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Decision of arbitration concerning the definite fixing of the Italian-Swiss frontier at the place called Alpe de Cravairola

23 September 1874

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PART XII

Decision of arbitration concerning the definite Fixing of the Italian-Swiss frontier at the place called Alpe de Cravairola

Decision of 23 September 1874

Décision d'arbitrage relative à la délimitation définitive de la frontière italo-suisse, à l'endroit dénommé Alpe de Cravairola

Décision du 23 septembre 1874

OPINION OF GEORGE P. MARSH, UMPIRE UNDER THE ARBITRAL AGREEMENT CONCERNING THE DEFINITE FIXING OF THE ITALIAN-SWISS FRONTIER AT THE PLACE CALLED ALPE DE CRAVAIROLA, CONCLUDED BETWEEN THE GOVERNMENTS OF ITALY AND SWITZERLAND ON THE 31ST OF DECEMBER ONE THOUSAND EIGHT HUNDRED AND SEVENTY THREE, DECISION OF 23 SEPTEMBER 1874[*]

OPINION DE GEORGE P. MARSH, SURARBITRE EN VERTU DU COMPROMIS D'ARBITRAGE RELATIF À LA DÉLIMITATION DÉFINITIVE DE LA FRONTIÈRE ITALO-SUISSE, À L'ENDROIT DÉNOMMÉ ALPE DE CRAVAIROLA, CONCLU ENTRE LES GOUVERNEMENTS DE L'ITALIE ET DE LA SUISSE LE 31 DÉCEMBRE 1873, DÉCISION DU 23 SEPTEMBRE 1874[**]

Determination of borders – sovereignty over the Alpe de Cravairola – interpretation of the Treaty of 1516 between Francis I and the Helvetian Confederation, the pamphlet "*Jura Crodensium et Pontemaliensium contra Campenses Vallis Madiae*" and the document "*Copia Partitionis*" within it, Judgement of 1 July 1367 of the Vicar of Matterello, Deed of Sale of 24 February 1406, Conveyance of 10 June 1454, Deed of 20 April 1497, Deed of 17 March 1420 and the Deed of 8 December 1490

Determination of borders - right to the territory based on use and occupation or right by acquisition pursuant to the conquest of 1513 and the Treaty of 1516 – reliance on previous determination and acquiescence – geographical principle of political division of territories according to the watershed not sufficiently recognized in the international law of Europe to constitute basis of the decision.

Arbitration – basis of determination of borders – award must be based on right to land rather than principles of convenience unless specified in arbitration agreement -convenience and cost of administering disputed territory, particularly to prevent continued environmental damage to the physical condition of the area are only subsidiary factors in the decision – mutual interest of States considered - question of whether principles of political economy are relevant in that the disputed territory should be assigned to the State which can derive the most profit from it.

Délimitation frontalière – souveraineté sur le Mont alpin Cravairola – interprétation du Ttraité de 1516 entre François Ier et la Confédération helvétique, de la maxime «*Jura Crodensium et Pontemaliensium contra Campenses Vallis Madiae*» et du document «*Copia Partitionis*» qui en font partie, jugement du Vicaire de Mattarello du 1er juillet 1367, Acte de vente du 24 février 1406, Acte de transfert du 10 juin 1454, Acte du 20 avril 1497, Acte du 17 mars 142 et Acte du 8 décembre 1490.

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[*] Reprinted from John Basset Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington 1898, Government Printing Office, p.2028.

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Délimitation frontalière – droits territoriaux basés sur l'usage et l'occupation ou obtenus pas l'acquisition consécutive à la conquête de 1513 et au Traité de 1516 – confiance dans la délimitation antérieure et son acquiescence – reconnaissance insuffisante dans le droit des Gens en vigueur en Europe, du principe géographique de la division politique des territoires selon la ligne de partage des eaux pour qu'il puisse servir de base à la décision.

Arbitrage – base de la délimitation frontalière – à moins de stipulations contraires dans le compromis d'arbitrage, l'attribution doit être fondée sur le droit de possession du territoire plutôt que sur des principes de convenance – la convenance et les coûts d'administration du territoire contesté, particulièrement afin de prévenir des dommages environnementaux persistants à la situation physique de la région sont seulement des facteurs subsidiaires de décision – considération de l'intérêt mutuel des États – question de savoir si des principes d'économie politique sont des éléments pertinents, dans le sens où le territoire devrait être attribué à l'Etat pouvant retirer le plus de profit de ce territoire.

