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Report of CAPTAIN J. TOMKINSON, commanding His Majesty's sloop of war Caledom, to VICE-ADMIRAL ALBEMARLE BERTIE.

Wednesday, June 7th, 1809.-At 1 p.m. waited on the bishop, in whose charge the government of Mozambique rests, from the death of the governor some months previous to my arrival, and delivered the
dispatches in my charge from the Earl of Caledon and Admiral Bertie. Was offered by the bishop any assistance the colony could afford, which I might stand in need of. Informed him of the leak in the ship's bows, when as many carpenters and as much wood as necessary was ordered for that purpose.

In respect to the French cruisers, he informed me as yet they had not appeared, but that the present was the commencement of their cruising, that they stay on the coast until the latter end of August, which is the close of the fair season; last year they were on the coast from the beginning of May to the last day of August, during which period the loss of the Portuguese was very great, they taking nearly all vessels belonging to the latter employed in the coasting trade from Delagoa Bay (Cape Correntes) to Cape Delgada, the value of which in negroes, elephants' teeth, gold-dust, and specie, is estimated at five hundred thousand dollars.

The principal force of the French in general are vessels fitted out from the Isles of France and Bourbon, by subscription, carrying from eight to ten guns, mostly manned by Lascars, except the officers, from which islands they sail without merchandize, and nearly so as to provisions, trusting to both solely from capture, they being all fitted up for the reception of slaves.

IX.

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after success on the coast of Mozambique run to Zanzibar and Quiloa with any money, arms, or clothing, powder, &c.; they may have taken, with which they purchase a cargo of slaves and corn, rice, &c., always sending their prizes immediately after capture to the Mahe Islands, at which place they wait until the change of the monsoon, when they are joined by the French vessels from Zanzibar and Quiloa and proceed together about the latter end of December to the Isle of France, at which time they expect the English cruisers will have quitted.

The only vessels except those described which were here last year were the Gobe Mouche and La Revanche (a schooner of ten guns); the latter vessel blockaded the entrance of Mozambique near two months, sending people on shore to the small island of St. George, before the mouth of the port.

The other cruisers in general anchored amongst the Angoxa Islands, Isle de la Fozo, &c., unsuspectedly observing every sail that passed from Delagoa Bay, Inhambane, Sofala, Sena, or Europe, to or from Mozambique. The Portuguese have factories

-at the four first mentioned places, as well as every bay or river of consequence from Delagoa Bay to Cape Delgada North, which places are the limits of their settlements on the South Coast of Africa.

On enquiring if the French had any trade to the north of Cape Delgada, or if the Arabs supplied them at the Isle of France in provisions of any kind, the bishop said the only places he knew of their trading to were Quiloa and Zanzibar, at which places for some time past they had carried on a great deal, but from the Portuguese never trading out of the limits of their settlements he could not say exactly what their trade consisted of; but from information of Arab vessels who now and then traded to Mozambique, he understood they purchased slaves, rice, indian corn, and elephants' teeth, those being the principal staple of the Moor men and Arabs, the proprietors of those countries, and that he had also been informed the French made a running trade during the S.W. monsoon to the above places from the Mah66 Islands, the wind serving both ways, and that they run across in about a week; he was certain, he said, they had magazines for the reception of the cargoes at the MaheAs, until the N.E. monsoon set in, at which time our squadron would have left the Isle of France open. He said he never

heard of their having an idea of forming a settlement on the South Coast of Africa, nor did he suppose,, were they so inclined the Arabs would let them.

June 8th.- Went to the house of Mr. Gadis, Collector of the Customs, who gave a similar description and account of the French vessels, saying he had lost nearly forty thousand dollars by them; same day was told by a merchant of the name of Vincent, who had been captured last year by the French and left at the Island of Zanzibar, which place he left in March last when there were two French vessels there trading, that during his stay on the island the port was never without a French vessel, sometimes two or three, they always went to the Mah, not the Isle of France, 'also that Zanzibar had no fortifications to prevent my entrance.

9th.-Spoke to an Arab captain of a small vessel belonging here, who acquainted me that on his leaving Zanzibar about a month before he left two French vessels there, a ship and a brig, who he conceived would remain a month or two, as their cargoes were being procured from different parts of the coast to the N. and S. of that place by Arab boats.
10th.-Went round the grand fort, which I was not permitted to enter. It is an octagon, with six bastions strongly built, the foundation of the north side running into the sea to low water, where it has a parapet a little higher than high water, with eight or ten guns flanking from N.E. to N.W., above which the wall of the fort rises nearly fifty feet; but on the land side the ditch never having been half finished, and that part they had commenced being now nearly filled up, also having no glacis, with ground gradually rising from the scarp of the fort to 200 yards from it, where I think it rather commands it (as from the regular ascent of the ground on which the fort stands from the sea the water, being brought to a level at the top, leaves it on the land side not more than a third the height it is on the side that runs into the sea). It could not make a long defence against a regular attack. It is built of a hard coral, which they have a method of cementing that makes it adhere as a solid mass, the stone itself hardening by exposure to the weather.

The European part of the garrison appear to be so much debilitated from the effects of the climate as to be incapable of any service. I was told by the commandant of the troops that B"

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not more than seven soldiers in the hundred were now alive during five years' service here, and the same proportion held nearly good with respect to the civil European inhabitants. They appear to have a good black militia, who are officered generally by Creole Portuguese, one half of which is kept for the security of the island of Mozambique, the other on the main land to prevent incursions from the natives of the interior on the plantations which are along the coast of the main. Mozambique yielding nothing, their whole supply is from that source.
The embodied militia are about fifteen hundred, besides great numbers kept for drawing the guns, though from every Portuguese inhabitant having arms in his possession in case of necessity, such as their black neighbours making war, they arm their slaves, who are generally attached to them from a knowledge of the barbarity of the people of the interior, their former masters, when I am informed they can bring five thousand into the field with firearms. Besides the grand fort which is at the N.E. end of the island, there is one on the south side about one quarter of a mile from the S. end, with eight guns, and a round fort on a rock about eighty yards separate from the south point of the island, whose wall is apparently about twenty feet high, with embrasures for from twenty to thirty guns; the rock is cut away on all sides to prevent a boat approaching, the only means of getting up is by a ladder lowered down.
There is also a fort on the main of eight or ten guns directly opposite the Grand Fort, the distance across is about a mile and a half.
The Grand Fort is sufficiently large for one hundred guns, and has I Teckon about thirty that would bear on a ship as she rounded the N.E. point of the island.
I was told most of their gun carriages were bad, and for want of shot they had substituted stone ones, which are too soft to be serviceable.
June 11th.-Went to the main land up an arm of the sea about ten miles N.W. of the island of Mozambique. The soil appeared rich, abundance of tropical fruit, but a great scarcity of wood for building, which I understood came a great distance from up the interior. The houses are strong and neat on the main, and well adapted to the climate, but the plantations round them have more the appearance of belonging to a poor uncivilised

