."

A curious fact with reference to Crichton's remarks is that he, as well as many others in the colony, seemed to consider that the question of boundary was a question not of right or of territorial title, but a thing to be fixed by Her Majesty's Government, and about which the Colonial officials had only to make valuable suggestions, which the Government might then carry out. He regards it solely from the point of view of expediency, and it is perfectly evident that, as far as right is concerned, he knows none beyond Moruca either to the Waini, to the Barima, or beyond.

Shortly after this Schomburgk appears on the scene with his scientific frontier, based on the doctrine of "convenient natural boundaries." Schomburgk, as is well known, was employed simply as a surveyor, and Lord Aberdeen expressly stated in the correspondence which followed the erection of his boundary posts that the planting of the posts were "merely a preliminary measure open to future discussion" (V. C., III, 199, 204, 207), and, at the request of Venezuela, they were actually removed. Nevertheless, they had great influence in stiffening up the ideas of all the officials of the colony. Thus, Superintendent King, in 1841, heard that a murder had been committed in

the Aruka, and in reporting the fact stated (B. C., VI., 112), that he "although this murder was committed *beyond what he always considered to be the limits of British Guiana*, but within the *assumed limits* of Her Majesty's Commissioner of Survey for British Guiana [Schomburgk] felt it his duty to have the body exhumed, and accordingly held an inquest thereon." Here the Superintendent himself traces the direct connection between Schomburgk's "assumed limits" and his own change of mind in reference to the boundary. Such is the effect of the setting up of posts by Her Majesty's Commissioner.

It is this change of mind in 1841 and its consequences which Her Majesty's Government now claim should be taken into account by the Arbitrators in determining the extent of Dutch territories in 1814.

The same change due to the same influences, is noticeable in Postholder McClintock, who says, in a report of December 31, 1848 (B. C., VI., p. 172):

"Your reporter, therefore, with a view to obviate this difficulty, begs leave to suggest now, *as the boundary of British Guiana is defined*, and no likelihood of any interference by the Venezuelan Government, that a Mission forthwith be established on the Bareema for the convenience of the Worror Indians of that river, and another on the Winey for Accawaya."

In accordance with this, he at the same time suggests the names of Indian captains for various localities in that region, namely, Assakata, Waini, Barama, and the Upper and Lower Barima.

Governor D'Urban, in a letter to Lord Goderich, October 18, 1827 (B. C. VI, 39), had already given a suggestion as to the boundaries of the colony:

"On the north, the sea coast, from the mouth of the Abary to Cape Barima, near the mouth of the Orinoco.

"On the west, a line running north and south from Cape Barima into the interior."

The Governor does not seem to have had any foundation for this particular suggestion. As an indication of the way in which

British Colonial Governors followed the example of their Dutch predecessors in "extending boundaries" by correspondence to a great variety of points, it is extremely valuable. It turns entirely on Point Barima. It amounts to saying: "We will take that; and as for the rest of it, run a north and south line, and there you have the boundary." Such a line of course cuts Schomburgk's zig-zag at every turn, and bears no particular relation to anything in the history of the case.

The suggestion of Governor D'Urban in 1827 is the first that ever was made in the entire history of this controversy of a territorial frontier on the Orinoco River. The Dutch Director-General Storm, with his movable boundaries, had referred many times to the question of limits in the coast territory, and had spoken both of the Waini and the Barima as a possible boundary, his most emphatic statement being that to the Governor of Surinam, that he believed the Spanish were right in claiming the Barima. Storm's ideas, however, of geography were entirely vague, and while he spoke of a line at the Barima, he had no knowledge where the Barima was, while his allusions have reference to some point a considerable distance above the river mouth. Governor-General Sirtema van Grovestins placed the boundary at the Moruca. The Company, and afterwards the Dutch Government, never stated what their claim of boundary was, or even that they had any claim.

The principal suggestions on this subject had come from Storm; but even Storm never in terms or by implication suggested a claim to any territory on the Orinoco River itself. D'Anville's map, to which Storm referred, does not put the boundary on the Orinoco, and the whole course of the correspondence and acts of the Dutch Colonial authorities is such as to indicate that no one would have been more surprised than themselves at a claim of a Dutch frontier on the Orinoco River. To them the Orinoco meant Spain just as much as the Essequibo meant the Netherlands. There never was the slightest doubt or suggestion that jurisdic-

tion, whatever it was, had been, or could by any possibility be, extended to that river.

At the close of the Dutch period, as has been already stated, in 1802, Major McCreagh reported the existence of five posts, four of them more or less fortified, with garrisons and in command of army officers, on the lower Orinoco, below Angostura, the lowest one being the pilot establishment at the Island of Papagos, opposite the mouth of Aratura, the first branch of the Orinoco above the Amacura and only a few miles from the mouth of the Orinoco itself. The pilot station at Papagos still continued to exist in 1836. In addition, there had been established during this period another post at the Island of Kuriapo, a few miles above Papagos, with a civil functionary in charge, called by the English a "Postholder."

Contrasting the situation between Venezuelan and British Guiana in the Barima, Schomburgk, the most earnest advocate of British boundary claims, and indeed their inventor, says (B. C. VII, 13):

"Venezuela has a Post and a Commandant within a short distance from the mouth of the Orinoco; the post nearest to the western boundary of British Guiana is in the River Pomeroon, a distance of 120 miles from the Amacura; and it follows, consequently, that the Postholder of the Pomeroon *can never exercise his influence or protection over the Indians who are settled on the Barima, or its tributaries.*"

As has been already suggested referring to the period prior to 1814, an occupation of a river, such as that of Spain in 1802 of the the lower Orinoco, with the city of Angostura, the four fortified posts below it and the pilot station at Papagos, would be sufficient, when that occupation dates back three hundred years, to settle the question of the title to the river until its waters were lost in the sea. What the British Case could advance in opposition to the title evidenced by that occupation it is difficult to see.

But the British Government itself, by the official act of its representatives, has distinctly disclaimed any title to territory on the

banks of the Orinoco, and in particular to Barima Point. On May 26, 1836, a remarkable letter was addressed by Sir Robert Ker Porter, at that time Her Majesty's Chargé d'Affaires at Caracas, to the Venezuelan Secretary of State (V. C. III, 189-92). This long document deserves the most careful reading. Sir Robert Porter begins by stating that—

“From a recent correspondence I have held with His Majesty's Consul in Angostura I have to request the serious attention of the Executive to a representation I am about to make relative to the more safe navigation for vessels on entering the principal mouth of the Orinoco.”

His Majesty's representative then refers to the dangers to which vessels are subject for the want of proper land and water marks to guide them, and remonstrates on the condition of the pilot establishment on the island of “Papagayos,” which as we have seen was already in existence in 1802. He refers to two British vessels that had been wrecked, one on the coast of Barima, the other on a shoal off Cape Barima; one for want of a beacon to point out the proper entrance, the other for want of a pilot. He goes on:

“It becomes my official duty to represent to the Executive of this Republic the indispensable necessity (and that without further delay) of placing a conspicuous beacon on Cape Barima, the point forming the grand mouth of the Orinoco to the south-south-east, where I am given to understand it could be done with the greatest facility, and to the greatest advantage. The object would effectually prove a sure mark, as also safeguard for all vessels seeking proper entrance into this vast river.”

He refers to the island of Cangresos (Cancrejo or Crab Island) as forming “the other side of the great mouth,” and to the sand-banks, “which reduce the only navigable channel to scarcely three miles in width, which commence on passing the bar, just without Cape Barima.” He says: “Buoys ought to be laid down at those particular points” which mark the channel or the sand-banks. He adds: “I am well aware that a pilot-boat was intended to have gone out every day from Point Barima to cruise for vessels bearing towards the entrance of the river;” and he remonstrates with the

Government for not seeing that this intention was fully and properly carried out. He uses the strongest language in reference to these measures, and says:

"I therefore seize the present occasion in endeavoring to impress upon the Executive the *imperious necessity* of promptly taking stable and energetic measures in the regulation of that which is of such vital importance to the growing trade of Angostura."

He dwells upon the fact that not only in England, but in many of her colonies, merchants are afraid to send their vessels to the Orinoco, in consequence of these dangers, and adds that at Lloyds no insurance can be effected to that river without a very considerable advance. He lays before the Government the protest which "His Majesty's Consul at Angostura . . . found it his indispensable duty to call to the observance of the Governor of the Province of Guayana." He closes by saying:

"I must once more repeat my solicitude that the Minister of Marine be directed to investigate and correct the abuses which have frustrated the good intent of the Government and that Department, and likewise that he be directed to attend to the recommendation I now have the honour of making by placing a proper beacon on the Barima Cape, as also the appropriate buoys in the Orinoco for the safer navigation of it, so that I may be enabled, in a very short time (and I trust the urgency will be seen), to have the satisfaction of officially communicating to His Majesty's Principal Secretary of State for Foreign Affairs (for the information of the merchants interested at Lloyd's) the measures that have been taken by this Government, rendering the great entrance to the Orinoco perfectly perceptible, as also the navigation of the river up to Angostura perfectly safe."

The Venezuelan Government answered on June 15 (V. C. III, 192), that the matter had been called to the attention of the Minister of Marine, and that suitable orders would be given to carry out the undertaking.

Not content with his previous communication, Sir Robert Porter again, on September 14, 1836, recurred to the subject. (V. C. III, 192). He said:

"I seize this opportunity (as in some degree connected with my subject) to request you will inform me (for the information of my own Govern-

ment) whether anything has yet been actually done as to erecting the light-house or beacon which I pointed out to the Government (many months ago) as absolutely necessary at the Boca Grande of the Orinoco."

Here is as strong an admission as could be made of the exclusive territorial dominion of Venezuela over not only the mouth of the Orinoco, but specifically over the territory on the right bank, both of the Orinoco and of the Barima at Barima Point.

The light-house was not erected at the mouth of the river, although in consequence of the request of Sir R. Porter, an Act of the Congress of Venezuela, approved May 11, 1842, provided for its erection (V. C.-C. III, 165). A light-ship was, however, established by the War and Navy Department of Venezuela, between Sabaneta and Barima Points, shortly after the passage of the Act. This light-ship was in place in 1846, and is mentioned by Sir H. Barkly in 1850 (B. C. VI, 183). The light-ship was established and maintained by the keeper Moron under a contract with the Venezuelan Government (V. C. III, 185).

In 1887 Venezuela decided to accede to the request which had been so urgently pressed by the British Chargé d'Affaires and replace the light-ship with a light-house on Point Barima; whereupon the Foreign Secretary, the Earl of Iddesleigh, wrote, January 12, 1887, to Mr. St. John, British Minister at Carácas (B. C. VII, p. 118) directing him to "inform President Blanco that the request by the British Consul for the erection of such a light-house in 1836, to which his Excellency referred in conversation with you as justifying the intention which he announced, was unknown to and unauthorized by the British Government of the day."

This extraordinary repudiation of the demand of its own representative, made half a century before, would seem, to say the least, to show a certain laxity of correspondence in the British Diplomatic Service of that period which is worthy of remark. The officers of this Service, it appears, did not hesitate to make the most pressing and urgent demands—in fact dictatorial would

not be too strong a word—of the Governments to which they were accredited, not only without any authority, but even without conveying to the Foreign Office any intimation that such demands were being made.

It appears, however, that in 1842 the Foreign Office was informed of Sir Robert Porter's demand and actually received copies of the entire correspondence. Mr. O'Leary, his successor at Caracas, having referred to the correspondence, was directed by the Foreign Office to send a copy of it, which copy he sent, accompanied by a letter of September 1, 1842, which was marked at the Foreign Office as "Received October 14." Mr. O'Leary's letter, together with the correspondence between Sir Robert Porter and Señor Gallegos is to be found in B. C. VII, 82.

Apart from the Minister's failure to report action, however, in which Her Majesty's Government in 1887 saw fit to take refuge, the mere fact that Sir Robert Porter made the request, either authorized or unauthorized, is one the significance of which cannot be questioned. Lord Iddesleigh stated that the request had been made by "the British Consul." This was apparently an inadvertence, as it is stated by the British Counter-Case (p. 127) that "the request referred to was made by Sir Robert Ker Porter, the British Chargé d'Affaires at Caracas, on the suggestion of the Vice-Consul at Angostura." As such, he was the Diplomatic Representative of Her Majesty's Government.

Sir Robert Porter was the Minister of Great Britain in Venezuela. He, if anybody, was familiar with the question of the boundary. It is not to be supposed that the British Minister in Venezuela could be entirely ignorant of the claim of his government, if claim there was, as to the frontier between the possessions of his own country and those of the country to which he was accredited. He could not have failed to know whether his government placed the frontier at Pomeroon, where its post was, or at the Orinoco, where the Venezuelan station was, one hundred and fifty miles along the coast to the westward. If his Gov-

ernment claimed the Orinoco mouth and Point Barima, he would be the first man to know it; and his request, or rather his demand, an immediate reply to which he desired for transmission to the Secretary of State for Foreign Affairs, which demand necessarily implied a recognition of the sovereignty of Venezuela over that very point, is a committal which the British Government cannot repudiate, whether this or that particular office, secretary or clerk was aware of it or not, certainly not after the lapse of fifty years, when in the meantime it had been "for topographical reasons" extending its territorial claims. Still less can the British Government take refuge in its failure to repudiate Sir Robert Porter's act, when its own published correspondence proves that the Foreign Office was perfectly cognizant of the act and of all the surrounding circumstances in 1842, and that the document received on October 14 of that year is in its archives. Knowledge, it is true, is not brought home by the papers to what Lord Iddesleigh calls "the Government of the day," but it is brought home to the Government of six years later. The letter of Sir Robert Porter represented the matter as of vital importance to British commerce and to British interests; that until the lighthouse was erected, British ships could not get insurance for the Orinoco, and that its absence practically put a stop to their trade in that locality, and had caused the wreck of two valuable ships a short time before.

According to Lord Iddesleigh's theory, the obligation which Sir Robert Porter had represented in such emphatic terms as resting upon the Venezuelan Government for the protection of British interests was an obligation that really rested upon the British Government for the protection of its own interests. Yet what did the British Government do after its attention was called to this matter in 1842? Did it build a lighthouse? Did it say to Venezuela: "This is our territory. Of course we want a lighthouse, and our representative made the mistake of addressing the demand to you. We beg your pardon. We did not intend that

he should make such a demand on you, because, of course, it being our territory, it is our duty to build the lighthouse, and we should reimburse you for any expense you have incurred on account of our unwarranted demand." The British Government did nothing of the kind. This was eight years before the Agreement of 1850, and nothing stood in the way of action; it was at the very time when Schomburgk's posts were the subject of protest and disclaimer; yet the Government chose to leave their position in Venezuela defined by Sir Robert Porter's demand for the construction of the lighthouse, never withdrew it, never modified it, never suggested that their representative had been in error, and by their inaction left the demand as it was when it was first made. The case was peculiarly one where inaction involved acquiescence, for the knowledge was brought home to the Foreign Office itself that its Minister had made a demand for a public work, involving large expense to Venezuela, as being a duty that Venezuela had to perform, and it had further notice from its Minister, Mr. O'Leary (B. C. VII, 81), that the Venezuelan Government were acting upon it, and had passed a law for the erection of the light (May 24, 1842). Her Majesty's Government also knew that, in compliance with Sir R. Porter's request, the Venezuelan Government had gone to the expense of establishing and maintaining a lightship at Barima Point, where it has been maintained ever since. Great Britain cannot, in 1887, be permitted to say: "The demand was unknown to the Government of that day, and therefore we are not bound by it." It was known to the Government of 1842. It was acquiesced in by that Government, because it was never withdrawn and Venezuela was left to suppose that, in the view of the British Government, it was bound by the obligation of a riparian proprietor to commit itself to that expense.

Sir H. Barkly, Governor of British Guiana, in a letter of September 20, 1850, to Earl Gray (B. C. VI, 183), states that he

had called for a report from Superintendent McClintock as to whether any movement had been made by the Venezuelan authorities having in view the occupation of any portion of the territory comprehended within the Schomburgk line.

As the Superintendent stated that he had not lately traveled as far as the Orinoco, which was two hundred miles from Pomeroon (as far as the evidence shows, he had not been there for six years), the Governor himself made an examination. He stated that their nearest settlement was Cariape [Kuriapo], on the Orinoco, 30 or 40 miles beyond the Amakuru. Another post was higher up at Barrancas. He does not mention the pilot station at Pagayos, which was much nearer, doubtless because he only referred to settlements. He also stated that a lightship had been established off Point Barima, "for the purpose of guiding vessels entering the Orinoco, here 14 miles wide." According to Sir R. Porter, the channel was three miles wide, but the hydrography of the Orinoco was better known at Caracas than at Georgetown.

In reference to the lightship, Sir Henry Barkly stated that "this project was doubtless substituted for that of a lighthouse, which it was formerly proposed in the Venezuelan Chambers, to build on Point Barima, in the teeth of our pretensions to its possession." This is rather hard on Venezuela, seeing that the action which was so well described as "in the teeth of our pretensions" had been not only proposed, but demanded by the British representative himself. It only shows, however, that the Colonial Governor was deplorably ignorant of the action of Her Majesty's Legation in Venezuela on the boundary question, an ignorance which he had shared with the Foreign Office, it is true, but which had not existed at the Foreign Office since 1842. Moreover, it is quite possible that "our pretensions" had attained an extraordinary and rapid growth between 1836 and 1850, for which the intervening visit of Schomburgk and his rectification of the frontier were no doubt responsible.

Sir Henry Barkly also stated:

"As the ship is moored a mile or two from the shore, and is owned, as stated to me, by private individuals trading from Angostura to the ports of this Colony, I am not aware that it can be considered any disturbance of the *status quo* on the part of the Venezuelan Government, though it may be advisable to instruct Her Majesty's Chargé d'Affaires to obtain explanations on the subject."

Sir Henry's error in reference to the private character of the lightship was no doubt due to the fact that the lightship was established and maintained by a keeper under contract with the Venezuelan Government. It was none the less, however, a Venezuelan establishment, maintained at the very mouth of the Orinoco and "moored a mile or two from the shore." As such it was and is a clear mark of Venezuelan sovereignty at Point Barima, and if the British claimed Point Barima, Sir Henry was right in saying that it was "advisable to instruct Her Majesty's Chargé d'Affaires to obtain explanations on the subject."

The British Government, however, notwithstanding Governor Barkly's "pretensions" to Point Barima, notwithstanding the significance of the Venezuelan lightship, moored a mile or two from the shore, and notwithstanding the overwhelming importance to British commerce of the maintenance of the light, never, so far as the evidence shows, took the step which the Governor recommended. As in the case of Sir Robert Porter's request it made no disclaimer, so in the case of the lightship it made no protest, and the lightship has remained there for fifty years.

The position of the British Government, therefore, both in the Foreign Office and in the Colonial Office, by the tacit approval of Sir Robert Porter's request and by acquiescence in the establishment of the lightship in consequence of it, has amounted to a clear disavowal of any right to Point Barima. Nor up to 1850 had it ever in any official correspondence made any such claim.

The reasons stated by Sir H. Barkly for insisting upon Point Barima are that it is essential to British interests: first, that the

coasting trade of the colony would be at the mercy of any Power whose privateers should rendezvous in the Orinoco during a war; secondly, commercial intercourse between the Orinoco and the British West Indies would be restricted to what would be carried on by the colony of Trinidad through the western channels of the Orinoco; thirdly, the supply of cattle (which was an important product of the Orinoco) would be cut off.

The importance to Venezuela of being able to control the mouth of its own river is not considered.

Perhaps the most important point referred to in Governor Barkly's letter is one mentioned in connection with Lord Aberdeen's offer for settling the boundary question by a line starting at the Moruca (Br. Atlas, Map 4 C.-C). "This offer," says Governor Barkly, "may have been influenced" by "Governor Light's confidential report of the 4th March, 1842" (B. C. VI, 183).

It is evident that the confidential report of Governor Light, of 1842, which, according to Sir Henry Barkly, may have influenced Lord Aberdeen to fix Moruca as the boundary, is a document of very vital moment in this controversy. Nevertheless, it nowhere appears in the British Case. That Case has chosen to leave its contents to the inference that may be drawn from Sir Henry Barkly's reference to it. The inference, which is inevitable, is that Governor Light's confidential statement was conclusive to the British authorities as to the western limit of their territories at Moruca. The Arbitrators have a right to infer from the condition in which the evidence is left by the British Case that such was the tenor of Governor Light's report. The inference could only be avoided by the production of the letter itself, which Her Majesty's Government has not chosen to print.

Venezuela, however, was taking control of this matter for herself. At this time a Venezuelan post was maintained at Kuriapo, one of the islands in the lower Orinoco, a few miles above the pilot station and the mouth of the Amakuru. The Venezuelan officer in charge of this post made frequent visits to Barima. The British

records, which refer to him as the "Postholder of the Orinoco," twice mention his presence even at Moruca. Superintendent King said, in 1840 (B. C. VI, 94), he "met here Francisca Rodrigues, the Postholder of the Oronocco"; and McClintock, in 1843 (B. C. VI, 127), remarked upon the fact that he "was visited by José Rodinze, Postholder of Corioppo, a village in Rio Oronoko."

Not only that, but the policy which had been initiated and pursued with such vigor by the Spaniards of keeping a patrol boat in Barima was continued by Venezuela.

On December 10, 1840, Superintendent King reported as to the Venezuelan gunboat in the Barima, enclosing "a statement made by Juan Pirel, who is now in Georgetown, together with some others from the Venezuelan territory, by which statement you will perceive the gunboat is on the eastern side of the Barima River, and which river is our boundary" (B. C. VI, 99).

This statement as to the boundary by the Superintendent of Rivers and Creeks was made just before Schomburgk had developed his boundary theory.

He added:

"Some time ago the gun-boat did seize some corials, but these belonged to persons from the Orinoque, and were taken in the Barima, therefore I did not report the circumstance, *it being beyond my jurisdiction.*

"The last seizure by the gun-boat was in the Mora Creek, and some of the inhabitants of Morocco were taken prisoners by the Commander of the gun-boat and carried to the Orinoque.

"You will also perceive, by the statement herewith sent, that the Commander of the gun-boat thinks he has still a right to come more to the eastward.

"I would feel obliged by your informing me whether I shall, for the future, endeavor to prevent all persons, whether Indians or others, belonging to the Venezuelan territory, from entering our territory without a pass."

It is to be noticed that the very important answer from the Government Secretary to the above letter is also omitted from the documents annexed to the British Case, although it is a document

to which Her Majesty's Government alone has access. As to what position was taken by the Colonial Government upon this direct inquiry of a most important character, which necessarily must have had an answer, and the answer to which is in possession of Great Britain, no information is given.

McClintock, Postholder in Pomeroon, reported the same circumstance (B. C. VI, 105):

" Your reporter, having received directions to send in a quarterly Return of all the Indians in his district, he proceeded first to Morocco, and while preparing himself for that duty information was lodged that a Spanish gun-boat was stationed in the Barima River, convenient to the mouth of the Mora Creek, and that two Spanish Indians attached to the Morocco Mission were made prisoners, and their corial and a variety of small goods taken from them.

" Your reporter, on the receipt of this information, prepared himself to go to Barima, but on reaching the Baramany Creek your reporter met one of the said Spanish Indians on his return to Morocco, who stated that the gun-boat had already started for Angostura, which prevented your reporter proceeding further than the mouth of the Waini River."

From the way in which this episode is referred to in the evidence annexed to the British Case, it may be inferred that no protest was made against the acts of the Venezuelan gun-boat.

In 1841 a Warow chief from the Canyaballi was reported by Schomburgk (B. C. VII, 11) as rejoicing "that at last it should be decided whether the Waini was in the British or in the Venezuelan territory, as at present they did not consider themselves secure against being carried away by the Venezuelans, and forced to work at low wages at Angostura."

Schomburgk also stated (B. C. VII, 14) that the Commandant of the Orinoco had taken some Indians from a place between the Amakuru and Barima a short time before to Coriabo [Kuriapo]. Of course Schomburgk listened to all that Indians had to say about Spanish cruelty, &c.; but the important point is that a Spanish official, according to Schomburgk's testimony, was exercising control in the territory in question.

Schomburgk, who was gathering all the information he could that reflected on the Venezuelans, again unconsciously bears testimony to the presence of Venezuelans in the Barima. He says (B. C. VII, 12): "Many of these Indians [in the Aruka] had to relate acts of cruelty committed by the Venezuelans." This shows that the Venezuelans in 1841 made a practice of going to Barima, although the place was entirely deserted by the British.

Whatever the above facts may be said to show as to Venezuelan control, they clearly negative the existence of British control in the coast territory. They afford proof, however, that the Orinoco was held and actively controlled down to its very mouth by the presence not only of the five posts mentioned by McCreagh, but the additional post of Kuriapo and the Venezuelan light-ship at the mouth of the river, which had been placed there in compliance with the request of the British representative to build a lighthouse on Point Barima. They show further that the Commandant at Kuriapo exercised an active control over the Indians in Barima, and they show the presence of a Venezuelan gunboat in the Barima River itself, apprehending Indians residing at Moruca and confiscating their goods. They fail to show—and this failure is in its way as significant as the affirmative proof—that Great Britain, having official knowledge of each and every one of these facts, all of them occurring before the Agreement of 1850, made any protest whatever in reference to them or took the slightest notice of them.

It appears also that the Venezuelan Government did exercise control in the lower Orinoco, and that it had the civil head of its lower settlements on that river, called by the British, by analogy, a "Postholder," visiting even the Barima, and that its coast-guard vessel, as during the Dutch period, was patrolling the river Barima. Under these circumstances, it would seem that, entirely apart from the question whether the Treaty does or does not take cognizance of acts of dominion by the British during their possession of British Guiana, there were

no such acts, and that the lower Orinoco and Barima remained, as they had always been, an acknowledged part of the territory of Venezuela.

It may be well to note the fact that certain Spanish Indians left the Venezuelan settlements during the revolution and came through the Barima to Pomeroon, which was evidently at that time regarded as the frontier of the English settlements. Their arrival is referred to in a letter of Governor John Murray, dated August 14, 1817 (B. C. VI, 7) to the "Second Fiscal":

"Having received information from the Postholder in Pomeroon that a considerable number of Spaniards, inhabitants of Oronoque, have arrived there with a view to remaining in this Government, I have to request that your Honour will be pleased to take measures to prevent these people from extending themselves on the coast between the Pomeroon and Essequibo Rivers, at the latter of which rivers I have directed that they should remain until further measures respecting them may be adopted."

These Spaniards were fugitives from the Province of Venezuela, which was now under a revolutionary government. Arrangements were made to send 100 of them to Porto Rico, at the expense of the Spanish Government. According to the Minutes of the Court of Policy, October 28, 1817 (B. C. VI, 8).

"Those still left at the Post requested leave to remain until they could return, which they would do as soon as means would be found to take them back to Oronoque, so that a speedy prospect might be entertained that the Colony would soon be entirely freed from them."

The Minutes of the Court further say, October 30, 1817 (B. C. VI, 8) that

"His Excellency stated to the Court that he had received a despatch from Lieutenant Mitchel, containing the information that twenty out of the Spanish refugees left at the Post had quitted to return to Angostura, and that the rest were then preparing to follow, so that it was probable by this time the whole had left the Colony."

It appears from the above that the limits of the colony at that time were considered by the Governor and by the Court of Policy to be fixed at the Pomeroon.

A few of them, however, remained, and, in 1834, Governor Smyth made a grant, to certain officials of the Colony as trustees, of a tract of land on Moruca Creek, for the purposes of a church for the Spanish Indians who had temporarily established themselves at that point (B. C. VI, 54.).

The fugitives seem, however, to have rapidly disappeared. A memorandum, apparently of 1838 (B. C. VI, 62), stated to be by the missionary at Moruca, says:

“In the Mission of Morocco there are now no more than ten or twelve Indian families residing.”

Of the others, some had gone back to Orinoco, others were working in Pomeroun and Essequibo.

In 1839 the Roman Catholic Pastor of the Morocco Mission says:

“In the aforesaid rivers [Waini and Barima], all Roman Catholics. * * * The captain of the Waycos, named Juan Ventura, is a Spaniard, and himself, and almost all his tribe, are Roman Catholics. In the only one creek of Bareema which I visited I met the Catholic captain and most of his tribe.”

He adds:

“The population of Morocco Creek can be estimated at least at 600 adults, of both sexes, almost all Spanish” (B. C. VI, 64.)

Postholder McClintock reports, in December, 1846 (B. C. VI, 146) that the Waramuri Hill Mission, which had been established by him at Moruca, had been for several months past totally neglected.

In 1847 Postholder McClintock reports (B. C. VI, 165) that the Waramuri mission is no longer a mission, “but once more mingled with the wilds. The Indian cottages are abandoned, and all the buildings more or less destroyed by wood ants, and should the place be undisturbed by the hands of man for three months longer, a stranger passing that way would be at a loss to discover the spot on which the once famed Waramury Mission stood.”

In March, 1849, Superintendent McClintock reports that the Waramuri Mission has been re-established (B. C. VI, 173). He also says that the Santa Rosa Mission in 1840 had 336 Spanish Arawaks, but since then they have gradually decreased, not by death, but by return to the Orinoco, particularly of late.

From Superintendent McClintock's report of March 31, 1850, it seems that the missions at Pomeroon and Moruca were then in a deplorable condition (B. C. VI, 177-8).

In a report of September 30, 1853 (B. C. VI, 194), Superintendent McClintock again refers to the condition of the missions on the Moruca, stating that the roof of the Waramuri church has fallen in and that another winter will destroy every inch of it; "in other respects, the Mission has all the appearances usual in abandonment, and the same observations are applicable to the St. Roses Mission, for, although the church is not actually down, it is not far from it."

Whatever the facts may have been with reference to Spanish Indians, their settlement at Moruca has no bearing upon the question of the disputed boundary.

It appears from the above that in the coast territory, as in the interior, there was no settlement, no post, no jurisdiction, and no control, west of Moruca by the British.

There remains only one question to consider, and that is the contention on the part of Her Majesty's Government in this case that their relations with the Indians of Barima (for there were no relations with the Indians of the interior), during this period, were in some way the foundation of political control. The question how far such relations can establish political control, has already been fully discussed. It only remains to be seen whether the acts of the British in this respect changed in any degree the situation referred to in the previous discussion in this argument.

It is contended in the British Case that the authorities of British Guiana were active in the same directions as their Dutch predecessors, and that by reason of their maintenance of the peace,

their employment of the Indians, the military services which the latter rendered, the presents which were given them, the appointment of chiefs, and jurisdiction of offenses committed by Indians, they established a species of political control over the inhabitants of the territory.

During the early part of this period the policy of the Dutch of maintaining their relations with the Indians by the distribution of gratuities and presents, in which, as before, rum was one of the largest items, and which it is also contended was an evidence of political control, was continued by the British authorities. The immense number of negro slaves in the British colony, which had passed to it from the Dutch, was a constant menace. In 1813 Indians were employed for several weeks in repressing a disposition on the part of the negroes to revolt. These were rewarded by a gratuity of 3,500 f. (B. C. VI, 4).

The cost of the annual presents to the Indians was a heavy burden upon the resources of the colony, but the necessity of being able to hold in check the negro slaves by fear of the Indians was such that the amount was paid without a murmur. It was in fact not a tribute paid by the Indians for protection, but a tribute paid to the Indians for protection, and it justified Acting Governor Codd in making the statement already quoted (B. C. V, 216), in his letter of September 26, 1813, to Earl Bathurst:

“ It is, however, obvious that our Colonies are tributaries to the Indians, whilst the proper system of policy would be to make them allies, looking to us for protection; and whilst living within our territories, affording them such aid as we might conceive they deserve.”

He added the significant phrase:

“ The quantity of rum and sugar issued tending to render them almost useless, for my part, I think the whole present Indian system requires to be reconsidered.”

It is evident that at the date of this letter, in 1813, there was no such relation between the British Colonial authorities and the Indians as could be made the foundation of a claim of political control.

In the same letter the Governor says that the expenses connected with the Indians amounted in 1811 to £6,904 and in 1812 to £5,112.