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Decision of Arbitration pronounced by the Umpire, George P. Marsh, September 23, 1874.

Opinion of George P. Marsh, umpire under the arbitral agreement concerning the definite fixing of the Italian-Swiss frontier at the place called Alpe de Cravairola, concluded between the governments of Italy and Switzerland on the 31st of December one thousand eight hundred and seventy-three.

The Honorable Commissioner Enrico Guicciardi, Senator of the Kingdom of Italy, and the Honorable Councillor of the States, Hans Hold, Colonel of the Swiss federal staff, duly nominated by the respective governments of Italy and the Swiss Confederation, arbitrators for the definite determination of the Italian-Swiss frontier at the place called *Alpe Cravairola*, having, by means of an agreement dated July thirteen one thousand eight hundred and seventy-four and in virtue of the fourth article of the above-mentioned "arbitral agreement," selected the undersigned as umpire in case they could not reach a solution of the said question; and the same arbitrators having duly declared in a report and notified the said umpire that they found it impossible to reach an agreement; the undersigned having carefully considered the arguments and the proofs submitted by the high contracting parties through their respective agents, proceeds and pronounces on the subject submitted to him, the following decision:

The question submitted to this Arbitral Tribunal by the two interested governments is formulated as follows in the first article of the arbitral agreement, by which authority the Tribunal acts:

> "Ought the frontier line above mentioned [which divides the Italian territory from the territory of the Swiss Confederation] to follow, according to the opinion of Switzerland, the summit of the principal chain by passing by the Crown of Groppo, Peak of the Croselli, Peak Pioda, Peak of the Furnace, Peak of the

> Monastery; or ought it, according to the opinion of Italy, to leave the principal chain at the specified summit of Sonnenhorn ⊿ 2788^{m} in order to descend towards the stream of the valley of Campo by following the secondary ridge called Creta Tremolina [or Mosso del Lodano 2556^{m} on the Swiss map], to meet the principal chain at the Peak of the Frozen Lake"?

It is not clear to the undersigned whether the high contracting parties have intended to authorize the arbitrators to determine a frontier line with a view to mere convenience or whether it is expected that they should solve the question strictly according to the principles of right. It is therefore necessary to examine the considerations and arguments presented by them as well with regard to convenience as with respect to right.

In the first place therefore, considering simply convenience and leaving aside for the present the question of right:

In the interest of Switzerland the fact is insisted on, that the contested territory is much more accessible from the Valle Maggia than from the Val Antigorio; that therefore it can be more conveniently and more advantageously administered by the Swiss authorities than by the Italian, the latter being able to approach it only during three months of the year; and consequently that all the rights and interests of the residents, both as to person and as to property, can be more effectually protected by the institutions and the judicial and executive authorities of Switzerland than by those of Italy.

It is also alleged that for want of legal control and of oversight of the actual occupants of the soil, the physical condition of the territory is rapidly deteriorating, by the diminution of the extent of pastures and grazing grounds, by the invasion of Alpine bushes, which, according to the rules of a wise administration, ought to be eradicated, – and by the continuous deluging of the soil due to an injudicious cutting down of forests that ought to be preserved and to the negligence of the owners in not taking proper measures to prevent the evil by new planting, settling the loose earth around the springs and the edges of the torrents and constructing barriers in the beds of the same.

It is moreover observed that the excessive and irregular floating of timber, cut on those Alps, down in the torrents whose waters are discharged in the Maggia occasions, owing to the numerous enclosures, an extraordinary accumulation of water, the descent of which down through the valley, when those enclosures are opened, causes grave injuries not only along the edges of the torrents in the Alp itself, but in a greater proportion along those of the Rovana in the commune of Campo.

It may be added that the movement of that torrent already produces most damaging effects on the course of the Maggia, that the violence of the torrent and its devastations are constantly increasing for the above-mentioned causes, and that it is even believed that it has a sensible influence upon the bed of Lake Maggiore at the mouth of the Maggia, and hence upon the navigation of a part of the same.

The fact is insisted upon that these damages, already so prejudicial to the interests of the Swiss population and its territory, can be prevented only by the application to the Alp of Cravairola of modern methods concerning forestal economy and the regulating of the waters.