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native than a European. Though the land is rich enough for sugar, coffee, cotton, &c., they only grow fruit and a sufficiency of Indian corn and rice for their consumption. They make a spirituous liquor with the cocoanut, and of the husk manufacture bass rope, which is the only kind of cordage they are possessed of. Each plantation has ‘an incredible number of slaves, who are so little attended to that their principal occupation is in getting a sufficiency of provisions for their own use. Here I was informed by a negro trader at certain seasons of the year they go to the interior, carrying with them -handkerchiefs, beads, and linen, for two dollars worth of which they receive in exchange a stout negro or an elephant’s tooth weighing from sixty to eighty pounds.
June 12th.-Went round the island, saw several large tanks full of water, the only means they have here of being supplied, there being no springs the tanks are always filled in the wet season by drains. Mozambique is well supplied with wheat for bread from the settlement of Sena, near Sofala, where the bishop informed me it grows in great abundance, cultivated by the natives, and I think equally good with that of any other country.
June 14th. This day the bishop honored me with a visit, and stayed to dinner. Saluted him on coming on board, also on his returning. He informed me the natives of Madagascar had about the month of August last year gone down in their canoes to Cape Delgada, burnt the town, and carried away all the blacks, but did not succeed in taking the fort, to which all the Portuguese had retired. He said these people will board any ship they meet at sea, and often succeed in taking them, when they put to death every soul on board. From the quick passage I had to this place, and the information I have received here, I think it a much better one for ships bound to India via Cape Correntes at this season (from the beginning of May to the middle of August), as during that time there is always a fresh breeze with only one danger to encounter, called the English Bank, which the Portuguese say is really in existence, though Captain Huddart in his directions seems to doubt it, where as the passage between the Europa rock and Madagascar has innumerable shoals, the Portuguese always go the former route to Goa from Europe, Brazil, &c., and I am of Records of South-Eastern Africa. opinion ships bound to Bombay would get there in twenty days less time at the season I mention. June 20th. The ship's repairs being complete, employed getting ready for sailing. June 21st. Finished watering. The bishop kindly gave me a letter to the deputy governor of Cape Delgada, and another to Acoiety, governor of Zanzibar, to supply me with any refreshment I might wish, also one to the king of Johanna requesting him to give me a pilot for the coast of Zanzibar, there being none at Mozambique. June 22nd. At 6 A.M. sailed from Mozambique. (Signed) J. TomKiwSoN. [Copy in Public Record Office, London.] Report Of CAPTAIN WILLIAM FISHER, of His Britannic Majesty's Sloop of War Racehorse, to VICE-ADMR&L ALBEMARLE BERTIE. Quited Simon's Bay 27th July, 1809, with the Staunch gun brig and Marian merchant ship, and proceeded with great variety of winds and weather, but without any remarkable occurrence, till the 15th August, when with a fresh breeze from N.E. and E.N.E. we made the land to the southward of St. Sebastian. Latitude observed 23° 16' S. Land moderately high and woody, interspersed with large patches of sand. Coast bold and clear. Sounded from 30 to 50 fathoms from 2 to 5 miles off, sand in shore, coarse sand, stones, and coral farther off. P.m. Wind drawing to S.E., and hazy over the land, hauled off to the convoy. Light winds during the night. At daylight no land seen. Joined the convoy lat. 23° 39'. Current 64 miles S. in 24 hours. P.M. Finding every appearance of settled E.S.E. wind and bad weather, directed the Staunch to proceed with the convoy to Mozambique and wait my arrival there. At 5 P.M. made sail, running 8 and 9 knots N.E. all night. 17th August. Morning strong gales E.S.E. with heavy squalls and showers. Steered N.W., running 10 knots, sea rising fast. At noon sun coming out for a minute observed 22° 16', but not to be considered accurate. At 1 P.M. saw the land, and soon after Cape St. Sebastian, high bluff and woody, Records of South-Eastern Africa. with red sandy patches nearly to the top. Coast to the north of it very low, every patch of trees looking like an island. At 3 abreast of the Cape, neither reef nor shoal to the southward of it. Opened the Bazaruto islands, the northernmost and smallest is nearly N.E. from the Cape 5 or 6 leagues; between it and the main are several reefs and islets, the sea breaking very high quite across, it appears to form a chain quite to the main, but I doubt much if it really joins. This island is about 1 mile long, the centre rather high and barren, the extremes low and bushy, so that at a distance it appears much smaller than it is. Between it and the second is a rocky channel about a mile wide. The sea, which is now running very high, appears to break entirely across it, but there may be a passage in moderate weather. This isle is low, rocky, and woody, about 5 or 6 miles long. Between it and the northernmost island is a channel of about 11 mile. Here too the sea breaks in every direction and very high, and the extremes of both islands being low and rocky, the passage, if there is one, is most probably dangerous and intricate, more especially as it must be subject to violent currents, which both to the northward and southward of these islands are very strong and irregular. The third island is by far the largest, being five or six leagues long, the higher parts in general are bare sands, a few trees and bushes on the lower parts, but the whole has a very barren appearance. The principal extent of these islands is nearly S.W. by S. and N.E. by N., the north part lies in 21° 25' S. latitude, and a reef runs about 1 miles N.N.E.
At sunset heavy gales with dark cloudy weather. Hauled off under close-reefed main topsail and reefed foresail.

18th August.-Strong gales and cloudy. Steered in for the land. Heavy squalls of wind and rain. At 1 P.M. low land on both bows. Wind moderating. Short irregular sea. Twelve and fourteen fathoms; lh. 30m. breakers on the lea bow. At 3h. tackled in seven fathoms one mile south of the reef, which extends about three miles north-east and south-west. Stood off to ten and a half fathoms. Wore and ran down the north-east side, five and a half fathoms at half a mile, twelve and fourteen fathoms at two miles from the breakers. Steered in for supposed northern point of Inhasato. Laud low and woody. From eleven fathoms to six and a half, breakers ahead and sea topping

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unpleasantly in several directions, strong S.E. wind and short sea. Anchored in nine fathoms and veered to whole cable, somewhat sheltered by the reef, current N.W. by I W. one and a half mile, supposed northern point of Inhasato N.W. I W. three leagues, southern, point S.W. by S. four leagues. Reef with heavy surf S.E. by S. three or four miles, wind and sea much abated during the night, current from half a knot S.W. to one and a half N.W., depth of water too irregular to ascertain the rise and fall, as swinging half a point frequently made a difference of ten or twelve feet.

19th August.-Strong S.E. wind and short sea. Dispatched Lieutenant Green, accompanied by Mr. Salt, at daylight to ascertain Sofala, and if the harbour would permit us to procure pilots. At 8h. 30m. A.M. weighed and stood in for North Point, round which the boat had passed, stood off and on sounding, surf breaking very high on some parts of the coast, soundings very irregular from eleven to five fathoms, and several reefs running off. At noon latitude observed 200 35' S. At 2 P.M. more moderate. Ran down to anchor in a situation the boat might fetch. Wind S. At 2h. 30m. had five fathoms, then four to three and a half. Hauled off and made sail. North Point W. by S. four miles. Deepened to ten fathoms and anchored. N. Point on the same bearing five miles. Found a reef of considerable extent, shoaling suddenly from three and a half fathoms to ten, eight, and six feet. At 4h. 30m. boat returning. About 7 she got on board, having crossed the reef in six feet water. Latitude of this anchorage by observation 200 33' S., longitude by + and D 360 35' East; chronometer unfortunately very irregular.

Lieutenant Green's Report.
On rounding the point found sandbanks corresponding with the chart of Sofala, whole country overgrown with wood, fresh traces of elephants close to the beach. Saw many naked savages armed with bows and arrows, and some small canoes. Addressed the people in various languages, but could establish no intercourse with them. Explored all day, but saw no appearance of a settlement. The harbour is good for small vessels, but difficult of access for those requiring more than twelve feet. No fresh water seen.

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August 20th.-Dark, cloudy, threatening weather. Appearances correspond so strongly that I have no doubt of this island being Inhasasto, and consequently that Sofala is a small and important (sic) settlement. The weather forbids my sending my boats this morning. At 6 A.M. weighed and ran down a low woody coast about N. I E. for five leagues, then falling in to the westward and appearing again N.N.E., reefs running some distance off. Found 7, 8, and 10 fathoms at three leagues, sometimes 5, but always deeper by hauling off shore. Steered E. by N. all night, gradually deepening to 25 fathoms, strong breezes from S. by E. to S.E. by S.

21st and 22nd.-Strong gales aid cloudy. Steered along shore course all day, a point off at night. Short heavy sea.

23rd August.-Strong breezes. Hauled in at daylight to make Mafamela. At 10 A.M. saw the land, at 11 Mafamela and another of the Angoxa islands, both small, low, and woody. They appear to be very correctly laid down. Moderate and fine. At 5 P.M. saw Mogincale N.W., making like a high island. Wind light and variable all night.

24th.-Moderate and fine. Wind from S.S.E. to S.W. Mogincale N.W. Land extending to N.N.E., broken sandy cliff north of Mogincale, and beyond it a large opening like a river's mouth. Wind light and variable in shore. A prodigious number of whales round the ship for a week past. At sunset saw a high land supposed to be the table over Mozambique. Moderate and fine all night. Latitude observed this day 15' 53'.