In view of the extremely sound conclusions which the British Colonial Governor draws from the fact of the subsidy, it is curious that the British Case should dwell upon it as an evidence of political control. It states (p. 105):

“The expenses of the Indian subsidy which was annually voted was considerable. In 1811 the Governor undertook to contribute 18,000 guilders and the Court of Policy 12,000 guilders of the probable cost, and in November 1812, while not limiting the amount to any specific sum, the Court of Policy were recommended to, as far as possible, restrict the expenditure under this head to a sum not exceeding 20,000 guilders per annum. By the year 1831, annual sums were still voted for the rations and gratuities given to Indians at the Posts, and the general distribution of presents had become triennial. The expense in every four years was estimated to be £6,600. In 1833 the general distribution was omitted, and the Court of Policy voted a sum of 30,000 guilders for the purpose in the following year.”

On August 1, 1834, the emancipation of the negro slaves took place. Those in Pomeroon took the proclamation quietly, and agreed to do nearly the same work as formerly (B. C. VI, 56).

All danger of a negro revolt now came to an end, and the practice of giving presents to the Indians immediately ceased.

The effect of this became speedily apparent. The British Case states (p. 105):

“In 1837 the Court of Policy decided that it would no longer defray the cost of the distribution of presents by the Postholders, and in 1838 Governor Light spoke of the Indian subsidy as entirely discontinued. In consequence of this by the following year no Indians were to be found residing at the Posts who could be considered as attached to them.”

Hadfield, Superintendent of Rivers and Creeks, in a report dated October 26, 1839, says:

“It may, however, be not remiss to remark that, previous to the enactment of the Ordinance appointing Superintendents of Rivers and Creeks, the Indians who chose to reside at the Posts were supplied with

plantains, salt fish, rum, &c., and presents of small articles, such as gunpowder, knives, looking-glasses, beads, combs, &c., were periodically distributed amongst all the Indians that chose to assemble at the Posts on such occasions, which induced many of them to attach themselves to the Posts, or locate in the vicinity, whose services could be obtained at an easy rate by the Postholders, as well for the purpose of conveying them from place to place, as the erecting and repairing of buildings. But now no such encouragement is given them, and the consequence is that not an Indian is to be found at any of the Posts who may be considered as attached thereto " (B. C. VI, 87).

The Essequibo settlement shortly began to feel the effects of emancipation on the labor problem and on the Indian question. Postholder McClintock, in a report of that year (B. C. VI, 141) comments on "the general indisposition that prevails among all classes on the sugar estates of the Arabian Coast," and mentions the fact that the Accaways of Waini and Barima have destroyed their habitations and gone to reside in the upper parts of the Cuyuni and Massaruni, doubtless still preserving in their Creole Dutch vocabulary the recollection of the "rum, gunpowder, &c.," with which they were formerly supplied at the Post.

The necessity of obtaining labor led the colonists to turn to the Indians, and few of these being left about the post at Moruca, they employed all those who came to them for employment from remoter districts. These Indians, many of whom lived about the Barima and its tributaries, did not give up their homes and settle in the neighborhood of the plantations where they worked or at the post of Pomeroon, but they came for short periods of time, and when the work was over returned to their homes. The colonists took advantage of their ignorance to bind them by oppressive contracts and to get the better of them by the quality of the goods in which the services were paid. To correct these difficulties, regulations were framed by the Colonial authorities to the effect that the Indians "could not be forced from their homes by any person or persons from Pomeroon to work as labourers without their own free will and consent, and that if they were ill-used

or paid less than they might have agreed for, they must make their complaints known to me [the Superintendent of Rivers and Creeks] upon my arrival in the river [Pomeroon], when their case would be attended to" (B. C. VI, 71). With the object of carrying out these regulations, the Superintendent of Rivers and Creeks went to Pomeroon to hear complaints; not only that, but he extended his journeys into the territory west of the Pomeroon and visited among the Indians, inviting them to make any complaint they desired of the settlers by whom they had been employed (B. C. VI, 65-75, 94-99).

The practice of making these visits was continued only for two or three years, and seems finally to have come to an end in 1844, when McClintock made his last journey in the district.

Even the Colonial officers were charged with gross injustice in the matter. Superintendent King reported in 1840 (B. C. VI, 97):

"Several Warrow Indians complained that they were greatly imposed upon by the people at Pomeroon by making them work for them, saying that the *Governor or Superintendent* sent for them, and that when they went out they made them work."

This is in line with the statement of Hilhouse, the Quarter-master-General of Indians, in November, 1828 (B. C. VI, 24):

"The Indians employed have had their payment withheld till they are exceedingly dissatisfied, and the faith of Government sacrificed to the inactivity of individuals."

That the officials of British Guiana might be found accusing the Spanish of ill-treating the Indians would not be surprising, and their statements based on the reports of Indians on that subject are of course hardly admissible as evidence. But these last statements are admissions against interest, made by these officials themselves, and offered in evidence in support of the British Case. They throw a curious light upon the allegation made in the Case itself (p. 108) that "any attempt to compel the Indians to enforced labor, under any pretext whatever, was sternly checked."

The number of Indians so employed does not seem to have been very large. Superintendent McClintock reports June 30, 1850 (B. C. VI, 181), that out of 4,000 Indians in Barima and Waini, "100, and no more, is about the average that repair to the sugar estates in search of work."

No conclusion can certainly be drawn from the above facts as to the maintenance of political control, except that perhaps they may account further for the use of the Creole-Dutch language in Barima, which the British Case seems to contend is an evidence of such control. The fact that planters hired the Indians to work, and that when they ill treated the Indians and failed to pay them their wages or paid them in inferior goods, the Colonial authorities took cognizance of the fact and compelled the planters to live up to their contracts, is not an exercise of control over Indians. Any Spaniard living in Angostura or in Caracas, any foreigner in short, might have worked for the planters on the same terms and had the same privilege of a judicial cognizance of his complaint. The fact that the Colonial authorities afforded through their courts a remedy in such disputes is no evidence of control over the Indians any more than the mere fact of employment is an evidence of such control.

The mode of treatment of the Indians by the Dutch and by the British, following the Dutch example, during the first half of the century is in strong contrast to that adopted by the Spanish, and numerous citations may be made from the evidence to show this difference, entirely on the authority of English official observers.

Quartermaster-General Hilhouse describes the great influence which the Spanish missions had had upon the Indians, showing that it had accomplished what Dutch influence had entirely failed to accomplish. He says (B. C. VI, 88):

"The Jesuits of the Missions, prior to the political disturbances in that quarter, had brought them to such a state of comparative discipline and civilization as even to reclaim them from their natural propensities as

hunters, and induce them to cultivate the soil. The superior cultivation of the refugee Spanish Indians in the Morocco Creek is a proof of this.

"Their capacity for discipline was such that they acted in regular bodies in support of the regular troops in the cause of the Royalists, and their attachment to the Government was such that, on the breaking out of the trouble, great numbers emigrated rather than acknowledge the growing ascendancy of the patriots."

Mr. Hilhouse had been Quartermaster-General of the Indians, and probably knew as much about them as anybody else in the colony. He says, in 1834 (B. C. VI, 52), in describing the Indians who came from the Spanish missions:

"To the credit of these people be it spoken that for twelve or fifteen years, the period of their first emigration, I have not heard of a single instance of those disgraceful atrocities that daily characterize the Colonial tribes, notwithstanding the Post of Pomeroon has been till within the last few months conducted to my certain knowledge with a laxity of probity and discipline; disgraceful to the Colony and enough to corrupt the morals of all within its influence.

"Of the Arawaaks and other tribes in the district of the Pomeroon Post I can only say that the last ten or twelve years has reduced them to a state of mental and physical degradation which has no parallel in any other European possession.

"The task of civilization if not utterly hopeless must be very slow with them."

This painful contrast between the effects of Spanish and British influence over the Indians, is a part of the evidence adduced by the British Case.

The quarterly return of the Postholder of Pomeroon, dated September 30, 1833 (B. C. VI, 50), shows the movements of Indians about the post. It also indicates the prevailing source of demoralization. The usual memorandum with reference to the Indians calling at the post is that they received "refreshment." "On one day six Indians left the post on leave for the recovery of their health." It is to be supposed that these matters are put in evidence as proof of political control. Certainly if rum could bring it about, all that the Dutch left to be accomplished in the way of political control was completed by the British—at least as to the

Indians that hung about the posts until they were obliged to leave "for the recovery of their health."

Superintendent McClintock, in a report of September 30, 1850 (B. C. VI, 184-5), discloses with conclusive sharpness the source of the influence of the English upon the Indians. He says that during the days of slavery the population of the colony considered it necessary to gain, no matter how, the affections or good wishes of the Indians, "which, to a considerable extent, was accomplished by an annual distribution of presents; but the free use of rum to them who called at the respective posts cemented still tighter the bonds of friendship."

"This authorized system of demoralization, if he may be allowed to call it by that name, that is to say, the unlimited distribution of rum, was practised at every Indian post throughout the province, and, in a manner recognized as *one of the then laws of the land*, in which light it was continued to be viewed until freedom to the Blacks was proclaimed; but no sooner had this magnanimous boon been granted (which in one respect was equally beneficial to the poor Indian, for the then deleterious system of giving them rum ceased), than those very people (the Indians) were, but in an indirect way, cast off, the Whites telling them: We no longer require your assistance, no more presents will be given, no more rations of fish, plantains, &c., issued, in a word, the negroes are free, and you can withdraw from the posts and return again to the wilds."

In connection with the above statement of Superintendent McClintock, a faithful official, than whom no one had better means of knowing the relations of the Colony with the Indians, it is beautiful to read the statement of Mr. Schomburgk, made in his letter of October 23, 1841 (B. C. VII, 33), in answer to Governor Light's inquiry "upon what grounds I claimed, in Her Britannic Majesty's name, the right of possession of the River Barima and the eastern bank of the River Amacura as the western boundary." He said:

"Great Britain has been partly actuated by philanthropical motives to see the boundaries of British Guiana determined, in order to afford protection to such of the Indian tribes as live within her boundary, and the comparatively few who remain of that interesting portion of her subjects look

with the greatest expectation for the moment when they may consider themselves secure against the arbitrary measures of unprincipled men."

Mr. McClintock's objection in 1871 (B. C. VI, 212) to Venezuelan occupation was less philanthropic:

"To say what would be the result in case the Spanish obtained a footing in Marucca is easily stated. Rum and other spirits would be introduced from the Oronoko in large quantities. Retail spirit shops would be established at the mouth of Marucca and at other places, which would interfere very materially with the revenue at present derived from that source."

The objection here is not to Venezuelan practices, but to the effects of commercial competition upon similar British practices.

Two other quotations may be given, one referring to an earlier, the other to a later period. The first, made by Hilhouse in a report of 1834, advocating the abolition of all the posts except that of Pomeroun, the retention of which he advised on the ground that it was a frontier post, predicted the results to the Indians of the policy then pursued by the Colony. He said (B. C. VI, 53):

"Beyond this the experience of seventeen years and a most intimate acquaintance with the Indians, under every circumstance, public or domestic, convinces me that all the other Posts are decided public nuisances; extra agencies without an object, except the annihilation of the Indians be such. I would recommend their immediate abolition, the nearest Burgher Captain being substituted in their charge as Protector, since as long as they are kept up all attempts at civilization must necessarily fail."

The second citation is from an equally good authority, Mr. McTurk, and of a comparatively recent date, namely, 1893. It contains the fulfilment of Hilhouse's prediction. Mr. McTurk says (B. C. VII, 333):

"The Indian population of the lower part of this district is dying out fast,"

And he adds:

"The primary cause of the great increase in the mortality among the Indians has been the liquor traffic at Bartica,"—

a traffic conducted immediately under the vigilant eye of Mr.

McTurk himself, whose official residence, Kalacoon, was on Bar-tica Point.

In reference to maintenance of the peace, the Indians appear to have been so thoroughly demoralized by their contact with the Dutch and British settlements that they showed very little further disposition to engage in wars. Upon one occasion hostilities were threatened between two tribes (B. C. VI, 37), and the British Postholder succeeded in bringing about a reconciliation. There is nothing, however, to show that this was in any respect an exercise of control or other than a purely voluntary arbitration.

There does not appear to have been any employment of the Indians for military purposes after 1814.

Much is said about so-called Enrolments of Indians. These were simply memoranda that were kept by the Postholders on the frontier of the tribes in the neighborhood. Several of them are given in the testimony annexed to the British Case (for example, B. C. VI, 12-3). Nearly all of these were Indians who lived on the Essequibo or on the Cuyuni and Massaruni rivers below the falls, as is shown by the short distance from the Massaruni post at the mouth of the river. Another group is credited to Cuyuni and Massaruni and at a sufficient distance to indicate that they were beyond the falls; but the note in reference to these is as follows:

"These people are in general a trading and wandering tribe. They go every year to the Spanish Savannah and Settlements; to the Macusse and Adray nations as soon as their cultivation grounds are prepared and planted."

The memorandum and its accompanying entry would seem to imply that the relation of these nomadic tribes was much closer to the Spaniards than to the British, yet it is an entry on a so-called "Enrolment" of Indians.

As to military service, Hilhouse stated in his testimony at the trial of Billy William (B. C. VI, 41), that a treaty had been

made by the Colony with the Arrowacks, Warrows and Caribs, and he added:

"I have only understood the Treaty to be as retaining them as soldiers in the defence of the Colony, that they obey all calls of the Colony for service, in consequence of which an allowance is made every three years which they consider as a retaining fee. I think it is the only tie—they look on it as subjecting them to serve when called on solely as allies. There is no clause I have heard of calling on them to submit to the laws in other respects."

There was no restraint upon the movements of the Indians. They moved about in or out of the district as they pleased. Thus, in 1845, Postholder McClintock reports a general movement of Accaway Indians from the coast district of Barama to the Cuyuni (B. C. VI, 142.)

Great stress is laid upon a supposed jurisdiction exercised by the British over the Indians in civil and criminal matters. In regard to this we have a very important statement, made as late as 1831 by one who surely should have known, as he was a "Protector of Indians," and had been for forty years in the Colony.

This was Van Ryck de Groot, who testified at the trial of Billy William, as to the scope of his duties. He says (B. C. VI, 41):

"If an Indian made a complaint to me I should act as a mediator, not as a Magistrate. If the injuring party did not choose to appear, I should not feel myself authorized to compel him to do so. In their quarrels I should consider that I had nothing to do unless they called on me as mediator; there is no order not to interfere, nor the contrary; on a grant the grantee is ordered not to molest the Indians, but to cultivate friendship. I give presents in the name of the Governor to the Indians, they are a retaining fee for their fidelity and friendship, the presents are not ever wilfully neglected, they may be withheld by accident, the Indians consider them as presents to them as friends and allies, not as subjects. I do not know they have any mode of recording events or any substitute for writing; any compact between them and us is oral only."

The above statement shows clearly the nature of the so-called "jurisdiction" of British Colonial officials in disputes

of Indians. The occasions on which any such settlement of disputes is referred to are very few in number. There was nothing in the nature of a court or process in connection with these settlements. As indicated by De Groot, they were cases of voluntary submission to arbitration. This seems to be admitted by the British Case, which says (p. 101):

“ In all matters of complaint by Indians they acted as mediators in the first instance, but where mediation was improper it was their duty to use every legal means on behalf of the complainant to procure for him adequate redress, if necessary bringing the facts of the case to the notice of the legal authorities of the Colony.”

This statement is so guarded that it is difficult to infer from it any allegation as to a prevailing practice. No case is referred to by the text except the very case we have just cited, that of Billy William, which was not a case in point, as both the *locus* of the crime and the fact that the Indian was a resident of the colony brought the case within the criminal jurisdiction of the Colonial court. The question is not so much what the duty of the Protectors was “ where mediation was improper ” as what they did, and what the legal authorities of the colony did when the matter was brought to their attention. As to this, nothing whatever is said.

The British Case goes on to say that in cases of Indian murderers who had laid themselves open to the application of the Indian law of blood revenge, in some instances “ the parties to the vendetta submitted their feud to the Protector’s or Postholder’s arbitration.” This, again, is simply a voluntary submission of a dispute to the mediation of a third party, and indicates nothing whatever as to the existence and exercise of civil or criminal jurisdiction.

The case of Manoel has already been alluded to. Superintendent Crichton in 1839 was making a journey in the Barima, apparently with the object of receiving Indian complaints of oppression on the part of settlers who had employed them at

Essequibo (B. C. VI, 65-75). On his way to Onoboe, an Indian settlement on the Barima, he was met by three Indians, who were in search of him to come and settle a dispute, which they were afraid would end in blood. This was the case of Manoel. The charge against Manoel was that he had forcibly dispossessed another Indian of his land, and Crichton gave an opinion that Manoel should give up the land to the owner. With this decision the accused seemed perfectly satisfied; in fact, as far as appears, Crichton was acting in the position of mediator, the attitude which De Groot had stated, only a few years before, that he habitually assumed in disputes between Indians. The Indians of the village, however, were dissatisfied that Manoel was not ordered to move out at once, and made an accusation against him of having killed his wife. It was upon this occasion that Crichton made the singular remark that "finding that this unfortunate transaction had taken place * * * on the left bank of the Barima River, where the Government has never claimed jurisdiction, I felt the difficulty of taking a decided step in the matter, and endeavored to restore peace among them by reason and persuasion first and then threats, and imagined that I had succeeded." Starting upon his return, however, he received word that Manoel had threatened to kill his accusers, and he accordingly took him away with him. Two months later he took Manoel back to Onoboe (B. C. VI, 78). No statement is made as to proceedings on the part of the Colonial authorities in this case, and it would appear that the Colonial Government decided that the case did not fall within their jurisdiction.

The cases of Pauli and Maul, upon which great stress appears to be laid in the British Case (pp. 102-3), are in no sense an evidence of control over the Indians. Both Pauli and Maul, against whom the proceedings were taken, were Essequibo colonists, and even if the proceedings had not been abortive, as they were, it would have been nothing more than an exercise of personal jurisdiction in a case of oppressive treatment of Indians by

the colonists. All that the Superintendent of Rivers and Creeks did in the matter was to get together the evidence to support the prosecution, in which he does not seem to have been very successful. Both Pauli and Maul were arrested within the territories of Essequibo, one at Moruca and the other at Spring Garden, near Supenaam (B. C. VI, 99).

The trial would seem to have been somewhat of a farce, the Crown electing not to proceed on one indictment and the defendant being acquitted on the other, as the Indian witnesses were not allowed to testify, "on the ground of their possessing no religious belief" (B. C., p. 103).

A court which rejected the evidence of Indians against white men as incompetent could not be said to afford a very valuable remedy in cases of wrongs done to Indians by whites. Nor could it be said that a claim of political control was established by reason of the affording of such "protection" as this to the Indians.

Even if Maul had not been acquitted, the case would have been inconclusive, as it is stated in the British Case (p. 103) that "no objection to the jurisdiction of the court was raised at any stage of the proceedings." The important question, therefore, as to whether or not the jurisdiction extended over a crime committed in Barima was never raised.

Superintendent King's report for the quarter ending December 31, 1840 (B. C. VI, 100-2) states that in November he was at the Pomeroon, and that "there were no Indians working for any of the inhabitants of the Pomeroon on account of the way Pauli and Maul had acted towards them, and they said they would not work until they saw how the case was settled."

If the Indians were waiting for a satisfactory termination of the trial before again beginning work in Pomeroon, they must have waited for a long time.

The case of Billy William is also without significance. Billy William was an Indian whose name would seem to imply that he

lived at or near the British settlements. His case is stated at length in the evidence (B. C. VI, 40), from which it appears that the murder with which he was charged was committed on the Essequibo, and that William himself went to the Protector of Indians of the district in which he lived and gave himself up (B. C. VI, 44).

The case is evidently not one of jurisdiction over the territory in dispute. The most important point to be mentioned with reference to it is the testimony of Hilhouse, the Quartermaster-General of Indians (B. C. VI, 40), who made a remarkable statement which throws considerable light upon the extent to which the British criminal law was applied to the Indians in 1831. Speaking of the Indians, he said:

"I am partially acquainted with their language, with their manners and customs perfectly. They have customs, but no code of laws, but have the *lex talionis* in all the tribes; on almost all occasions they exercise the *lex talionis* when a white mediation does not step in to buy off the murder by a pecuniary consideration. . . . There is scarcely a family of Indians in the Colony in which an instance of this retaliation has not occurred."

If this were true of Indians *in the colony*, what must have been the situation as to Indians outside of the colony, in the territory now in question?

Every case of the exercise of British criminal jurisdiction is cited, or may be presumed to have been cited, in the Appendix to the British Case. They do not number half a dozen, and in each one of them there is some specific fact as to the *locus* of the crime or residence of the offender, which makes the jurisdiction of no significance so far as the question of political control is concerned. If there had been others, they would have been cited. We may, therefore, assume that these were all. Nevertheless, Hilhouse, the the Quartermaster-General of the Indians, who probably knew more about it than any living person, who had been Quartermaster-General eight years before, speaking as late as 1831, at a time when the British had been in control of the colony for

twenty-eight years, said that there was not an Indian family *in the colony* where there was not an instance of the application of the law of retaliation and blood revenge. Continuing his testimony in the Colonial Court room, he made this grim statement :

“ If prisoner was acquitted I do not think the Indians would spare this man unless the Governor or some other person arranged compensation for the death of this woman ; otherwise the avenger of her death is now in this room.”

In view of the above, how idle it is to talk about criminal jurisdiction over wandering tribes of Indians, neither named or numbered, unidentified by the Colonial authorities, never coming in contact with the Colonial authorities, and inhabiting, when they inhabited any particular place, a territory stretching over a space of two hundred miles from the outside plantation of the colony, and to cite as proof of such jurisdiction a journey made by Mr. Crichton and another made by Mr. King, who were hunting up complaints against Essequibo employers of Indian labor, and in one or two trivial disputes acted as voluntary mediators between the parties. In this very colony, British criminal law was so little applied to Indians within the limits of the settlements themselves that Mr. Hilhouse could say that there was not an Indian family in the colony where a murder had not been committed and privately avenged, and in giving his testimony in court at the trial of an Indian for the murder of his wife, could make the horrible statement that if the prisoner were acquitted, “ the avenger of her death is now in this room.”

The last journey of the kind referred to was that taken by Superintendent McClintock, December 31, 1844, when he went to the Barama to act as arbitrator in a dispute which he heard had taken place between certain Indians. He travelled three hundred miles and was gone about two weeks, but took no action when he investigated the affair (B. C. VI, 134-6). He does not even tell us why no action was taken.

The case of Frederick, an Indian charged with murder, which

was tried in the Colonial Court February 13, 1832, has no significance, as the Indian, Frederick, resided in Essequibo, and the crime was committed in Essequibo, as is shown by the evidence (B. C. VI, 47).

In reference to the so-called "Appointment of Indian Chiefs," to which extensive reference is made in the British Case, no practice seems to have prevailed as early as 1850 of making such appointments otherwise than as a mere recognition of a previous selection made by the Indians.

In 1823 Hilhouse writes to the Governor with reference to the appointment of chiefs (B. C. VI, 34):

"I have also to request, on the part of the Indians generally, that your Excellency will be pleased to prohibit all interference of the whites in the nomination of their Captains, as different individuals have in many instances taken upon themselves this right, which is purely elective on the part of the Indians themselves, and thereby given rise to great discontent and family animosities."

Timmerman, Protector of the Indians, states, in a letter to the Governor of Essequibo, January 26, 1833:

"The Indian Captains, which Mr. Hilhouse asserts to be appointed by the Postholders, are diametrically opposed to the fact, at all events in the Pomeroon district, where no deviation has been practiced contrary to the ancient established custom of leaving the choice of their Captains to the tribes themselves (whenever a vacancy occurs)" (B. C. VI, 49).

The practice of giving an appointment or commission as a Captain to chiefs of the Indians appears to have begun about 1834, in which year Captain Juan, who was already Chief of the Spanish Indians who had settled in Moruca, was appointed Captain (B. C. VI, 57).

It is difficult to see what significance this paper given to one who was already a chief could have.

Governor D'Urban, in a letter to the Colonial Secretary, Lord Goderich, November 26, 1831, fairly defines the relation of the Colony to the Indians (B. C. VI, 43):

"Mr. Bagot has justly said that 'we have not dispossessed the Indians of their territory,' they occupy it as freely and uninterruptedly for every purpose which is essential or agreeable to them, as if we had never come hither (by the way we only succeeded to the place of the Dutch), but the tribes who live within reach of civilization, derive most solid and important benefits from our regular and constant assistance."

The facts stated in this chapter show that whatever interpretation may be put upon the treaty as to the significance of acts of Great Britain, either of settlement or of political control in the disputed territory since 1814, no extension was made before 1850 beyond the occupation of the Dutch at the date of the Treaty of London. The territory now in dispute was substantially in the same situation, both as to settlement and as to political control, as it had been in 1814. The evidence on this point is the evidence adduced by the British Case.

This evidence shows that there was neither settlement nor the exercise of political control by the British in the interior west of the Cuyuni falls, or in the coast territory west of Moruca.

The Agreement of 1850 that neither party would occupy or encroach upon the territory in dispute, has been discussed in the chapter on Diplomatic Correspondence. It is only necessary to say a word in reference to it here.

Assuming for the sake of the argument that the British contention is correct, that acts of occupation subsequent to 1814 are to be considered as establishing title in this arbitration, which Venezuela denies, no such effect can be given to any act of occupation after the adoption of the agreement and while it continues in force, nor can any existing occupation or political control ripen during the continuance of the agreement. The question of title to the disputed territory is, as it were, in suspense, and each State debars itself from the right to extend in any manner its occupation therein, or to take any benefit by the running of any prescriptive period. It constitutes an estoppel upon both parties as to such acts, and if either party performs such an act it is also estopped

from deriving any benefit in law therefrom. All questions of occupancy or political control whether arising under Rule (α) of the Treaty or under any other branch of this investigation become inoperative, as far as their effect upon the creation or confirming of title is concerned, from the date of the signature of this agreement. No period can run after the adoption of this agreement. All operation of law as to the establishment of title is in suspense during this agreement. An absolute line of demarcation is established in the boundary controversy by the year 1850, after which and during the continuance of the agreement no act of either party has any legal effect whatever.

The Agreement of 1850 was appealed to by the British Government as late as 1887, and has never been abrogated. It is therefore still in force.

A word must be said here in reference to the case of Thomas Garrett (B. C. VI, 212). Garrett was a creole of Georgetown, who in September, 1874, committed a murder in Georgetown and escaped into the Barima territory. He was pursued there by British Guiana police and arrested "on the banks of the Amacura," brought to Georgetown, tried, convicted and sentenced.

According to Governor Longden in his letter to Mr. Middleton, January 30, 1875 (B. C. VI, 213):

"It is exceedingly difficult to reconcile the accounts which the constables give with the existing maps of the district, which maps are inconsistent with each other and probably equally incorrect. The country appears to be a wilderness, and the possession of it is claimed by Great Britain and by Venezuela alike. It is in fact a part of the disputed territory referred to by Colonel Wilson in his dispatch to Lord Palmerston of the 30th December, 1850, with regard to which he exchanged declarations with the Venezuelan Government that 'neither Government should occupy or encroach upon the territory in dispute.' As far as this Government is concerned, this declaration has been carefully observed, and *there are no resident British authorities within the district.* But I apprehend that in agreeing to this declaration Her Majesty's Government never surrendered or intended to surrender their claim to any part of the disputed territory,

unless the boundaries of Venezuela and British Guiana should be finally adjusted, as proposed by Lord Aberdeen in 1844."

The statement on the part of the Governor that "there are no resident British authorities within the district" is a most significant statement, taken in connection with the previous statement that "this declaration has been carefully observed."

In Governor Longden's letter to the Earl of Carnarvon on this subject, dated February 22, 1875, he says (B. C. VI, 212):

"Garrett was arrested on the banks of the Amacura River, the river which was proposed by Sir Robert Schomburgk in 1841 as the boundary between Venezuela and British Guiana, but which boundary was not accepted by the Venezuelan Government, and *is not acknowledged by either Government.*

The position taken by the Foreign Office, in its instruction to Mr. Middleton, was that, as far as the Agreement of 1850 was concerned (B. C. VI, 215-6):

"It could not have been intended that this agreement should preclude either Government from arresting criminals in the disputed territory, and that it would be most undesirable that it should have that effect.

"I have also expressed to His Lordship my opinion that for the above reasons—assuming Governor Longden to be right in stating that Garrett was arrested in the disputed territory, and not within Venezuelan jurisdiction—the trial should be at once proceeded with.

"Lord Carnarvon has concurred in this view, and instructions in accordance therewith have been sent to the Governor of British Guiana.

"I have to instruct you to inform the Venezuelan Government of the decision of Her Majesty's Government in this matter.

"In doing so you will be careful to assure the Venezuelan Government that nothing could be further from the intention of her Majesty's Government than to sanction any infringement of the territorial rights of Venezuela. You will point out the very grave misfortune that it would be to Venezuela, as well as to the Colony of British Guiana, if the disputed territory lying between them were allowed to become a sanctuary in which criminals from both countries might take refuge, and so escape the punishment due to their crimes; and you will state that Her Majesty's Government feel confident that, on full consideration of the matter, the Vene-

zuelan Government will recognize the justice and expediency of the decision which you are instructed to communicate to them."

The declaration of the British Government is most important as an admission that all but special and necessary jurisdiction is prohibited by the Agreement of 1850 in the disputed territory.

It is an admission that the exercise of such special jurisdiction, arising from the necessities of the situation, and to prevent the country from being an asylum for criminals, should not have any effect in establishing control, whichever party happened to exercise it.

CHAPTER XVIII.

NATIONAL SECURITY.

We summarize here the conclusions which we have thus far reached.

1. That Spain discovered Guiana and, by a first and timely settlement of a part for the whole, perfected her title to the whole of the geographical unit known as Guiana.

2. That, if Spain's discoveries, settlements and armed expeditions are held to be inadequate to complete her title to the whole of Guiana, they are certainly effective as to all of the disputed territory.

3. That even if Spain's inchoate title had not been perfected when the Dutch occupied the mouth of the Essequibo, she had not abandoned that region in fact, and no presumption of an abandonment had then arisen; and the Dutch entry—even if a peaceful one—was premature and wrongful.

4. That, in fact, the Dutch entry at Essequibo was not an attempt to appropriate lands believed to be open to peaceful settlement, but was an act of war—the forcible appropriation, in war, of territory known to be claimed by Spain, and as to which Spain's purpose to hold and to settle was well known.

5. That, by the Treaty of Munster, the Dutch title by conquest to the places then actually possessed by them in Guiana, was confirmed by cession from Spain.

6. That the treaty involved the concession that what was not given to the Dutch was retained by Spain, and that, when the limits of the Dutch possessions were marked, the territory beyond—to the north and west—was Spain's territory.

7. That, at the date of the Treaty of Munster, the Dutch were not in the possession of any part of the disputed territory.

8. That the Dutch could not thereafter acquire title to any part of the disputed territory save by prescription, and that a public, continuous, adverse, undisputed, actual and firm occupation, under a claim of right, for fifty years was necessary to perfect a title by prescription.

9. That there was never any such occupation by the Dutch of any part of the disputed territory; every attempt at occupation being protested and resisted by Spain; and every such attempt having utterly failed, except the settlement in the Pomeroon-Moruca region.

10. That the exclusive political control which the Tribunal is given an option to consider as the equivalent of adverse holding, must have the characteristics of an adverse holding which we have enumerated, and that no exclusive political control was ever exercised by the Dutch over any part of the disputed territory unless perhaps it be on the Pomeroon. In the close neighborhood of the Moruca post such a control was exercised, but it was protested and resisted by Spain in every way that was open to her—as has been every attempt to make settlements or to assume control of the disputed territory.

11. That the Agreement of 1850 cut off all titles by prescription or political control, and established a neutral status in the disputed territory; that all acts of Great Britain since are wholly ineffectual to extend her territory or to confirm her title.

12. That, whether the Dutch title is rested upon conquest, cession or prescription, it is a strict and limited title, in behalf of which the rules as to constructive occupation cannot be invoked. The conqueror gets only so much as he firmly holds; the grantee only what is granted; one who prescribes, only what he has actually appropriated. None of these can invoke against the party from whom the title is wrested any rule of constructive occupation, such as the rule of natural boundaries, of watershed, of middle distance, or any other rule that is rested upon such considerations as safety or convenience, or geographical unity and

the like. These rules rest upon the theory that the contending nations have equally meritorious and original titles, and cannot be used to extend a grant, or to aid a disseisor.