Now this, it is said, can hardly be done by the Italian government, on account of the inaccessibility of the territory from the Italian side of the mountains, and because Italy has no sufficient interest in the protection of the forests and soil of these Alps to make it an adequate subject for her intervention in such an undertaking; and lastly because the cost of the application of such measures if taken by Italy would be far beyond their cost to Switzerland as a part of her regular forestal system.

Perhaps it is not out of place to observe here that though Switzerland, in case the contested territory should be assigned to Italy, could not adopt any measure of safety or of improvement within the limits of those same Alps, yet, in case of such an assignment, the fourth Article of the Convention of the Borromee Islands of the year 1650 would become annulled in virtue of Article seven of the same Convention, and, consequently, Switzerland would be free to prohibit the floating of timber from those Alps across Swiss territory, and to enforce such prohibition by the confiscation of the timber itself or by any other legal means, and thus to protect the banks of the Rovana from damages occurring from that cause.

In connection with the above-mentioned facts, it is proper to remember that in the argument of Lawyer Scaciga della Silva, submitted by the Italian agents, it is asserted that the productive power of the Alps is already diminished by half; and from the reports of the agents on both sides it appears that the diminution has been going on for a long time. Besides, it is evident by a superficial inspection of the territory and of the landed property of the Commune of Campos, that the physical damages that have resulted or those that are feared from a bad administration of the soil and forests of the Alps, have not been exaggerated in the reports of the Swiss agents.

Finally, it is suggested that, according to the general principles of political economy, it is most expedient that the contested territory should be assigned to those who can derive the most profit from it, and that the Alp of Cravairola would be of greater value to the inhabitants of adjacent Swiss communes, than it could be to owners so distant as those of Crodo. And this argument acquires greater force from the observation already made, viz, that it is in the power of Switzerland to adopt severe legal measures for the protection of her territory and by such means to deprive Alpine timber of any mercantile value in the hands of Italian residents.

These observations, here imperfectly sketched, and other analogous arguments which could be adduced, seem to the undersigned to be of no light weight, and he is fully convinced that if a satisfactory compensation could be found for the communes and the Italian private citizens, residing at present in the Alp of Cravairola, the interests of the two countries would be effectively

promoted by the cession to Switzerland of the sovereignty and ownership of the debated territory. Fortunately, the two countries have few or no opposite or even rival interests; on the contrary, there is solidarity of interests between them. Each of the two derives advantage from the material prosperity and the political and social progress of the other; and the removal from them of any cause of dissension and irritation is highly advantageous to both.

If therefore it were clear that the arbitrators had the power to follow considerations of mere convenience, and if they or other arbitrators were authorized to fix a compensation for the present owners of the soil, the undersigned would not hesitate to say that the sovereignty and the ownership of the Alp ought to be ceded to Switzerland and a just equivalent granted to the actual residents for the transfer of the property.

But the terms of the "agreement" do not in any way imply that such a power is conferred on the arbitrators; and the absence of any provision for the indemnity of the present owners of the soil induces the undersigned to believe that the high contracting parties did not intend to confer upon their arbitrators such authority. Furthermore, it is the opinion of the undersigned, that the extension of Swiss institutions, laws and administration to the territory while the owners of the same continued to be subjects of the Kingdom of Italy and to reside for the most part of the year in that country, would give rise to jealousies, dissensions and endless disputes, and would prove more hurtful to the peace and harmony of the two countries than the present unsatisfactory condition of the territory; and according to all probabilities would give rise to more international questions than any decision of this tribunal could settle within the limits of its competency.

The question of convenience cannot therefore be considered as a fundamental basis for a decision, but can only serve as a subsidiary criterion in case of failure of the means to reach a well-grounded conclusion.

We now reach the question of mere *right*.

It is understood to be admitted that certain communes of Valdossola, or rather of a part of that valley, the Val Antigorio, had the incontestable possession and use of certain parts of the Alp of Cravairola for nearly four centuries, and of other parts of the same for a period of time much longer still, and this under the claim of a title of absolute ownership over land acquired by money, a title accompanied by various official acts, more or less important, of Italian public authorities, which acts are interpreted by the Italian agents as proofs of the exercise of sovereignty over the territory on the part of Italy.

The agents of Switzerland claim high dominion over the Alp of Cravairola as being part of Val Maggia which the XII. Cantons acquired by conquest in 1513 and by treaty in 1516, in support of which claim they insist upon the principle of political geography that, at least in the absence of proof to the contrary, the watershed must be taken as the limit of jurisdiction between adjoining states, and consequently that the denomination "Val

Maggia" in the treaty of 1516 must be considered as embracing all the smaller basins that drain into the principal valley.