25th.-Moderate and fine wind N.W. Worked up to Quitangone, a clear open bay north of Mozambique, 35 and 40 fathoms 11 mile from the beach, sent a boat on shore to a village and procured a pilot. Latitude 140
47. At 1 P.m. made sail to the southward, passed the mouth of a large river, weathered Quitangone Point and opened the islands, which lay in a large shallow bay, Seven Tree Island, Flat Island, and St. George lay nearly in a line north and south. W.S.W. from the latter lies St. Jago. Mozambique is the westernmost. The fort flagstaff and buildings make it very conspicuous, as all the islands are low. At 3h. 30m. received the king's pilot. A fresh breeze at N.E., passed about two miles to the eastward of Seven Tree and Flat Islands. S.S.W. from the latter is a reef which always shows,

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between which and St. George is the best passage. You will have ten fathoms three-quarters of a mile from the island, then steer in for Mozambique, keeping the fort a little open on the starboard bow to avoid a reef which runs off from the northern shore, and which is steep too. I believe our pilot had no other mark but the colour of the water.

Anchorage at Mozambique, latitude observed 150 01', longitude + and D 400 41'. Flows full and change 40 30'; rise of water nearly twenity feet, which was indeed amply sufficient. Having passed this haul round the Fort Point within two cables in five fathoms, and be prepared to anchor as the water soon shoals. We lay in 5 fathoms abreast of the wharf, fort S.E. by S. j mile.

This harbour is perfectly secure, but as the northern and

-westerne sides are very shoal the anchorage is not large. The island is about 13 mile long, very narrow, and almost entirely sand. The town contains some large houses, but is a wretched place, and depends wholly on the main for supplies. Bullocks are small and dear, sheep very dear; fowls and fruit cheap and excellent. Water in a large tank close to the wharf. The fort at the harbour's mouth mounts about 70 guns and 2 or 3 mortars, they are of all sorts and sizes and in a sad condition, few of them would stand an action, and the first discharge would inevitably dismount half of them. There is a small fort on a detached rock at the west end of the island, and on the main at the distance of several miles I saw another, neither of them important. The garrison consists of six hundred free blacks officered by Europeans, whose number including all ranks and conditions cannot much exceed one hundred. Their merchants are Banians, their seamen and pilots Moors, their whole population is of such different and discordant descriptions that I do not think an additional force could be raised under any circumstances, unless they were new negroes.

The present Governor Antonio Manuel de Mello Castro e Mendonza was extremely attentive during my stay, and anxious to furnish me with everything in his power. He had not been in the colony a fortnight, and had no charts except one of the coast from Mozambique to Delgada, beyond which they have no intercourse. He procured two pilots, Moors, who professed to

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know Sofala. Their description agreed with the opinion I have expressed. The Portuguese say there is only one small stone building with a single gun, that it is chiefly valued for a particular sort of rice grown there. They have small settlements at Correntes and Inhambane. The officer who travelled into the interior some years since was the commandant of one of the subordinate posts. His papers, which are not supposed to be very interesting, are in the hands of the Portuguese Government. I could procure no information of Dr. Cowan, but the governor has given general orders for his reception, and should he reach any of the Portuguese settlements he will receive every possible attention. Far from supplying the natives on the coast with cloths, hardware, arms, ammunition, &c., they are themselves in great want of all kinds of European manufactures.

2nd September.-At 7 a.m. weighed and stood out.

(Signed) WILLIAM FISHER.

[Copy.]

Letter from the EARL OF CALEDON to the RIGHT HONOURABLE NICHOLAS VANSITTART.*

CAPE Or GOOD HOPE, June 27th 1810.

MY DEAR SIR,-In your last letter dated November 11th 1809 you mentioned your intention of passing the winter in Devonshire in consequence of Mrs. Vansittart's illness a course which I hope has ceased to render your continuance in that part of the country still necessary as much might be expected from the mildness of the climate.

Together with your letter I received the enclosures from Mr. Macaulay as also a letter from that gentleman addressed to myself. The information I gave you respecting Dr. Cowan was intended as private, but I feel no objection to its publicity in the way you describe if writing in the unrestrained manner I did my
expressions have been sufficiently correct. Mr. Macaulay supposes the act of parliament for the abolition of the slave trade


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is evaded by English vessels taking out fresh clearances as it may be at Madeira or Rio de Janeiro and sailing under the Portuguese flag; if this fraud is practised I think it must be confined to the trade on the western coast of Africa as I understand there are but four ships regularly employed in the slave trade between Rio de Janeiro and the settlements of Mozambique and Inhambane and these I have reason to believe are bona fide Portuguese property. One vessel particularly the Elizabeth of which Mr. Macaulay entertains a doubt belongs to a Mr. Guedes de Souza who is related to the ci-devant governor of Mozambique, another the Penquito was in the trade previous to the passing of the abolition act. The present governor of Mozambique who arrived there in the month of August last is described as a person superior in most respects to his predecessor and if the Portuguese Government sanctioned by Great Britain empowered him to arrest (and if proved) to confiscate all property when it shall appear that English capital is embarked for the purpose of slave traffic this measure might serve in an additional manner to deter the parties from undertaking the adventure. The usual course for the slave ships after receiving the cargo at Mozambique is to proceed to Rio de Janeiro, if the market there does not answer the voyage is continued to the river Plate. This was the mode which the Elizabeth adopted and Mr. Guedes was certainly obliged to dispose of his stock at Monte Video to a considerable loss. The Penquito Jose Mugelles master followed the same plan which I believe is likewise pursued by the Portuguese traders from Benguela and Congo. When the Elizabeth left the river Plate in May last there were about 5000 green negroes for sale at Monte Video, they sold upon the average at 130 Spanish dollars each, those from the western coast invariably bringing a greater price than those from Mozambique.

If Great Britain was induced to urge the Portuguese Government to the abolition of this traffic I do not conceive any objection could properly rest as to the abandonment of their factories on the eastern coast of Africa for so miserably deficient are they in the means of defence that in the month of August the Council of Regency administering the government at Mozambique earnestly solicited the commander of one of His Majesty's sloops to remain there for the purpose of assisting to defend the place against the natives of Madagascar who at that time threatened an attack. At Inhambane, Quelimane and De la Goa they are still less prepared to resist, consequently if another source of trade was not found sufficiently extensive to employ the Portuguese inhabitants so as to render it an object still to continue their establishments I cannot imagine that much difficulty or expense would be incurred in withdrawing the people. The Isles of France and Bourbon receive their slaves principally from Madagascar but occasionally from Zanzibar. The island of Zanzibar is tributary to the Imam of Muscat who farms it out to black merchants connected with the French. It is said that he received as rent for the year 1807 40,000 Spanish dollars and that the produce was equal to 60,000. One of the chief advantages is derived from the contiguity of the island to the mainland whence the negroes are brought who are sent either directly to the French islands under the Arab flag or indirectly by going in the first instance to Madagascar. This information I obtained through the medium of a French officer lately a prisoner of war. I am unable to suggest any means for the prevention of this traffic farther than what the vigilance of our cruisers afford unless in more peaceful times if the French retain the sovereignty of the Mauritius a prohibition could be procured through the influence of the East India Company.

I regret very much that you did not receive two letters which I wrote to you each introductory of a particular friend Major Bird and Lieutenant Colonel Collins. Major Bird was under the necessity of throwing all his papers overboard and from an ill judged diffidence did not introduce himself. I had requested him to give you a view of the colony as to its finances and resources as also the plans of improvement which I propose to effect. My other friend Colonel Collins would have given you an interesting account of the interior but his professional zeal induced him when in the channel to get on board of a ship bound to Spain where his regiment was then serving. I shall endeavour to make up the deficiency in some degree by sending you his journal and report to me and to enable you more fully to comprehend the object, I have attached a copy of the directions I gave him.
His mission to the N. E. boundary (out of which his journal

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has arisen) was one of investigation but I afterwards found it expedient to give him authority as a
magistrate in the districts of Graaff Reynet and Uitenhagen with the title of Commissioner. I must beg that
his communications may be held private as he particularly requested I should consider them so unless when
using them for public purposes, at the same time if you think the information respecting Caffraria would be
of sufficient interest to the African Institution I shall willingly request his permission to offer it.