But Great Britain denies that the Dutch territories in Guiana were in any way derived from Spain. She expressly disclaims any title by conquest, or by cession, from Spain. A title by prescription is tentatively put forward, but the territory to which it is applied is left undefined, and it seems to be denied that this prescription is used to cut off a prior Spanish title. It is rather prescription in the sense of *occupatio*. For the British contention is that Spain had no title whatever, either to the lands in Guiana originally occupied by the Dutch, or to those "great extensions" afterwards made by them; that all of these lands were *terra nullius*, subject to be freely appropriated by any nation; that, therefore, the Dutch may claim for their settlements the same broad effects—as to their constructive limits—that can be claimed for those of Spain, the discoverer and first settler. If the prescription set up is used to cut off a prior Spanish title, this would hardly be claimed. The convenience and security of a disseisor is not taken account of. Now, while this contention of Great Britain is utterly unsupported by the facts, and directly contradicted by the official declarations of her grantor, made before the grant, and directly to her, we ought, perhaps, to discuss briefly the boundary question upon the basis of this contention.

Upon the theory of the British Case that the actual settlements of Spain in Guiana did not have relation to the whole of that province, or to the whole of the disputed territory, but only confirmed her title as a discoverer to such parts of it as were actually occupied by her—leaving all other parts open to the occupation of the Dutch—and that there was an implied abandonment by Spain which must prevail even against her expressed intent to occupy the whole, what are the rules of law as to the limits that will be allowed to the Dutch settlements? Are they to be fixed upon a basis that admits a constructive possession of vast unoccupied

areas, upon a basis that allows to the Dutch all of the equitable extensions that may be claimed for the settlements of the discoverer?

May the second comer, for instance, claim one-half, or even more if a natural boundary suggests it, of the territory that intervenes between his settlements and those of the discoverer? If in this unoccupied, intermediate space, there is a region that is equally necessary to the safety of each settlement, has the discoverer and first comer no preferential right? Are the intendments of law, as to the extent of an occupancy, to be given their full scope in behalf of the first comer and exhausted before the rights of the second comer can be considered, or do they enter in parity of right? Or is it true—as seems to be claimed by the British Case—that all of the equitable intendments and constructive extensions are to be allowed to the second comer? May he extend his limits so as to close the access to the discoverer's settlements and to command the entire interior possessions of the discoverer and reach to the very heart of his settlements?

May the second comer not only claim a middle line, but extend himself, by construction, to the fenced possessions of the discoverer and first settler?

Given, settlements by the discoverer on the Orinoco, and by the second comer on the Essequibo, may the second comer make the Orinoco the line of division? Is the discoverer to be treated with severity, and the one who followed in the road he had opened, with liberality? The rules suggested by the British Case seem to imply all this.

In the British Counter-Case (par. 9, p. 136) we have the statement:

“ There is no distinction between the first and second comer beyond this that, as already stated, the first comer has a right within a reasonable time to take possession of his discovery; otherwise the same rules apply to the original possessor as to the person taking subsequent possession.”

In subdivision 4 of the Principles of Law given in the British Case (p. 149) it is said:

“As between two or more neighbouring and rival settlements, the line of division cannot be ascertained by any hard and fast rule applicable to all cases. A line must be looked for which shall divide the country in accordance with the principles which, upon a consideration of all the local circumstances, seem those of natural division. But great weight must also be given to the relative importance and presumable power of expansion in the direction of the vacant territory of the settlements, between which it is to be divided.”

The rule here stated is that, if the second comer is more wealthy, populous and powerful than the discoverer, the territorial division is to be upon the lines of the relative importance and power of the discoverer and the intruder.

In the dispute between Great Britain and the United States as to the Oregon boundary, Great Britain was at the other end of the argument. Mr. Twiss (Oregon Case, p. 812) represents Mr. Gallatin, on behalf of the United States, as putting forward, as a consideration affecting title by contiguity, the superior ability of the United States to settle the territory. This theory was utterly rejected by Great Britain, and Mr. Twiss thus disposes of it:

“The reason which Mr. Gallatin alleged in support of the title by contiguity, namely, the facility with which the vacant territory would be occupied by the teeming population of the United States, is but the disguised appeal to the principle of the *vis major*, and strikes at the root of the fundamental axiom of international law, that all nations are upon a footing of perfect equality as to their obligations and rights.”

The law writers do not allow a parity of right to the second comer. Twiss (Law of Nations, Sec. 128) says:

“When title by settlement is superadded to title by discovery the law of nations will acknowledge the settlers to have a perfect title; but when title by settlement is opposed to title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar the claim to disturb the settlement.”

He then quotes Wheaton as basing a title by settlement on an implied intention of the discoverer to abandon the territory and a prescription by the settlers.

And in the next section he says:

"Title by settlement then, as distinguished from title by discovery, when set up as a perfect title, resolves itself into title by usucaption or prescription."

He then proceeds to show that the title rests upon the implied acquiescence of the discoverer, his silence after knowledge of long uninterrupted possession. He says the law of nations has not defined the length of time that will constitute a title by prescription and refers to the Hudson Bay dispute between France and England, where England claimed title by discovery, but also alleged against the French claim of discovery, an acquiescence in British settlement.

This author then distinctly discriminates between the settlements by a discoverer and settlements by a second comer. The latter he rests upon prescription, matured by the acquiescence of the discoverer. He cannot, however, be taken to acquiesce unless there has been an actual possession, and only so far as that has extended.

Fiore (Paris edition, 1885, Sec. 850), well points out that non-user is not abandonment unless there be a clear intent to renounce title. But if one state cease to physically occupy or use a tract, and a second state, though without any right of possession, does actually take physical possession, and holds it with manifestations that are obvious, open and unequivocal (*signi exteriori non equivoci*), and this condition of things is known to the state which formerly had possession, and is tolerated by it; this, if continued long enough, proves an abandonment, and, as a legal consequence, legitimatizes the possession. This, Fiore thinks, is the true origin of international prescription.

We will try, then, to point out how far the British claims exceed her rights, even upon the theory that Spain had no other ad-

vantage than such as belongs to the first comer; that each was entitled to hold only the lands it occupied and such further bounds as are, for one reason or another, allowed by the rules of international law to be attendant upon or appurtenant to the lands occupied.

In the very nature of things the first comer has this advantage. His constructive limits are not curtailed by those of any rival claimant. He is entitled, from the date of his settlement, to the widest constructive limits allowed by law.

The second comer can take only what is left; and none of the rules of constructive possession can be used by him to curtail the constructive occupation of the first comer.

Before any Dutch occupation in Guiana, Spain had settlements at Trinidad, Santo Thome and Essequibo. The first two of these were, when the Dutch came to Essequibo, peopled by Spaniards and held by Spanish officers and garrisons. Essequibo was not at the time actually occupied, but had not been abandoned.

From the time when the Spaniards first settled in Trinidad and in the Orinoco, the Essequibo was constantly visited by them; and a Spanish colony was actually established in that territory. Fortifications were erected, and the land was placed under cultivation for the purpose of producing bread for the Governor at Trinidad.

But, waiving at this point the consideration of the Spanish settlement in Essequibo, let us see what constructive limits the law assigned to the Spanish occupation of the Orinoco.

The first rule of law to which we call attention is thus stated by Hall (Int. Law, 4 ed., 110):

“ A settlement is entitled not only to the lands actually inhabited or brought under its immediate control, but to all those which may be needed for its security.”

This extract is quoted in the British Case, without dissent, and may, therefore, be taken as accepted:

Phillimore (Int. Law, 3d ed., i, pp. 337-338) says:

" They (the law writers) all agree that the Right of Occupation incident to a settlement, such as has been described, extends over all territory actually and *bona fide* occupied, over all that is essential to the real use of the settlers, although the use be only inchoate, and not fully developed; over all, in fact, that is necessary for the integrity and security of the possession, such necessity being measured by the principle already applied to the parts of the sea adjacent to the coasts, namely, *ibi finitur imperium ubi finitur armorum vis*. The application of the principle to a territorial boundary is, of course, dependent in each case upon details of the particular topography."

And Twiss (Law of Nations, Sec. 133), speaking of the rule of a mid-channel boundary, says:

" Circumstances however may create exceptions, as for instance when the control of a district *not actually reduced into the possession of a nation* is necessary for its security, and is not essential to the security of the co-terminous state."

Spain, from the moment Trinidad and Santo Thome were settled, was entitled to the full application of this rule in her behalf. No settlement made thereafter by the Dutch could, by any constructive effect, in the slightest degree invade the limits given by the rule to Spain. That these limits leave the Dutch insecure, gives them no right to demand a new line. They might as well claim the right to push back the discoverer's line of actual occupation.

Let us now apply this rule to the case in hand. It gave to Spain as appurtenant to her settlements all territory and places that might reasonably be needed for their security and integrity. Surely we do not need to make an argument to prove that the occupancy of the mouth of the Orinoco by any other power was absolutely incompatible with the security, not only of Santo Thome, but of the Spanish settlements to the south of that river. It is wholly unworthy of discussion whether such an occupancy would have been a complete barrier to Spanish access from the sea to the Orinoco; or would only have made such access difficult and perilous. It is to us matter of great surprise that, admitting the rule we are discussing, Great Britain should put forward a claim

to Barima Point. Of the military and commercial results of the occupancy of Barima Point she was early advised. Indeed it is plain from Schomburgk's report that the unfair advantages to result therefrom had much to do with the line he proposed. He says (June 22, 1841):

"The peculiar configuration of the only channel (Boca de Navios), which admits vessels of some draught to the Orinoco, passes near Point Barima, so that if hereafter it became of advantage to command the entrance to the Orinoco, this might be easily effected from that point. This assertion is supported by Colonel Moody's evidence, who visited this spot in his military capacity in the commencement of this century." (B. C., VII, p. 13.)

He adds that to place some person of authority at this point would "command from the neighbouring States that respect to which a British colony like Guiana has full right."

The word "respect" seems here to be used in the sense of *submission*. It is the "respect" that a prisoner pays to his jailer.

In a confidential letter to Governor Light, written October 23, 1841, Schomburgk more fully explains the importance which attaches to Barima Point, and here discloses a stronger and doubtless the true reason for his attempt to fix the boundary at the Amacura. He shows that the Orinoco offers water transportation for from 400 to 500 leagues; that there are nearly 300 tributary streams of more or less importance which also serve as canals and facilitate commerce; that Santa Fé de Bogota may be reached within a distance of eight miles by one of these tributaries, and (to quote) that "operations of commerce or war, combined with others from the Pacific, could be carried on by means of the vast plains or llanos. A small fleet may go up the Orinoco and the Meta within 15 or 20 leagues of Santa Fé, and the flour of New Granada may be conveyed down the same way.

And the only access to this vast inland communication for sailing vessels of more than 10 feet draft of water is by means of the Boca de Navios, which is *commanded from Point Barima.*" (B. C. VII, p. 33.)

He proceeds to say that Venezuela "would be an insignificant enemy," but points out that some maritime power of Europe might get Barima. It is not an altogether unfamiliar policy this—to seize a military or commercial strategic point from a weak power, out of the assumed fear that some other strong power might get it, or to equalize the seizure of some other strategic point by another nation. France, he says, has attempted to extend the bounds of Cayenne to the Amazon, and her success will give her the control of the great commerce of that river. She might also seize Barima, and, therefore, Great Britain must seize it. We quote further:

"France has attempted to establish a fortified position at the mouth of the Amazon near Macapa, which she claims as the eastern boundary of Cayenne. A settlement at this spot commands the commerce of the Amazon, and this no doubt, is the reason why this Power puts such importance upon its possession. Supposing that unforeseen circumstances should put France in occupation of Point Barima at the Orinoco, and that Macapa at the Amazon is ceded to her, she will then command the commerce of the two first rivers of South America, and hold the military keys of the northern provinces of Brazil and of the former Spanish provinces of South America, north of the equator, which territories will be always at the mercy of that power which commands the channels to their commerce." (B. C., VII, pp. 33-34.)

Yes; Barima Point commands the whole drainage basin of the Orinoco, and these vast territories "will be always at the mercy of that power which commands the channels of their commerce."

The author of these suggestions very suitably marked them "confidential." They do not bear the light well.

In this confidential letter of October 23, 1841, Schomburgk quotes Colonel Moody, who, as he says in his letter of June 22, "was sent in the earlier part of this century to report on the military situation of the Orinoco," as saying that Point Barima was "susceptible (*sic*) of being fortified so as to resist almost any attack on the sea-side—the small depth of water, the nature of the tides, and its muddy shores, defend it. The Barima, and the un-

cultivated forests on marshy ground, present an impenetrable barrier against the interior, and debarkation from the Orinoco might be put under the fire of any number of guns—and the land reproaches (*sic*) on that soil could be easily rendered inaccessible to an invading force."

Mr. Schomburgk adds that this statement is "fully born out by personal inspection during my late survey of the entrance to the Barima." (B. C., VII, p. 33.)

It would seem, from Colonel Moody's mission, that the English interest in Barima Point antedated Schomburgk's alleged discovery of traces of Dutch occupation there.

Great Britain cannot, in view of these reports from her civil and military representatives in Guiana, deny that the control of Barima Point was essential to the military and commercial security, not of Santo Thome alone, but of the Spanish settlements to the south of the Orinoco, which must use that river as an outlet. It seems, indeed, that the product of the mines of Peru were sent, in a good measure, by the Orinoco to Spain. This fact and the rule of law, as stated by Hall, being admitted, the Barima region was as definitely and absolutely Spanish territory when the Dutch entered the Essequibo as were the fields and gardens about Santo Thome.

The control of the Orinoco is to Venezuela a matter affecting the control of her commerce and her national security. To Great Britain it involves nothing as to her own commerce or security, but only the right to subordinate the commerce and the liberties of a sister nation.

But the possession of Barima Point does not satisfy the reasonable demand for security of the Spanish settlements on the Orinoco. The Point is of little value if it may be easily flanked by a water route. The possession of all affluents of the Orinoco, entering above the Point, is essential. The evidence shows that the route of commerce from Essequibo to the Orinoco was by the

Waini and the Barima, those internal water passages. The control of the trade of the Orinoco involved the control of the Waiui, Barima and the Amacura. The control of the mouths of these would not be efficient—if hostile expeditions and contraband traders might use the streams to points near the Orinoco. These rivers and the Mora passage were the side doors of the Orinoco, and if they were open, the bolting of the front door was of no avail. The British Counter-Case (p. 28) expressly admits that "*The Spaniards entered, explored, settled, and effectively defended the Orinoco.*"

If the Orinoco was Spain's and she was entitled to control its mouth for her security, then she must, for the same reason, also control all affluents entering that river above the extreme projecting points of its shores. This would carry the Spanish limits to the headwaters of all rivers through which a water access might be had to the Orinoco.

We shall a little later discuss the water shed theory put forward by Great Britain, in its application to the Orinoco, but for the present we confine ourselves to the discussion of the rule of security and integrity.

This rule has a further application. The ownership of the Orinoco, and the settlement at Santo Thome, are not secure, even if the mouth and all the affluents of that river be given to Spain, if there is not also allowed, as attendant upon that ownership and the settlements on the Orinoco, such a breadth of land on the south bank as to keep an enemy from a quick and easy access to the river. The second comer may not, by a mere constructive occupation, extend his bounds threateningly near to the "very heart" of Spain's actual occupation.

The British Case puts forward a claim to the whole water shed of the Essequibo and its tributaries; but this is based upon a Dutch occupation that did not exist when the limits of Spain's earlier settlements were assigned.

The effect of allowing this claim, Schomburgk thus describes (V. C. vol. iii, p. 187):

"I consider that Her Majesty has undoubted right to any territory through which flow rivers that fall directly, or through others, into the River Essequibo. Your Excellency is well aware that the Cuyuni falls a few miles above the penal settlement into the Mazaruni, and both river, after their junction empty themselves at Bartika Point into the Essequibos. Upon this principle the boundary line would run from the sources of the Carimani towards the sources of the Cuyuni proper, and from thence towards its far more northern tributaries, the Rivers Iruari and Iruang, and thus approach *the very heart of Venezuelan Guiana.*"

He then proceeds to point out that these inland regions are of less importance to Great Britain than Point Barima, called by the Venezuelans "the Dardanelles of the Orinoco"; but that, by putting forward the water shed claim, Great Britain would acquire "additional grounds to impress the claim of Point Barima." And indeed the fading Indian traditions and the faint evidences that some one, assumed to be a Dutchman, had lived at Barima, sadly needed the aid which this suggested barter would give.

The grim truth of Schomburgk's statements as to the scope of the watershed claim will appear when we examine a table of distances. This watershed line is distant from the south bank of the Orinoco, at the mouth of the Aguirre, 40 miles; at the mouth of the Imataca, 53 miles; at the mouth of the Piacoa, 23 miles; at the first site of Santo Thome, 29 miles; at the second site of Santo Thome, 21 miles, and at the mouth of the Caroni, 35 miles. The line is nowhere more than 64 miles from the lower Orinoco. Along the line of the Caroni it runs, at the mouth of the Usupano, within 10 miles of the Caroni, and at other points is 19, 20 and 25 miles distant.

The line, at the point where it comes within 21 miles of Santo Thome, is distant 288 miles from Fort Kykoveral.

Here, then, we have a second comer claiming a constructive extension of the limits of a single small settlement that would carry his line, at its most distant point, 300 miles from that settle-

ment and to within 21 miles of the principal settlement of the discoverer and first settler of the country.

Phillimore says of "natural boundaries":

"We know indeed, alas! by recent experience, that the phrases 'natural boundaries'; and 'rectification of frontiers' have been used by powerful military States to cover unjust spoliation of the property of their weaker neighbour." (Int. Law, 3d ed. i, 345.)

The reasonable security of the Spanish settlements is flagrantly denied, if the second comer may, by invoking another rule of constructive occupation, limit the Spanish territory to a narrow strip along a great river, both banks of which Spain had first occupied, and bring a hostile power within twenty-one miles of Spain's principal settlement. The rule of security is the rule that first comes into operation and dominates every other. If, therefore, the rule as to the water shed were, as Great Britain now states it, rather than as she stated it in the Oregon controversy, it must give way to Spain's prior right to be secure in her ownership of the Orinoco and its tributaries. The water shed theory is not left to have a partial application, but is wholly put out of use by the Dutch, for the reason that before the Dutch entered the Essequibo the upper water shed had been occupied by Spain—under the rule we are considering.

We conclude, therefore, that if Spain had no other advantage than that of the first comer, the rule of reasonable security gave to her, as appended to her Orinoco settlements, both banks of the Orinoco, and of all affluents of that river entering above Barima Point, and, at the least, such a width of territory to the east of the Orinoco as would reasonably protect its eastern or southern bank and the settlements thereon from quick and easy attack.

Cape Nassau would be the nearest eastern point on the coast that could possibly be suggested as the line of security. If it be said that such a line would open a back door to Essequibo, the answer is obvious: The line was drawn and this territory was Spain's before the Dutch came.

As to the interior, it is not so easy to locate the exact line of security as related to the Orinoco settlements alone. But when we take into account the fact that Santo Thome was a gateway to El Dorado, and that this interior was, in the language of Phillimore, "essential to the real use of the settlers," without which there would be no reason for maintaining Santo Thome, we are enabled to say that the region attendant upon the Spanish occupation of the Orinoco certainly embraced a large part of the territory now claimed by Great Britain in the interior. Santo Thome was the military and commercial base for the great interior. It was established and defended as a gateway, and to isolate it is to destroy the only reason for its existence.

We have not coupled the Spanish occupation of the Essequibo with their settlements on the Orinoco in this discussion. Elsewhere we have clearly shown, we think, that Spain occupied the Essequibo before the Dutch came, and that her absence at the time did not work an abandonment. If that be so, then any constructive extension of the limits of a settlement at the mouth of the Essequibo, which the law allows, would belong to Spain. If the occupation of the mouth of the river had the effect claimed for it by Great Britain, the basin had been appropriated by Spain before the Dutch came; and that appropriation could not be affected by the wrongful entry of the Dutch beyond the line of their actual occupation.

There is another rule of law closely related to the rule we have been discussing. It is the rule that gives to the nation owning the banks of a stream, and as appurtenant to that ownership, the delta region found at its mouth. This rule is not at all based on the idea that the soil of these delta formations has been carried from the banks of the river itself, or from other lands owned by the nation claiming the delta region. Indeed, when it can be positively shown that the alluvion has been torn from one bank and deposited upon the other, the rule is still applied. Between indi-

vidual owners the rule is based upon considerations relating to land boundaries; but, as applied to a nation, it is rather a specific application of the rule of security. It is the relation of these delta regions to the control of the mouth of the river, and to the security of the settlements on the river, that fixes their status.

It is wholly immaterial where the detritus came from—whether down the Orinoco, or down the Essequibo and by the ocean currents to the mouth of the former river. These deposits are caused by a loss of velocity in the current carrying the silt. The Orinoco loses its flow in the sea and drops its silt. It also checks and deflects the flow of the ocean currents across its mouth towards the west, and causes that current to drop some of its silt at points to the eastward of the main channel of the Orinoco. As the delta formation grew, this effect would be increased. The coast region to the east of the Boca de Navios, as far as Cape Nassau, is undeniably alluvion; and if, by the deposit of silt coming from the east—whether influenced by the Orinoco or not—the Barima and the Waini now communicate with the Orinoco, while maintaining, through the Mora passage, another entrance to the sea, the delta region has become one.

Boats may pass from the Orinoco through the Barima and the Waini to the sea by natural channels. The tide flows in and out of the Barima, at the Orinoco and at the Mora passage. At the time of the discovery of Guiana, this inland water way from the Moruca was the safest and quickest route for boats between the Essequibo and the Orinoco. Other mouths of the Orinoco flowing through the delta towards the Gulf of Paria, or towards Trinidad, bore independent names, just as these do, and were similarly used as outlets to the west. In whatever manner, then, as a scientific problem, it came about, we find the Waini and the Barima to be parts of the delta water system of the Orinoco. The mouth of a stream is "where the points of the coast project no further."

Lord Stowell, in *Twee Gebroeden* (3 Rob., 34), says:

“The embouchure or mouth of a river is that spot where the river enters the open space to which the sea flows, and where the points of the coast project no further.”

The rule of law applicable to delta regions is thus stated by Twiss (*Law of Nations*, Sec. 181):

“Upon like considerations of security, islands which have been formed by the accumulation of mud at the mouth of a river, and which keep sentinel as it were over the approaches to the mainland, are regarded as necessary appendages of the coast on which they border and from which they are formed.”

The rule is rested by this author upon considerations of security. The relations of these islands to the river mouth, as we find them, is the determining thing. How they came there is wholly unimportant to the jurist. Lord Stowell's opinion in *The Anna* (3 Ch. Robinson, 395) makes this clear.

“Consider,” he says, in the case of certain islands at the entrance of the river Mississippi, “what the consequences would be, if lands of this description were not considered as appendant to the mainland and as comprised within the bounds of territory. If they do not belong to the United States of America, any other Power may occupy them; they might be embanked and fortified. What a thorn would this be in the side of America! It is physically possible at least that they might be so occupied by European nations and then the command of the river would be no longer in America, but in such settlements. The possibility of such a consequence is enough to expose the fallacy of any arguments that are addressed to show that these islands are not to be considered as part of the territory of America.”

The delta regions on the east of Boca de Navios, in the control of another nation, would be a thorn in the side of the nation owning the Orinoco river; would give a sentry post to an enemy quite as much as those on the west. There is no part of the entire delta region of the Orinoco to which the reasoning applies more strongly

than to the Waini-Barima region. Indeed, if we give to Great Britain this region, the guards of the Orinoco mouth might almost as well be withdrawn; for she will have secured a water inlet that isolates them. The reason of this rule certainly includes as delta islands all of the lands on the ocean side of any waterway flowing through the alluvion, that may be entered from the main river and followed to the sea.

The British interest in this territory is not its value for settlement, or as necessary to the defense of their settlements, but as giving them control of the mouth of the Orinoco, the basin of which is, and always has been, Spanish.

Schomburgk has this to say of this region (B. C., VII, p. 34):

“The peculiar formation of the fluvial system of the coastland between the Barima and the Essequibo admits an inland navigation, in punts and barges, to Richmond Estate, on the Arabisi Coast of the Essequibo, which with a few improvements might vie with any of the interior canals of England.”

That is to say, the possession of this “fluvial system” would establish at least a joint use and control of the Orinoco, and with Barima Point would dominate that river. This brings the river fully within the reasoning of Twiss and of Lord Stowell.

These rules based upon the right of the first settler to be secure in his possessions are controlling. All other rules, based upon convenience and kindred considerations, are in abeyance until there has been set apart to the first comer all places that may be reasonably necessary to his present and prospective security. We cannot for a moment doubt that a stretch of country to the east of the Orinoco, extending on the coast to a point that will include the water sheds of all streams entering the Orinoco, was reasonably necessary to the security of the Spanish settlements on the Orinoco. The question of the line of safety, in the interior, involves a consideration of the Spanish interior settlements, which we do not enter upon here.

CHAPTER XIX.

WATERSHED.

Great Britain puts forward a claim to the constructive possession of the whole watershed of the Essequibo, including its great tributaries, the Mazaruni and the Cuyuni. The area of this basin, treating it as one, is about 67,000 square miles. We are not definitely informed as to when it is claimed this title attached, though that date is a very important factor in determining whether it ever attached. These extracts from the British Case (p. 161) perhaps give us the scope of the British contention, as first propounded:

"It is not disputed that the Dutch and the British have for centuries been in full possession of a very considerable territory on both sides of the Essequibo below the point where it is joined by the Massaruni. It is submitted that, according to every principle of international law, this carries with it the right to the whole basin of the Essequibo and its tributaries, except in so far as any portion of that basin may have been occupied by another Power.

"The Power in control of so large an extent of territory round the lower course of a river such as the Essequibo, to which no other Power has ever had any access, and where no dominion other than that exercised by the Dutch and the British has ever existed, has a *prima facie* right to the whole of the river basin. Such right can only be rebutted by proof of actual occupation by another Power."

And again:

"The title of the British to the basin of the Essequibo and its tributaries is greatly strengthened by the fact that the only permanent means of access to by far the greater part of the upper portion of this basin is by these streams themselves. The Power in control of the lower portion of the Essequibo therefore commands the whole of the basin of that river and its tributaries."

The first of these paragraphs seems to make the river basin attendant upon settlements on the lower tide water banks of the Essequibo, without any further occupation of the coast—

provided "considerable territory on both sides" of the river is occupied. This constructive extension of the limits of the river mouth settlements is not put upon the fact that the river is the means of access to the interior region, but is, we are told, "strengthened" by that fact. And finally this watershed rule, it is said, can only be stayed in its operation by a prior "actual occupation by another Power." We answer: There is no principle of international law that gives to such a tidewater, river-mouth settlement, as the Dutch had at Essequibo, the wide constructive effect here claimed; and, if there were, a good prior constructive occupation by another nation would prevent its operation just as effectually as a prior actual occupation.

The rules of constructive occupation must take effect in their order, and if by any other such rule of law the river basin, or any part of it, had been assigned to Spain before the Dutch came to Essequibo, she could not be deprived of it by any mere constructive effect given to the Dutch settlement.

The watershed or coast settlement theory is not capable of a partial application. It is put upon the theory that the river is the channel of communication with these interior lands—and that this fact creates a natural geographical unit that is to be preserved. But if the upper stretches of the river are first occupied, whether actually or constructively, the unity of the tract, and the reason of the alleged rule, can only be preserved by giving the *mouth* to the first appropriator of any part of the basin. And, as this rule can give only a constructive occupation, if any other rule—such as the rule of discovery, or of the security and integrity of a settlement—has already taken effect in the basin, the first cannot be used at all.

And further the British Case impliedly admits that the watershed rule here put forward did not operate until "a very considerable territory on both sides of the Essequibo below the point where it is joined by the Massaruni" had been occupied by the Dutch.

When did the Dutch settlement on the Essequibo acquire the extent necessary, according to the British contention, to bring into operation this watershed theory? Great Britain should have assigned a date, or at least an approximate one. Of the occupation of the Dutch on the Essequibo in 1648, Professor Burr says:

"Such are our scanty materials for a notion of the character and limits of the Dutch colony on the Essequibo at the close of the long war with Spain. So far as they enable us to infer, it was a body of two or three dozen unmarried employés of the West India Company, housed in a fort at the confluence of the Cuyuni and Mazaruni with the Essequibo, and engaged in traffic with the Indians for the dyes of the forest. Agriculture, save for the food supply of this garrison, there is little reason for supposing. Of tobacco or of sugar one hears nothing after the mention of the specimens received in the time of Jan van der Goes. The first sugar mill on the river seems to have been established in 1664; and at that date there was as yet no provision for the registry of lands in Essequibo. This purely commercial character of the Essequibo establishment is the more striking because the other Dutch colonies on the coast, both those of the patroons and those planted directly by the Company, had all been of settlers. . . . Of outposts there is thus far no mention.

"Such as it was, the post on the Essequibo remained in 1648, as it had always been, the westernmost establishment of the Dutch on this coast, and was now, with the exception of Berbice, their only Guiana colony." (V. C.-C., vol. ii, pp. 74-75.)

Surely this was not the occupation of "a very considerable territory on both sides of the Essequibo."

In the British Counter-Case (p. 136, par. 10) we have what seems to be a greatly modified statement of the watershed rule. To the proposition of the Venezuelan case that, "Ownership of the mouth of a river does not, of itself, give title to the watershed," Great Britain answers: "This proposition is too narrowly stated. Ownership and control of the course of navigation of a river may in some instances give title to the watershed." This statement of the rule would deny to the Dutch and to the British the Cuyuni basin, for two reasons, first because the Essequibo and the Cuyuni

were not ways of commerce, and, second, if they were, neither the Dutch nor English ever controlled the course of navigation. On the other hand, the rule as stated would give to Venezuela the watershed of the Orinoco; for Spain first, and Venezuela after her, did own and control the course of navigation of that river from the date of its discovery. The appeal of Great Britain's representative in 1836 to Venezuela for the erection of a light-house at Barima, indubitably proves that this ancient control was maintained and acknowledged. Unless it can be shown that the Amacura and the Barima are parts of another watershed, the rule as stated by Great Britain would assign those rivers to Venezuela.

We will now consider briefly the law applicable to river-mouth settlements. It has happened that Great Britain, in her boundary contentions, has several times faced the question we are now considering, and in every case in America, so far as we now recall, she has defended and secured territorial limits that were utterly antagonistic to the rule she now puts forward. In the cases of the St. Lawrence, the Mississippi and the Columbia Rivers in North America, Great Britain did not hold the mouths of those streams, and so did not concede to the river-mouth settlements the constructive limits she now claims for Essequibo; notwithstanding that, in the cases of the St. Lawrence and of the Mississippi, France was the discoverer of those rivers, had fully explored them, had occupied the coast near their mouths, and had planted posts in the interior.

In the case of the Columbia, the river had been discovered by an American, entered from the sea, and a settlement made at the mouth. In all of these cases Great Britain claimed and appropriated a large share of the drainage basins of these rivers. In the case of the Mississippi Valley, to do this she passed beyond the head waters of the Atlantic rivers, over a high and continuous mountain barrier, that separated the drainage basins, and claimed and secured that immense and fertile section of the Mississippi Valley lying east of that river. All of these rivers, especially the St.

Lawrence and Mississippi, were great navigable waterways, affording, in that period, the only natural channels of commerce available to the interior. If there has been any case where Great Britain has, against her interests, allowed to any other power the rule she asserts here, we have not found it. We will not attempt to exhibit the details of the Oregon controversy, but will present from the English law writers enough to show the position taken by Great Britain.

Discussing the geographical extent of titles, and especially the doctrine of watershed, Westlake (*Int. Law*, p. 171), says:

"If that doctrine were adopted in its fullest extent it would lead to the conclusion that France, while she held Canada and Louisiana, was entitled to all the basins of the St. Lawrence and Mississippi, except such portions of the former as were comprised within the settled area of the English colonies, and such portions of the latter as were well understood to belong to Mexico. But during the negotiations with England in 1761 France repudiated any such claim, and proposed that the Indians 'between Canada and Louisiana, as also between Virginia and Louisiana, should be considered as neutral nations, independent of the sovereignty of the two crowns, and serve as a barrier between them' (*Twiss, Oregon Question*, p. 307)."

Twiss (*Oregon Question*, p. 245) states that the United States had before formulated this rule:

"That whenever any European nation takes possession of any extent of sea-coast, that possession is understood as extending into the interior country to the sources of the Rivers emptying within that coast, to all their branches and the country they cover, and to give it a right in exclusion of all other nations to the same."