Moreover they claim that, among the circumstances of the case, certain proceedings of the year 1554 for the determination of the eastern limits of the Cravairola Alp, constitute in themselves a binding acknowledgment of the sovereignty and of the high dominion of Switzerland over the territory in question.

These are the cardinal points submitted to our examination. Other minor arguments presented by the parties will be mentioned in the course of discussion.

Numerous documents have been presented by the respective parties, which have all been studied, but the undersigned will only mention here such as he considers have a substantial relation to the argument.

The documents brought forward by Italy, are:

"Judgment of the 1^{o} of July 1367 of the Vicar of Matterello, annulling a sale made by the Commune of Crodo of a part of Cravairola, on the ground of reciprocity."

"Deed of sale of the 24th of February 1406, of a part of the Cravairola Alp in the territory of Cravairola."

"Conveyance on the 10th of June 1454, of three parts of the Alp of Collobiasco, in the territory of Cravairola."

"Deed of April 20, 1497, which reads: '*busco existente et jacente in et supra territorio et dominio de Crodo* in the Cravairola Alp.'"

These documents, all prior to the Swiss conquest and the treaty of 1516, are presented by the Italian agents for the purpose of proving by the exercise of jurisdiction and by legal descriptions that the *locus in quo* was independent of the jurisdiction of the Val Maggia and belonged to the commune of Crodo. Italy also brings forward a pamphlet entitled "*Jura Crodensium et Pontemaliensium contra Campenses Vallis Madiæ,*" containing a relation of the proceedings during 1554 to define the limits of the Alp of Cravairola, besides various other documents relating to such delimitation.

The agents of Switzerland appeal to the deed of March 17, 1420, by which a third part of the Alp of Cravairola "*jacente in territorio Vallis Madiæ*" was sold to the commune of Crodo; and to the deed of December 8, 1490, which cedes to the Commune of Crodo the Alp of Collobiasco "*existing and situated in the dominion of the men of Valmaggia, said to be in Cravairola*."

Switzerland maintains that these words imply an acknowledgment of the jurisdiction of Val Maggia, and adduces besides the treaty concluded in 1516

between Francis I. and the Helvetian Confederation in which Val Maggia is recognized as belonging to Switzerland.

This country also relies on a document already mentioned, entitled: "*Copia positionis terminorum anni 1554,*" contained in the pamphlet entitled "*Jura*" referring to the determination of the eastern limits of the Alp of Cravairola, which document the Swiss say proves a submission of the Commune of Crodo to the jurisdiction of a Swiss tribunal, in a matter involving the high dominion over the territory in question.

It being admitted that subjects of the kingdom of Italy are in possession of the soil under the protection of Italian jurisdiction, it is proper, first of all, to examine the principal proofs with which this right is impugned by Switzerland, and the testimony opposed to these proofs.

In the "*Copia positionis terminorum Anni 1554*" it is stated that "*quœdam differentia, lis et quœstio juridica*" had arisen between the authorities of Crodo and those of Campo "*causa et occasione confinium Alpis Cravairolæ ipsorum de Crodo, et dominii ipsorum de Campo cumque fuerit*, etc., *quod litigando in jure coram Magnific. D. Christophorum Quintoni de Friburgo et Honor. Comm. Vallis Madiœ,*" etc., and that the parties agreed to the conclusion that certain citizens of Crodo, named in the document, should define the limits by means of permanent signs, which was done. In the subscription or attestation of the notary the document is called "*Instrumentum definitionis dominii.*"

The Swiss agents contend that these proceedings are necessarily an acknowledgement on the part of the Commonwealth of Crodo of the jurisdiction of the Swiss authorities in the matter. On this point it must be observed that although "*la differentia et lis*" imply the question of the limits of the Alp of Cravairola, we are not informed as to what was the nature of the litigation. Perhaps it was originally a suit against citizens of Crodo arrested on territory claimed by Campo, on account of the violation of the same, and in that case the Swiss magistrates of Campo would naturally insist on the right of jurisdiction.