Your letter of the 11th November on many accounts so very acceptable to me gave me the best information
upon the state of parties, but I confess it was not without serious regret that I read you had found yourself
compelled to decline 'the high. situation which was proposed to you more especially as the manner in
which it was offer'd indicated the sincerity of the overture.

I wish with all my heart an administration was formed upon which we could rely for the discharge of its
duties with firmness and ability, at present I see nothing but instability and every account confirms me in
the propriety of my original conduct in declining to entangle myself by a precipitate declaration of personal
attachment towards a class of men whom however much I might individually esteem I could not as a
collective body support in the manner which was expected of me. My early predilection for and my
gratitude to Lord Grenville fbr the confidence he reposed in me had been very much limited by the doubt I
entertain of giving effect to what I believed were his opinions upon the Catholic question; you may
therefore suppose I have read with great pleasure his letter to Lord Fingal and I shall anxiously await the
outline of those arrangements which he conceives would reconcile what is usually called Catholic
emancipation with the security of our own establishment and as this is the point upon which Lord Sidmouth
and his Lordship are supposed to have differ'd I hope we may again have their united strength in cabinet
without calling for sacrifices from either party incompatible with their sense of public duty. I remain &c.

(Signed)

CALEDON,

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[Original.]
Letter from CAPTAIN H11. LYNNE to REAR ADMIRAL STOPFORD.

HIS MAJESTY'S SLOOP Eclipse, May 21st 1812. SIR,-I have the honor to inform you of my arrival at
Simon's Bay on this day in His Majesty's sloop under my command, last from Mozambique.

I left Port Louis on the 14th of March, but having mostly light winds and calms until close off Mozambique
on the evening of the 2nd April, when the weather became so unsettled with constant heavy rains that I was
under the necessity of hauling off the land, and unable to get into Mozambique Harbour until the 9th.

According to the instructions I had the honor to receive from you, I made every enquiry respecting the
number of troops, strength and condition of the forts, &c., &ca, and gained all the information I could wish.

The fort at the entrance of the harbour is apparently very strong, but on entering it you find it in a most
decayed state, the walls nearly falling, guns and carriages totally unfit for use, so much so that on returning
our salute I observed several of the carriages had broke down and upset. There are in the fort one hundred
and five or six pieces of cannon of different dimensions, not one of which is fit for service. Fort Lorenzo
(the fort at the south end of the island) is a square tower situated on the shoal between the island and the
main land, which is difficult of access from the tide flowing round it, and at low water the mud extends so
far from it that you cannot walk to it. The walls of the fort are in rather a better state than those of the fort at
the entrance, but the guns and carriages (of which there are thirty of different sizes) are equally bad as the
others. They have little or no ammunition, three rounds of iron shot, and a few made of stone.

The present force consists of thirty European and forty Creole soldiers, with about four hundred of the
natives who are placed as centinels, apparently to save the few Europeans that remain, but who scarcely
know the use of a musket.

I was given to understand that the Portuguese Government had had more of the latter description of people,
but not having

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had the means of paying them or giving them either provisions or clothes, they had retired into the interior
to support their families.
The natives are by no means well inclined towards the Portuguese, indeed the latter have been obliged to send troops on the coast to punish a party of Caffres who had committed various acts of violence on the property and persons of those employed in the coasting trade. The natives of Madagascar also come over in their canoes to plunder the coasting vessels, taking the slaves or whatever merchandize they may have on board, which they have done for this some time past with impunity and great success. There are regular ships come annually from Rio Janeiro to Mozambique with supplies, and take in return slaves, ivory, gold dust, and gum. The Americans have always been in the habit of coming there, and still continue to do so every year in the months of June and July, and smuggle slaves to the Brazils and Spanish America. A brig also, lately from Seychelles, but belonging to the Isle of France, had been there and taken away two hundred slaves.

During the time the Isle of France was in the possession of the French, there was a great traffic carried on. They calculate on an average there were about 12,000 slaves annually exported from the Portuguese settlements on the African coast to their settlements in India, Brazils, &c. The extent of the Portuguese dominion on the African coast reaches to Cape Delgado to the north and to Delagoa Bay to the south. The residents at the different stations are appointed by the governor of Mozambique, who was himself until lately under the government of Goa, but is now made independent. The present governor of Mozambique has been appointed governor of Madeira for some time past, and has permission to quit Mozambique without waiting for his successor, of which permission it is his Excellency's intention to avail himself the first opportunity that offers. Mozambique has been very sickly of late, so much so that almost the whole of the inhabitants quitted it for some time and lived in tents on the small islands of St. George and St. Jago. Great numbers have died of the small pox, and many

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from fever. At present the small pox is got under, but fevers are very prevalent.

It was my intention to have left Mozambique on the 13th of April, but was prevented by bad weather until the 15th.

The season being so far advanced, I judged it for the good of His Majesty's service to come to Simon's Bay in preference to Table Bay, which I trust will meet your approbation.

I have, etc.

(Signed) H. LYNNE, Commander.

Extracts from a letter from COMMODORE JOSEPH NOURSE to J. W. CROKER, ESQ.

His MAJESTY'S SHIP Andromache,

AT SEA, January 5th 1823.

On the 16th of December, with the Cygnet and colonial brig Wizard I arrived at Mozambique, when a mutual exchange of salutes and civilities took place.

The Island of Mozambique presents a noble memento of what the Portuguese were, and the largest of the three forts, St. Sebastian, when it is considered that it was erected in the infancy of fortification, and at such a distance from any resources, is a wonderful monument of the enterprize of the first adventurers; perhaps, at the present day, there are few fortresses more imposing; it stands at the north end of the island, and to go into the harbour must be passed at the distance of pistolshot; the curtain of the fort may be more than fifty feet in height. I went over the inside accompanied by the governor, it may mount from 60 to 80 pieces of cannon, with one heavy mortar, but the ordnance is very generally in a decayed state, and I observed but very few shot, very much decayed, and parcels of stone shot, so that I should suppose they must be very short of ammunition. They have a well for water, barracks capable of containing, I should think, more than a thousand men, and bomb proofs and magazines: in short, its original projectors do not seem to have omitted anything to make it a

IX.

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most formidable work; and nothing but its first solidity has preserved it so long, and it is yet in very good repair.
This settlement is altogether in a miserable condition, and its commercial importance fallen to nothing comparatively to what it was, which is to be attributed to the diminished demand for slaves and the perturbed state of the mother country.

The Island of Mozambique, which may be a mile and a half long, was originally a coral rock, with scarce a shrub growing on it; and it now depends entirely on the mainland for all the supplies of fresh provisions they require; and, some day not distant, if their importance continues to decline, they will be cut off by the natives from this support, which is at present kept up by sheiks in the pay of the Portuguese.

The merchants who had recently gone into the interior to purchase slaves, I was informed, had been murdered, and their property seized.

To give some idea of the state of this place: The governor with three of his suite came to dine with me, and returned on shore about half past seven; about eight, guns were fired from the fort, which was at first taken to be some act of rejoicing, when a boat brought an officer to me from the governor, in considerable alarm, to inform me there was a revolt among the soldiery (who are almost all composed of Caffres or natives), and that they had attempted to gain possession of the fort, and in short, that the greatest scene of confusion was going on, and many lives lost. The governor almost wholly deserted solicited my protection.

At first it struck me to be some political disturbance for their independence, in which case I should not have felt myself authorized to interfere; but ascertaining it was confined to about two hundred of the native or Caffre soldiers, without leaders, who were wantonly firing at all that came in their way, humanity induced me immediately to send to his assistance, and the marines were landed. Our bugle and drum put the enemy to flight, and they took to boats to escape to the main.

I had given orders that the marines were only to act on the defensive, and to take under their protection the governor or any of the inhabitants that might be in danger: this scene ended with the loss of several lives, and, as frequently happens, to those whose curiosity or accident placed them in the way of these savages.