He says the reason of the rule was thus stated by Pinckney and Monroe:

"Nature seems to have destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest and to have detached them from others."

And again (p. 247):

"Because their settlements bar the approach to the interior country and other nations can have no right of way across the settlements of independent nations."

Twiss (*ib.*, 148) quotes Mr. Rush as saying, in 1824:

"I asserted that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river and its tributary streams."

To this, Twiss says, "Great Britain formally entered her dissent," "denying that such a principle or usage had ever been recognized amongst the nations of Europe, or that the expedition of Captain Gray, being one of a purely mercantile character, was entitled to carry with it such important national consequences. In the subsequent discussions of 1826-7, Great Britain considered it equally due to herself and to other powers to renew her protest against the doctrine of the United States, whilst on the other hand the United States continued to maintain that Gray's discovery of the Columbia river gave, by the acknowledged law and usage of nations, a right to the whole country drained by that river and its tributary streams."

The author then states his own views thus (*id.*, p. 279):

"The principles involved in this position seems to be that the discoverer of a mouth of a river is entitled to the exclusive use of the river; and the exclusive use of the river entitles him to the property of its banks. This is an inversion of the ordinary principles of natural law, which regards rivers and lakes as appendages to a territory, the use of which is necessary for the perfect enjoyment of the territory, and rights of property in them only as acquired through rights of property in the banks."

And again (*id.*, p. 281):

"As to the reasonableness of the rule, if Mr. Rush meant that rivers were the natural and most convenient boundaries of territories, this proposition would command a ready assent. But the result of the principle which he set up as to the extent of the discovery, would be to make the high-lands and not the water courses the territorial limits."

Phillimore, writing of the Oregon Case (*Int. Law*, 3d ed., i, § 337) says:

"The United States claimed that a nation discovering a country, by entering the mouth of its principal river at the sea-coast, must necessarily be

allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river and its tributary streams."

But, he says:

"This proposition was strenuously denied by Great Britain upon various grounds:

1. That no such right accrued at all to mere discovery.

Great Britain 'was yet to be informed,' she said, 'under what principles or usage, among the nations of Europe, his having first entered or discovered the mouth of the River Columbia, admitting this to have been the fact, was to carry after it such a portion of the interior country as was alleged.'"

In his comments upon the position assumed by the United States, Phillimore says (*id.*, p. 337):

"If the circumstances had been these, viz. that an actual settlement had been *grafted upon a discovery* made by an authorized public officer of a nation at the mouth of a river, the law would not have been unreasonably applied."

It seems, then, that this writer holds that the benefit of this rule cannot be claimed unless settlement has been "grafted upon a discovery," and that in the case of a discoverer it rests upon the theory that the basin is necessary to the security and integrity of the settlement. In the case in hearing, however, the rule is set up by a second comer against the discoverer, and in a way to destroy the security and integrity of the discoverer's settlements, and to cut him off from the occupancy of the region that was the objective point of his first occupation.

In the Oregon Case Great Britain asserted that the United States could not claim a title by discovery, because Captain Gray, who made the discovery of the Columbia river, was a mere private navigator.

Hall (*Int. Law*, 4 ed., p. 111), speaking of this matter, says:

"It has been maintained, but it can hardly be conceded, that the whole of a large river basin is so attendant upon the land in the immediate neighbourhood of its outlet that property in it is acquired by merely holding a fort or settlement at the mouth of the river without also holding lands to any distance on either side."

This writer further holds that, even where there is an extended coast holding, the extent of coast must bear some reasonable proportion to the territory which is claimed in virtue of its possession.

Let us apply this test to the case at bar; and, for that purpose, let us assume that the Dutch coast occupation extended all the way from the mouth of the Essequibo to the mouth of the Moruca, a distance of some 40 miles. As a matter of fact Dutch occupation never attained any such proportions, but had it done so, those 40 miles of coast settlement would, according to the present British pretensions, have represented an interior constructive occupation of some 67,000 square miles; or, in other words, for each mile of actual coast settlement there would have been 1,700 square miles of constructive occupation. If this disproportion should seem great, what shall be said when it is remembered that for almost a century after the Treaty of Munster, except for two short lived settlements on the Pomeroon, from 1658 to 1665, and from 1686 to 1689, such Dutch occupation as there was on the coast west of the Essequibo was limited to a trading post, or else a man shelter, located at times on the Pomeroon and at times on the Moruca or Waquepof. Not until near the close of the last century did settlement extend west along the Arabian Coast to near the Pomeroon; and, by that time Spain had been for already three-quarters of a century in the actual occupation of the Cuyuni, and of many of its tributary streams.

The so-called watershed theory has never, even by its most extravagant advocates, been extended to apply to lateral frontiers. Its application is confined wholly, where it can be applied at all, to the determination of interior limits, never to that of lateral limits in territory parallel with the coast. Here the attempt is made not only to apply it to the headwaters of the Essequibo, but to rivers nearly as large as the Essequibo itself, which run at right angles to the latter and parallel with the coast, and, in fact, rise almost on the very banks of the Orinoco. "It can hardly be

conceded," says Hall (Int. Law, p. 111), "that the whole of a large river basin is so attendant upon the land in the immediate neighbourhood of its outlet that property in it is acquired by merely holding a fort or settlement at the mouth of the river without also holding lands to any distance on either side." Yet the attempt here is made to found possession of a lateral territory, watered by a river 300 miles long, by plantations that come to an end twelve miles from its mouth and then are stopped by an impassable barrier.

The Dutch Ambassador at Madrid, in making the claim of the West India Company (V. C. II, 135), stated that it was a claim to "the River Essequibo, and all the little rivers which flow into it." Had that been its character, and had the Cuyuni been such a stream as Capoey or Oene, or even as Supenaam, the Spanish Government might have thought it worthy of attention. As it was, they refused even to discuss it.

Hall further shows that the rule as to water courses was based upon the fact that they formerly "were not merely the most convenient, they were the necessary means of penetrating into the interior;" and says that in Africa railroads offer a better access, and that in that region the "river basins are so arranged that a final division of the continent could hardly be made in accordance with their boundaries."

Where, as here, there is an occupation (whether it be actual or constructive) of the territory upon the upper banks of a river, that occupation is of a part of the geographical unit called the basin, and should be taken, if the rule of unity is observed, to be an occupation of the whole. A settler coming afterwards to the mouth cannot cork up the river. In the cases of the St. Lawrence and of the Mississippi, the United States--and, in the case of the Columbia, Great Britain--asserted and secured the right of the settlers on the upper stretches of these rivers to the free navigation thereof to the sea.

Of this rule Mr. Twiss (Oregon Case, p. 280) says:

"According to the Civil Law (*flumina perennia*), as distinguished from streams (*rivi*), were deemed public, which, like the sea shore, all might use. In an analogous manner, in reference to great rivers flowing into the ocean, a common use is presumed, unless an exclusive title can be made out, either from prescription or the acknowledgement of other states."

Wheaton (Int. Law, p. 291) writing upon this subject, says:

"The right of navigating, for commercial purposes, a river which flows through the territories of different states, is common to all the nations inhabiting the different parts of its banks; but this right of innocent passage being what the text writers call an *imperfect right*, its exercise is necessarily modified by the safety and convenience of the State affected by it, and can only be effectually secured by mutual convention regulating the mode of its exercise."

Turning now to make a brief application of the law to the facts, we remark first that the reason given for the rule in the cases where its application has been supposed to be allowable, shows that it can have no application here. The Essequibo was never "the necessary means of penetrating into the interior," or even the most available means. In fact, by reason of the numerous falls and rapids found in it, and in the Cuyuni, it was an impracticable route for any important commerce. The range of low mountains over which these streams fall makes an interior basin that is in no proper sense a part of the same geographical unit with the coast.

It is indisputably true that at the time when Great Britain claims that this great interior basin became attendant upon the Dutch settlements on the Essequibo, because it was a part of the same geographical unit, neither the Dutch nor any other European nation supposed there was any practicable route by these rivers to the great interior—the Eldorado. Berrio and his Spanish predecessors, and Raleigh, Cabeliau and every other explorer and navigator, rightly designated Santo Thome, and not Essequibo, to be the gateway of the Cuyuni Basin. This route availed itself, for a large part of the way, of the great savannahs, and found an easy

passage over the range; while that from the Essequibo contended, from start to finish, with dangerous rapids and falls in the river, and an almost impenetrable tropical forest on its banks.

That the Essequibo and Cuyuni are not the natural ways of travel and commerce and settlement, is proved by the fact that neither the Dutch nor British have ever extended their settlements along them. These rivers, with their rapids and falls and forest-clad banks presented the way of greatest resistance to settlement from the Essequibo, and it took the easier way down the river from Kykoveral.

Schomburgk, who, in 1841, passed down the Cuyuni from the Acarabisi, and through the gorge at the eastern corner of this basin, just above the confluence of the Cuyuni and Essequibo, describes that point as "a small range of mountains through which the river has broken itself a passage" (B. C., VII, p. 29). That passage consists of a series of cataracts, by which the river falls two hundred feet in thirty or forty miles, and he nearly lost his life in passing them. Surveyor Perkins lost a man here on one of his expeditions, and says (Timehri, June, 1893) that "it has long been known as among the most dangerous, if not the most dangerous, of all the large rivers of British Guiana."

This obstacle has stopped all progress of settlement in this direction.

Schomburgk further says: "But the difficulties which the Cuyuni presents to navigation, and those tremendous falls which impede the river in its first day's ascent, will, I fear, prove a great obstacle to making the fertility of its banks available to the Colony." (B. C., VII, p. 30.)

A description of the country, published at Demerara in 1843, says: "A short distance above their junction these rivers [Mazun, Cuyuni and Essequibo] become impeded by rapids, above which they are frequented only by a few wandering Indians." (V. C., vol. iii, p. 406.)

Mr. Henry I. Perkins, F. R. G. S., Government Surveyor, says of the Cuyuni (*Timehri*, June, 1893, p. 75):

"It has long been known as among the most dangerous, if not *the* most dangerous, of all the larger rivers of British Guiana, and there are times when the height of its waters, either above or below a certain point, gives it every right to claim this unenviable notoriety. My first experience of it was a highly unpleasant one in 1887, when, with a brother surveyor, I spent about four weeks journeying up and down a portion of it, and surveying placer claims on its right bank. On this memorable occasion we lost two boat-hands from dysentery, a third dying on his return to Georgetown from the same disorder, and last but not least, in coming down stream our boat capsized at the Accaio—the lowest fall in the river—where one man was drowned and everything was lost."

"The Cuyuni diggings are somewhat unfortunately situated as regards the regular despatch of supplies to them; for in the heavy rainy season, the river becomes so rapidly flooded and remains at a dangerous height for so long a period, that it is almost impossible for loaded boats to ascend it." (*ib.*, p. 81.)

The Dutch Commandeur wrote, in 1727, that the river was "very dangerous" and that it was not worth while to attempt anything above them (V. C., vol. ii., p. 81). In 1731, he wrote that "The great number of rocks which lie in these two rivers [Cuyuni and Mazaruni] and which occasion the falls by reason of the strong stream rushing over them, . . . wherefore it is impossible to establish any plantations there, although the soil is very well fitted for it." (V. C., vol. ii., pp. 84-85.)

Mr. im Thurn, in 1880, speaking from personal knowledge, says that beyond the narrow cultivated coast strip,

"is what may be called the timber tract, from which alone timber has as yet been remuneratively brought to market. This extends toward the interior as far as the lowest cataracts on the various rivers. It is at present impossible to cut timber profitably beyond the cataracts, owing to the difficulty of carrying it to market. (V. C., vol. iii, pp. 407-408.)

And again:

"The two remaining tracts [*i. e.*, above the lowest cataracts] are *entirely uninhabited* except by a few widely-scattered Indians of four or five different tribes." (*ib.*, p. 408.)

Rodway, speaking of English efforts, since 1884, to establish armed stations in the disputed district, says (Rodway, iii, 280):

"Another move in the same direction was made in 1892, by establishing a boundary post up the Cuyuni, near its junction with Yuruan. Except for its bearing upon the boundary, this post is quite useless and might be abandoned if the question were settled; under present circumstances, however, it is highly desirable that it be kept up, notwithstanding *the fact that the police who reside there have to perform a very hazardous and long journey of forty or fifty days to reach it, and then are cut off from all communication until relieved.*"

Mr. Dixon, a recent visitor to this Yuruan station, thus contrasts the difficulty of reaching the centre of the Cuyuni basin from the English settlements, and the ease with which the same point is reached from the Orinoco. This explains why that region has been Spanish for three centuries, but has never had a Dutch or English settlement within its borders until the recent armed invasion. He says:

"This made me, as an Englishman, feel considerably mortified to think that it takes our Government from five to six weeks to reach their frontier station, whereas the Venezuelan outpost was then being put, and by this time probably is, in direct communication with their capital by road and wire. Also, whereas it costs our Government an immense annual sum to maintain their small number of police at Yuruan on salt and tinned provisions (sent all the way from Bartica Grove, on the Essequibo, in paddled boats), within 200 yards on the other bank Kuyuni is the Venezuelan outpost, supplied with all kinds of fresh food from their cattle farms and plantations." (Jour. Royal Geog. Soc.; Apr., 1895, p. 341.)

Thus, not only has Dutch and English settlement kept close to the coast, but it is the topography of the country which has kept it there. The encircling rim, through which the rivers break only in cataracts, is the obstacle. Clearly, this constitutes a *natural barrier*. For over two hundred years the settlements have never passed and never attempted to pass twenty miles above the confluence of these rivers. Thus history tells us, without a study of the topography, that there is here a natural barrier.

Cabeliau, in 1598—before the Dutch came to Essequibo—

found the Spaniards building a road towards the interior from Santo Thome, with the purpose of opening the interior basin, and so informed the States General; and that the land of gold could not be reached without engaging the Spaniards there. The spread of the Dutch settlements was not up the river towards the interior. Their only efforts there were for trade.

In the Case of Venezuela (p. 228, § 12) this proposition is stated:

“ If a natural barrier exist between the coast region and the interior, that barrier will be the boundary between the two.”

To this Great Britain (C.-C., p. 136) responds: “ As a general statement this proposition is admitted.”

It is not necessary that this barrier should be impassable. It is still a barrier, though rivers have broken over it. The flow of the Colorado through its great canyon did not obliterate the mountain ranges, but rather emphasized them. The river broke a way for itself, but not for commerce.

In a report to the West India Company by E. D. Maurain-Saincterre, engineer in Essequibo, March 19, 1722, he says:

“ The ground is even better above in the rivers Essequibo, Mazaruni, and Cuyuni than below; but because they are full of rocks, falls and islands, and much danger is to be feared for large sugar canoes, this is the reason why up to this time the Europeans have not been willing to establish sugar plantations there.” (V. C., vol. ii, p. 79.)

In fact, the Dutch drew back, from their first and uppermost plantations, towards the coast. The Secretary in Essequibo, writing to the West India Company, in 1777, says (V. C. ii, 232):

“ There are several planters who hold thousands of acres of land which are not under cultivation. For most of the old planters, as soon as the lower lands were brought under cultivation, transferred their plantations which lay above this fort or Flag Island, brought off all their slaves, mills, cattle, etc., and practically abandoned the old plantations; but, in order nevertheless to retain their right, as they fancy, to those upper lands, they sent thither all their old and decrepit slaves, who can be of no use on the new plantations.

Thus one finds above this island (which is distant only one tide from the mouth) not one sugar, coffee or cotton plantations except only that of

the ex-Councilor S. G. van der Heyden, situated a great tide above this island, at the mouths of the two rivers Mazaruni and Cuyuni.

In these rivers, likewise, just as in the river of Essequibo, properly so-called, there can be found not one plantation which furnishes any products except a little cassava bread, and this of so slight importance as not to deserve mention. And this is also the case with the navigable creeks of Bonnasieke, Arriwary, Supinaam, and Itteribisie, each of which has only one sugar plantation at its mouth, and all the other lands in those creeks and rivers are and remain uncultivated." (V. C., vol. ii, pp. 232-233.)

What was believed to be true, in the earliest days, as to access to the Cuyuni Basin, is still true; and if this whole region was British the Cuyuni Basin would be opened up from the Orinoco and not from the Essequibo.

It was not true in the early days of Guiana, nor is it now, that the possession of the mouth of the Essequibo—even if accompanied by a coast occupation to the Pomeroon—was effective to cut off access to the interior by Spain. Spain found it easier to reach the Cuyuni at the mouth of Acarabisi creek from the Orinoco than the Dutch did from the coast, and Great Britain has found that at the present day the time is shorter from the Orinoco to the advanced Venezuelan posts, than from Essequibo to the British post in the same locality. The reason of the rule by which the river basin is sometimes treated as appurtenant to an extended coast occupation, does not support the British contention here. First, because there was no such prior coast occupation; and, second, because the principle of geographical unity—the ease of access, the closing of the natural gateway—assigns the basin of the Cuyuni to the Orinoco, from which it was first approached. The Cuyuni Basin did not (to use Phillimore's words) "have the occupied seaboard for its natural outlet to other nations."

As Martens has said (Int. Law, pp. 464-5):

"Therefore, it cannot be established as a principle as Bluntschli does—that the occupant has the right to consider as its domain not only the points effectively occupied by it, but moreover the whole territory that

'according to nature' constitutes, with these points, an organic whole. For example, according to Bluntschli, a country which has seized upon the mouth of a river is master of its whole course.

"The facts, however, may contradict the rules, and it may happen that no application of these latter can be made. It is only necessary to bear in mind that effective occupation creates for the occupant certain rights and imposes on other states corresponding duties."

In the present case, if there were any such rule as that which Bluntschli advocates, the facts contradict the rule, and no application can be made. In this case the area of effective occupation is determined both by barriers on the one hand, and by outlets on the other. To apply a hard and fast rule, as to river systems, to the geographical facts presented by the territory in dispute would be to run counter to the existing physical conditions—conditions which negative the theory that lateral tributaries are necessarily an appurtenance of a settlement on the lowest waters of the main stream.

But if the rule would have applied in case the Dutch and Spanish settlements had been contemporaneous, and each had manifested an intention to occupy the new basin, its operation is effectually prevented by the facts that Spain was the first discoverer, that her settlement had for its avowed purpose the occupation of the basin, that such occupation was reasonably necessary to the integrity and security of her settlement, and that in fact she was the first and the only one to settle the basin. The avowed object of Santo Thome and of all the costly Spanish expeditions into the interior cannot, in conscience or reason, be defeated by a constructive effect to be given to the later Dutch settlement. The States-General had been told by Cabeliau that Spain's purpose was to occupy the interior. In fact there was an actual Spanish occupation of a part of the basin before the Dutch occupation on the coast had attained such proportions as to support any pretence of a constructive occupation of the basin.

The presence of the Spanish missions in the Cuyuni basin, and

their possible effect in defeating her claim to the whole watershed, is thus referred to in the British Case (p. 163):

“Further to the south the Imataka Mountains and the range of hills constituting the water-shed between the tributaries of the Orinoco and those of the Cuyuni and Massaruni form the boundary of the river basin to which Great Britain is *prima facie* entitled. But if it be considered that Venezuela is entitled to the region about the Yuruari, in which the Mission stations were situate, the Schomburgk line offers a boundary with every advantage of physical features, etc.”

We have already seen the state of the Essequibo colony in 1648. It was not until 1658 that the Dutch attempted to occupy the Pomeroon. The plan was a large one, but the failure was even larger; for, in 1665, it was destroyed by the English.

In 1679 the Commandeur in Essequibo writes:

“The river Pomeroon also promises some profit; for, in order to make trial of it, I sent thither in August last one of my soldiers to barter for annatto dye. But there lately came tidings of the approach of a strong fleet of Caribs from the Corentyne with intent to visit this river and Pomeroon, having perhaps a secret understanding with the Caribs here to make a common attack upon us. (This danger, thank Providence, we have escaped; for I now learn from Berbice that they long ago passed this river on their way back from Barima, and, seizing in Berbice an Indian boat, have gone back to their homes again.) On receiving the aforesaid ill tidings I called in to the fort the above-mentioned outlier in Pomeroon, both to save him from being surprised, along with the Company's goods, by these savages and to strengthen ourselves in case of attack. Accordingly he came to the fort on the 8th inst. with all the goods, bringing with him a barrel of annatto dye which he had there bought up. The scare being now over, I shall send him back there within four or five weeks (the dye season not fairly beginning there before that date); and, if the trade prospers, it would not be a bad idea to build there a hut for two or three men, so that they may dwell permanently among the Indians and occupy that river.” (V. C., vol. ii, pp. 37-38.)

In 1689 the Commandeur in Essequibo wrote:

“In Pomeroon the Company has nothing to lose but a small bread and yam garden, with five or six decrepit negroes, . . . and the whole force there consists of only nine or ten men.” (V. C., vol. ii, pp. 59-60.)

In the same year the post was practically abandoned, as appears by this resolution of the West India Company:

“It was further resolved that from the colony of Pomeroun shall be removed whatever has been brought thither on behalf of the company, both the employees and the slaves and other commodities, there being left there only three men with a flag for the maintenance of the company's possession at the aforesaid place, and that the aforesaid employees and commodities be transported to Essequibo in order there to be employed for the service of the Company.” (V. C., vol. ii, p. 62.)

The condition of things in 1790 is told with particularity in the report of Commissioners Sirtema van Grovestins and Boey:

“The river of Essequibo is cultivated on the eastern side from Bourassiri to Bonnasigue, and on the western side from the Toeloekaboeka to the Supinaam Creek, being a distance of nine thousand six hundred rods. However, many more lands here could be brought under cultivation if the vicinity of the river Orinoco did not prevent it, for the Spaniards there sometimes come with armed boats, called lances [lanchas], as far as Moruca and by force carry away the Indians who dwell there, enslaving them, while on the other hand our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free.

The colonies of *Demerara and Essequibo* therefore form a stretch of *twenty-four [Dutch] miles* along the coast of Guiana; and, if means could be found to facilitate the inland communication by appropriate canals issuing into the rivers, both for the transportation of products and for the drainage of the lands, this would increase incalculably the land fit for cultivation. (V. C., vol. ii, p. 243.)

The noticeable things here are, that the Spaniards on the Orinoco were asserting by armed expeditions the ownership of Pomeroun; that by reason of this the Dutch could not extend their settlements to that region, and that Demerara and Essequibo combined only occupied “*twenty-four Dutch miles along the coast of Guiana.*”

Now, long before this time the Spaniards had established many missions in the watershed of the Cuyuni, and had asserted and maintained a military control throughout that region.

Spanish military occupation and surveillance of the lower Cuyuni resulted, in 1772, in the final abandonment of the last Dutch post in that river, three days' journey from the Dutch fort.

We conclude this discussion with the remark that Great Britain is not only asserting here a doctrine, as to river mouth settlements, the reverse of that maintained by her in the Oregon case, but is in the case now at bar denying to Venezuela the benefit of the alleged rule, while claiming it in her own behalf. Spain held the Orinoco, not constructively but actually. In the language of the British Counter-Case (p. 28): "The Spaniards entered, explored, settled and effectively defended the Orinoco." The occupation of the Orinoco and of the Essequibo present two very different cases. The former was "entered, explored, settled and effectively defended" by Spain. Of Essequibo and the Dutch these things cannot be said. If the Orinoco was Spain's—if she owned both its banks, from mouth to source, as she did—then a very mild and reasonable application of the watershed theory would give her the tributary streams—the Waini, the Barima and the Amacura. Her acknowledged dominion over the main stream could not be maintained without these. In the case of the Essequibo, Great Britain seeks to appropriate the main stream and all its tributaries by mere construction, and that apparently before any Dutchman had passed above the tide limit. And yet, admitting Spain's actual, effective dominion of the Orinoco, she denies to Spain two of its tributaries and seeks to appropriate by the seizure of Barima Point the command of the Orinoco itself.

CHAPTER XX.

MIDDLE DISTANCE AND NATURAL BOUNDARIES.

While no definite use has been made here, so far as we recall, by Great Britain of what is called the rule of the middle distance, it will not be amiss to briefly to state the reason and limits of the rule. It is not a mere rule of compromise—the splitting of the difference—and can have no application to any case where there is a line of right. This great Tribunal is organized to find the line of right, and is required to establish it when found. It cannot omit to do either of these things. It cannot, without finding the line of right, fix upon a middle line; nor, after finding the true boundary, give to one nation that which it has found belonged to another. Before the rule of the middle distance can be used, it must be found that there is no line of right; that neither party has a superior right to the whole or any determinate part of the disputed territory. In that case the middle distance is not the splitting of a difference, but the nearest possible ascertainment of the line of right. It proceeds upon the theory that there is no better right to any part of the territory in dispute. Neither party admits, or even suggests that we have such a case here. In the discussion between Spain and the United States, as to the western boundary of Louisiana, the former rested the suggestion of the middle distance upon the theory that two nations had made discoveries and settlements at some distance from each other, and that neither had a superior claim to the territory in controversy. In the case at bar Spain only has the discoverer's title, while that of the Dutch rests upon conquest, treaty, prescription, or an alleged abandonment of the discoverer's title. But if, in any case of a disputed boundary, the middle distance is to be applied as a basis of compromise, it

must relate to the beginning of the controversy. If one party has already, over the protest and insistence of the other, split the difference for himself by pushing forward his occupation to the middle distance, it would be an intolerable suggestion that an arbitration tribunal should again give him a middle distance. The rule as to natural boundaries was much, and very strangely, made use of by Schomburgk in his reports, and is still invoked to justify large Dutch and British encroachments. As applied to the British claims here, the rule is of very narrow application, and has relation rather to the field work of the surveyor than to the apportionment of large territories. It assumes that the line of right is approximately on the ridge, or watershed, or river, and that natural line is adopted rather than the nearby artificial one—because it furnishes a more permanent marking than the surveyor's posts. The use of the rule by Schomburgk is very extraordinary. Before he entered upon his survey he had selected his natural boundaries for British Guiana, and distinctly upon the principle that every point of advantage must fall upon the British side of the line. One is filled with wonder as he reads Schomburgk's letter to Governor Light, of July 16, 1839 (B. C. VII, pp., 2-7), to see the partiality shown by the Creator towards Great Britain. Every range and river was so located as to give to her a strategic point and to leave her neighbors defenseless. In every instance the "natural boundaries" beckoned Great Britain forward. If she claimed to one river, the one beyond was the "natural boundary"! If rapacity and injustice could ever be humorous, that letter of Schomburgk would give him new and unsought fame. He solemnly deprecates the "political motives" of the Brazilians, and appropriates the Amacura "to insure the political importance which always would be attached to the mouth of the Orinoco." He criticizes a boundary survey by the Brazilians, because the other Powers interested were not present in order to give their consent to the "extraordinary pretensions" of the one-sided and self-elected Brazilian Boundary

Commissioners, and forthwith sets about doing the same thing. He determines that Great Britain must have the command of the Orinoco, and must secure the savannahs about the Rupununi, in order to "command an inland navigation which may be extended to the Pacific Ocean." "A glance at the map of South America," he says, "is sufficient to show what advantages Great Britain may expect from these boundaries." He concludes that it is entirely "practicable to run and mark the limits of British Guiana on the system of natural divisions, and that the limits thus defined are in perfect unison with the title of Her Britannic Majesty to the full extent of that territory." What a rare and felicitous happening! Great Britain's rights and her wants accord! But the accord is not casual; her rights were fitted to her needs. Schomburgk, before going to Barima, had given to Great Britain the command of the Orinoco, and his observations there are to be taken in the light of that fact.

It was of this sort of use of the rule of natural boundaries that Phillimore wrote the phrase—"has been much used by powerful military states to cover the unjust spoliation of their weaker neighbors."

Natural boundaries that mark a geographical unit may be properly taken account of in determining the limits of a constructive occupation. But in the case in hearing, a line of right must be found, and when it is found no considerable amount of territory, and no strategic point can be taken from one and given to another by this rule. Only unimportant deviations may be made, and these may not all be at the cost of one party.

SUMMARY.

Thus far, in the discussion of the question of limits upon the theory of Great Britain that all of the disputed territory was, when the Dutch came to Essequibo, *terra nullius*; or, if not, that by the Treaty of Munster the Dutch obtained an equal right with Spain

to appropriate it by settlement—we have treated chiefly of the principal original settlements of each.

It remains now to see what was done by the Dutch in the way of advancing their settlements within the disputed limits.

We affirm, *first*, that no Dutchman was ever authorized to settle on the coast west of the Moruca, or upon any river entering that coast or the Orinoco, and that no Dutch colony or settlement was ever established there. No colony or settlement of Dutchmen could have been founded there without the authorization of the Dutch West India Company. No Dutchman had any right to go into that region, or to sojourn or trade there without the authorization of that Company. If, without this, he went there he was a trespasser against Dutch law, and could acquire no landed rights; for the West India Company had, as against all Dutchmen, an exclusive right to trade and to plant settlements there. This right the Company strenuously asserted against the Surinam Dutch. The Essequibo and the Pomeroon settlements were authorized by the Zeeland Chamber, but no settlement in the Waini-Barima region was ever authorized. A trade there was authorized and was conducted in large part with the Spaniards, but no act was ever done or authorized looking to colonization in the region we are speaking of. The Dutch records have been remarkably well kept, and they show that the Governor of Essequibo was required to record and to report with commercial exactness his receipts and expenditures. His pay rolls contain a list of all officers and employees, and these were very carefully scrutinized and supervised at home. An attempt by the Governor to found a new settlement without the previous authorization of the Chamber would have promptly ended his career. A new settlement implied a large expenditure—a fort, a garrison and civil officers. The home authorities and the Governor were not clear whether they could claim this region. They were fruitlessly asking each other where the boundary was.

But there is more than an absence of authorization to any Dutchman to settle there; there is an affirmative statement of what was authorized there. It was a "shelter" and not a post or a settlement. It did not contemplate the use of the soil, or the gathering of settlers about it; and in its very nature was a disclaimer of any purpose to hold the locality against the Spaniards. It had relation to trade only, and to a trade that was not seated, but fugitive. The name and the character of these stationary umbrellas was familiar; and Queen Elizabeth, in 1580, told the Spanish Ambassador that these "shelters" could not confer territorial rights (B. C.-C. App., p. 317). What England then denied to Spain, she now allows to herself.

No Dutchman was ever authorized to go to, or to remain for a season in the Waini-Barima region except for trade or to catch fish or slaves; and, save this temporary "shelter" there never was west of the Moruca any authorized Dutch post, house or structure of any sort.

In 1766 the Court of Policy "forbade that any one hereafter stay in Barima" (V. C., vol. ii, p. 165). In 1768 the Dutch Director-General reported the robbing of "the Widow la Riviere" by Spaniards; and added that "this did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security, I had this inserted in his pass; he was also forbidden by the Court to settle in Barima." (V. C., vol. ii, p. 176.) And, in 1769, he wrote that the widow of Jan la Riviere, "who against the absolute prohibition of the Court had gone with his slaves to live in Barima," having died there his widow had been "robbed" of everything by the Spaniards, and had returned to Essequibo. (V. C., vol. ii, p. 187.)

We know that smugglers and other disorderly people—some of them probably Dutch—were there for a time. We know that Surinam Dutch went there to trade against the protest of the Commandeur in Essequibo. How many seasons any of these sorts of visitors remained hidden on some one of the interlacing water-

ways, we do not know, but we do know that neither the West India Company nor any other Dutch governmental authority ever authorized any Dutchman to settle or to appropriate lands there, and that if any one did so his act was not only unauthorized, but in opposition to Dutch authority.

But, if the signs and traditions found by Schomburgk are fully accepted, it remains to be proved that the Dutchman was an Essequibo or Pomeroon Dutchman authorized to be there; for, if he was a fugitive, or a Surinam Dutchman, he had no Dutch right to be there. He was an intruder or a smuggler, whose presence could not create a settlement of the West India Company, or in any way affect the boundary question. The utter lack of any reliable knowledge as to who he was, how he came there, or how long he remained, leads most strongly to the conclusion that he was one who felt that his presence needed to be concealed. Upon such evidence as this a title by settlement certainly cannot be founded. The most westerly Dutch settlement on the coast then was on the Pomeroon river.

In 1802 the English Commandant of Berbice, Demerary and Essequibo speaks of the "River Pomeroon, at the entrance of which is the *furthest* military post, called the post of Morrocco." (B. C. V, p. 172.)