Many other suppositions could be made to demonstrate that an appearance of the Commune of Crodo before a Swiss magistrate may constitute a presumption but not necessarily an acknowledgment of the competency of said magistrate. In this case we can also suppose that a friendly arrangement had been accepted because objections had arisen to the jurisdiction of the magistrate himself. Howsoever it was, no indication of the nature of the question was made by the magistrate, the difference having been adjusted by an agreement among the parties.

In the able and ingenious argument of the Swiss agents it is averred that the expression *ipsorum di Crodo* indicates simply the right of proprietorship, while the words "*et dominii ipsorum hominium de Campo,*" signify the jurisdiction of *high dominion*, and moreover that the same word *dominii* in the

"*Attestatu Instrumentum deffinitionis dominii*" is merely a casual expression used by the notary and not by the parties, in the sense of simple ownership.

If this construction can be sustained, it is important as an admission of the sovereignty of Val Maggia on the part of persons perhaps not authorized by their governments, but still probably well informed as to effective jurisdiction. But the notary, who subscribed the document, according to all probabilities, also extended it, and it is improbable that he would have used the same expression in two different senses in the same document. According to the principles of legal interpretation, the same word used more than once by the same writer in the same document must be taken as having always the same meaning, unless the contrary appears from the context. In the present case, the undersigned does not find in the context a sufficient reason for believing that the notary intended to use the word *dominium* in different senses in the two paragraphs in which it occurs; therefore if he meant to speak of *alto dominio* in the body of the deed, it must be supposed that he was alluding to *alto dominio* in the *attestatu*.

According to this interpretation, the proceedings in question would assume the aspect of an attempt at a final definition of the question of territorial sovereignty and jurisdiction.

But, independently of this, the undersigned opines that as a grammatical question the words *Alpis Cravairolæ e dominii* are in the same category, being both genitives placed after *confinium*, the first indicating by name a certain territory, and the second designating another territory by means of a descriptive term which simply indicates land by its ownership, without any allusion to the sovereignty and without including in fact the first tract of territory. In other words, the Alp of Cravairola is a portion of the soil situated on one side of the boundary, and the *dominium* of Campo is another portion of the soil situated on another side of the same boundary. In fact, from the examination of the several documents submitted and from others of the same period the undersigned finds no well-defined difference between *territorium* and *dominium*. These words seem to have been used indiscriminately in the sense of ownership or of sovereignty according to the argument and in conformity with the context of the acts.

But whatever may be the grammatical construction and the logical sense of the word which is used in this document, the pamphlet *Jura* contains other documents of great importance tending to demonstrate that, whatever was the opinion entertained by the parties to this transaction as to its value, their superiors, the respective governments of Milan and of Switzerland, gave it the value of an international convention for the definition of the limits of the territorial jurisdiction between the two countries.

The document that follows the *Copia Partitionis* in the pamphlet *Jura*, is an official communication from the Milanese government to the Commissary or Mayor of Domodossola, dated February 16, 1555. It sets forth that "the Ambassadors of the Lords of the XIII Swiss Cantons have complained as in

the preceding months, that parties from that land and its jurisdiction went to Valle Maggia, under the jurisdiction of the aforesaid Lords, and violently tore down certain terminal posts *placed on the confines between one and the other jurisdiction* and planted them beyond the place where they formerly stood."

Now, in this sentence, the *terminal posts* were evidently those planted in the month of June of the preceding year, that is, the limits between the Alp of Cravairola and the lands of the Commune of Campo, and "*one and the other jurisdiction*" can hardly mean other than the jurisdiction of Switzerland, exercised by the authorities of Val Maggia and west of the posts placed in 1554, and the jurisdiction of Milan, exercised by the authorities of Domodossola and limited to the east of these same posts.

According to date there follows an official communication from the government of Milan addressed "*to the Eminent jurisconsult Castilioneo and to the* Podestà (Mayor) of Domodossola" relative to the contest "*inter Domodossolanos subditos nostros et homines Vallis Madiæ subdilos Helvetiorum de finibus*." This is followed by five or six other communications of the year 1556 from the same source and on the same subject, all insisting on the reestablishment of the limits of 1554 and all using the same expressions to indicate the contending parties.

Among these, there is one (No. 14) of June 19, 1556, in which allusion is made to the "*Controversia finium inter dictum Commune Crodi et Commune loci di Campo*"; and the expressions "*fines inter ipsa Communia*" and "*termini inter ipsa* Communia" are used.