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As there did not appear a single soldier under arms, and the governor declared to me he had no one in whom he could place the smallest dependence, I permitted the marines to remain all the night and the following day, when, before the close of it, information was brought from the main that these rebel soldiers had dispersed, and thirty of them were taken prisoners. I was present when a few of these half-starved wretches were landed.

As a few of the inhabitants had come forward, when the danger was over, and the few Portuguese soldiers, who had been sent with directions to the sheiks to secure these people, had returned, and the governor's mind seemed more at ease, I withdrew the marines, took my leave, and sailed the following morning.

On the 26th of December I arrived at Delagoa Bay, at which place I found the Cockburn schooner (attached to Captain Owen), by which vessel I learnt the deaths of Captains Cutfield and Lechmere, with the loss of two midshipmen, the carpenter of the Leven, and twenty-four seamen in the ships; and that they had put to sea on the 30th November, with a large sick list, intending, if they did not get better, to go to the Cape. As their Lordships, in all probability, will have Captain Owen's report of his proceedings at Delagoa Bay, I shall have occasion to offer but few remarks.

This bay is very extensive, abounding in shoals, and yet but little known. The anchorage to be called Melville Harbor, under Elephant Island, in which I found the Cockburn schooner and two small merchant vessels, is rendered secure to the seaward by sh6als; the water is of moderate depth, and the bottom is sand. It was just before, and after, the full of the moon that we were there, the tides, flood and ebb, ran about 2-knots, and on the evening of the 27th of December, we experienced, with little previous intimation, one of the heaviest squalls of wind and rain at S.S.W. that, perhaps, the oldest seaman may have witnessed; it lasted in all its force nearly an hour, and settled into a strong gale, which lasted twenty-four hours. All the vessels drove, but fortunately from the direction of the wind, none on shore.

The Andromache was brought up in its height by the chaincable fast to the small bower, a metal anchor invented by Mr. Kingston of Portsmouth Yard, and we have every reason to be well satisfied with it.

Lieutenant Owen, who commands the Cockburn, was about to proceed up the south end of the bay to survey the River Mapoota, which is reported to be of some size; this part of the bay is full of shoals, but
Mr. Owen confidently expects to find a channel, and indeed, when there are such strong tides, there can be little doubt of it, altho' it may be found to shift.

It appears there may be a good opening for a trade with the natives in ivory and gums, in the rivers which empty themselves into this bay.

Up English River the Portuguese have two small establishments; for this permission they pay a tribute to the chieftains, or kings of the neighbouring country, and have hitherto been in the habit of assuming to themselves the exclusive right of traffic with the natives, and have presumed to put soldiers on board any English merchant vessels that come within their reach; so that it has only been by bribing these people that the English have been able to procure the products of the country, and that only through the Portuguese.

The officer who has the conduct of this establishment is under the orders of the Governor of Mozambique, and instructed not to permit any vessels to trade with the natives; and all the ivory &c. which they procure is sent to Mozambique by a vessel which comes for that purpose at stated periods.

To explain the nature of this establishment more fully, and the proper notice which has already been taken of it by Captain Owen, I send a copy of that part of his orders to Lieutenant Owen which relate to it, and shall give any effect to it that may be proper and in my power.

I shall now conclude with once more apologizing for having taken up so much of their Lordships' time, and remarking that the service Captain Owen has to perform, from the little experience I have obtained of this coast, is one of a very arduous nature, from the many obstacles that present themselves, in surfs, currents, climate (which has always been so destructive to human life in the rivers of Africa within the tropics), hostility of the natives, and a coast abounding in shoals and innumerable small islands.

Much new light has been thrown upon the position of the archipelago of islands to the northward of Madagascar, by Captain Moresby, which will be laid before their Lordships; and, I shall take care to have it followed up, and their longitudes correctly ascertained by every opportunity that may offer.

I have &c.

(Signed) JOSEPH NoURSE, Commodore.

[Enclosure.]

It has I find been the custom of the officers of the Portuguese factory in English River to assume a right of dominion here, when this port is visited by British vessels to trade, and to put black soldiers on board for the purpose of confining the traffic with the natives to their own individual agency and advantage. Now as the Portuguese themselves have no territory but two very small portions, one in Mafomor, where the factory stands, and a small spot in Temby, which they sometime occupied as a factory, and, for which, they pay an annual rent to the kings of Mattale and Temby; and have no authority or jurisdiction over any of the natives, nor right to interfere with them; this insult on our flag and nation is never to be permitted, and if any British merchant vessels should arrive here whilst you are in the bay, you are to inform them of this circumstance, and that the respective kings of Temby have assured me, that they are extremely desirous of cultivating a free commerce with the English, and to cede them any territory they may require. And also, that the whole country round the bay from Inyack to Calonga, has the same sentiment.

This whole country therefore is open to their industry and speculation, for peaceable commerce; and they need not permit any interference of the Portuguese residents, who are known here only as merchants forcing an exclusive trade on unjust principles.

And if any merchant ship shall be visited by force from the Portuguese factory within the precincts of this bay, and you come to a full and clear knowledge thereof, you will, as it is your duty, extend your protection to her, and make prisoners of the parties who shall presume to do so, reporting to me in detail your proceedings herein.

The Portuguese have no right of dominion within the precincts

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of this bay whatever, the whole of which is open to the peaceable commerce of British subjects, without the interference of any foreign power.

Given under my hand on board H. X. Ship Leven in Delagoa Bay this 19th day of November 1822.

(Signed) W. F. W. OWEN,

Captain of H. M. S. Leven, and Senior Officer.

To LIEUTENANT RICHARD OWEN,
Commanding H. M. Brigantine Cockburn.

[Copy.]

Extracts from a Letter from CAPTAIN OWEN to J. W. CROKER, ESQRE.

H. M. SHu, Leven, SimON'S BAY,
CAPE OF GOOD HOPE, 7th April 1823.

Weakened as my own crew had been by death and sickness from which none who survived the attacks had recovered their health and strength, the remaining all these vessels became a subject of serious concern to me, but having succeeded in gaining the fullest confidence of the native princes and their people I was enabled in my short stay to add twelve naked negroes to my physical strength, and so arranged that we were prepared to depart on the 11th of March, on which day the Barracouta rejoined us.

I have confined this communication merely to a succinct account of my proceedings, but shall whilst here chart all our observations and make particular reports on the subjects which have occurred in their course as soon as possible, merely adding that circumstances which shall be reported in detail hereafter have induced me to accept the cession of the kingdom of Temby to His Majesty, our Master, until his pleasure be known, one copy of which I have the honor to enclose. As I had no particular instructions on these subjects from their Lordships it had been my intention to avoid scrupulously whilst on this service every species of interference in acts of a political nature,

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but to this I have been forced, first, by the unwearied entreaties of King Kapel (or Capella) and his people, secondly, by some inimical and piratical acts of the commandant of the Portuguese factory in English River, for his own individual gain as a merchant, and lastly because without acceding to this cession King Kapel would not permit his subjects to embark with me, takiug this act for the security of their persons and to assure their return.

[Copy.]

Extracts from a letter from CAPTAIN OWEN to the REVEREND DR. PHILIP.

Like all other African nations, all the countries around the bay make slaves of their enemies, but of their enemies only. The proximity of this point and the Bazaruta Isles to the Cape and to the French islands offered to the cupidity of some Europeans too strong a temptation to resist; English, French and Dutch vessels have been known to visit these places to entice the people on board and then steal many of them, so that even now the inhabitants have no confidence in Europeans, but watch the slightest symptom of movement to make their escape until they have acquired some knowledge of the parties. The Portuguese merely buy such as are caught from the Vatwahs of the interior or some of the native women to make a market of their prostitution thus feeding the worst passion of our nature. War among the surrounding tribes furnishes them slaves and famine women at a low price to let out to such ships as may visit the bay. There are however very few slaves exported from this place and the natives have a decided aversion to the trade.