This condition was continued under the British until 1824. There was not the slightest semblance of British influence west of the Moruca until after 1839, about which time the Postholder in the Moruca began to make casual visits to the Barima-Waini region.

The British claim to the coast region west of the Moruca cannot be rested upon an actual occupation by settlement.

We turn now to the interior, to see what part of the disputed territory there, if any, was ever settled or actually occupied by the Dutch. We affirm with confidence that nothing that can, by any stretch of consideration, be properly called a settlement was ever established by the Dutch above the lowest falls of the

Cuyuni. No Dutch grant of lands above that point was ever made, nor was there any survey or subdivision of lands made looking to individual allotments.

The only structure of any kind raised in the interior of the disputed territory, by the Dutch, was for a postholder's dwelling on the Cuyuni.

Dutch trading posts were temporarily established somewhere on the Cuyuni, from 1754 to 1758; again, from 1766 to 1769, and from 1769 to 1772.

There was never any post in the Mazaruni above Fort Kykov-eral, and while there were a few plantations on that river above and near the Fort during the earlier days of the colony, in 1781, the Director-General, in giving a list of plantations, assigns but one to the Mazaruni.

The first attempt on the part of the British to occupy the interior above the lowest falls of the Cuyuni was in 1880, when placer mining was begun on the Puruni. The present police station, at the junction of the Cuyuni and Yuruari rivers, was not established until 1890.

As to Spain's relations to the disputed territory after the Treaty of Munster, they have been discussed in other chapters of this argument. For present purposes it is enough to say that, apart altogether from any question of settlement or control by Spain, her title to that territory was not dependent upon questions of settlement. Upon other considerations, discussed in other chapters, that territory belonged to Spain. It was hers by right of perfected discovery, by the rule of watershed, and upon the principle of security.

In passing, it may be added, especially in the interior, Spanish settlement was greatly advanced after the Treaty of Munster. Missions were established, as we have shown, which were authorized, defended and supported by the Spanish government. Every one of these contemplated the gathering of a village, and the use of the lands for agriculture and for grazing. The place did not

depend wholly upon imported colonists, but contemplated the bringing of the Indians into the villages, the breaking up of the tribal relations and the establishment of a clerical and civil Spanish control over them. They were not made slaves, but Catholics and Spaniards. Each of these missions sent out its expeditions into more distant parts to gather in the Indians; and the records of the Dutch show that a very extensive and successful grazing industry was established. Horses and cattle were raised in such numbers that the Dutch supplied their needs by purchase from the Spaniards and from a region now claimed by Great Britain to have been Dutch territory. If this region was open to appropriation by settlement, by the first comer, it was appropriated by Spain; for Spain only ever made a settlement within it.

CONCLUSION.

Venezuela, with great respect but with great confidence, now submits to this High Tribunal the very serious issues involved. She does this in the happy belief that in the short but brilliant history of arbitration tribunals this one will find a conspicuous place, and will recommend to other nations the use of this great agency of peace. Venezuela has no direct representative upon this Tribunal; and, by this fact, it is more nearly assimilated to the great courts of justice from which the idea of representation is wholly absent. No other international tribunal has presented this feature. They have been too much the conferences of representatives, rather than the consultations of judges, to whom the parties are quite indifferent. The one tends to unsatisfactory compromises, the other to decrees that establish rights. In the very constitution, therefore, of this Tribunal we have the strongest appeal to the sense of impartial justice and the surest ground of hope that the judgment may confirm the faith of those who believe that it is possible to bring the nations to a bar that will treat them with the same impartiality that is shown to individual litigants. When that confidence is fully established, the era of a universal peace will be near.

Respectfully submitted,

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Counsel for Venezuela.

Of the following six papers the first four have been prepared by His Excellency Señor Rafael Seijas, formerly Minister of Foreign Affairs of the United States of Venezuela, and the remaining two by the Agent for that Government before the Arbitral Tribunal.

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THE BULL OF POPE ALEXANDER, 1493.

[*Translation.*]

I have read the book sent me by the Ministry for examination, it being the one just received, and entitled "The Diplomatic History of America. Its first chapter, 1452-1493-1494, by Henry Harrisse, London, 4 Trafalgar Square; B. F. Stevens, Publisher, 1897." It seems to be a new edition of the work of Harrisse which is cited in the following extract.

I copy the following from a paper prepared by me in 1886:

"The London *Times* of the 7th March ultimo publishes an opinion on the Venezuelan boundary question, written by Mr. Emil Reich, LL. D, who, on reaching the subject here discussed says:

" 'It now remains to inquire into the legal points involved in the present question. Spain, and now Venezuela, base their claim on South American territories on the famous Bull "inter coetera" of Pope Alexander VI (May 4, 1493), and on the Treaty of Tordesillas (June 3, 1494). It does not occur to us to question the power of Pope Alexander to issue such a Bull.'

"There can be no reasonable doubt that then, in the latter half of the 15th century, the Popes were pretty generally considered as the depositaries and exponents of international law."

"That they ceased to be held as universal arbiters in the 16th and still more in the 17th century; that their legal attitude to the acquisition of 'ultramarine' countries was already, in the sixteenth century, most forcibly assailed and impugned by even Spanish teachers of international law, such as Francis de Victoria, Melchior Cano, Dominic Soto, Antonio Raminez, &c.; all that does not legally affect the recognition of the Pope as international arbiter in the latter half of the 15th century.

"As was done by the present Pope in the arbitration case between Spain and Germany *in re* the Caroline Islands (1885), so every fair critic must proceed now in the case between England and Venezuela—we must apply to historic questions of the 15th century the principles of law of that very century, and of no other. In thus accepting Alexander's Bull as a legal title, we can yet not accept it as a clear title. The line of demarcation drawn by the Pope has never been clearly fixed, and HARRISSE has proved that, if anywhere, that line struck the Continent of South America so far west as to exclude the territory between the Orinoco and the Amazon rivers—that is, the Guayanas. To cap this it can be shown that in the long transactions between Spain and Portugal *in re* their boundary disputes in South America in 1750 and 1777, the Bull of the Pope, although directly bearing on the question at issue, was never mentioned at all, *et pour cause*.

The book consists of twenty chapters, as follows:

- I. The Papal Grants to Portugal. 1452-1484.
- II. Spain asks the Pope for a Grant of the Newly-Discovered Regions. 1493.
- III. The Three Bulls of May, 1493.
- IV. Alleged Protest of Portugal at Rome.
- V. The Bull of Demarcation not "ridiculous."
- VI. Spain sends an Embassy of Obedience.
- VII. The Fourth Bull of 1493.
- VIII. Signing of the Treaty of Tordesillas.
- IX. Alleged Partition of the Globe.
- X. Columbus and the Treaty of Tordesillas.
- XI. Spanish Interpretation of the Treaty of Tordesillas.
- XII. Ferrer's Theory.
- XIII. The First Tracing of the Demarcation Line.
- XIV. The Theory of Enciso.
- XV. What is the River Marañon?
- XVI. Enciso's Geographical Description.

- XVII. The Marañon and the Maranhão.
 XVIII. Spanish Ruling at Badajoz.
 XIX. The Demarcation Line in Spanish Maps.
 XX. The Official Model Map.

Conclusions.

Notes.

Of these chapters the fifth is so interesting that it has seemed well to translate it in full, and include the translation herewith, pp.

It is also well to study the conclusions, which are as follows:

CONCLUSIONS.

Notwithstanding the subsequent Bulls and treaties between Spain and Portugal, all attempts to determine the place where the Demarcation Line was to pass in America have been based upon the stipulations of the Treaty of Tordesillas (1494).

The location of this divisional line has varied according to the notions which the cosmographers of the times had of the circumference of the earth and of the length of the marine league.

But in every instance save one the Line was fixed east of both mouths of the Amazon river.

Thus do we find that, according to Jaime Ferrer (1496), the meridian of the Demarcation Line *on his sphere* was in $42^{\circ} 25'$, west of Greenwich, and *on our sphere* in $45^{\circ} 37'$, also west of Greenwich.

According to Martin Fernandez de Enciso (1518), that meridian, *on his sphere*, was in $47^{\circ} 24'$ west of Greenwich, and *on our sphere* in $45^{\circ} 38'$, also west of Greenwich.

According to the experts convened at the Badajoz Junta (Duran, Sebastian Cabot, etc., in 1524), the meridian of the Line, *on their sphere*, was in $47^{\circ} 17'$ west of Greenwich, and *on our sphere* in $46^{\circ} 36'$ west of Greenwich.

According to Diego Ribeiro and the Sevillian Hydrography of the 16th century (1529 usque * * *), the meridian of the Line,

on their sphere, was in $44^{\circ} 45'$ west of Greenwich, and on our sphere in $49^{\circ} 45'$, east of the western mouth only.

Yet, according to Alonzo de Chaves and the Padron General, as interpreted by Oviedo (1545), the meridian of the Line on that model chart was in a longitude seeming to correspond, on our sphere with $45^{\circ} 17'$ west of Greenwich, which locates the Line east of both mouths of the Amazona.

As to the Portuguese cosmographers, they place the Line, judging from its position in the Cantino map, (1502), in a longitude apparently corresponding, on our sphere, with $42^{\circ} 30'$ west of Greenwich."

It results, then, that Guiana, lying to the west of this meridian, belonged to Spain.

The British Case says that England, France, and Holland repudiated the grants made by the Bulls.

But the book examined proves that in former times Great Britain recognized them, and to one of them she owes the acquisition of Ireland.

Dr. Quijano Otero upholds the Bulls in his historical report upon the boundaries between Colombia and Brazil, claiming that all Christian Princes have recognized their validity, and citing the case of Edward IV of England.

Their validity is also admitted, as has been shown, by the English lawyer, Emil Reich.

And it is also admitted by the United States of America, since they place the Bull of Alexander VI at the head of the Constitution of Florida, which Spain ceded to them in 1819. See their official publication -- *Federal and State Constitutions*.

That document also figures in the Case of the Argentine Republic in its recent boundary question with Brazil, decided by the arbitral award of the President of the United States of America.

CARACAS, May 10, 1898.

(Signed)

RAFAEL SELJAS.

THE BULL OF DEMARCATIION NOT RIDICULOUS.*

In our days, after four centuries, the power which the popes claimed to exercise regarding the paramount sovereignty over the islands of the world, appears to us excessive and singular. It is not without surprise, therefore, especially among Protestant nations, that Venezuela, for instance, is seen at such a late date to appeal to a papal grant as the source of her rights over Guiana in the present conflict with England. But it is evident that to judge the question with impartiality, we must carry our thoughts back to the time when the donation was made to Spain, and not consider it with the ideas which prevail to-day.

Apostolical letters constituted in a great measure at the close of the fifteenth century what might be termed the ruling law of Europe, since they were based upon traditions, as well as rules which were universally deemed to be equitable, or, at all events, received as such by all European nations. England, which now describes that supreme authority and its logical, direct and immediate consequences as "comical" and "ridiculous," yielded to it formerly with as much readiness and respect as any other nation. Nay, during several centuries, her historians believed, and a number still believe it, that the rights of Great Britain over Ireland had precisely the same origin as the rights claimed by Venezuela over a part of British Guiana. And so it is, historically.

In the "Metalogicus" of John of Salisbury can be read the following statement: "At my request the Pope granted and gave to the illustrious King of England, Henry II., Ireland to possess by an hereditary title, as is shown by his Letters, which are preserved to this day. For all those islands, by virtue of a very ancient right, are considered to belong to the Roman Church, in

* This article, pp. vii-x, entitled *The Bull of demarcation not ridiculous*, is a reprint of Chapter V. of a work entitled *The Diplomatic History of America*. London. B. F. Stevens, 1897.

consequence of the donation made by Constantine, who founded and endowed that Church. Besides, Pope Adrian sent through me a golden ring adorned with a gem of great value, in proof of the right to govern Ireland."

One of the letters mentioned by John of Salisbury is evidently the Bull *Laudabiliter*, inserted by Baronius and by Rynær in their collections, under the date of 1155. We notice in that document, among the reasons of Adrian IV. for granting to Henry II. the kingdom which he was preparing to conquer, two of those adduced by Alexander VI. in the Bull granting the New World to Ferdinand and Isabella, viz.: for the strengthening of the Church, and the spread of the Christian religion.

The authenticity of a part of that apostolic letter is now contested, and not without cogent arguments. But it cannot be denied that the Bull *Laudabiliter* well expresses the sentiments which, as regards the alleged primordial rights of the Holy See, were recognized by European nations in general, and England in particular. Even if, as several scholars of note say, the Bull had been invented or interpolated by Henry II., we are bound to infer from such a deception that the sovereignty of the popes, at least over the islands of the world, was recognized in the British Isles as well as anywhere else. Otherwise, of what use would have been the supposed interpolation?

Further, on the Sunday preceding the Feast of the Assumption in 1172, Henry II., in the Cathedral of Avranches, before the legates, bishops, barons, and people, his hand on the Gospels, placed his own kingdom of England and all its dependencies under the pontifical sovereignty. The following year he was more explicit still. In a letter addressed to Pope Alexander III., in 1173, the authenticity of which has not been questioned, he says to the pontiff: "The Kingdom of England belongs to your jurisdiction; and as to the obligation of feudal right, I acknowledge myself to be the subject of you alone." It was not therefore a mere spiritual sovereignty, but one paramount and absolute.

Under the circumstances, it is evident that a king who declared himself to be, in such terms, a mere vassal of the Pope would not have acted inconsistently in asking of him the grant of the Kingdom of Ireland which he coveted.

This submission to the rights or pretensions of the papacy was not limited in England to the Plantagenets. It continued in the Houses of Lancaster and York. Such, at least, was the case with the first Tudor. The five embassies of obedience which Henry VII. sent to Rome from 1485 to 1493, prove his catholic deference. It is no exaggeration therefore to say that if the auditor of the Rota, Jerome Porcio, had kept his promise to publish the discourse "bene et eleganter compositum," which was pronounced by John Sherwood, Bishop of Durham, when, December 14, 1492, he came with Giovanni Gigli, of Lucca, to place the oath of obedience for Henry Tudor in the hands of Alexander VI., we should find in his oration the same expressions used in the discourses pronounced about the same time by the ambassadors of the Catholic Sovereigns. And just before the time when Borgia granted to Ferdinand and Isabella the countries recently discovered by Christopher Columbus, England still took as a basis for her right of sovereignty over Ireland, the Bull *Laudabiliter*, that is, an authority derived from the same principle and source.

Again, the sending by Henry VII. of John Cabot four years afterwards to discover Cathay does not militate against his regard for the papal authority in that respect. The King of England doubtless interpreted the rights conceded to Spain and Portugal as not excluding in the main the search by other nations for new lands and islands. The restrictions set forth in the Bulls applied only to the discoveries actually accomplished by those two powers. This we see by the fact that Henry VII. imposes as a primary condition the going only to regions heretofore unknown of all Christians: "Quae christianis omnibus ante hæc tempora fuerunt incognitæ." These are almost the terms of the Bulls *inter cætera*. But those discoveries once accomplished, they required the

confirmation and vesting from the Pope, according to the then custom in Europe.

At that time Henry VII. entertained sincere feelings of respect and gratitude for the papacy. He had not forgotten the eminent service rendered to him only a few years before by Innocent VIII. When, after the Battle of Bosworth, wishing to extinguish forever the dissensions existing between the Houses of York and Lancaster, by marrying his cousin, the daughter of Edward III., he had not only obtained, without difficulty, the required dispensation, but by sending Giacomo Passarelli to London, and by the famous Bull *ineffabilis sedentis*, the Pope had lent him powerful aid and consecrated the new dynasty.

Under such circumstances Henry Tudor would not have disregarded the decisions of the Court of Rome, with which he never ceased to be in the best of terms, as is shown by the frequent embassies of obedience which he sent him at the end of the fifteenth century.

It is true that by what we know, through Burchard and In-fessura, of the orations which were pronounced at Rome by the special envoys of the King of England, particularly that of May 1, 1504, on the occasion of the accession of Julius II., we gather that no mention is made of the countries discovered in the north-west. But the expeditions of John Cabot, of the brothers Fernandez, and of Bristol shipowners, had yielded no such results as Henry VII. cared to secure. Those voyages to Labrador and Newfoundland, where the navigators sailing under the English flag had scarcely found anything else than barren countries, icebergs and white bears, resulted neither in profits nor expectations. This is the reason why we do not see England put forward Cabot's expedition as the ground of her rights to the sovereignty of North America until a century afterwards, and then chiefly to thwart the efforts of France in colonizing Canada and the adjacent regions.

COMMENTS AND CRITICISMS ON THE BRITISH CASE.

[*Translation.*]

The British Case dedicates an article to "Papal Grants." It calls attention to that of Alexander VI to Spain, the prior one of Nicholas V in favor of Portugal, the controversies between that nation and Spain, and the treaty concluded between them at Tordesillas in 1494. It then states that by the Treaty of Madrid, 1750, Article 1, all rights which rested upon the Bull of 1493, the Treaty of Tordesillas and others, were put aside; and by subsequent articles the right of the two Powers *inter se* were declared anew. That the grants made to Spain by the Papal Bulls were entirely repudiated by England, France and Holland. That Calvo, treating of the pretensions of Portugal in Africa without actually resting upon the Papal title, observes parenthetically that the Bulls have, however, "a judicial character with relaxation to the epoch in which they were published"; that with this exception all the writers from Grotius down considered those Bulls as binding only, if at all, upon Spain and Portugal, but utterly inoperative as regarding other powers. That Francis I of France, and Elizabeth, of England, both protested against these claims, and consequently they have ignored them; and finally, that Calhoun, in the course of the Oregon question, wrote as follows:

"When this continent was first discovered * * * Spain claimed the whole in virtue of the grant of the Pope, but a claim so extravagant and unreasonable was not acquiesced in, and could not long be maintained."

It does not appear that there is much accuracy in the preceding allegations, particularly if we have before us the said treaty of 1670, by which Great Britain received from Spain the confirmation of that which at that time the British King or his subjects possessed in America; which was agreeing that America and her adjacent islands in fact belonged to Spain, whether this title was

derived from the grants of the Pope or from discoveries prior and subsequent thereto.

This case refers to a passage of Calvo, Section 270, in which he says, parenthetically, after citing the bulls, that "the importance of the judicial character of these documents with respect to the epoch in which they were published cannot be denied" (the words, however, not being given in full), which show, it is said, that the publicist referred to does not found a title upon them; but Calvo in other places speaks more explicitly. For example, on page 24 of the introduction to his work, or page 283, Section 283 in the first, he writes:

"This important question of the right of possession and sovereignty over recently discovered lands shows the character of the political relations which European States preserved toward the Roman Pontiff, and that, until a direct and special agreement was entered into, neither Spain nor Portugal hesitated to accept the competency and authority of Alexander VI., who disposed at will of the ownership of the regions, islands and continents which the genius of navigators might reveal to the world."

In Section 283 he is even more positive and emphatic, as he expresses himself in these terms:

"The public law of Europe in the latter part of the Middle Ages was completely dominated by the Church; the Pope was considered hierarchically as the supreme authority in the determination of international questions. On the other hand, in order better to justify appropriation by way of conquest, it was admitted that the Christian nations had an implicit and absolute right of dominion over the pagan nations. From the combination of these principles was derived the situation created toward the American aborigines, according to the European nations, by the right of discovery and the celebrated Bull of Alexander VI., which, by means of the line drawn at a distance of three hundred leagues to the west of the Azores, fixed the territories destined to belong to the crowns of Spain and Portugal respectively. It is known that later, with a view to settling the disagreements which had arisen between the interested parties, the imaginary line was extended to three hundred and fifty leagues west of the same islands, thus legitimatizing the pretensions of the Portuguese to the sovereignty of Brazil.

However, the European domination over the lands and islands of the

new world does not rest exclusively upon the decisions of the Holy See and the precepts of canonical law; they had also another foundation, which Spain herself has invoked more than once in support of her rights to the territories of which her bold navigators had succeeded in taking possession. It was unlikely that France, England and Holland, imbued with a desire to create a colonial dominion and to open new fields for their commerce, should avail themselves of the same principles; and thus it was that there broke forth those bloody maritime wars which characterised nearly the entire seventeenth and a part of the eighteenth centuries."

On the other hand, the book of HARRISSE, which is spoken of in a different paper, proves how far the veneration of the British for the acts of the Pope as supreme legislator extended, and proves, also, that to a Bull they owed the acquisition of Ireland. If the Popes had the right to make grants in favor of England it would be absurd not to admit that they had the power to make like grants to Spain.

As to GROTIUS, he was a Dutchman, and wrote with the earnest desire to justify the conduct of his nation in America and elsewhere.

It is not true that the publicist CALVO alone concedes value to the acts of the Pope in these times.

Ch. SALOMON, in his work "Occupation of Territories without an Owner," published in Paris in 1889, has for the first chapter the following:

"Period of the Bulls." "Summary. 8, Epoch of the Great Discoveries. 9, The Bulls. 10, The Bulls of Alexander VI. 11, Treaty of Tordesillas. 12, *Principles applied during this period.* 13, The rights of the natives,—Victoria. 14, Analysis of the dissertation upon Victoria. First part: The Indians were the proprietors and sovereigns of the soil which they occupied. 15, Second part: Analysis of the titles invoked by the Spaniards to establish the validity of their taking possession. 16, Third part: What are the titles which may justify such taking of possession."

In number 11 he says: "We have to give an opinion upon the different Bulls and the treaties which affected the partition of the world between Portugal and Spain. The principles which inspired them would hardly find a partisan in our day, and on this point we agree with the opinion of

Cauchy: *It is necessary, if one wishes to understand their spirit and appreciate their value, to take care not to study them in the light of modern ideas.* In the practical point of view, the Bull of Alexander VI. has found defenders even down to our own times. Bentham, impressed with the difficulties presented by the theory of discovery and the occupation as it was understood at the period in which he wrote, eulogizes it in a manner apparently sincere. Sumner-Maine is not far from agreeing with his opinion."

Number 12 is to the following effect: "The doctrine of the period with which we are occupied may be reduced to four propositions: (a.) *The Pope has the right to dispose to whomsoever he may choose all the lands situated outside of the civilized world, whether discovered or not; all property as well as all sovereignty proceeds to him.* These two ideas, on the other hand, are confounded; (b) the acquisition of those immense territories, unknown up to that time, is not by reason of discovery nor by occupation, but to a donation graciously given by the Pope. So that the title to possession is derivative and not original. The donation is always revocable if the conditions under which it was given are not observed; (c) the Christian only can possess and be a proprietor; only the Christian state enjoys the rights of sovereignty; (d) the pagan natives have no rights."

According to this the writer deems applicable to the questions which originated at the time those doctrines were in vogue, the principles then prevailing.

Of the same opinion is Cauchy, cited by Salomon. In effect, the former, in the article entitled "Bulls of Partition," writes with regard to that of Alexander VI as follows:

"It is one of the last and most solemn occasions in which the Papacy intervened under color of religious interests, in the settlement of the temporal affairs of the crowns. *That act has been too much judged according to our modern ideas, instead of applying to it, on the contrary, the ideas which had for such a long time prevailed in Europe, whose empire, enfeebled by degrees in a part of Germany and other great central States, yet preserved itself unimpaired in the Spanish Peninsula.*"

In a note added at the foot of this article we find:

"The Kings of Portugal submitted the legitimacy of that discovery and possession to the judgment of the Pope, the supreme common judge selected in those times as an arbitrator by all the kings in Christendom, in their

differences. (*Investigations as to the priority of discovery of the countries situated upon the western coast of Africa beyond Cape Bojador, by Vicount de Santarem, p. 66.*)

"Grotius himself was inclined to consider the *Bulle of Partition* as a form of transaction between the two crowns rather than an exclusive attribute of dominion. Or, it may be said that this decision is without force, or, *which is not less credible*, that the desire of the Pontiff was to intercede in the Castilian-Portuguese controversy rather than to in anywise prejudice the rights of others."

The jurist, Emil Reich, in his opinion upon the Guiana question published in the *London Times* of March 7, 1896, declared that the power of Pope Alexander VI to grant the Bull of 1493 could not be questioned.

If Calhoun really wrote that which is attributed to him, yet another Secretary of State of the American Union, Upshur, stated in 1848:

"How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of nations has yet definitely settled. The opinions of mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights, acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against the changes of opinion resulting merely from the more liberal or the more just views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations *as understood at that time*, and not by the improved and more enlightened opinion of three centuries later." [Wharton's Digest, Sec. 2.]

Washington Irving, cited by Rodway and Watt, "*Annals of Guiana*," affirms that:

"During the Crusades a doctrine had been established among the Christian princes" according to which "the Pope, from his supreme authority over all temporal things, was considered as empowered to dispose of all heathen lands to such potentates as would engage to reduce them to the dominion of the church, and to propagate the true faith among their benighted inhabitants."

The Colombian publicist, Señor Jose Maria Quijano Otero, in his report on the boundary between Colombia and Brazil writes:

“ All Christian princes recognized the validity of these Bulls, and it is even affirmed that some British merchants having desired to carry on trade with Guinea, the King of Portugal, John II., called upon Edward IV., King of England, to impede such trade, basing his demand upon the dominion conceded to him over that territory by a Papal Bull. The prohibition was carried into effect, the British monarch being convinced of the claimant's rights.”

He cites in support of him Hakluyt's Navigations, Voyages and Traffics of the English; Vol. II., Part II., page 2.

The United States acquired Florida by purchase from Spain in 1819, and soon after she entered into the membership in the American Union. In the book entitled “ Federal Constitutions of the United States, Colonial Laws, and other organic laws of the States,” compiled pursuant to the order of the Senate of the United States by Ben Perley Poore, in setting forth the constitution of Florida he places before it the privileges conceded to Columbus by the King of Spain on April 3, 1492; the Bull of Pope Alexander VI., of 1493, which granted America to Spain; the treaty of 1795, between her and the United States, and finally the treaty of February 22, 1819, relating to the cession of Florida.

What the British Case says regarding the Treaty of Madrid of 1750 is completely overturned by the observation that, when it declares that this Treaty shall be the only basis for the division of the dominions of Spain and Portugal in America, and agrees to declare annulled any right and action which the two crowns could found upon the Bull of Alexander VI., and the Treaties of Torde-sillas, of Lisbon, or the agreement executed at Zaragoza, and of any other treaties, conventions and promises, it adds that all of them, as far as they refer to the line of demarcation, should be void and of no effect, *but should remain in full force and vigor in every other particular.*

It thus annulled the basis of the line of demarcation, but not

the gift of the Dominion of America and other places made to the two crowns.

To the same end, it is claimed that only acquisitive prescription is applicable to nations, and in no manner free prescription. Because of this, and for the reason that the Treaty of Munster did not authorize Holland to conquer territory in Guiana that Spain deemed to be hers, and because that document prohibited either of the two parties selling and trafficking in the places possessed by the other, including therein those taken from Holland in Brazil by the Portuguese; it has been deduced that such prohibition has always been in force, and that in consequence thereof the Dutch could not, without violating it, occupy places that were not among those ceded to them by the Treaty of Munster, that is to say, Kykoveral and the mouth of the Essequibo.

Those arguments may have so much more effect, in view of Rule (a) of the Treaty of Arbitration, which does not impose upon the judges the obligation of considering exclusive political control of a district or its effective colonization as equivalent to prescription, but gives them permission to do so. Of this permission they will or will not make use, according to the reasons which one or the other party may present to them. Those here set forth may incline them not to make use of this permission.

Prescription is subject to certain conditions; one of them should be applicable to the case here. For example, it cannot take place with regard to the sea, as was sustained by Great Britain in the question of the fur seals of Bering Sea; neither can it have the effect of relieving the fulfillment of obligations of a perpetual character agreed upon in treaties; much less, when in addition to what is contained in the Treaty of Munster, there exists that of Utrecht of 1713, in which the following was agreed upon:

“On the contrary, that the Spanish Dominions in the West Indies may be preserved whole and entire, the Queen of Great Britain engages that she will endeavor, and give assistance to the Spaniards, that the ancient

limits of their dominions in the West Indies be restored and settled as they stood in the time of the aforesaid Catholic King, Charles II; and if it shall appear that they have in any manner, or under any pretense, been broken into, and lessened in any part since the death of the aforesaid Catholic King, Charles II." [That was in 1700.]

to which may be added that by the Treaty of October 28, 1790, it was agreed between Spain and England [Article VI.] that "with respect to the Eastern and Western Coasts of South America, and to the islands adjacent, that no settlement shall be formed hereafter, by the respective Subjects, in such parts of those Coasts as are situated, to the South of the parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain; provided that the same respective Subjects shall retain the liberty of landing on the Coasts and Islands so situated, for the purpose of their Fishery and erecting their huts, and other temporary buildings, serving only for these purposes."

According to the first of these articles the Dutch were prevented from making acquisitions in Guiana that should alter the *status quo* of 1700; and in case of their doing so, England should aid Spain in re-establishing things to their former status.

In conformity with the second, England, or her subjects, were prohibited from forming settlements on the coast to the Southward of the Orinoco, occupied as it was by Spain; a prohibition which must have been in force since 1796, when Great Britain captured the Dutch colonies in Guiana and retained them except for a brief interval between 1802 and 1803. (1)

As we are now speaking of prescription, it would be well to bear in mind the argument employed in the Venezuelan Case on page 229. It reads as follows:

"Venezuela has accepted this rule, but she submits and will claim that *time* is but one of many elements essential to create title by prescription. Prescription to be effective against nations, as against individuals, must be *bona fide*, public, notorious, adverse, exclusive, peaceful, continuous,

(1). We believe this corroborates the proposition of law set forth in the Venezuelan Case under No. 18, page 229.

uncontested, and maintained under a claim of right. Rule (a) fixes fifty years as the *period* of prescription, but leaves the other elements unimpaired."

It would be well to enumerate in that connection each and every one of the protests of Venezuela, and other acts of herself and of Spain which are opposed to the application of the rule.

The same may likewise be observed with regard to what is written on page 236 of the said Case, which contains this argument;

"The present occupation by British subjects and persons under British protection having been effected subsequent to 1850, in the interior, and subsequent to 1834 on the coast, and having been undertaken after due warning from the Venezuelan Government that titles thus sought to be acquired would not be recognized by it, and after notice from the British Government that persons so entering into said territory must do so at their own peril, said subject and persons may be regarded by Venezuela as mere trespassers, and Venezuela is under no obligation to recognize any British titles which such subjects or persons may have acquired to lands situate within said territory."

The British Case contains the following statement:

"The Venezuelan Government were aware of the position of the boundary posts erected by Schomburgk, and made remonstrances to Her Majesty's Government upon the subject."

It would not have been improper to add, that not alone did Venezuela protest against the placing of the posts, but also secured an order for their removal, together with the declaration that they did not signify any act of jurisdiction, being merely a preliminary step subject to future discussion between the two Governments. Further than this, the British line does not pass through Barima, but through the Amacuro, a river situated to the west of the other. Until 1886 the Republic had no notice of such a line, and even then not because Great Britain informed her of it. It was the Governor of British Guiana who mentioned it in the reply given by his secretary to the Venezuelan Commissioners, Dr. Jesus Muñoz Tebar and General Santiago Rodill, through the Consul of this country in Georgetown on January 8, 1887.

In the British Case it is hinted that Venezuela should not be permitted to make use of the propositions of Lord Aberdeen in 1844, nor of Lord Granville in 1881, because she did not accept them, and has not desired any compromise, nor anything but the decision of the legal question; and because they were made in a spirit of indulgence and great concession in the hope of a settlement, and for the maintenance of friendly relations. But Venezuela must say likewise with regard to the offer of compromise presented by her Minister, Dr. Jose Maria Rojas, on February 21, 1881, and which is spoken of in the memorandum which General Guzman Blanco attached to his note of July 29, 1896, to Lord Rosebery, and which is inserted in the Case of the Republic under No. 591, page 251.

In Volume VI. of the Appendix to the British Case is inserted a document entitled "Decree of the Congress of Angostura—a Declaration upon the Division of the Territory of the Missions"—and is taken from the "Documents for the History of the Life of the Liberator," Volume V, page 700. It is, in fact, bound in said book, and was dedicated by the Permanent Committee of the Sovereign Congress appointed to examine the report made by the Chief Commissioner of the Missions of the Caroni as to the number of districts of which each one should be composed. They are reduced to five; that of the East, including the towns of Palmar, Cumamo, Miamo, Carapo, Tupuquen, Turmeemo and Cura; that of the Center, including the towns of Altagracia, San Antonio, Guro, Tupapui, Upata and Santa Maria; that of the South, containing those of Guacipati, Pastora, Ayma, Avechcia, Piedad, Santa Clara, San Serafin and San Pedro de las Bocas; and that of the Lower Caroni, containing those of Caruache, Murucuri, Caroni, San Felix and San Miguel; and those of the Lower Orinoco, containing those of Puga, Piacoa, Santa Catalina, Sacopana and all of the villages of the Indians of those streams.