It is very remarkable that in none of these maps, except the one of 1554, is mention made of the Alp of Cravairola, but the controversy is always described as concerning the limits, not of possessions foreign to Crodo, but of the respective communes; and, as already stated, the complaints of the Swiss ambassadors of the 16th of February, 1555, mention particularly the terminal posts placed in 1554 as limit between the *respective jurisdictions*. From these facts it seems clearly to result that, although it is not evident that the immediate parties to the transaction considered it as an argument of great importance, the two supreme governments of the Val Maggia and the Val d'Ossola, in the middle of the XVIth century and for nearly one hundred years after, agreed to retain the covenant of 1554 as definitely fixing the limits between their respective territories.

There is no proof that at the time of the transaction of 1554 a claim of jurisdiction was made by the authorities of Val Maggia or by the XIII Cantons, nor does it appear that at any period before or after that date till the year 1641, that Switzerland asserted any supremacy or high dominion over that territory. But on the other hand it appears that the governments of the two countries accepted the settlement of 1554 as definitive.

In connection with the fact that no claim was made by Switzerland, it is well to notice an analogous state of things relative to the government of Val

Maggia. No document of any nature whatever is produced from the records of Val Maggia, and there is no proof that the Commune of Campo was at any time in the historic period in possession of the Alp of Cravairola.

There is a merely intrinsic probability that in some remote age this Alp may have been the property of that commune and the two documents wherein the Alp is described as belonging to the *dominium* of Val Maggia add force to this supposition. But these documents are not acts to which Val Maggia was an active party, and there is in them no positive proof of that kind, showing that the authorities of Val Maggia ever exercised or claimed jurisdiction over the Alp of Cravairola till 1641. It is a very probable supposition that in those rough times during which the law of the strongest generally prevailed, and few owners could show title-deeds to their lands or their jurisdiction, save the title of possession, the transferring of the soil to the inhabitants of Val Antigorio may have been considered as in itself implying also the sovereignty. And as far as we have the means of knowing it, Switzerland seems to have acquiesced in this point of view for more than a hundred years from the acquisition of Val Maggia.

In 1641, Oswald of Schaffhausen, Commissioner, Bailiff of Val Maggia, whether by order of his superiors or for personal reasons no one knows, called an assembly of the delegates of the Communes of Crodo, Pontimaglio, and Campo to adjust the differences arising in relation to the Alp of Cravairola. Pursuant to this convocation certain citizens of Crodo and of Pontimaglio met him and his companions on the Alp on the 2d of October 1641 and declared that they were not authorized by their communes, but that they would make a report to them, in order that a delegation might be named to discuss the subject. On that occasion, Commissioner Oswald "in the presence of the subjects of Antigorio, protested that the jurisdiction over the Alp was his, and that he could not and must not neglect the acts that would be judged necessary for the maintenance of the jurisdiction of his illustrious Lords of the XII Cantons of the Most Serene Helvetian Republic." This, as has been observed, is the first formal claim that is known of the sovereignty of the Alp by Switzerland. If this was done in obedience to orders from Switzerland and not merely personally by the Commissioner, it would be right to suppose that the archives of Switzerland could furnish the proof the fact; but no proof of this kind has been presented.

This claim was often repeated during the following years and the result was a greater excitement and a growing irritation. It is not necessary to follow the history of these facts, because in 1650 a convention held at the Borromean Islands, by the authorities of the two governments, recognized the limits of 1554, made several grants, to the two sides, and especially this one, of authority to the people of Crodo to carry the timber of the Alp by means of the Rovana into Val Maggia, a provision, it must be observed, entirely superfluous had this Alp been Swiss territory. Another provision did away with suits growing out of all previous quarrels and riots; and lastly an article conceived in these words: "And this provision, shall last till the point of the

jurisdiction over the said Alp is decided, and no prejudice is intended to any of the above mentioned cases."

The undersigned understands the term "provision" as applying to the whole subject matter of the Convention, and not only to one or several particular articles. The convention decided nothing in relation to jurisdiction, but left the question just as it found it, and naturally, this point, in the state in which it then was, must be judged by facts and by the laws connected with its preceding history.

After 1650 other numerous attempts, more or less serious, were made on both sides to establish a jurisdiction over the contested territory, but in the opinion of the undersigned they do not possess a sufficiently conclusive character to affect the case materially either one way or the other, and we must refer for a decision to the rights of the parties, such as they were at the time of the Convention of 1650.