Of their morals we could observe but little, they are honest and it is said punish adultery and theft among themselves with death, if the aggrieved party be a man of consequence, but their definition of adultery is purely scriptural and not that introduced into our ecclesiastical law by the Roman heresy. They however let out their daughters to the Europeans without scruple, and indeed both sexes during youth appear to be without restraint, commencing their intercourse before their tenth year. These lamentable habits appear to be common to

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all the natives on this coast and of Madagascar, none of them attaching any moral principle to the intercourse of the sexes until the women become the property of some particular person by purchase, being then the slaves of their husbands as purchasers they lose all right over their own persons and then only can be guilty of adultery.

The people of Temby are so peaceable and tractable that it must be viewed as a point eminently calculated for an establishment whence civilization of the native Africans might flow through all the neighbouring countries and from whence a fatal blow might be given to the last efforts of slave dealing in these seas. This is not a place to shew how this might be effected but that it be so must be evident by the slightest reflection on its locality. To conclude this short account of one of the finest ports known a small vocabulary of the English and native languages is added.

Besides the articles above enumerated as the products of the countries round Delagoa Bay may be added honey and bees wax in great abundance as well as dye woods, ambre, and tortoise shell might be collected.
in considerable quantities. The present price of a fowl is about a farthing's worth of beads, of a man's labor per diem one penny worth of the same, of a bullock one blanket, and of other articles of food a relative value. Wives are bought from the first families at prices varying from twenty bullocks to a piece of blue dungaree.

The soil of the whole country is light and sandy but for the most part extremely fertile. [Original.]

Letter from COMMODORE KOURSE to J. W. CROKER, ESQRE.

HIS MAJESTY'S SHIP Andromache,

SIMON'S BAY, May 8th 1823.

Sir,-I have the honor to forward, for the information of their Lordships, a copy of the cession of the kingdom of Temby, the original having been forwarded by Captain Owen, with his remarks.

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It will therefore, perhaps, be unnecessary for me to add more at this moment than I may feel it my duty in the event of any trade being opened to it from this place, to interpose should the Portuguese at Delagoa attempt to prevent any British vessels from trading there, as from Captain Owen's statement they have done, and for the purpose of confining the traffic with the natives to their own individual agency and advantage. I have, &c.

(Signed) JOSEPH NOURSE, Commodore.

[Enclosure.]

I Mayett, King Kapell King of all the lands situated between English and Dundas rivers on one side, and the River Mapoota on the other, commonly called Temby, after one of my forefathers, who first settled this land; do, by the power, authority, and title which have devolved on me by the much lamented death of my grandfather the late King Kapell, freely cede the full sovereignty of all the said lands of Temby and Mapoota, to George the Fourth King of Great Britain and Ireland, &c., &c., and his successors, on the conditions and for the reasons hereafter specified.

First: that the King of Great Britain do permit a free trade to this land by all his subjects of British India, of the Cape of Good Hope, of Mauritius, and of his European dominions, under such regulations, as he may see proper.

Second: that the King of Great Britain do establish such a force in the lands of Temby as may protect my people, Not only from the incursions of the warlike natives of the interior; but also from the insults and continued oppressions which have hitherto been practised on us by European nations, and more particularly by the Portuguese, who are not only unable to afford us any protection themselves, but by a most despotic, enthralling, and unreasonable interference, prevent, when they can, our commerce with the people of any other nation, even instigating us to murder those of our subjects, who may have had any such commerce; and to all this: in the late war with the outcast Olontontes, when our whole country was devastated, and no family safe,--the Portuguese factory on the north bank of English River were not only at peace with our invaders; but, on such amicable terms as to buy their plunder of

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slaves and cattle, and to carry on other peaceable traffic with them; whilst my people were reduced to a famine, by the effects of the said war.

Third: that the person who shall represent the King of Great Britain in these lands, shall be entrusted with unlimited power, to execute such laws and regulations as may be made for the lands of Temby and Mapoota.

Fourth: that no law or regulation, neither for white inhabitants or black (except only the military) shall be made, unless assented to after discussion by the chiefs assembled for that purpose in the first instance; and, in the second, by the head council, consisting of the British governor, King Kapell, or his successor, two British and two Temby councillors.

Fifth: that the number of chiefs shall not exceed one for every square league in the country, and one half the number may be British settlers, or military officers not under the rank of lieutenants in the army; the chiefs shall be named by the governor and by King Kapell jointly, those of Temby shall be chosen by King Kapell, those from the British, by the governor.

Sixth: King Kapell recommends that no governor be allowed to retain his situation more than five years and that the King of Great Britain would be graciously pleased to cause their public conduct to undergo a public.
review and trial in England, at the end of their time, and that no charge against them shall be received, 
unless delivered into his successors’ hands, within one year after his supercession.
Seventh: That no law or regulation shall ever be proposed or passed, but on the following principles viz.
The freedom and security of persons and property, and a perfect good faith, that is, the person and property 
of every man shall be inviolable and sacred, so long as he keeps all the contracts, engagements, or 
conventions he may have voluntarily entered into, either with the State or with individuals.
Eighth: Whenever any lands may be necessary for public buildings or works it must be ceded by law, after 
the second year of the formation of a British establishment, before that time I, King Kapell will give such 
lands as the Governor shall require of me: but, should any individual suffer loss by a public appropriation 
of his land, he must be satisfied for the same, according to the judgment of the arbiters.

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Ninth: The chiefs shall be called together in council by the joint authority of the Governor and King Kapell 
four times in every year, for fourteen days each time, and not to absent themselves without permission of 
the said authority.
Tenth: Every man shall have dominion in his own family, that is, over his own wives, children and 
servants, within the bounds prescribed by law. The laws of the land shall, as soon as possible, be reduced to 
the most simple order, and be taught by rote to every male child, who as soon as he shall be able to repeat 
them and understand them, after he is seventeen years of age, shall enter into a solemn agreement to keep 
the same, and shall be from that time free from his father's government, being responsible only to the State, 
except he still inhabits his father's house, in that case he must fall under his paternal government.
Eleventh: In all civil and criminal cases, trials shall be before Judges named by joint authority of the 
Governor and King Kapell from the chiefs, and in civil cases by three arbiters, in criminal by seven.
Twelfth: The revenues and their administration in every branch come under the head of laws and 
regulations, and the power of making war or peace shall be with the supreme council exclusively, and the 
males population shall be formed in bodies of militia, and exercised at least, two hours in every week, under 
such regulations as the Governor and King Kapell may think proper.
Thirteenth: A man may by will give over his property to whomsoever he may think proper, provided he be 
sane, but no property whatever shall be devised in tail, and in case of dying intestate, all his children by all 
his wives, shall share the inheritance equally.
And I King Kapell do declare that I am induced to make this cession by the advice of my chiefs, because I 
find my State and people too weak to defend themselves against the aggressions of either Africans or 
Europeans, and, because I find my people ignorant and uncultivated and inhabiting a country capable of 
everything, by well directed industry, to which they are well disposed, and lastly, I have chosen the King of 
Great Britain as my protector, because, my people are so strongly attached to his,

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that very many speak the English language, and because I believe his power to be the only one established 
on principles of universal justice, and the only one capable of affording me and my people the protection 
we seek.
In witness whereof I have put my hand and seal in the British manner this Eighth day of March One 
Thousand Eight Hundred and twenty three.
(Signed) KAPELL.
(Signed) STENGELLY,
CAPENFINICK,
SHAMAGUAVA.
We the undersigned do certify, that we walked about sixteen miles to the residence of King Kapell of 
Temby, unattended by any but his own people, and that he did without solicitation, and by his own free will 
and desire, make a cession of the sovereignty of his kingdom and its dependencies in the public presence of 
his chiefs and people as by the accompanying deed, and that he then gave his hand to sign the same, as did 
also, as witnesses, Stengelly the chief of the district forming the southern bank of English river, and 
Shamaguava the interpreter, and Capenfinick.
In witness whereof we have given this under our hands this Nineteenth day of March 1823.
(Signed) WX. MUDGE, Senior Lieutenant of H.M.S. Leven.
JOHN FORBES, Botanist.
I the undersigned do hereby certify, that, I had been repeatedly solicited to accept the cession of the kingdom of Temby by the desire of King Kapell, of which it was only my intention to acquaint superior authorities, but circumstances rendered it necessary, that, I should at once decide to accept it until the pleasure of His Majesty should be known, when this request was brought to me in form by Prince Stengelly in the King's name, which he did on the eighth of March; I do also certify that so far from having moved this act myself, or from having offered any inducement to the King of Temby to do it, I have constantly evaded (sic) it, when urged to take the country for King George and the English, until this time nineteenth March 1823.