The authenticity of this document cannot be doubted, published as it was by General Jose Felix Blanco, in charge of those

Missions, but it was not by the Congress of Angostura, but by the Permanent Committee, which, as has been seen, had legislative powers. It is well to observe that the measure referred to the Missions of the Coroni exclusively, not to the other Spanish Missions established in the territory of Guiana.

In the same official table of the Missions of Guiana in the Lower Orinoco, after the Capuchin Missions had been suppressed by the Spanish Cortes, in 1813, which is dated 1816, and reproduced in the British Case, Volume VI, page 6, are included those of Santa Cruz del Calvario, San Antonio de Huiscatome, San Miguel de Unata and San Isidro de Barceloneta, which are not mentioned in the decree of the permanent committee of the Congress of Angostura, which only mentions twenty-seven.

In the same category are found those of Casacoima, Aguacagua, Uyacoa, Tupura, Payaraima, Suay, &c. Fifty-seven of them appear on map No. 15 of the United States Commission at Washington.

This document is probably produced for the purpose of denying the value of the work, which brought to light the fact that three Spanish Missions had existed, one in Mawaken, in the Siparuni, an affluent of the Essequibo; another in Wenamu, a tributary of the Cuyuni, and another called Queribura, in the Mazaruni, none of which are shown in the decree referred to.

But this may be answered by Article 2, of the Treaty of March 30, 1848, in which Spain recognizes the Republic of Venezuela as a free, sovereign and independent nation, composed of the provinces of Margarita, Guayana, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure Mérida, Trujillo *and any other territories and islands that may belong to her.*

Venezuela is the owner of many islands, and no one will dispute her title to them because their names do not appear in this Treaty.

Better still, in former years several Anglo-Americans established themselves in the Island of Aves, near that of Saba, that

no law had included among those belonging to Venezuela, and this Government, under the claim of title, expelled them therefrom. At the same time, Holland, to which Saba belongs, claimed it as her own, and agreed to submit the dispute to the arbitration of Spain. The evidence of both parties having examined, she decided, on the 30th of June, 1865, that the island belonged to the Republic of Venezuela, but with the burden of indemnifying Holland for the fishery that her subjects should cease to enjoy, if in effect they were deprived of it. The following considerations are worthy of note:

“Considering that Venezuela, on her part, bases her right principally on that of Spain, before the said Republic was constituted an independent State, *and although it appears also, that Spain did not materially occupy the territory of the Aves Island, it undoubtedly belonged to her as part of the West Indies which were under the dominion of the Kings of Spain according to Law 15, Chapter 15, Book 2, of the ‘Recopilacion de Indias.’* Considering that the Aves Island must have formed part of the territory under the jurisdiction of the Court of Caracas, when the latter was created June 13, 1786, and that when Venezuela became an independent nation, she did so with the territory of the Captaincy General of the same name, declaring alterward that all the regulations adopted by the Spanish Government up to 1808, were in force in the new State; wherefore the Aves Island could be considered part of the Spanish province of Venezuela. Considering that, even leaving out the above statement, it appears, nevertheless, *that although it can be said that the Aves Island was never actually occupied by Spain or inhabited by Spaniards,* neither is the temporary residence thereon of some natives of Sabá and Saint Eustace, more than an accidental occupation which does not constitute possession; for even though the island is not capable of permanent occupation, on account of the floods to which it is exposed, if the Dutch, supposing it to be deserted had settled upon it with the purpose of permanent occupation, they would have erected some buildings, and would have endeavored to render the island constantly habitable; neither of which was done. And considering, finally, that the government of the Netherlands had done nothing on said island but utilize the fishing by its colonists, whilst the government of Venezuela has been the first to maintain an armed force there, and to perform acts of sovereignty, thus confirming the dominion she acquired through a general title derived from Spain; it is our opinion, in conformity with that of our Ministerial Council,

after hearing the decision of our whole Council of State, that the ownership of the island in question belongs to the Republic of Venezuela, leaving to her the charge of indemnity for the fishing which the Dutch may fail to profit by, if, in truth, they are prevented from utilizing it, in which case the average of the net annual proceeds of the fishing in the last five years, capitalized at 5% interest will serve as a rate of valuation for said indemnity." [VENEZUELAN INTERNATIONAL LAW—BRITISH BOUNDARIES OF GUAYANA, R. F. SEIJAS (p. 333).]

The existence of the three missions or posts above named is ascertained from ancient Dutch documents discovered by Professor Burr; and these cannot be impugned by the British, because they adduce in their favor others taken from the same Dutch archives, and of this same kind; much less when they do not give any better reason for their denial than the assertion of their own functionary, Mr. McTurk, that these settlements never existed.

In Volume VII of the Appendix to the British Case there is given a chronologic list of the principal maps of Guiana. Among them is found the map of the Governor of that Province, Don Manuel Centurion, prepared in 1770, and bearing the following title: "General Plan of the Province of Guiana, as accurate as possible, and with respect to its wide circumference and unknown center, prepared with the information acquired up to December 31, 1770, by the Commandant General thereof, Don Manuel Centurion." This plan is reproduced in the Atlas accompanying the British Case under No. 24. It bears the date December 31, 1770, and is the same as one of the three which this Government has, but there is here another map of this same Centurion, prepared, it is said, upon more certain information and better acquaintance required practically up to April 5, 1770, which is its date. This map shows four fortresses without name, the villages or towns of San Felipe, Esmeralda and six more without name, the stronghold of San Carlos, the Jesuit Missions of Santa Barbara and nine more without names; eighteen missions of the Capuchins without the names, and seven missions of the Franciscan Observants

without names—in all thirty-five; a presidio without name, four barracks without name. Also, and differing from the other map reproduced by Great Britain, the following lands are shown to be under cultivation: two [plantations] on the banks of the Essequibo; one on each bank of the Surinam; one on the left bank and two on the right bank of the Copenham; two on the right and one on the left of the Corentin; one on each bank of the Berbi, and one on the left bank of the Demarari.

It is understood that these are Dutch plantations and it is noted that none of them are to be found on the banks of the Moroco, nor of the Pomeroon.

On the map of Centurion this note is placed in the British document:

“On this map, drawn to illustrate Centurion’s reports and recommendations, the boundary is drawn in accordance with the extreme Spanish view, viz., from the right bank of the Moruka, past the source of the Povaron (Pomeroon), crossing the Essequibo a few miles above its junction with the Massaruni, and then turning almost due east, so, as to confine the Dutch Colonies to a strip of coast, and cut off the whole Hinterland.

The Mission stations are marked, but not named, and are shown as lying between the head-waters of the Yuruari, the course of the Imataka, and the source of the Caroni River. St. Thomé is at Angostura, and there is no mark of Spanish occupation east of the Orinoco, save the Missions.”

In the first place, if the map is drawn showing the line between Spain and Holland to be at the Moroco, this is only to represent possession in fact. As to *right*, what Centurion thought has been shown in the following report sent to Spain on November 11, 1773, in pursuance of the Royal Order of July 24, 1772. It reads as follows:

“In punctual and complete obedience to your Highness’ commands I have to report as follows:

This Province of Guaiana is the most easterly part of the King’s Dominions in South America on the north coast, and its boundaries are: On the north, the Lower Orinoco, the southern boundary of the Provinces of Cumana and Caracas; *on the east, the Atlantic Ocean; on the south the great river of the Amazons; and on the west the Rio Negro, the Canon of*

the Casiquiari, and the Upper Orinoco, boundary of the eastern and unexplored part of the Kingdom of Santa Fé.

On the confines or limits of the vast region of this Province [of Guiana] the French and Dutch have occupied the whole sea-coast with their Colonies—the French in Cayenne, round the mouth of the Amazon, and the Dutch in *Surinam, Berbiz and Essequibo, fifty-five or sixty leagues from the Great Mouth of the Orinoco.*”

This document is published in Volume IV of the Appendix to the British Case, under No. 518, paragraph 3.

In another report of the same Centurion, also printed therein under No. 483, he says to his Government: that the Dutch did not have in the Cuyuni any possessions except a settlement [plantaje] at the place where it empties into the Essequibo; that having wished to establish, fifteen or twenty leagues further up in 1747, a post and guard for the purpose of enslaving Indians in Spanish territory by means of the Caribs, as soon as the missionaries were assured thereof, they informed the Commandant of Guiana, and he dislodged them from there the following year, 1758, by a detachment of soldiers, and burned the post and carried away prisoners the two Dutchmen, the negro and Caribs which they found, with the instructions and original documents, which showed the infamous commerce which, by order of the Director of Essequibo, and for his vile interest, that guard as well as all the other advanced posts of the Colony, bled the Spaniards to the heart or center of the province of Guiana.

Centurion also adds the following:

“It is also shown in document No. 1, that the Dutch are not in possession of the Masaruni, nor of the other rivers that flow into the Essequibo on the south-west side. And it would be well to undeceive them of this error, from which their unfounded complaints arise. For, as the Essequibo runs nearly parallel to the sea-coast, from the vicinity of the Corentyne to where it flows out into the sea, forty-five leagues to the east of the mouth of the Orinoco, all the rivers which take their rise in the center of our Province of Guayana and flow toward the coast extending between the mouths of the Corentyne and Essequibo, actually meet the Essequibo, which crosses and absorbs them.

So that if, as the Dutch suppose, the territory which is comprised by the rivers flowing into the Essequibo, and which are the Cuyuni, Maseruni, Mao, Apanoni, Patara, and other smaller ones, with their arms and streams, were territory of the Republic, the foreigners would have a greater part of the Province of Guayana than the King our Sovereign, as is shown on the enclosed map, which with all possible exactitude, I have drawn for this report, indicating thereon, by a yellow line, what, in my opinion, the Dutch may claim in virtue of any right of possession acquired [*in any manner*] up to the present day."

Noting in passing that the English translation omits the three underlined words "*in any manner*," attention is called to the fact that Centurion gave positive assurance that the Dutch were not in possession of the Mazeruni, nor of the Cuyuni, nor of the Mao, nor of the Apanoni, nor of the Patara, as was likewise affirmed by the witnesses called upon to testify as to the cause of the Dutch complaint.

Now, it is not true that the Moroco line was the extreme Spanish pretension, as was alleged in the British Case. This is quite the contrary of the truth, as is shown by the fact that, after 1770, the date of Centurion's map, came the Treaty of Extradition of 1792, which placed the Dutch in the Essequibo, Demerari, Berbice and Surinam; and by the Royal Order of October 1, 1780, approving the plan of Inciarte to build two forts to protect from the Essequibo Dutch, the town which was to be founded near the said river. Previously, in 1737 and 1743, the Marquis de Terranova [Torrenueva] had recommended the settlement of a province which should prevent the Dutch from passing to the westward of the Essequibo river, and the construction of a fort at its mouth, which should serve as a protection to the town to be founded as the capital of that new province (Volume II of the Appendix of of the British Case, No. 225). It is likewise opposed to what, according to Professor Burr, the Governor of Guiana claimed in 1769, assuring the Counsellor of the Dutch Colonies that the boundary was in the Oene, its affluent on the left. Thus says Mr. Buissan, Counsellor in Essequibo, to the Director-General

of Essequibo, on December third of that year, writing in these words:

"I cannot neglect to communicate to your Excellency that Pedro Sanchos has come from Orinoco with the bad news that in a month or six weeks two boats will come with as many as fifty or sixty men as far as in Pomeroon to carry off the Indians, and then, I fear, plantations will surely be pillaged; *for this Governor sets his boundaries as far as the banks of Oene, where James Fenning lives.* I do not doubt but many black and red slaves will go over to them; and who will get them back from them? * * *

I once told your Excellency that the Spaniards claim Pomeroon; the end of this will shortly be seen. * * *

Pedro Sanchos will, before this reaches you, already have made the communication to your Excellency." [Extracts from Dutch Archives, Document No. 281.]

In the same Volume, Document No. 172, page 333, it is seen that the Spaniards were trading with the Colonists inhabiting the Upper Essequibo.

Finally, in the report of Professor Burr upon the Dutch claims in Guiana, it is seen on page 368 that in the dispute between the Zeeland Chamber and that of Amsterdam in 1750, the latter denied that:

"colony of 'Essequibo and appurtenant rivers' included of right anything more than the Essequibo and its tributaries, and did not fail to point out that the various utterances of the Zeeland Chamber itself were inconsistent with each other in their statement of the boundaries."

In the second place, the British Case says, with regard to the point referred to, that Centurion reduced the Dutch Colonies to a strip of coast, and *separated from the whole Hinterland.*

The Spanish Governor delineated, as is said, the part which the Dutch occupied in fact, and no more; because, as the Commandant General of Venezuela explained in his instructions issued on February 4, 1779, to the officer, Don Jose Felipe de Inciarte, to found towns in the Province of Guiana:

"The said Dutch Colony of Essequibo, and the others which the States-General possess on that coast, are all in general on the banks of the

rivers, close to the sea-shore, and do not penetrate far into the interior of the country."

Lord Salisbury wrote, on the 18th of May, 1896, as follows:

"All the great nations in both hemispheres claim, and are prepared to defend, their right to vast tracts of territory which they have in no sense occupied, and often have not fully explored. The modern doctrine of 'Hinterland,' with its inevitable contradictions, indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control."

Mr. Olney replied to this on the 22d of June, and after repeating it in extract said:

"But it cannot be irrelevant to remark that 'spheres of influence' and the theory or practice of the 'Hinterland' idea are things unknown to international law, and do not as yet rest upon any recognized principles of either international or municipal law. They are new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations. 'Such agreements,' declares a modern English writer on international law, 'remove the causes of present disputes; but if they are to stand the tests of time, by what right will they stand? We hear much of a certain "Hinterland" doctrine. The accepted rule as to the area of territory affected by an act of occupation in a land of large extent has been that the crest of the water-shed is the presumptive interior limit, while the flank boundaries are the limits of the land watered by the rivers debouching at the point of coast occupied. The extent of territory claimed in respect of an occupation on the coast has hitherto borne some reasonable ratio to the character of the occupation. But where is the limit to the "Hinterland" doctrine? Either these international arrangements can avail as between the parties only, and constitute no bar against the action of any intruding stranger, or might indeed is right.' Without adopting this criticism, and whether the 'spheres of influence' and the 'Hinterland' doctrines be or be not intrinsically sound and just, *there can be no pretense that they apply to the American continents or to any boundary disputes that now exist there or may hereafter arise.*"

With regard to Hinterland, it has already been observed that, according to the Publicist, Francis Despagnet, the excuse of the preceding consists in fixing, by means of an international agree-

ment, a topographical line, within which each country has the right to occupy or establish a protectorate to the exclusion of the other contracting state ; this is its Hinterland or territory within the conventional line. In turn, each contracting country obligates itself not to make any attempt to acquire territory nor to dispute the influence of the other state beyond the line fixed. In practice, *Hinterland* is the prolongation toward the interior of a territory first occupied on the coasts, to the limit of the possessions of the other contracting state, or of the Hinterland, which may be recognized in the treaty. Despagnet cites what the German Chancellor said on the 30th December, 1886, to wit : " It does not treat so much of fixing the frontiers in conformity with the state of actual possession, as it is the coming to an understanding as to the spheres of reciprocal interest in the future," and adds, on his part, that there is much analogy between the actual system of *Hinterland*, and the *a priori* limits of the spheres of influence established in the fifteenth and sixteenth centuries between the colonizing nations by the Holy See; that the famous Bull of Alexander VI, of March 4, 1493, is only the limitation of a vast Hinterland divided among the Spaniards and the Portuguese; and, when these two nations, poorly satisfied with the papal decision, modified the frontiers drawn by the pontifical sovereign, by the Treaty of Tordesillas, of June 3, 1494, they entered into a convention that does not differ from modern treaties regulating the *Hinterland*, except as to the extent of its application and the spirit of submission toward the Pope, to whom they were subordinate, because Julius II. had to approve it in 1509; that the same *Hinterland* system appears organized in various recent treaties, those made between France and England in 1843, regarding the islands of the Hebrides, and the Leeward Islands of Tahiti; and with respect to Africa, by those concluded between England and Germany in Eastern Africa and in Zanzibar in 1886 and in 1890, etc., etc. That explanation makes clear that the so-called *Hinderland* doctrine of sphere of influence is a new inven-

tion of the great powers which are dividing, according to their fancy, the territories of Africa, considered as barbarous and susceptible of acquisition by the first occupant. Consequently it has not, nor can it have any application except between the contracting nations; and Venezuela not being one of them, and Spain, from whom she derives her territorial rights, also never having been one, it is not conceived why the British Case invokes it against the Republic. If it is true that the Bull of 1493 was nothing but the limitation of a vast *Hinterland* between the Spaniards and the Portuguese; and if the Treaty of Tordesillas, by which they substituted the line of papal demarcation, does not differ from modern treaties of *Hinterland*, except in the extent of its application, and the spirit of submission to the Supreme Pontiff, who approved it in 1509, then the British have less reason to allege it, because it was only issued by the one who then held the necessary authority to do so, in favor of Spain and of Portugal, and to the exclusion thereby of all the other states. It has already been shown that in that epoch all Christian Princes recognized the validity of those Bulls, and to one of them the English owed the acquisition of Ireland. At all events, as Spain was the first occupant of Guiana, the doctrine of *Hinterland* could benefit her alone.

Until now the civilized world has never thought the native inhabitants, either of the old or the new hemisphere, to have sufficient capacity to constitute States, nor to obtain the rights of such. Their wishes have never been taken into any account whatever, and when, as in Africa, effect has sought to have been given to treaties concluded with them, such have been held, and not without reason, to be merely farcical.

As Salamon says, the celebration of a treaty cannot be conceived of, because it cannot be seen with whom it can be made and what could be its object. The cession of sovereign rights by those who do not possess any, cannot be comprehended. The acquisition of sovereignty will follow as a consequence of the

occupation, and not of the treaty. The same when there exists in the territory a species of rudimentary sovereignty. In order to obviate the incongruity of these cessions, there has been conceived the idea of inserting a clause stating that "the Sultan cedes all the rights which constitute the notion of sovereignty, as is understood in the public law of Germany." It also happens many times that the petty king cedes his rights successively to various states as a means of increasing his income in the shape of brandy, powder and other products which please him.

By such means, and with presents of canes with silver heads, laces, three-cornered hats and coats, and military insignia, the English have obtained whatever they desired from the Indians. What value can their affidavits have? Likewise of what value are those of British officers, such as McTurk and im Thurm, who are themselves both parties and witnesses?

Caracas, May 10, 1898.

(Signed) RAFAEL SEIJAS.

COMMENTS AND CRITICISMS ON THE
COUNTER-CASES OF VENEZUELA
AND GREAT BRITAIN.

[*Translation.*]

Mr. Minister: You had the goodness to communicate to me the letter which the counsel of Venezuela in the boundary question between that country and British Guiana, addressed on the 6th of August last to Señor José Andrade, Envoy Extraordinary and Minister Plenipotentiary of the Republic, at Washington.

That paper speaks favorably of several of the notes which I have written with regard to the same case in the character of Counsellor to the Ministry of Foreign Affairs, and pursuant to

your orders, and in the light of the official documents submitted for my examination. One of my notes was upon the Papal Bulls, which divided a large part of the world between the Spanish and Portuguese, and the argument has found place in the Counter Case of Venezuela, which also mentions that derived from the Spanish-English Treaty of 1670, in which the British monarchy recognized the dominion of Spain over the whole of America and its islands. Among the documents included in Volume II of the Appendix to the Counter Case there appear certain observations which I made, upon errors in the British Case, as to certain political information regarding Venezuela, New Grenada and Ecuador, and as to the supposed decree of Bolivar relating to the boundaries of Guiana.

I beg that you will express my sincere satisfaction to see that my modest efforts in the hope of attaining this object may contribute something to the defense of Venezuela.

Filled with that hope I have read once more the Counter Cases of Venezuela and Great Britain, and propose to here set forth some of the reflections which the study thereof has suggested.

It seems to me that Great Britain does not withdraw any of her claims in spite of the Case having demonstrated their exorbitance and injustice, and insists upon the enlarged Schomburgk line with a tenacity worthy of a better cause.

The British tell us that the failure of Dutch occupation in certain places does not make them Spanish or Venezuelan in default of proof that Spain or Venezuela had a right to them by occupation. The principles of contiguity and territorial unity, which are certainly of much weight, have been alleged in vain. But it has been deemed well to reinforce them, and for no other purpose was there invoked the Papal Bulls, the declaration of the King of Spain made in the Laws of the Recopilacion de Indias, and the treaties of 1670 and thereafter, in which Great Britain asked and received from Spain a renunciation and cession of the American territories which had been taken possession of by the Kings and subjects

of Great Britain, only because she did not have them in her material possession. Admitting, then, the value of the Papal Bull of 1493, which no one could understand more perfectly than Spain and Portugal, it results that the part of Guayana adjudged to Spain rightly belonged to her, whether it was occupied or not, whether inhabited or deserted, whether in the interior or on the coast, or whether possessed in peace or perturbed by the intrusion of contrabandists or filibusters; and this even setting aside the title of contiguity, which would at once suffice.

But we cannot shut our eyes to the value of Article 7 of the Treaty of Madrid of July 16, 1670, renewed in 1713, 1763 and 1783, in which it was agreed that "*The Most Serene King of Great Britain, His heirs and successors, shall have, hold, keep and enjoy forever, with plenary right of sovereignty, dominion, possession and property, all those lands, regions, islands, colonies and places whatsoever, being or situated in the West Indies, or in any part of America, which the said King of Great Britain, and His subjects, do at present hold and possess, so as that in regard thereof, or upon any colour or pretence whatsoever, nothing more may, or ought to, be urged, nor any question or controversy be ever moved concerning the same hereafter.*"

From the observations with regard to Article 7, made by the compilers of treaties, Don José Antonio de Abren y Bertodano, and Cantillo, it is seen that the Crown of Spain thereby assured to the British King the dominion of all territories that he at that time possessed in America; that not having specified the territory ceded in this manner, the article thereafter came to be the cause of innumerable disagreements between the two monarchies.

But the argument derived from the treaty cannot be answered, and it is well thus to amplify it in every way, because together with that of the ousting of the Dutch who in 1758 were in the Cuyuni Post, and that of those who were in Barima in 1769, and likewise the various raids made into the Moruca and the

Pomeroon, and the capturing of foreign ships in the Orinoco, are among the most powerful arguments which we have to use in this contest.

If, as Great Britain here claims, Spain did not possess in Guiana more than the Orinoco, and if, in the rest of America, her rights extended only to what was discovered and occupied by her, then why did the British King request of her the confirmation to him, his heirs and successors in plenary sovereignty and possession, all the lands, provinces, islands, colonies and dominions in the West Indies or any other part of America, which the King of Great Britain and his subjects possessed in 1670, so that they neither could nor should ever pretend any other thing, nor thereafter move any controversy whatever regarding it?

It seems to me that this was equivalent to the recognition of the grants made by the Papal Bulls to the Kings of Spain, and agrees with the value attributed to them by the British Crown, and which is referred to in the book of Mr. HARRISSE.

I understand that the same recognition was given to them by France in the Florida case, cited elsewhere upon the authority of the diplomat, publicist and historian, Bancroft; and the Dutch themselves, in the act of accepting from Spain by the Treaty of Münster, the possession and enjoyment of the lordships, towns, castles, fortresses, commerce and countries of the *West Indies*, as also in Brazil, and on the coasts of Asia, Africa and *America* respectively, that the States-General of the United Provinces held and possessed, including especially the forts and places which the Portuguese had taken from those States and occupied since the year 1641; as also the forts and places which the said States should come to conquer and possess thereafter without infraction of said treaty.

Since 1580 the Dutch, then subjects of Spain, had rebelled against her to throw off the yoke and convert themselves into a sovereign and independent nation. Upon obtaining this end, in 1648, as a termination of the war carried on for this purpose,

their former sovereign agreed to leave in their power, or cede to them, which is the same thing, the conquests made by them during the struggle; the one case outside of that of total conquest in which belligerent acquisition takes effect in modern times. This being so, and no one being able to convey anything but his own property, and not that of others, it is clear that the Dutch occupations in Guiana, which were the subject of the cession contained in the treaty, had been effected in the territory of Spain, who could thus renounce them in favor of the new nation which was taking its place among the powers of the world.

Regarding the conquests made by the Dutch in Brazil, a part of America, and as such belonging likewise to Spain, she agreed to restore them to the Dutch, thus annulling the action of the Portuguese, also her subjects since 1580, but who had made themselves odious by reason of their also aspiring to independence. These Portuguese had formed expeditions to Brazil with the object of conquering and appropriating it, as in the end they succeeded in doing. What the treaty says with regard to those places which the Dutch might come to conquer and possess from 1648 onwards undoubtedly referred to the same territory of Brazil which the Portuguese were already disputing with them, and was done as an act of hostility against the Portuguese, being nothing more nor less than the said restoration of the conquests made by them from the Dutch in the same Brazilian country. If Spain had not thought it hers, and the Portuguese subjects of her Crown, she could not well have done one or the other thing without offending them, and whoever was the owner of the territory. There does not exist any other explanation for such an agreement.

To agree, as stated in Blue Book, No. 1, page 7, "*that the Treaty [of Munster] confirmed the Dutch in all the possessions which they had at that time acquired in South America, and gave them liberty to make fresh acquisitions wherever the Spaniards were not already established;*" is in the first part of the proposi-

tion an evident truth, but which proves that those possessions up to that time were Spanish; and as to the second, Spain appears also disposing of places in which she had not then settled, but which she nevertheless recognized as hers. It has been proven that this last grant did not refer to Guiana but to Brazil, and to no other kind of acquisitions than those proceeding from conquest; which, as has been said, was agreed in odium of the Portuguese, who were already in revolt.

Be that as it may, those affirmations of the British defense form the meshes of a net in which she entangles herself, because they involve precisely the confession of that which they deny. At each step this truth is apparent in the documents so far produced by Great Britain. They say that "between 1621 and 1648 the Dutch commanded the whole coast of Guiana as far as Trinidad"; that "in 1637 and 1638 they were found settled in the Amacuro"; that "during the whole of this period (prior to 1648) the Dutch were masters of the sea in the neighborhood of the mouth of the Orinoco"; that "they were always present at the west of the Moroco and controlled it"; that servants of the Dutch West India Company were *residing* in the Barima and the Pomeroon in the year 1683; that "the Dutch before 1648 controlled the Cuyuni and Mazaruni basin," etc.

Place these propositions beside those before referred to, viz.: "that the Treaty [of Munster] confirmed the Dutch in all the possessions which they had at that time acquired in South America, and gave them liberty to make fresh acquisitions wherever the Spaniards were not already established;" and without losing sight of the fact that in that treaty only Spain and the Low Countries were parties, it is necessary to agree that the confirmation of such possessions as were acquired by them in South America presumes to be in Spain, to whom it was due, the right to do so, or, what is the same thing, that South America belonged to Spain, and she could dispose of the same as she saw fit in the

employment of the powers inherent in international domain or State sovereignty.

In no other manner is it conceived that Spain could have conceded to the Dutch, and even *ex post facto*, territories in South America, any more than that they could accept them. If Spain were not the owner of those territories, and they were open to the occupation of all the powers, as strenuously claimed by the Dutch when once they were recognized as a sovereign nation, there would not have been the least necessity for Spain to confirm to them these intrinsically legitimate acquisitions. The agreement in the Treaty of Munster between Spain and Holland is an irrefutable argument that the Dutch recognized in Spain the power to grant them rights in Guiana.

It is absurd to say that the part relating to the future conquests by the Dutch referred to Spanish places, because Spain considered all that region hers, and indispensable to the security and unity of the Province of Venezuela and of the Vice Kingdom of New Grenada, as the Governors of that Province so many times made manifest. To authorize a nation to make conquests in a country's own territory is to invite that it be done by a future war in which it previously declares itself conquered, a thing so contrary to the duties of a nation to preserve and defend itself, and seek its own prosperity, that it finds no example in diplomatic history.

Among the documents of the Washington Commission there is found a report of Prof. George L. Burr, upon the meaning of Article V and VI of the Treaty of Munster, and which concludes with these words:

1. "It is improbable that, in the intent of its framers and its ratifiers, the Treaty of Munster conceded to the Dutch a right to win from the natives lands claimed by Spain.
2. It does not appear that it was ever interpreted in this sense by either Spain or the Dutch."

From the reasoning of this report it results that the value of the grant was limited to the conquests which in the future the

Dutch should make in Brazil; and this precisely because Spain considered it hers by reason of the discovery and occupation effected there by Spaniards and Portuguese, the latter then being subjects of the Spanish Crown, but who, being then in rebellion, were seeking the recovery of their independence. Spain, in order to diminish the number of her enemies, decided in 1648 to agree to the independence of Holland, and, as a means of flattering her, not only did she agree to the restoration of the conquests made upon Holland by the Portuguese in Brazil, but also, to prejudice the latter, she extended her favors to the Dutch to the point of giving them the privilege of making conquests there likewise. Probably Spain feared the loss of Brazil, as she did lose it, in fact, and moreover, part of the same Guiana which went to form the so-called Portuguese, now Brazilian, Guiana. That is, that following the example of the Low Countries, Portugal also happily succeeded in her purpose to free herself from the Spanish dominion. Thus was Spain vanquished in America by the Portuguese, and forced to divide with them her southern dominions, as was realized by the treaties of 1750 and 1777. For the same reason the clauses of the Treaty of Munster concerning the restoration of the conquests which had passed into the hands of the Portuguese in Brazil availed nothing to the Dutch, no more than the recognition of the future conquests which might take place by the Dutch in the same territory. They preserved nothing of what they had occupied in Brazil, all of which came under the Portuguese power, as a result of their definitive victories. In South America Holland retained only the portion of Guiana that the Treaty of Munster gave her, and also the colony of Surinam obtained from Great Britain by the Treaty of Breda in exchange for the colony which they had acquired under the name of New Netherlands in North America, and which came to be in the course of time the present State of New York in the Federation of the United States of America. Only the settlements of Demerara, Essequibo and Berbice having been ceded to Great Britain in

1814, Surinam is to-day still a Dutch possession, bordering on British Guiana and on French and Brazilian Guiana. The boundary between Surinam and British Guiana is now pending; and that of the latter with France was fixed in 1891 by the Emperor of Russia, who was named arbitrator for that purpose.

Before entering upon other points it seems proper to take note of the introduction to the British Counter-Case, which contains these significant observations:

"In presenting to the Arbitral Tribunal the Counter-Case on behalf of Great Britain, Her Majesty's Government desire to call attention to the fact that the Venezuelan Case contains a number of references, particularly in the notes, to the Report of the United States' Commission, and to the Report of Professor Burr presented to that Commission.

It must be borne in mind that the statements contained in those Reports, and the inferences founded thereon are not in any way binding upon the Governments of Great Britain or Venezuela, and must be tested by the evidence by which they are supported.

Moreover, since those reports were prepared, a large number of documents bearing on the case, and a great body of evidence have been collected. These documents and this evidence were not before the United States' Commission.

Her Majesty's Government have therefore abstained in this Counter-Case from discussing the passages cited from the Report of the United States' Commission and of Professor Burr, and have confined themselves to commenting upon the statements made in the Venezuelan Case and the evidence referred to in that Case or contained in the Appendix to it."

The Commission spoken of was appointed by the United States to study the question of the divisional line between Venezuela and British Guiana, and to make a report upon the same to the Washington Cabinet, all in a private character and for the purpose of furnishing it a basis upon which to proceed. It is well known that it did not reach the end of its labors, because the cessation thereof having been directed before they were concluded, it had to prematurely disband. The report of its work, which it presented on that occasion, set forth, as it was bound to do, what steps it had taken for the fulfillment of the duty for the perform-

ance of which it had been appointed. One of its acts consisted of the sending to Europe of Professor Burr, for the purpose of studying the Dutch and British archives, which was duly carried out, so that certain copies of the documents examined, 350 in number, form a second volume of the nine in which appear together the studies carried on by direction of the Commission, and also the papers transmitted to it by the Governments of Venezuela and Great Britain. When the fact of the organization of the Commission was communicated to the latter Government, and its desire made known that the interested parties should aid it by sending it all documentary evidence, historical narrations and unpublished archives which might be found in its possession, it replied in a note of February 10, 1896, through its Minister of Foreign Affairs, that it would gladly place at the disposal of the Government of the United States all data which it had relating to the boundaries with Venezuela; that it was occupied in gathering documents to be presented to Parliament, and that it would take great pleasure in sending advance copies of them.