Recapitulation. – The evidence of the title of Italy consists in the acquisition of the soil previous to 1500 by communes now belonging to the Kingdom of Italy, or in the incontestable possession of the territory by these same communes up to the present day; in certain acts of jurisdiction which are said to have been accomplished by the official authorities of Domodossola relative to the soil of the Alp, acts which are alleged to be not only conclusive in their nature, but which are also considered to afford strong presumptive evidence of the fact, so long as they are not refuted; in the proceedings of 1554, 1555 and 1556, which treat of the definition of the limits by a territorial and jurisdictional delimitation, and which were accepted as such by both governments for nearly a century without protest; and finally in the absence of any claim of high dominion or jurisdiction from Switzerland or its dependencies previous to the year 1641, when the Alp had been possessed by Italian communes for whole centuries.

The right of Switzerland is founded: on considerations of convenience; on the alleged principle of political geography, according to which the limits of bordering States in mountainous regions are determined by the watershed; on the conquest of 1513 and on the treaty of 1516, which recognizes Val Maggia, of which the Alp of Cravairola is part, as belonging to Switzerland; and its provisions for the establishment of the limits between the Alp of Cravairola and the Commune of Campo.

Considering all these points, the undersigned is of opinion:

Firstly: That the title of Italy over the said territory is established *prima facie* by the above considerations and therefore valid, unless it is refuted by proofs adduced by Switzerland.

Secondly: Though reasons of convenience and of mutual interest advise the cession of the Alp of Cravairola to Switzerland, nevertheless, for the

reasons already expressed, the arbitrators would not be justified in assigning that territory to the Confederation merely on this basis alone.

Thirdly: That the geographical principle of the political division of territories according to the watershed is not generally enough recognized in the practical international law of Europe to constitute an independent basis of decision in contested cases. It is true that geographically a large valley includes its minor basins, but in ordinary parlance the word "valley," when used with reference to a large river, is generally restricted to the principal basin, the lateral tributary valleys having usually their own proper names; hence such a designation does not necessarily include minor valleys, but must be interpreted according to possession and other circumstances if any exist. As stated, there is no proof of any formal claim on the part of Switzerland, relative to the sovereignty over the Alp, as part of Val Maggia, previous to the assertion of jurisdiction by Oswaldo in 1641; and if in the mediæval period, through which the history of the Alp of Cravairola extends, it was accepted as a principle of law, that tributary valleys must follow the jurisdiction of the principal current of the waters, it cannot be explained why the Commune of Campo did not claim the sovereignty of Cravairola as belonging to its own territory, at the time when the Italian Communes acquired it. But there is no trace of such a claim at any time till a century after the definition of the limits in 1554.

Fourthly: That although, in a scientific sense, the principal valley of a river embraces those of its tributaries, yet these words, when used in public documents, especially in those of ancient date, must be interpreted according to the contemporaneous use and sense. The undersigned sees no proof that any of the parties to the treaty of 1516, or of any subsequent period previous to 1641, considered the Alp of Cravairola as included in the denomination of Val Maggia; but, on the contrary, the absence of any claim of sovereignty by Switzerland or by the Commune of Campo over the soil geographically situated in Val Maggia, but possessed and enjoyed by foreign moral bodies, shows *prima facie*, that the Confederation and the Commune of Campo did not consider themselves invested with the right of such sovereignty at any time before such claim was put forward by a Swiss official in 1641.

Fifthly: That the proceedings of 1554, which the undersigned is obliged to interpret as in harmony with the corresponding official documents of 1555 or 1556, tend rather to negative than to establish the right of Switzerland to the sovereignty of the territory in question, and to show that the limits established by the parties immediately interested were considered by them and their respective governments as a territorial and jurisdictional delimitation.

On the whole question, the undersigned is of opinion that, using the expressions of the Agreement: "The frontier line that divides the Italian territory from that of the Swiss Confederation (Canton Tessin), at the spot called the Alp of Cravairola, must leave the principal chain of mountains at the summit called Sonnenhorn, and descend towards the stream of the Valley

of Campo and following the secondary ridge called Creta Tremolina (or Mosso del Lodano on the Swiss map) to meet the principal chain at the Peak of the Frozen Lake," * * * and he pronounces his decision accordingly.

In conclusion, the undersigned has the honor to express his high appreciation of the ability, moderation and impartiality displayed by all the members of the arbitration, and also his sincere thanks for the continued courteousness and consideration manifested towards him by all with whom his office brought him into contact.