(Signed) W. F. W. OWEN,
Captain of H.M.S. Leven.

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Letter from JOHN BARROW, EsQRE., to R. WILIOT HORTON, ESQRE.
ADmRATY Office, 14th June 1823.
SIR,-I am commanded by my Lords Commissioners of the Admiralty to transmit to you an extract of a letter which I have received from Captain Owen of His Majesty's ship Leven, employed on a survey of the East Coast of Africa, with a deed by which the sovereignty of the kingdom of Temby, in Delagoa Bay, has been surrendered to His Majesty; and I am to request you will lay the same before Earl Bathurst, and move his Lordship to favour my Lords with his opinion on the answer to be given to Captain Owen upon that subject. I am &c.

(Signed) JOHN BARROW.

Letter from COMMODORE NOURSE to LORD CHARLES SOMERSET.
His MAJESTY'S SHIP Andromache,
iN SimoN's BAY, 16th June 1823.
MY LORD,-I have the honour to forward for your lordship's information a copy of the cession of the kingdom of Temby, by the king of that country to His Britannic Majesty, and received by Captain Owen, commanding His Majesty's squadron directed to survey the eastern coast of Africa. Also the copy of a manifesto, that I have made and shall issue at the application of any merchants desirous of opening a trade to Delagoa Bay from this colony. I have &c.

(Signed) JOSEPH NOURSE, Commodore &c.

By JOSEPH NOURSE ESQUIRE Companion of the Most Honourable Military Order of the Bath, Commanding His Britannic Majesty's ships and vessels employed and to be employed at the Cape of Good Hope and the seas adjacent &c. &o. &c.

Mayett King Capell King of all the lands situated between English and Dundas rivers on one side, and the river of Mapoota on the other, commonly called Temby after one of his forefathers.

By power authority and title which devolved on him, by the death of his grandfather, the late King Capell, having freely ceded the full sovereignty of all the said lands of Temby and Mapoota to George the Fourth King of Great Britain and Ireland &c. &c. &c. on certain conditions which it is not necessary here to state. And William Fitz-William W. Owen, Esquire, Captain of His Britannic Majesty's ship Leven, and Commander of the British squadron employed on the survey of the eastern coast of Africa, having certified that he had been repeatedly solicited to accept the cession of the kingdom of Temby by the desire of King Capell of which it was only his intention to acquaint superior authorities, but circumstances rendered it necessary that he should at once decide to accept it until the pleasure of His Britannic Majesty should be known, and that the request was brought to him in form by Prince Stengelly in the king's name on the eighth day of March 1800 and twenty-three.

Captain Owen also certifies, that so far from having moved this act himself, or from having offered any inducement to the King of Temby to do it, he constantly evaded it when urged to take the country for King George and the English, until the eighth day of March one thousand eight hundred and twentythree.
In consequence of the above cession having been made in due form and order, I Joseph Nourse commodore and commanding in chief all of His Britannic Majesty's ships and vessels on the Cape of Good Hope station &c. &c. do authorize all and every of His Britannic Majesty's faithful subjects to carry on all trade, so far as they lawfully can and may, quietly and peaceably with the king, princes and people of the said kingdom of Temby. And do hereby make known that any interruption given to the said faithful subjects of His Britannic Majesty engaged quietly and peaceably in lawful trade with the said king princes and people of Temby will be at the cost and peril of any such persons, of any nation whatsoever. And the more to prevent any such unlawful interruption to

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any of His Britannic Majesty's subjects engaged in such lawful quiet and peaceable trade with the king, princes, and people of the kingdom of Temby, I do further announce that all convenient opportunities will be taken by His Majesty's ships to visit the Port Delagoa, in order to protect if necessary the interests of His Britannic Majesty's subjects engaged quietly and peaceably in lawful trade, with the king, princes and people of Temby, and in the event of any interruption being given to His Britannic Majesty's subjects engaged in lawful trade as aforesaid stated, they are desired to shew this document.

Given under my hand and seal on board His Britannic Majesty's, ship Andromache in Simon's Bay, this First day of June 1823 and in the Fourth Year of His Britannic Majesty's reign. (Signed) JosEPH NOURSE.

To all persons whom it doth or may concern.

[Copy.]

Letter from R. WILMOT HORTON, EsQRE., to JOHN BARROW, ESQRE.

DOWNING STREET, 5th July 1823.

SIR,- I have to acknowledge the receipt of your letter of the 14th ultimo, enclosing an extract of a letter from Captain Owen, employed on a survey of the east coast of Africa, transmitting a deed by which the kingdom of Temby in Delagoa Bay has been ceded to His Majesty, and requesting at the same time that Earl Bathurst would favour the Lords Commissioners of the Admiralty with his opinion as to the answer to be returned to Captain Owen's letters on the subject, and I am directed to acquaint you that in the total absence of all information with respect to the country in question and uninformed of the particular reasons which influenced Captain Owen in acceding to a cession upon the conditions specified in the deed above mentioned, Earl Bathurst does not feel himself in a situation to offer an opinion to the Lords Commissioners on the point referred to him. I am however directed to advert to a passage in Captain Owen's letter which alludes to a future

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detailed report on the subject of this cession and which may furnish information that would enable their Lordships to answer Captain Owen's letter in a more satisfactory manner than at present. I am &c.

(Signed) R. WILMOT HORTON.

[Copy.]

Letter from COMMODORE NOURSE to J. W. CROKER, ESQRE.

H.M.S. Andromache,
IN Simon's BAY, September 26th 1823.
SIR,-By an English merchant vessel from Delagoa Bay I learn that Captain Owen was there on the 27th of August, and was to leave it in two days, all well, having resurveyed the entire bay. I learn also that the Portuguese upon the appearance of the surveying vessels, sent 180 natives (slaves) from their fort, in order that they should not be seen by the English men of war, probably fearing they might be seized. I mention this circumstance to shew there is a traffic in slaves from Delagoa Bay. I believe them to be carried to Mozambique, and from thence exported to the Brazils, and that numbers are sent from Mozambique to Madagascar and that some are conveyed to the Seychelles and to Bourbon. I have &c.

(Signed) JOSEPH NOURSE, Commodore.

[Copy.]

Letter from CAPTAIN W. F. W. OWEN to J. W. CROKER, ESQRE.
E.M.S. Leven, MozAmBiQuE,
9 October 1823.
SIR,—It is my duty to state for the information of my Lords of the Admiralty that on this eastern coast of Africa the slave trade has recently received a new impulse for the supply of Brazil. It would appear that this diabolical commerce is the only one capable of inspiring its miserable remains of Portuguese population with energy and activity. There are in this port seven vessels preparing their cargoes for Rio de Janeiro, one of them of about 600 tons, to carry 1,200 slaves. The export of slaves from this port cannot be less than 15,000 annually.

At Quillimane 16 vessels have taken cargoes within the last year, amounting to 10,000, and the new order of things brought about by the revolutions in Portugal and Brazil has opened the ports of Quillimane and Inhambane to a direct communication with the latter, which enables them to carry on this abominable traffic more advantageously and to a greater extent. From Inhambane however, the trade in slaves is very limited compared with that of Mozambique and Quillimane, the neighbouring tribes being very averse to it; nevertheless wars are excited solely to make slaves to pay for merchandize. The same also occurs at English river to a still smaller extent, yet sufficiently so to keep the neighbouring tribes in a ferment and continual state of warfare. The price of a slave at Quillimane, Inhambane and Delagoa rarely exceeds two or three Spanish dollars to the Portuguese, who get for them perhaps twenty or thirty from the vessels. Much of the gain is necessarily expended for their intermediate subsistence which however is scarcely enough to hang soul and body together, and the ships which use this traffic consider they make an excellent voyage if they save one third of the number embarked to sell at Rio for 150 or 200 Spanish dollars each. Some vessels are so fortunate as to save one half their cargo alive and their gains become a strong motive to more extensive speculations.