Subsequently the British Government submitted to the Washington Commission information referring to the claims of Great Britain as to the Barima boundary, including an opinion of her Attorney-General in that particular; and announced that it would publish, in Blue Book No. 3, documents illustrating said matter; which was the result of a request by that body.

When Professor Burr went to London no difficulties were put in the way of his examination of the portion of the Dutch archives which exist there, with regard to the colonies of Essequibo, Demerara and Berbice, which were ceded to the British in 1814.

By such antecedents, and especially by the sending to the Washington Commission of Blue Books 1, 2, 3, 4 and 5, concerning the controversy, and which that Commission reproduced as volumes V and VI of its publications, which were sent to the Governments of Venezuela and Great Britain, it is perceived that

both were pleased to comply with the solicitation that they lend their aid to the Commissioners in the clearing up of the dispute. It is understood that the work of the Commission will now, with the same object in view, be passed on to the five arbitrators who have been appointed.

Their study will be facilitated not a little in view of that already undertaken by such competent persons as the five appointed to form the Commission, who were among the most illustrious of the great Republic, namely: Hon. David J. Brewer; Hon. R. H. Alvey; Hon. F. R. Coudert; Hon. Daniel C. Gilman, and Hon. Andrew D. White. The first of these, who presided over it, is an Associate Justice of the Supreme Court of the United States, and also a member of the Tribunal of Arbitration, created to decide the controversy, was appointed by the choice which that Tribunal made with the due authorization of Venezuela, and in her name.

Its Secretary was Mr. Mallet-Prevost, whose ability, judicial and linguistic knowledge, assiduity and experience, the Commission made the subject of the fullest encomiums in its general report. He also contributed to the work in the shape of a very meritorious report upon the cartographical testimony of geographers, succeeding in arranging the maps in classes or groups showing the historical connection between them and pointing out their value as evidence.

Dr. Justin Winsor, Professor Franklin Jameson, Professor George L. Burr, Professor J. C. Hanson and Dr. de Haan, who participated in the work of the Commission, belong,—the first to the Library of Harvard University, with the reputation of being one of the most eminent geographers of the country; the second and third are professors of history, one in Brown University and the other in Cornell; the fourth is cartographer of the State University of Wisconsin; and the fifth from the University of Johns Hopkins, an expert in the Dutch language and in the examination of archives. A great number of private citizens acting *motu*

proprio furnished the Commission with books, maps, pamphlets and documents of various kinds, which seemed to them capable of contributing to the desired end; and the public offices immediately opened their treasures to them, among others the Library of Congress. The Commission was likewise given valuable assistance by the U. S. Geological Survey and the Hydrographic Bureau, whose officers readily placed at its disposal all the materials which they had in their possession, and aided them by their personal assistance, notably Mr. Marcus Baker. This last for the period of several months devoted himself to work upon maps and charts which have been published in a reproduction of the most important ones of the last three centuries. Not satisfied with this, the Commission occupied itself with profound historical investigations, and the perusal of books of travel, in search of light upon the Spanish and Dutch settlements in Guiana, and upon questions of occupation and territorial dominion.

The Commission also reviewed all of the diplomatic correspondence carried on between officers of both countries, as well as of the Colonial Governments prepared for the Home Governments, with narrations of events and reports of conferences. Outside the printed diplomatic correspondence, the Department of State gave it access to all of that contained in its bound volumes, from which they caused to be copied whatever seemed to them to relate directly or indirectly to the question at issue.

It will be seen that the Commission had to examine many treaties, beginning with that of Munster of 1648, and that this brought it to the discussion of the various works upon international law from Vattel down to the present day, in so far as they related to the matter in question; and the discussion of the same nature between the United States and Spain as to the boundaries of Florida (now Louisiana and Texas); and between the United States and Great Britain regarding the boundaries between their North American possessions and the British Colony.

When we add to these investigations that also which is neces-

sary to make one familiar with the numerous documents, maps and papers submitted to the Commission for examination by Venezuela and Great Britain, it may be asked whether it is well to put to one side the work of a Commission of gentlemen to whose wisdom, and to the great number of materials with which they had to work, they united the character of third parties, wholly disinterested and impartial, and bent only upon giving their best services to the cause of peace and harmony between two nations, and upon meriting the confidence placed in them by their Government and the world.

That such a view was held of them by the Governments of Venezuela and Great Britain may be seen from these words taken from its report:

“ We take pleasure in adding that during the entire life of the Commission each of the two Governments has manifested in a most agreeable and satisfactory manner its desire to help us in our investigations. Every call made upon either has been promptly answered, and there has been an effort to put us in possession of all the facts which either deemed of importance to a satisfactory solution of the question in dispute.”

It does not seem inopportune to call to mind that in the British Blue Books as well as in the Case and Counter-Case of Great Britain, there are adduced many Dutch documents in support of their claims; but nevertheless they declare in their Second Volume that they will not discuss the reports of the Washington Commission, several of which are based upon extracts from the archives of the Hague, examined most diligently and transcribed with a marvelous industry.

Returning to the original theme, I insist upon the following reflection already made elsewhere:

“ The following feature of the British Case attracts still more attention. Its principal argument, if not the only one, consists in ignoring the force of the rights of Spain as the discoverer and first occupant of America in general, and in particular of the region of Guayana, upon which is based the question at issue, in order to attribute validity solely to Dutch and British occupation. Nevertheless, the documents presented, taken from the archives

of Spain, tend only to prove that the Spanish authorities knew and tolerated, or at least did not succeed in preventing, foreign occupations.

“ Thus Great Britain destroys, by such a course of argument, the foundations upon which she has built her claims. Because, in truth, if the territory of Guayana, taken by the Dutch, was justly open to occupation, it is useless to seek from Spanish authority confirmation of the right to such acquisitions; still less, if it is true, as it is affirmed with admirable assurance on page 36 of the Preliminary Statement, ‘ that the more accurate statement of events is that attacks and encroachments by Spain on the Dutch possessions were repelled by the Dutch and British.’ ”

In another place, following the same reasoning, it is said:

“ If at the date of the treaty, Spain had only one settlement in Guayana, namely, St. Thomé, and therefore the Dutch, or any others were at liberty to occupy and take possession of all the rest of the territory, what necessity was there for Spain to confirm the Dutch in all their possessions which they had at that time acquired therein, as if she had formerly had any rights over them, and as though such occupations were not legitimate without *her confirmation*, an act which would signify on the part of Spain a cession of her property in favor of the new owners? And what value could be attached to the license which the treaty is claimed to have given the Dutch, in order to make fresh acquisitions wherever the Spaniards were not already established? How can a nation give away what is not its own, and what is accessible to occupation by every one without power on its part to prevent it?

“ On the contrary, upon examination of the Treaty of Munster, by which was terminated the long war of more than seventy years between Spain and the Netherlands, which were in revolt against her, and by which these were recognized as a sovereign and independent power, every impartial reader will find what is found in all treaties of peace, namely, a final settlement of the conquests made by the belligerents during the time of hostilities. In other words, in that treaty the Dutch acknowledged that they had no perfect title to the possessions which they had acquired in Guayana during the war, and asked Spain to validate, by treaty and cession, their right to these acquisitions.”

In support of this it was thought well to cite the opinion of Phillimore, Sec. CCCCVI, vol. 3:

“ With respect to immovable property captured in war, the established doctrine of International Law may now be said to be *that the*

acquisition of it is not holden to be completed before either the territory in which it is situated has by submission and consequent extinction of its international personality, become incorporated in the possessions of the conqueror; or what is a much safer title to property so acquired, before a Treaty of Peace has recognized and ratified the possession of the conqueror."

Sec. 526 : "*It is now pretty generally acknowledged that there is both absurdity and iniquity in classing territory obtained by conquest under the category of res nullius, and in applying with unreasoning pedantry or sophistical injustice, not the spirit, but the letter, of the Roman law, to a subject-matter which, like that of conquest, has necessarily undergone, in all its bearings, a most important change since the time of Justinian."*

"The shameless pretext of Frederick the Second for the invasion of Saxony, in 1756, will not be alleged again by the most reckless despiser of International Justice."

"Various and many Treaties of Peace fortify the sound international doctrine that *conquest* and *occupation* of territory are distinct public acts, carrying with them very different consequences both to the State and to the individual. The language of treaties which concern the acquisition of conquered territory is that the subdued State *yields or concedes* a certain territory to another; not that the conquering State *retains or keeps* possession of what it has seized, which would be the proper expression in the treaty with respect to a State obtaining the recognition of an *occupied* territory."

"'It is unquestionable,' says Monsieur de Rayneval, 'that the word "cede" (céder) necessarily implies ownership, consequently it is neither destroyed by war nor by conquest. Thus the principle taught by the Roman law, and the majority of publicists, is belied in practice.'"

From this it has been deduced that it is not true, as stated in Blue Book No. 1, in several places, and especially on page 25, that Great Britain "extended her settlements and continually exercised over the territory originally claimed by the Dutch all those rights by which nations usually indicate their claim to territorial possession."

In the Counter Case of Venezuela it is shown beyond a doubt that the Treaty of Munster ceded to the Dutch that which they possessed in 1648, not any subsequent extension at the cost of

Spain; that, on the contrary, it was there stipulated that the Dutch should respect the Spanish possessions, and should not acquire more Spanish territory; and that if the said extensions be at the west of the Essequibo, precisely the region in question, they prove a violation of treaty obligations.

This is a capital point. It was thought to be decided by Article III of the Treaty of Arbitration, which reads:

“The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the boundary line between the Colony of British Guiana and the United States of Venezuela.”

But the British Counter Case asserts that the Dutch, at the date of the Treaty of Munster, were unquestionably in possession of the great part of the coast, from the Orinoco to the Amazon; that they controlled all the rivers which run into the Atlantic, except the Orinoco, and had established settlements at various points; that those of the Essequibo and Pomeroon were not an infraction of the Treaty of Munster, but were expressly in accord with the rights reserved to the Dutch by Article V thereof; that British occupations of the territory situated between the Essequibo and the Pomeroon, which always extended and now extend far beyond that territory, were founded as of right in succession to the Dutch by virtue of the right which they and Great Britain independently had to colonize and settle.

In a paper prepared here in 1897 several pages were devoted to the explanation of the interpretation which Venezuela gave to Articles III and IV of the Treaty of Arbitration. Upon examining them, it was seen that the first does not authorize the Arbitrators to give to the British any rights other than those belonging to the Dutch at the time of the cession in 1814; neither may they take into consideration what England may have done from 1796 to 1802, nor from 1803 to 1814, because they must

limit themselves, according to the treaty, to an investigation of the state in which things were found between the Spaniards and the Dutch in 1814; neither, for the same reason, may they consider the acquisitions which Great Britain pretends to have gained on this side of the Pomeroon, the limit of the area under Dutch cultivation in 1814; nor likewise the usurpations committed after 1850, being opposed to the agreement entered into between Venezuela and Great Britain neither to occupy nor usurp any part of the territory in dispute, and effected in spite of vigorous and repeated protests on the part of the Republic and in the abuse of force; and furthermore, that they must not give them the benefit of the lapse of fifty years set forth in the treaty as the term of prescription, etc.

If this were not so, the mention made in Article III of the necessity of inquiring into and ascertaining the extent of the territories belonging to Spain and the Netherlands in 1814, the date of the cession of the latter's colonies in Guiana to the English, would be without any value or effect as a means of arriving at a knowledge of the boundary between these territories at that time, and thereby determine the dividing line between Venezuela and Great Britain.

True it is, that to the phrase "territories belonging to the United Netherlands or . . . the Kingdom of Spain respectively," are added these words, "or that might be lawfully claimed," by one or the other, "at the time of the acquisition by Great Britain of the colony of British Guiana"; but upon analyzing the significance of such addition, it has been made clear what they were; not the territories which the Dutch might legitimately claim, because it has been proven beyond a doubt that they did not pass the Essequibo on the coast, but the others which they were bold enough to claim without documentary proof.

It is necessary, then, to submit said Article III to the crucial test of a right interpretation in order that, in harmony with the

rest of the Treaty, it may be seen that its true sense is to carry back things to the state in which they were in 1814.

To the same effect is Article IV of the Treaty, which constitutes its essence. It is as follows:

"In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case:

Rules.

(a.) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription."

In the Venezuelan Case it is stated:

"Venezuela has accepted this rule, but she submits and will claim that *time* is but one of many elements essential to create title by prescription. Prescription to be effective against nations, as against individuals, must be *bona fide*, public, notorious, adverse, exclusive, peaceful, continuous, uncontested, and maintained under a claim of right. Rule (a) fixes fifty years as the period of prescription, but leaves its other elements unimpaired" (V. C., p. 229).

Upon such an observation the British Counter Case comments as follows:

"The proposition herein enunciated is not accurately stated. Time and possession are, broadly speaking, the only essential elements of prescription." (B. C.-C., p. 137.)

In the Counter Case of Venezuela this point has not been taken up, doubtless in the thought that Great Britain would not controvert it; but as she has now impugned it, though only by a mere denial, it is necessary to expound the proposition of our Case.

I attributed much importance to the said rule (c), considering that it simplified the question, and was equivalent to a recog-

nition of the rights of Spain to the whole territory of Guiana; but in the attempt to destroy them by the employment of acquisitive prescription, the latter is called in the treaty "exclusive political control, and effective colonization" of a district. I therefore devoted myself to searching through the books that were accessible to me in Caracas, for the doctrines of science in that particular. I did not find a complete exposition of the matter, either in the books which were the most comprehensive up to that time, viz.: Calvo's "Theoretical and Practical International Law," in five volumes, to which the sixth was added in 1896; and the German Manual of International Law, with the coöperation of twelve publicists, almost all professors of science, published in Hamburg in 1887, by Dr. Franz von Hoftzendorff, also professor of law; and the most recent "Treatise on the Public International Law of Europe and America according to the progress of Science and the Practice of Modern Times," of which there have arrived here, up to to-day, seven volumes, there being lacking only the eighth and last.

I saw that in Ortolan (Eugène) alone, there was treated at large, in all its phases, the point that appeared in the treatise published in 1851 in Paris, "On the means of acquiring International Domain, or the property of a State among Nations, according to the Public Law of Nations, compared with the means of acquiring property among private persons according to municipal law; and followed by an examination of the principles of political equilibrium." I also found in a French periodical, "General Review of Public International Law," of Professors Antoine Pillet and Paul Fanchille, No. 3, of May and June, 1896, an article entitled "On Acquisitive Prescription in Public International Law," a paper which explains its object and the conditions necessary to its existence, by Eugène Audinet, Professor of International Law of the Law Faculty of Aix.

I gathered the principal ideas which these texts contain to

establish the same principles as are invoked in the Case of Venezuela, not without making use, also, of the teaching of Grotius, Barberac, De Filice, Martens (Henri), Rutherford, Klüber, Ahrens, Heffter, Woolsey, Martens (F. de.), the fifth Arbitrator, Ribaud, Wild, Travers Twiss, Vattel, Phillimore, Calvo, Pradier-Fodère, Fiore, Riquelane, Bello, Madiedo, Torres Campos, Ortolan (Eugène), and Audinet.

There were also utilized to the same end, the statutes of several countries, as explained by their jurists and commentators, Marcadé, Troplong, Baudry, Lacatinere, Lariche, Bonjean, Bentham, Covarrubias y Molina, Escriche, Tapia, Stephen, Wharton, Giles Jacob, and T. E. Tomlin.

In fine, another chapter was dedicated to the task of demonstrating that prescription is not applicable to the present case, because it does not fulfill the requisites which are deemed indispensable in law to make it valid.

CARACAS, October 4, 1898.

(Signed) RAFAEL SELJAS.

NOTES ON MARMION'S REPORT OF JULY 10, 1788
AND ON MAPS SUBMITTED BY
GREAT BRITAIN.

[*Translation.*]

I. MARMION'S REPORT.

In the Appendix of the British Case, Volume V, page 59, there was published a "topographical and general description of the Province of Guiana and of its mighty river the Orinoco, in which an account is given of its settlement, arable lands, products and commerce, and certain measures are proposed which are regarded as conducive to its development and increase, its preservation,

and better condition of defence," being a report written by the Governor of Guiana, Don Miguel Marmion, on July 10, 1788.

The second paragraph is as follows:

"The portion of this country (Guiana) belonging to Spain is bounded on the east by the Dutch Colonies of Essequibo, Demerari, Berbis, and Surinam, and by the French Colony of Cayenne; on the south by the Portuguese Colonies of the Amazons and Rio Negro; and on the west and north by the Upper and Lower Orinoco, which separates it from the Kingdom of Santa Fé and from the Provinces of Barinas, Carácas, and Cumaná. (It [Spanish Guiana] may be regarded as divided into three districts: that of the Lower Orinoco, which includes from Point Barima, on the great Boca de Navios, up to the Rapid of Atures, a space of more than 180 leagues from east to west, wherein lies the capital of Guayana Santo Thomé, the reductions of the Catalonian Capuchin Fathers, part of the Missions of the Observantines, and the best arable lands and chief, though very scanty, settlements and products of the province; that of Parime, on the south, in which are the so-called city of Guiroir and the Lake of Parime, or El Dorado, formerly so celebrated,* a country of great extent not well explored, and which the Rivers Parime, Mao, Curaricara, and Paragua water to no purpose; and, lastly, that of the Upper Orinoco, from the mouth of the River Meta, not far distant from the Rapid of Atures, up to San Carlos, at the junction of the Rio Negro and Casiquiare, and following the stream of the latter until it discharges itself again into the Orinoco near the Villa of Esmeralda.) A great part of this extensive province [Spanish Guiana] is occupied, especially towards the centre, by divers nations of barbaric Indians, who are but little known and very difficult to reduce, owing to their wandering life, to their sheltering themselves in the thickets of their woods and forests, and to their attachment to, and extreme love of, independence, which they prefer to all the greater advantages of civilized and rational life." [B. C. V. p. 52.]

On comparison of this passage with the corresponding one in the authenticated copies, which Venezuela has three times obtained from the archives in Spain, it is seen that in the same title of Marmion's report there is a difference of texts. That in the British Case lack certain words which are published in the Case

* Lake of Parime between the third and fourth degrees of north latitude, on the shores of which the discoverers of the 16th century used to place the imaginary great city of Manoa or El Dorado.

of Venezuela, viz: "rivers bathing it and affording its communications;" the word "adaptable" before the words "arable lands;" likewise the words "its dense forests." In place of the words "which are regarded as conducive to its development and increase, its preservation and better condition of defense," our Case reads "some means best adapted and conducive to their investigations and advancement."

But that is not the most important difference. The principal one consists in there being inserted in the second paragraph already copied, the words put between parentheses, which read: "(It [Spanish Guiana] may be regarded as divided into three districts: *that of the Lower Orinoco, which includes from Point Barima, on the great Boca de Navios,*" etc., up to and including the words "until it discharges itself again into the Orinoco near the Villa of Esmeralda.")

The same thing was done in two places in Blue Book No. 3, pages 20 and 316, the first time the words being put in italics, from the beginning of the insertion, up to and including the words "part of the Missions of the Observantines."

It seems that the object was to prove that in the mind of Governor Marmion the Spanish Province of Guiana commenced at *Point Barima*; which was wholly incorrect, because the same paragraph begins by saying: "The portion of this country [Guiana] belonging to Spain is bounded on the east *by the Dutch Colonies of Essequibo, Demerari, Berbis, and Surinam, and by the French Colony of Cayenne.*"

Certainly he would have said this if the Spanish possessions did not reach beyond Barima. On the other hand, there are recorded acts of Marmion showing that he exercised jurisdiction over Barima, Waini and other points; for example, the commission given on June 20, 1785, to Mateo Beltran, Master of the Orinoco Coast Guardship, that he should enter Barima Creek and intercept two foreign ships which were there cutting timber. That commissioner was in the Amacuro, the mouth of the Barima, in

the Mora, in the Waini, in the Arature, etc. In the same report above referred to, Marmion says that "The Essequibo falls into the sea 48 leagues to the windward of the Boca de Navios of the Orinoco," just as was written by Governor Centurion when he said (Blue Book No. 1, p. 124 and 125) in his report of November 11, 1778, that:

"On the confines or limits of the vast region of this province the French and Dutch have occupied the whole sea-coast with their Colonies—the French in Cayenne, round the mouth of the Amazon, and the Dutch in Surinam, Berbix and Esquibo, 55 or 60 leagues from the great mouth of the Orinoco."

The Dutch being at this distance from the great mouth of the Orinoco, the boundary between the Spanish Province of Guiana and the Dutch Colonies could not begin there.

The other point which appears in the documents cited is the mistake made in copying the following paragraph on page 63 of the Appendix of the British Case, Volume V:

"This first settlement having been formed with the views stated, and with the object which shall be given more fully when treating of the defence, the colonization shall be continued in the interior of that peninsula with three, four, or more villages, and lastly with a villa of Spaniards on the banks of the Cuyuni nearly at its point of union with the Supamo, which will be most conducive in the said spot to the furtherance of the progress of the settlement, and to the *protection of this approach to the Missions, and the prevention, as already mentioned, of the escape of the Indians and their communication with the Dutch of Essequibo, and the penetration of the Utaer into their districts, and the prejudicial traffic in poitos.*"

At the foot there is a note referring to the expression, "a villa," as follows:

"From an extra-judicial report it is known that a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Orinoco (*sic*)."

It is manifest that this is completely absurd, because the Cuyuni does not anywhere run into the Orinoco, although one can communicate therewith by means of other rivers and streams,

But by the photograph which has been procured and duly certified from a page of the original report existing in the General Archives of Simancas, Department of War, bundle 7,241, the error is clearly shown. [See V. C. C. Vol. 3, p. 146.]

What the note really says is this:

“ From an extra-judicial report it is shown that a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Curumo.” [V. C. Vol. 3, p. 400.]

The said interpolation and this substitution of *Orinoco* for *Curumo* raises a presumption that in the copies of other documents, Spanish as well as Dutch, similar errors may have been made.

The Counter-Case of Venezuela makes certain conclusive observations with regard to the last error, which is persistently committed, because it first appeared in the British Blue Book No. 3, page 322; and the note is adduced as a new proof of the existence of the fort on the Curumo, which at least had a beginning in 1793, but which is denied in British Blue Book No. V, in spite of the assertion of Schomburgk to the contrary. The latter in his memorandum upon the boundaries of Guiana addressed to Lord Stanley, Colonial Secretary, on December 26, 1844, says:

“ I expect likewise that the Venezuelan Government will oppose the right bank of the River Cuyuni being taken as a boundary line from where that river receives the Acarabisi to its source, and from thence to Mount Roraima, in consequence of the Spaniards having had a fortified post, called Cadiva, opposite the mouth of the River Curumo.” [B. B. No. V, p. 51.]

This assertion is rebutted in a note saying:

“ This was a mistake. Subsequent investigations have shown that no such post was ever established by the Spaniards. See ‘Venezuela No. 3 (1896), pp. 25-6.’”

The passage cited is as follows:

“ In the present condition of things, and with those Colonies again in the hands of their ancient possessors (the Dutch), the danger is fortunately diminished, but not to such a degree as to render it unnecessary to provide

for the security of that frontier (the importance of which is already better recognized) as well and speedily as possible.

“ And for this purpose it is, in my opinion, indispensable that, as proposed, a fortress, with a mixed village of Spaniards and native Indians, should be constructed on the banks of the Cuyuni; that the escort of from twenty-five to thirty men which, by Royal Order, have been granted to those Missions, and which can be formed of the settlers themselves, should be united therewith, and that every effort should be made to encourage and increase this establishment by inducing the people, through concessions of lands and certain other favours, to settle in those parts; where as in the other approaches and chief entrances to the Orinoco (as already stated in another place), the measure of its strength and true resistance will be in proportion to the greater or less extent of its population.” [B. B. No. II, pp. 25-26.]

After this citation it is confidently affirmed in Blue Book No. 3 that:

“ The proposed post was, however, never erected, nor was there ever any Spanish guard placed there.”

But what can rationally be deduced from the words of Marmion is that, at the date of this report, July 10, 1788, the fort on the Curumo had not yet been constructed. It was to have been commenced in that year; and that in that year a Spanish guard was placed there, appears incontestable from the documents published in Volume II of the Appendix to the Case of Venezuela, namely, certain communications from the Governor of Guiana, Luis Antonio Gil, in 1792, who speaks of the existence of the sentry box, or strong-house of the Cuyuni and the means adopted for its defense.

In 1793, Señor Miguel Marmion, substituted as he had been by Luis Antonio Gil, was in Caracas, from whence he says that he sent a copy of his report of 1788, made up from the rough notes and loose memoranda which happened to remain in his possession.

II. MAPS SUBMITTED BY GREAT BRITAIN.

In Volume VII of the Appendix to the British Case, page 358, is cited the following:

“ General Plan of the Province of Guiana, as accurate as possible and with respect to its wide circumference and unknown centre prepared with the information acquired up to December 31, 1870, by the Commandant General thereof, Don Manuel Centurion.”

With regard to this map, there is to be found on page 359 the following statement:

“ On this Map, drawn to illustrate Centurion's reports and recommendations, *the boundary is drawn in accordance with the extreme Spanish view, viz., from the right bank of the Moruka, past the source of the Povaron (Pomeroon), crossing the Essequibo a few miles above its junction with the Massaruni, and then turning almost due east, so as to confine the Dutch Colonies to a strip of coast and cut off the whole Hinterland.*

“ The Mission Stations are marked, but not named, and are shown as lying between the head-waters of the Yuruari, the course of the Imataka, and the source of the Caroni River. St. Thomé is at Angostura, and there is no mark of Spanish occupation east of the Orinoco, save the Missions.”

The most notable thing in this commentary is that it says that “ the boundary is drawn in accordance with the extreme Spanish view.” According to this, Spain could never have made claim to beyond the Moroco.

It will not be inopportune to remember what has been said by some authors with regard to maps. For example, Twiss said:

“ Maps, however, are but pictorial representations of supposed territorial limits, *the evidence of which must be sought for elsewhere.*” [Oregon Question, p. 128.]

“ Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequently founded on fictions or erroneous statements.” [*Idem.* p. 306.]

That Governor Centurion did not deem the boundaries marked on his map to be the true boundaries of Guiana, he himself de-

clared in so many words in reports transmitted to his Government, some of which are reproduced in the Appendix to the British Case. Here is the proof. On Page 111 (of British Case, Appendix IV) in the report of the Commandant of Guiana to the King, dated November 11, 1773, three years after the sending of the said map, we find these words:

"In punctual and complete obedience to your Highness' commands I have to report as follows:—

"This province of Guaiana is the most easterly part of the King's dominions in South America on the north coast, and its boundaries are: On the north, the Lower Orinoco, the southern boundary of the Provinces of Cumaná and Carácas; *on the east, the Atlantic Ocean; on the south, the great river of the Amazons*; and on the west, the Rio Negro, the cañon of Casiquiari, and the Upper Orinoco, boundary of the eastern and unexplored part of the Kingdom of Santa Fé.

"*On the confines or limits of the vast region of this province the French and Dutch have occupied the whole sea-coast with their Colonies—the French in Cayenne, round the mouth of the Amazon, and the Dutch in Surinam, Berbiz, and Essequibo, 55 or 60 leagues from the Great Mouth of the Orinoco.*" [B. C. IV., p. 111.]

In Blue Books, Nos. 1 and 3, such reports are spoken of and the assurance offered that in the above map the Dutch were represented as being in possession of the coast to a point beyond the Moroco, but without giving them, contrary to the fact, any occupation in the interior of the country; that his report was not approved by the Spanish Government because of its being too favorable to the Province of Guiana, and he was ordered to send another; that this contained a greater exaggeration of the Spanish claims, because it assigned to the Province the boundary above indicated, which included the whole of the Dutch establishments and all of Spanish Guiana to the Amazon, an extent of territory which Spain never had intended to occupy, and not even to claim, unless the pretension of the King of Spain that all America belonged to him by virtue of the Papal Bull of 1496 could be considered as a claim.

When Blue Book No. 3 invokes passages of a report of Marmion upon Guiana in general, and in which he recommended the

construction of a fortress on the banks of the Cuyuni, it states that the extract is more significant as to the period from 1770 to 1776, when Centurion had reported that *the Province of Guiana reached to the Amazon on the south and to the Atlantic Ocean on the east*; and that probably the extravagant assertions of Centurion, which were discredited at that time by the Spanish Government, brought about the careful investigations and surveys which are referred to in the reports of Don Miguel Marmion.

Far from the assertions of Centurion having been doubted in Spain, the Spanish Government itself gives to Guiana the same boundaries that he does, to wit: *on the east the Atlantic Ocean and on the south the Amazon River*, as may be seen in the Royal Cedula of May 5, 1768. Lord Salisbury declared it absurd in his note of November 26, 1895, to the Government of the United States of America, because it absolutely ignores the Dutch settlements existing in 1768, not only in fact, but recognized by the Treaty of Munster; and because it would, if considered valid today, transfer to Venezuela, British, Dutch and Spanish Guiana and an enormous territory belonging to Brazil.

But the Government of Venezuela in its Memorandum of March 28, 1896, communicated to Mr. Olney and the U. S. Commission on the Venezuela-British Guiana Boundary, vindicated that document, and showed that there was nothing absurd about it; for as to the Dutch Colonies recognized in the Treaty of Munster, they were situated on the coasts or banks of the rivers without penetrating much into the interior, so that the greater part of this belonged to Spain; that Spain had always claimed to the Amazon; that in 1750 she had agreed with Portugal to release a part of the Amazon; but the agreement being annulled by mutual dissent in 1761, her rights were revived, and she could, therefore, in 1768 declare that Guiana was bounded by the Amazon, discovered by Spaniards (the first Vicente Yanez Pinzon); and that in 1777, when she again entered into a treaty with Portugal, in almost the same terms as that of 1750, she reserved

that portion of the Amazon comprised between the mouth of the Yavari and the most westerly mouth of the Yupura.

In the said Memorandum a great deal was made of the fact that the Spanish Royal Cedula of May 5, 1768, had been the axle upon which turned the boundary controversy between Venezuela and the former New Granada; and that upon the authority attributed to it by the Spanish Monarchy, which was named arbitrator of the rights in the question, it adjudicated part of the Orinoco to the Colombia of to-day, and also a great number of towns which Venezuela had possessed on the other side of it for many years; it having been sustained by the Colombian Government that prescription does not exist in law of nations. Venezuela, in accordance with the agreement of arbitration of the dispute, had to submit to an award which deprived her of no less than seventy-seven towns.

It is thought that the map of Centurion represented not the right of the Spanish Province of Guiana, but the fact of the actual possession of a Dutch post in the Moroco, which the Spaniards had tolerated more than consented to, as is demonstrated by all the acts which they did in that river and in others situated more to the east or southeast of the Orinoco.

And in this connection, there is not a little force in the circumstance that not only did Spain officially declare the boundaries of Guiana to be those expressed in the Royal Cedula of 1768, three years after the date of Centurion's map, but stated in the Treaty of Extradition made with Holland at Aranjuez in 1791, that Puerto Rico, Coro and Orinoco were Spanish possessions, and *Essequibo*, Demerary, Berbice and Surinam were Dutch possessions; and the commission given to Inciarte on February 27, 1779, to construct two forts, one to prevent the attacks which the Dutch might make upon the town which it was proposed to establish close to the creek of the Rio Moroco, and another in the same locality to prevent the passage of all hostile ships, and to drive out the

Dutch from the advanced post or guard house which they had built there.