Given at Milan in duplicate September 23, 1874.

Signed: GEORGE P. MARSH.

The present copy conforms with the original, preserved in the archives of the Ministry of Foreign Affairs of the Kingdom of Italy.

Rome, December 6, 1894.
The director of the archives.
[Seal Min. of For. Af.] G. GORRINI.

Decree adopted by the Swiss Federal Council for he execution of the Award

LE CONSEIL FÉDÉRAL SUISSE.

Vu le Compromis passé entre le Conseil fédéral et le Gouvernement Italien, du 31 Décembre 1873, relatif à la frontière Italo-Suisse au lieu dit «Alpe de Cravaïrola;»

Vu la sentence du sur-arbitre, M. Marsh, Ministre des États-Unis à Rome, en date du 23 Septembre 1874, qui porte: «La ligne frontière qui sépare le territoire Italien du territoire de la Confédération Suisse (Canton du Tessin) au lieu dit «Alpe de Cravaïrola» doit quitter la chaîne principale des montagnes au sommet désigné 'Sonnenhorn', pour descendre vers le ruisseau de la vallée de Campo et, en suivant l'arête secondaire nommée Creta Tremolina (ou 'Mosso del Lodano' sur la carte Suisse) rejoindre la chaîne principale au 'Pizzo del Lago Gelato'»,

Arrêté du Cons. féd. conc. la frontière sur l'Alpe de Cravaïrola.

Vu l'art. 2 du Compromis arbitral,[1] qui statue: «Les hautes parties contractantes admettront la sentence arbitrale qui interviendra et reconnaîtront comme définitive la ligne frontière qui elle aura déterminée;»

[1] Voir Recueil officiel des lois, tome XI, page 516.

Et l'art. 8 du même Compromis en ces termes: «Les hautes Parties contractantes s'engagent à procéder aussitôt que faire se pourra à l'exécution du jugement arbitral,»

ARRÊTÉ:

Art. 1er. La ligne frontière déterminée par la sentence arbitrale de M. Marsh, du 23 Septembre 1874, est reconnue comme définitive, cette sentence étant admise et devant entrer en rigueur dès ce jour.

Art. 2eme. Le présent arrêté sera inséré au Recueil Officiel, et l'original de la sentence arbitrale déposé aux archives fédérales.

Berne, le 4 Janvier 1875.
Au nom de Conseil Fédéral Suisse,
Le Président de la Confédération:
SCHERER
Le Chancelier de la Confédération: SCHIESS.

Protocol signed by the President of the Swiss Confederation and the Italian minister in Berne at 17 May 1875:

Les Soussignés, Monsieur le Sénateur L. A. Melegari, Ministre d'Italie en Suisse, et Monsieur J. Scherer, Président de la Confédération Suisse, à cela dûment autorisés, reconnaissent et déclarent, au nom de leurs Gouvernements respectifs, que la sentence arbitrale, rendue à Milan, le 23 Septembre 1874, par Monsieur Marsh, Ministre des États-Unis d'Amérique à Rome, surarbitre nommé, en la forme convenue dans le compromis signé à Berne le 31 Décembre 1873, pour fixer définitivement la frontière Italo-Suisse au lieu dit «Alpe de Cravairola,» sentence dont suit le dispositif:

«La ligne-frontière qui sépare le territoire Italien du territoire de la Confédération Suisse (Canton du Tessin) au lieu dit ‹Alpe de Cravairola› doit quitter la chaîne principale des montagnes au sommet désigné ‹Sonnenhorn,› pour descendre vers le ruisseau de la vallée de Campo, et, en suivant l'arête secondaire nommée ‹Creta Tremolina› (ou ‹Mosso del Lodano› sur la carte Suisse), rejoindre la chaîne principale au ‹Pizzo del Lago Gelato:›»

Est devenue, en vertu de l'Article II. du dit compromis, obligatoire pour les deux États contractants, lesquels, par conséquent, s'engagent à faire procéder, dans l'année et aussitôt que faire se pourra, par le moyen de délégués spéciaux, à la collocation des bornes sur la ligne-frontière définitivement tracée dans le dispositif de la sentence arbitrale précitée.

Fait à Berne, le 17 Mai 1875.

[L. S.] MELEGARI.
[L. S.] SCHERER.