At the end of the statement of the British Case regarding the map of Centurion, it is pretended without concealment to apply in America the doctrine called *Hinterland*, which is, as says F. Despagnet, to fix by means of an international agreement a topographical line within which each country has a right to occupy or establish a protectorate to the exclusion of the other contracting state, that is, its *Hinterland* or territory within the conventional line. In other words, *Hinterland* is, according to the same author, the prolongation towards the interior of the territory first occupied on the coast up to the limit of the possessions of the other, and adds that, as said by the German Chancellor in 1886, it is not so much the fixing of the frontiers in conformity with the state of actual possession, as it is the coming to an understanding for the determining of the spheres of reciprocal interest in the future. This new doctrine, which European powers, such as Great Britain, Germany, France and Portugal, have applied and are still applying with regard to occupations on the continent of Africa, has not found a place in international law, and consequently is obligatory only upon the parties who have spontaneously adopted it in their conventions.

In the correspondence carried on in 1896 between the Government of Great Britain and the United States regarding the Venezuelan-English Boundary question, and primarily of general arbitration, Lord Salisbury wrote on the 18th of May, as follows:

“ All the great nations in both hemispheres claim, and are prepared to defend, their right to vast tracts of territory which they have in no sense occupied, and often have not fully explored. The modern doctrine of ‘*Hinterland*’ with its inevitable contradictions, indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control.”

To this Mr. Olney replied that “ ‘spheres of influence’ and the theory or practice of the ‘*Hinterland*’ idea are things unknown

to international law and do not as yet rest upon any recognized principles of either international or municipal law. They are new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations."

After citing the words of the modern English writer, who discusses the doctrine of "Hinterland" and says that the rule regarding the territorial area affected by an act of occupation in a country of great extent, has been that the crest of the watershed is the presumable interior boundary of the territory, and that the flank boundaries are the limits of the land drained by the rivers which empty into the point of coast occupied; that the extent of territory which may be claimed by virtue of an occupation on the coast has so far been given a reasonable ratio to the character of the occupation, and who, asking what are the limits of the "*Hinterland*," adds: "Either these international arrangements can avail as between the parties only and constitute no bar against the action of any intruding stranger, or *might indeed is right*." Mr. Olney, without adopting that criticism and putting to one side the question as to whether the doctrines of the "spheres of influence" and the doctrine of "*Hinterland*" are, or are not, intrinsically sound and just, asserts emphatically that "there can be no pretense that they apply to the American continents or to any boundary disputes that now exist there or may hereafter arise."

No opinion of greater authority can be invoked than that of the noted American statesman above named, to reply to the idea given in the British Case, in examining the map of Centurion, by which it applies to doctrine of *Hinterland* to extend the scope of the Dutch occupation of other centuries, in opposition to the preferable and anterior rights of Spain, the discoverer, occupant and colonizer of that territory of Guiana, hostilely invaded by Dutch forces. Not only for the reason that this doctrine was quite

unknown at that time, but also for the reason that Spain has never accepted it, and because, if it has been recently introduced in Europe, it has been in Africa only, and as a result of special stipulations by the contracting powers, and has no place in international law as far as she is concerned, the arbitrators cannot attribute any value to the argument refuted.

The reasons here set forth are equally applicable to other Spanish maps analagous to that of Centurion.

There accompany the Counter-Case of Great Britain six maps by different authors and of different periods, to wit, Diguja, 1871; Heneman, 1770; Inciarte, 1779; Porter, 1825; Bauza, 1841, and Hohenkerk, 1897, without any observation being offered as to their contents, nor the object for which they are presented.

However, it must be supposed that they tend in general to rebut the claim to the Essequibo boundary contended for by Venezuela.

The first is that of Governor Diguja, in whose time the Province of Barcelona and that of Guiana formed part of that of Cumaná, and purports to show the Governments of Carácas, Trinidad and Margarita bordering thereon, together with the Dutch Colonies situated in the Province of Guiana; the course of the great Orinoco and part of the great rivers which enter in it, and its labyrinth of mouths; the existence of the Spanish towns, villages and places; "doctrinas" and missions of Indians, soldiers, families, souls, houses, farms, churches, contributions of Indians, ecclesiastical state, cocoa farms and their products, cattle farms and how many head of cattle there are, the number of slaves, regular troops and their salaries, debt of the province, resources it counts upon, etc.

If it is proposed to deduce from the map that the boundaries of Guiana did not extend to the Essequibo, it may be answered that the contrary was asserted by Governor Diguja himself, as well as by Centurion, Marmion, Gil and Inciarte, his successors, also Father Caulin, Herrera, Father Murillo Velarde, Alcedo, and

the engineer and boundary commissioner, Don Francisco Requena, etc.

The map does not extend to the eastward, as it should and as is customary; but we see on it the legend "Dutch Colonies," extending from 6 to 7 degrees of latitude north and about 316 to 317 of longitude, it is not said at what meridian, in a space comprised between the rivers Essequibo and Cuyuni up to a little beyond the latter. There appears, and with its name, "Fort Zelandia;" which, as is known, once existed in the Pomeroon, but which was destroyed by the English in 1666, without ever being re-established; so that in 1761, when this map of Diguja was made, there was no such fortress. What the English left of the Pomeroon Colony in the winter of 1665-66 was destroyed by the invasion of the French, which followed shortly after that of the British. However, as Professor Burr observes, almost up to our own times "New Middelburg" has continued to exist on paper with its fort of "New Zelandia." Among the maps thus criticised by him, naturally this map of Diguja should be included.

As to the proposition in the British Counter-Case to prove the non-existence of the posts of Queribura, Wenamu and Mawaken, it may be said that the opposite assertion is found in an official communication of the Director-General of Essequibo, Storm van's Gravesande, who was himself informed of it by the report of the postholder of Arinda and the information given by the colonist, Francis Couvreur. These communications bear date as follows: that of T. Steyner, the said postholder, May 28, 1756, and that of the Director of Essequibo to the Dutch West Indian Company, July 7th of same year. Consequently, Diguja, in making a map in 1761, might have information of the three places referred to; but his silence regarding them might be the result of ignorance, or due to the lack of data, and his omission a similar error to that committed in naming the fort of "New Zelandia" which had disappeared almost a century before.

The British Case, as though this were enough, has contented

itself with denying the facts believed by the Dutch officer Gravesande. Mr. Michael McTurk, Commissioner of the District of the Essequibo and Pomeroon Rivers, and who figures in another character since 1884, in the invasions of Venezuelan territory ordered by the Home Government and that of the Colony, in a printed affidavit on page 234, Volume VII of the Appendix to the British Case, and sworn to on the first of November, 1897, before M. P. Alton, Commissioner of Affidavits for British Guiana, says, among other things, what follows:

"2. I know the River Siparuni, a tributary of the River Essequibo. There is, so far as I am aware, no place on it called Mawaken, and I have never heard nor do I believe that there ever was a Mission founded by the Spaniards on the banks or in the neighborhood of that river.

"3. I know the River Massaruni, having frequently ascended both it and its tributaries. There is no place on or near it called Queribura, nor is there any local tradition that the Spaniards had at any time a mission or settlement in the surrounding country. I know the place marked on the map at *Curabiri* near the mouth of the Puruni, which it has been suggested is the same as Queribura. From the nature of the situation it is quite unfit for a Mission, nor could one have been placed there, as it is merely the name of a small fall or rapid in the river, and owing to the surrounding country being swampy forest it is eminently unsuitable for any mission or settlement.

"4. . . . I know the River Wenamu, a tributary on the right bank of the Cuyuni. I have never heard that there ever was a Spanish Mission in that part, but I have been informed that the Dutch lived in that river." [B. C., VII, p. 234.]

By the foregoing it is seen:

1. That the Director-General of Essequibo and the postholder of Arinda *positively* assert the existence of those three places, and Mr. McTurk denies it. 2. That the Director-General of Essequibo and the postholder of Arinda, as Dutchmen, had an interest in concealing the existence of the settlements which they make known, on account of its possible influence upon the boundary between their territories and those of Spain, but they confess it nevertheless; while Mr. McTurk, a British officer and an old and

vigorous agent in the plans of expropriation of Venezuela, undertakes with all the zeal he is capable of to consummate them; and therefore is entitled to little credit, above all when he has entrenched himself in the camp of denials.

The second map presented is that drawn by Heneman in 1770, and is entitled:

“Sketch Map of the Boundaries between Royal-Spanish and Dutch Guiana on the mainland of South America; belonging to the Report hereon, conceived and chartered by _____ v. Heneman, sworn Engineer.”

Nothing better can be said regarding it than what was written by Professor Burr in his report upon the official maps presented to the Washington Commission. Therefore, as it is included in this category, its partiality in favor of Holland is put in evidence.

“But there exists another map by Heneman, of quite another interest and importance; the one map, so far as I am able to learn, ever devoted to the boundary between Spanish and Dutch Guiana (the map is uncolored, except for a stripe of red along the boundary line; this comes out only imperfectly in the reproduction. That the map is a copy, not Heneman's autograph manuscript, is made probable by the omission of his initials, due doubtless to that puzzling monogram already mentioned). It now lies in the library of the department of the colonies at The Hague, though how it came there it is hard to guess. Labels still decipherable on its back seem to show that it once belonged to the collection of the West India Company. Further clew I have not found. The map's title runs:

“‘Sketch Map of the Boundaries between Royal-Spanish and Dutch Guiana on the mainland of South America; belonging to the Report hereon, conceived and chartered by _____ v. Heneman, sworn Engineer.’

“The report here mentioned cannot be found. It forms no part of that submitted by Heneman to the West India Company in September, 1776, which nowhere makes mention of this boundary. It is not impossible that it was handed in at the same time as a confidential report. What makes it improbable are the differences between his general map and this special one, and notably the difference in the boundary line itself. The boundary leaves the coast, indeed, at what may be meant for the same point, though changes in the contour of the coast and in the

spelling of names, the insertion of a new river (the 'Moccomocco') and the omission of an old cape ('Caap Breme') leave this somewhat uncertain. What is more significant is its change in direction. Instead of running south-southwest, as in the general map (and in D'Anville's), it has veered two full points of the compass, and now runs due southwest, no longer cutting (as in D'Anville's map) the Cuyuni and the Mazaruni, but crossing the head waters of the great branches of the Orinoco—the Aguire, the Caroni, the Caura, the 'Paruma' (D'Anville's 'Pararuma'). Just beyond its intersection with the last-named stream this western boundary of Dutch Guiana turns at a sharp angle and becomes the southern boundary, running thence east by south to the edge of the map. When, at whose instance, and for what purpose this map was made, and what sanction, if any, it ever received, it would be of exceeding interest to know. I have sought in vain for any mention of it in the minutes, both open and secret, of the West India Company and of the successive councils which until 1803 followed it in the government of the Guiana colonies. It is possible that it may have been prepared for the Stadhouder, who shared the passion for geography common among the princes of his time and who gathered a rich collection of maps; but if so, he seems never to have made a communication regarding it to the bodies administering the affairs of the colonies." [V. C.-C., vol. 2, pp. 246-248.]

After showing the career of Heneman up to 1804, Professor Burr concludes his statement as to this map as follows:

"How naturally at any time during this long service Heneman might have been turned to for such a map as that in question is apparent. The absence from his map, however, of any indication at the mouth of the Demerara of the new colonial capital, Stabroek which was founded in 1782, makes it tolerably certain that the map antedates the English occupation of 1781. And the fact that Santo Thomé appears at the old site below the Caroni instead of at the new one of Angostura, to which it was removed in 1764, as he could perhaps have learned from Spanish maps available to him in Amsterdam—for those of Cruz Cano and Surville had now been published—adds ground for the belief that he made it before leaving Guiana in 1778. In that case it seems most probable that it was a special task confidentially assigned him as a supplement to that completed in September, 1776, and that the changes from the earlier map grew out of further study, or perhaps out of the suggestion to which the new map owed its birth." [V. C., vol. 2, p. 250.]

The first map of Heneman, which was to be a general one, Professor Burr says was probably never completed by reason of the necessary expense; that, however that may be, no such map is now to be found among the archives of the company; but there exists there a mere sketch map, giving the results of his surveys, and meant as a basis for a more elaborate one. It comprises the colonies of the Demerara and Essequibo Rivers, as also the abandoned colony of Pomeroon, part of that of the River Berbice, with the further districts, rivers and creeks of the above named colonies, as likewise the contour of the sea-coast and its banks, etc.

With regard to this sketch map, Burr adds the following:

“This map bears no date, and it cannot be quite certain that it was transmitted with its author's report in September, 1776. Yet this is *every way probable*; and, in any case, as Heneman now returned to Surinam, the map's information belongs to this period. When there are taken into account the haste and the hindrances of his work, and the fact that at the same time he prepared and submitted several local charts and many elaborate tables, great accuracy as to the remoter parts of the colonies will hardly be expected; and in particular his portrayal of what lies west of the Essequibo and the Pomeroon does not suggest personal observation. Both as to the coast region and as to the upper course of the Cuyuni and Mazaruni, it seems—what it doubtless is—a mere adaptation of the map of D'Anville. It is, perhaps, therefore, needless to conjecture any other source for the boundary line which appears for a short stretch at the northwest corner of the map. Both in point of departure on the coast and in direction it concurs nearly, though not quite exactly, with D'Anville's line—starting a trifle more to the east and trending a trifle more to the west.” [V. C., vol. 2, pp. 245-6.]

In the accompanying Atlas, called Volume IV of the Venezuelan Case, there have been reproduced three maps of Heneman; Nos. 63, 64 and 65, namely, that of the mouth of the Cuyuni, 1772, and that of Essequibo and Demerara, 1775, both taken from the Atlas of the United States Commission; and that of the boundary line between Spanish and Dutch Guiana, which it is said it reproduced from the manuscript original existing in the Department

of the Library of the Colonies at the Hague, No. 488 of the Catalogue. It bears, with an interrogation expressing a doubt, the year 1776, and has no colors; while the map attached to the British Counter-Case represents in yellow the islands of Orinoco and Essequibo, and the rivers in blue; as well as indicating in red the dividing line between Spanish and Dutch Guiana. It is given, without hesitation, the year 1770, when Heneman had not yet arrived in the Dutch Colonies of America, as it was in 1772 that he visited Essequibo for the first time, and before that time he had only executed a new map of the Surinam Colony, as is seen from a petition addressed by him in 1769 to the Directors of that Colony. The copy produced is certified at the foot in Dutch, the words meaning in Spanish "A true copy, C. A. Eckstein, Director of the Topographical Institute," without any indication of place or date.

These differences seem of little meaning. The essential thing is that the line of Heneman lacks all foundation, and the reasons upon which he has based it are unknown. Professor Burr asserts it is only an adaptation of the D'Anville line, which he accepted, not by reason of his personal information or of its official authority, but on account of its general reputation for correctness.

Mr. Mallet-Prevost, in his report upon the cartographical testimony of geographers, has made clear that Delisle drew a *regional* line between the Spanish possessions and the country which was wild and uncolonized to the east, without stating it to be the boundary of the Essequibo settlements, which are not shown on the map, and without alleging any reason why in such a case it should begin at the mouth of the Orinoco, as that of Bouchenroeder, who asserted, although falsely, the existence of a Dutch Fort in the Amacuro, confounded by him with the Barima; that D'Anville erroneously converted it into a political line, and that a multitude of geographers have followed in his steps and copied his work in a mechanical manner; that Gravesande and the Dutch West India Company did not know where the boundary was, nor the manner of determining it; and that when the map of

D'Anville came to their knowledge they accepted it at once *in consideration of his authority*, but without knowing in the least any historical fact whereby to fix it, and that thus it is not based upon historical research nor upon the inquiries of the people who must be supposed to have been best informed about the facts; and that the so-called *Schomburgk line* was taken by him from the maps of Arrowsmith, which line was in turn derived successively through Bouchenroeder, Jefferys, Thompson, D'Anville and Delisle; and that there never would have been proposed such a line as Schomburgk's if Delisle had not marked out a century before the western limits of the Spanish usurpation upon savage Guiana; and if the error of D'Anville, who badly interpreted Delisle, had not been perpetuated by a multitude of geographers and map makers, who, without examination, accepted the authority of the great name of D'Anville.

The third map presented by the British Counter-Case is one entitled: "No. 110. Plan of various lands of the Lower Orinoco, drawn by Don José Felipe de Inciarte, and mentioned in No. 37 of the Extract."

There is placed on it the date of 1779. It indicates hills, savannas, and valleys for different purposes, a site upon which if an outpost and a town were made it would cut off the communication which the Dutch hold through these streams with the Indians of the same and of the Orinoco, "a little hill on the bank of the Barima, which it will be well to fortify"; "the banks at the mouths of the Barima, Guiana and Baruma, although marked with crosses, consist of mud and sand without any stones whatever"; "Post or Guard, that the Dutch have in the Moruca River"; "Villages and Farms of the Indians of the Arawak Nation"; "the number of feet of water which are found in navigating along the coast, from Baruma as far as the northern end of the Waini mud bank, without going out to sea more than a league, nor coming nearer to land more than half a league."

At the end of these explanations, some being marked with

numbers and others with capital letters, is the following "NOTE: That all the lands which this plan has left without other indication, are low, without hills, almost all overflowed and marshy, and therefore unsuitable for farms; they are covered with numbers of mango trees (these in great quantity), also puruas, zapateros and mulberry trees, and an abundance of timity and manaca."

At the foot there appear, at the right, these words: "A true copy of the original existing in the archives of this bureau. Nicolas de Urata, Commissioner of E. M., Chief of Bureau."

"Visaed: Benites, Colonel, Chief of the Department of War."

It lacks an indication of the place and date in which the certification was made, and the nation and the archives from which the map was taken.

Certainly it must be Spanish, but it does not say so.

In the report of Inciarte to Señor José de Abalos, dated at Caracas, November 27, 1779, he says:

"Herewith I send to Your Excellency *a plan of all the lands* I have visited, remarking that, of all that said plan contains only the branch Macuro, part of the Tapacuma, the part of the branch from Visororun and the river Essequibo have been drawn according to information of the Indians, while all the rest has been drawn with the distances and demarcations which I have personally taken in surveying the lands during the expedition." [V. C. vol. 2, p. 438.]

Doubtless, this is the map now presented by Great Britain.

There has not been found a map of the Province of Guiana, of which mention is made in the narration of the visit made to Inciarte when he was Governor thereof, at the beginning of this century, by an officer of the Dutch colony, to whom he presented a copy upon his return, as a favor added to many others which he had heaped upon him.

For what purpose the map of Inciarte has now been produced is not divined. If it is because it shows the Moruka post, it is

well to remember that Spain has never denied its existence, but considered it as the result of her own toleration and not of right.

When Inciarte was commissioned to establish towns in the province of Guiana and to occupy the territories of its eastern part, by the Commandant-General, Don José de Abalos, the latter informed him that as the boundaries of Guiana commenced on the east to the windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo, that this and the other colonies of the States-General were nearly all on the banks of the rivers near the seashore, and that to the rear of Essequibo and the other Dutch possessions running to the eastward as far as French Guiana, and on the South as far as the Amazon River, the land was unoccupied by the Dutch, and only occupied by the gentle Indians and a large number of fugitive slaves of the Dutch and also of the plantations of Guiana; for which reason the commissioners should effect the occupation of those lands as belonging to Spain, their first discoverer, and not ceded thereafter nor occupied at that time by any other power, nor did any other power have any title thereto, advancing in the occupation towards the east as much as possible until reaching French Guiana and extending themselves also as far as possible on the south until reaching the frontiers of the crown of Portugal.

By a Royal Cedula of the first of October, 1780, the construction of the two forts near the Essequibo was ordered, as well as the ousting of the Dutch from the post or advanced guard which they had constructed on the Moruka. Finally, Inciarte in his last report of September 5, 1783, concludes by highly recommending the occupation of that Moruka post, abandoned by the Dutch by reason of the French having overpowered the colony of Essequibo, and he also urges its provisional fortification, and the establishment of a town of the native Indians which inhabited that neighborhood.

Among the documents of Venezuela there has been printed a petition of citizens of Guiana to the Spanish Government against

Inciarte for not having carried into effect the founding of the towns which he was instructed to do before he was made Governor of that province.

The fourth map is a copy made in Caracas about 1825, and sent to the British Museum by Sir Robert Ker Porter, then Consul of Great Britain here, presumably from a Spanish sketch of many years earlier. It is called "Topographical Chart of the Department of Caroni." It is not known who was the author, and has the names of many of the ancient missions. It is not certain what relation it has to the boundary question.

The fifth map is of 1841 and by the Spanish engineer, Don Felipe Bauzá, comprising various provinces and parts of others, among these Guiana. It is founded upon the work of Churucca, and Fidalgo, as well as that Ferrer, and very particularly upon that of Baron de Humboldt, and on the unpublished charts and private plans of Solano, and on those of the campaign of General Murillo, and many documents of the officers of the Royal Armada, Doz and Guerrero, and of the engineers Cramer and Primo de Rivera, of Don José de Inciarte and of the pilot of the Spanish trade to the Indies, Don Joaquin Morreno. It is duly certified in Madrid on May 4, 1898, by the archivist of the Archives of the Hydrographic Office, Senor Joaquin de Ariza, for James H. Reddan, Commissioner of the Government of Her Britannic Majesty. It shows all of the towns, villages, places, existing and ruined, missions, ranches, farms, sugar mills, cattle farms, castles, towers, Indian villages, silver mines, trails, roads and royal highways.

It gives as the boundaries of British Guiana a line which starts from a point on Moruka Creek and runs in a south-westerly direction to the Rinocote Mountains, and from thence runs to the southeast and terminates at the source of the Pomeroon River, apparently in conformity with that of Humboldt, which is elsewhere analyzed.

The last is a chart of the mouth of the Waini River and

the Mora or Morawhanna Passage, which it says is situate in the northwest district of the colony of British Guiana, surveyed by L. S. Hohenkerk, Government Surveyor, on October 28, 1897.

Probably it is intended to illustrate the attitude taken by the British Counter-Case in the matter of the topographic configuration of the territory in dispute.

Caracas, October 22, 1898.

(Signed) RAFAEL SEIJAS.

THE LINES OF SCHOMBURGK AND OF CODAZZI

[*Translation.*]

The line drawn by Schomburgk is in no wise binding upon Venezuela just as the line traced by Codazzi is in no wise obligatory upon Great Britain. These lines constitute no legal evidence, and will have before the arbitrators only a relative moral value, and rest exclusively upon the authority, capability and independence that they accord to the authors thereof. In such respects the Codazzi line has a greater moral value than can be conceded to that of Schomburgk. Let us proceed to demonstrate it.

Schomburgk visited Guiana for the first time in 1834, when he was thirty years of age. He was then a young man who, having failed in his original trade of tobacconist in the United States, had changed his profession, and thereupon essayed that of surveyor. He arrived in Demarara as an employé of the Royal Geographical Society of London, for the purpose of exploring British Guiana. Subsequently he continued his work in the pay of the British Government, until 1843, when he left it completed, and we are not surprised that he fixed the limit of Demarara at the right bank of the Orinoco; what surprises us is that he should not have placed it

on the left bank, and even farther still within the lands lying to the west of the Caribbean Sea.

The Codazzi line has quite a different source. Born in Italy, and brilliantly educated as a mathematician, Codazzi undertook a voyage to old Colombia, fascinated by the glories of the Liberator Bolivar, and stimulated by his own desire for a military career, in which he had distinguished himself in his native country, having taken part in the campaigns of 1812 to 1815 as an engineer officer. The Italo-Britannic army in which he had served having been disbanded after the last campaign, he gave himself to travel, and visited Greece, Wallachia, Moldavia, and Germany. He was also in Rome, Poland, Prussia, Denmark, Sweden and Holland. It was in Amsterdam that he was struck with the desire to go to the land of Bolivar, and from there set sail for the United States, bound for Colombia. By 1820 he had already enlisted in the Colombian army in the service of his adopted country, in which he obtained the full rank of Colonel of Engineers.

He employed the years 1828 and 1829 in preparing the corographic chart of the whole Department of Zulia. The work was so perfect that upon its recommendation by General Paez to the Constituent Congress of 1830, that august body ordered that maps of the entire Republic be made, and Colonel Codazzi was designated by the Executive to undertake the arduous task. In this he spent ten years, and then published in Paris in 1840 the result of his splendid and valuable work. In the study of the Province of Guiana he spent the years 1838 and 1839 traversing its deserts, navigating its mighty rivers, and studying, upon the land, with the documents before him, the frontiers bordering upon Brazil and British Guiana.

The work of Codazzi merited the most sincere approbation of men of science of his age. The French Academy congratulated the Venezuelan Congress for the protection it had accorded to the work of the wise geographer. The Geographical Society of Paris awarded him the annual first prize, consisting of a silver medal.

The Geographical Society of London sent him a communication abounding in flattering expressions for the author. The Institute for the Promotion of Science in Washington elected him a corresponding member. His Majesty Louis Phillipe, King of the French, decorated him with the Cross of the Legion of Honor. And, finally, his adopted country received him with great enthusiasm, and the Government of Venezuela declared that by such important surveys Colonel Codazzi had made himself worthy of national recognition.

When the two men—the geographer and the surveyor—are compared one with the other, Codazzi appears a giant and Schomburgk a pigmy. So that the moral worth of the work of Codazzi is undoubtedly superior to the work of Schomburgk.

Notwithstanding this, the Government of Venezuela, in the copious array of documents which this discussion has brought forth, never boasted of the work of Codazzi; but on the other hand, since 1841, the British Government has never ceased to invoke the work of Schomburgk, as if it were an irrefutable authority, an incontrovertible proof of its right, a definitive proprietary title drawn up in its favor by that surveyor. Why, the name of Schomburgk has been used to such an extent in the British publications that if one were to take the trouble to abstract this name every time it has been used in the British documents since 1841, and place the names so collected in a row, there would be formed a line many kilometers in length, which would be the *true Schomburgk line*, and which would have a greater moral value than the original line drawn by him in 1841.

Paris, November 4, 1898,

(signed) J. M. DE ROJAS,

Agent of Venezuela.

BRITISH DIPLOMACY IN CARACAS FROM
1830 TO 1850.

[*Translation.*]

It cannot be denied that Great Britain gave very valuable assistance to old Colombia during her war for independence. Venezuela, upon separating from Colombia in 1830, exerted herself to recognize those services by a very cordial friendship, to which end one of her first diplomatic acts was the sending of a Minister to London, for the purpose of resigning the treaty of commerce and navigation made by Great Britain in 1825 with the old Republic of Colombia. The Venezuelan Envoy signed the said treaty without completing it, as was provided in one of the articles of the treaty which was signed in Bogota in the greatest hurry, and in consequence it remained without the time of its duration being fixed. But in the period of sixty-nine years which have elapsed since then, each time that the Government of Venezuela has proposed to revoke the said treaty the Government of Her Britannic Majesty has claimed that the treaty was perpetual, and could not be revoked without the terms of its proposed substitute being previously made known, basing such an extraordinary position, perhaps, upon the wording of the first article of said treaty, which reads as follows:

I. "There shall be perpetual, firm and sincere Amity between the Dominions and Subjects of His Majesty the King of the United Kingdom of Great Britain and Ireland, His Heirs and Successors, and the State and Peoples of Colombia."

Such a doctrine is to-day repudiated by the principal professors of international law, who hold that when a treaty of commerce has not fixed the limit of its duration, it is understood that each party has the right to revoke it upon giving one year's notice to the other.

The first diplomatic agent of Great Britain in Caracas was that distinguished gentleman, Sir Robert Ker Porter. He was born in Durham in 1780, so that when, in 1836, he requested the Government of Venezuela to establish a lighthouse on Barima Point, he was already fifty-six years of age. Sir Robert Ker Porter arrived in Venezuela with the prestige of his antecedents as a soldier, a diplomat, litterateur and artist, he being a noted painter, and had, in 1804, been called to Russia and appointed historical painter to the Emperor. In 1811 he married Princess Marie, daughter of Prince Theodore de Sherbatoff, of Russia. He served his native country as a diplomat and soldier in various places on the Continent of Europe—in Russia, Persia and Spain—and also in South America. In 1841, with permission of his Government, he left Caracas for Europe, and died suddenly in St. Petersburg on May 3, 1842, a few hours after having taken leave of the Emperor. It is inexplicable that a man of such great personal prestige should invite the Government of Venezuela to establish a lighthouse on Point Barima without the authorization of his Government, and at least without informing it of his action, while it appears from the books presented that the British Government only had notice of it in 1842.

So cordial at this time were the diplomatic relations between Venezuela and Great Britain that in 1837 King William IV., as a token of admiration for the conduct of General Paez, father of the Independence of the Republic, and its first President, presented him with a sword bearing the following inscription:

“The gift of King William the Fourth to General Paez, as
 “a mark of esteem for his character, and for the disinterested
 “patriotism, which has distinguished his gallant and victorious
 “career, 1837.”

This explains why the mission of the surveyor, Robert Schomburgk, to the Orinoco, in 1841, caused an immense surprise in Venezuela; but the Government being desirous of cultivating the most friendly relations with Great Britain, permitted itself to

submit to a foreigner's thus, without previous permission on its part, invading its territory armed with authority and instructions to ascertain what belonged to the British Colony.

At the time of the death of Sir Robert Ker Porter, there was already in Caracas a representative of Great Britain, Mr. Daniel O'Leary, General of the Colombian army, who had fought under the orders of Bolivar in the war for independence, and might well have been considered a Venezuelan, not only for his services to his adopted country, but also by reason of his social connections, he having married one of Venezuela's most prominent women. The presence of General O'Leary contributed greatly to calming the public excitement, and General Paez, President of the Republic, for the second time during that period, limited himself to the statement, in his Message to the Congress of the Republic, of what follows:

" A disagreeable event, promising to affect our relations with Great Britain, has occupied the attention of the Government, and caused inquietude in the minds of our citizens. The Government of Her Britannic Majesty, desiring to ascertain the boundaries of her possessions in British Guiana, despatched a Commissioner to explore the territory, and designate the line which, in his judgment, should divide it from its neighboring countries. But the Commissioner not only fixed the said line within the territory of Venezuela, but did so in such a solemn manner, and employed such formal signs, that it had more the appearance of taking possession and exercising acts of sovereignty, than of his being engaged in a mere preliminary examination or purely provisional work, guided only by his own knowledge and private opinion—which latter has turned out to be the case according to the explanation given by the Governor of British Guiana, and also in the answers received from the British Government by our plenipotentiary in London. They leave no doubt that, whatever excesses may have been committed by the Commissioner, it has been far from the intention of Her Majesty to occupy

any part of the territory of Venezuela, and that the fixing of the boundary is subject to discussion between the two Powers. Such a result, which has had the effect of quieting our countrymen, makes us hope, also, that the justice with which the Republic sustains its rights will be seen and recognized in the Treaty which is necessary to terminate this matter."

This language, so moderate, so sensible, and so friendly toward Great Britain, notably contrasts with the following words of the British Government to the Envoy of Venezuela on February 10, 1890:

"As regards the frontier between Venezuela and the Colony of British Guiana, Her Majesty's Government could not accept as satisfactory any arrangement which did not admit the British title to the territory comprised within the line laid down by Sir R. Schomburgk in 1841."

Mr. O'Leary having been sent to Bogota in the diplomatic capacity which he exercised, he was substituted in 1843 by Mr. Belfort Hinton Wilson, as the diplomatic representative of Great Britain in Caracas. Mr. Wilson had the rank of Colonel in the Colombian army since 1822, when he arrived in Venezuela, and was, up to the last moment, one of the aides-de-camp of the Liberator Bolivar; and so much thought of by him that the Liberator wrote, in the twelfth clause of his will, the following:

"I direct my executors to give thanks to Mr. Robert Wilson for the good conduct of his son, Colonel Belfort Wilson, who has accompanied me so faithfully up to the last moments of my life."

Mr. Wilson retired from Venezuela in 1851.

The presence of two British diplomatic agents, who represented their native country in Caracas during ten years, and who, by reason of their military antecedents in Colombia, must have been *personæ gratissimæ* to the Government and people of Venezuela, came finally to be prejudicial to the Republic; for the intimate confidence that each inspired left the public sentiment quite unsuspecting regarding any ulterior views that the British Govern-

ment might have upon the question of the boundaries of Guiana; and this explains the deficiency of that convention known as the "*Modus vivendi*" entered into in 1850 between Señor Lecufia, Venezuelan Minister of Foreign Affairs, and Colonel Wilson, Chargé d'Affaires of Her Britannic Majesty in Caracas—a convention agreed upon when France was consummating the brilliant conquest of Algeria, and the desire for the colonization of foreign lands was just being developed in Europe.

This is the exact story of British diplomacy in Caracas from 1830 to 1850.

Paris, November 1, 1898.

(signed) J. M. DE ROJAS,
Agent of Venezuela.