The ships from Brazil bear the new flag of that country, but the governor here has forbidden them to enter the ports of Africa under any other than Portuguese colours. The vessel I boarded off Quillimane was under Brazil colours and going for a cargo of slaves, but I did not interrupt her voyage, having no instructions on the subject, and because considering the nature of the service I am engaged in, it would have been impolitic. It is now however perfectly within the power of the British Government to stop the slave trade on this coast at a blow. There is no other market for them than Brazil, with whom we have no treaties that can render our forbearance necessary. Its flag need not be recognized as a cover to such a villainous commerce, and if this market be shut up the traffic will die away naturally. Sofala is the most miserable of all the Portuguese establishments except Delagoa Bay, of which I shall forward a rough translation of a manuscript memoir I procured there, it could not even furnish a boat to assist the Barracouta whilst aground.

That decadence should follow the Portuguese wherever they are established is a natural consequence of their miserable and narrow policy, their only merchants are armed with military and arbitrary authority, and strangers who would visit them for trade are subject to every species of wanton indignity and exaction. In this port of Mozambique an English vessel even in distress cannot land any part of her cargo in deposit to enable them to repair their vessel without paying two and a half per cent, at the value fixed by the Portuguese authorities, this makes it equal to five per cent on the value, and if any part of her cargo be sold it pays a nominal twenty-five per cent on the value as fixed by the same authority, amounting by this artifice to forty or fifty per cent. Quillimane however solely by its situation as the port of an extensive country rich in every sort of natural product is regaining some of its ancient wealth, but the population consisting but of few masters and numerous slaves it cannot possibly under such a regimen ever attain much consequence.

Inhambane also, by the effect of one man's paternal policy and industry is a thriving colony, he excites the natives, who are all free, to industry and commerce by his example, his counsel and careful administration, this is the natural consequence of arbitrary power falling into wise hands. But should the Governor be changed for one who does not see his interest so far, it will fall again into disorder and indigence. The paper I formerly transmitted on the Portuguese establishments I find a perfectly just representation, they have nowhere except in the Rios de Sena any dominion or authority beyond the limits of their forts and factories. At Sofala however they pretend to have conquered lately with fifty men the whole country of Quiteve as far as Manica which is but eight days journey, yet when I was there they were almost shut up in
their establishment by tribes at war with them. And in the Rios de Sena, several Kings of the Maraves were in open war against

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it and fears were entertained that they might destroy Sena and Tete. These accounts however are frequently exaggerated to excuse demands on the Government for men and money, the latter of which falls in all cases by management into the hands of the sub-governors. Mozambique is at present in a very critical state, the governor feels it necessary to reside in his fort, he has very few men, not more than twelve or fourteen Europeans, and not more than eight officers in whom he can confide and these are for the most part very young men. Its market presents nothing but slaves for sale, and it is not without great difficulty that provisions or vegetables can be procured except only rice and shell fish, on which the native inhabitant principally subsists, and such is the indolence of the Portuguese that the merchants are mostly strangers, Moors and Banyans, and the only intelligent merchant by whom supplies can be readily procured, if attainable, is actually a washerwoman from the Cape of Good Hope, here raised to wealth and the first consequence in society, by a moderate share of intelligent industry. In short the whole country from Delagoa northwards presents a most lamentable picture of decay and ruin, by the miserable indolence and impolicy of its masters, possessing in itself at the same time all the sources of population, wealth and prosperity.

For eight days successively there have been at this place severe shocks of earthquakes, we had two very sensibly felt on board yesterday at 2 P.m., and another at 2 A.M., which carried me out on deck supposing it was our chain cable running out of the hawse. It is believed here that these shocks answer to volcanic eruptions in some part of Madagascar or on Mayotta.

I have, &c.

(Signed) W. F. W. OWEN, Captain.

[Office Copy.]

Letter from EARL BATHURST to LORD CHARLES SOMERSET.

DOW CING STREET, lst October 1823.

MY LoR,-I have had the honor to receive your Lordship's despatch NO 43, transmitting a Letter addressed to you by Commodore Nourse covering the Copy of a Deed by which the 1, 2

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Sovereignty of Temby in De la Goa Bay on the Eastern Coast of Africa has been ceded to His Majesty by the Native Chiefs of that Country, and also Copy of a Manifesto which that Officer had prepared, and intended to issue upon the application of any Merchants desirous of opening a Trade to Temby from the Cape of Good Hope.

The Cession of Temby had, previously to the receipt of your Lordship's Dispatch, been brought under my notice by the Lords Commissioners of the Admiralty who had received a copy of the Deed of Cession from Captain Owen; but no definitive step was taken on their Lordships' reference as the Records of this Department did not afford any Information with respect to Temby, and as Captain Owen had stated that he intended at a future time to report in detail upon the circumstances which had induced him to accept of the Cession of that Country until His Majesty's Pleasure should be signified, but I was more particularly induced to delay the consideration of this subject in expectation of receiving Dispatches from your Lordship. I regret therefore to find that your Lordship has confined yourself in your Dispatch, now before me, simply to the transmission of Commodore Nourse's papers without offering at the same time any observation on the subject to which they relate, or furnishing any information which can determine my Judgment as to the Policy of ratifying this Treaty, which in many of its details appears objectionable and impracticable, even supposing that the Cession was in itself, a desirable object.

But notwithstanding the objections to this Cession under the conditions specified, your Lordship will immediately collect whatever Information you may be able to obtain with respect to Temby, and in transmitting to me the result of your Enquiries, you will state whether you consider that the formation of any Post in De la Goa Bay would be a desirable measure, as far as regards the Interests of the Colony placed under your care; and whether an Establishment there might eventually prove advantageous to Great Britain in a general point of view.

Your Lordship will also notice whether the Portuguese Settlements have at any time been extended to the Coasts of Temby.
In the mean time I have to inform your Lordship that a communication has been made to the Lords Commissioners of the Admiralty directing that Commodore Nourse should be instructed to withhold the promulgation of any Document by which it might be imagined that the Deed of Cession had been ratified, and which was only accepted by Captain Owen until His Majesty's Pleasure should be known. I have, &c.

(Signed) BATHURST.

[Copy.]

Letter from CAPTAIN W. F. W. OWEN to JOHN WILSON CROKER, ESQRE.

H. M. SHIP Leven, MOZAMBIQUE,

11th October 1823.

SIR,-My Lords Commissioners of the Admiralty may possibly expect from me some further explanation of my view of the political relations of the Portuguese in this part of the world, to attach to the correspondence of which I have the honor to forward copies.

It is to be lamented that our negotiation was so unwise as to permit the slave trade to exist even as far as Delagoa Bay, where such trade had never before existed beyond the purchase of a dozen a year, but where by this permission means will be found to keep the whole country in a state of disorder and warfare, for the purpose of having slaves in greater numbers.

The port is more convenient than any other for direct communication with Brazil, and if the temptation to make slaves be permitted to be held out to the natives, by opening a market for them, they will cut one another's throats without mercy, and the whole country will be depopulated in a very few years.

The governor here does not seem aware that Delagoa Bay was specifically mentioned in the treaty of 1810, but whether exclusively or inclusively is questionable. That treaty, if I read it aright, permits the Portuguese to trade in those parts of the eastern coasts of Africa which are under the dominion of the King of Portugal between Cape Delgado and Correntes and our translation renders Cape Correntes into Delagoa Bay, sixty leagues further to the W.S.W.

I cannot conceive that the treaty which was meant to prevent the extension of a most diabolical traffic, and only to acknowledge the right of the King of Portugal to such traffic in what were (very ignorantly) believed to be his dominions, could give any right of dominion where neither in fact nor in natural justice he had it, or was entitled to it.

In no part southward or northward of the Colony of the Rios de Sena have the Portuguese any dominion whatever, beyond the muzzles of their guns. In most parts they are even excluded by the natives. There is not a syllable offered by the governor that goes to the extent of showing a right of dominion, the annual present mentioned as paid to Kapell and Kolletta of Temby and Moamba was not in either case for the right of dominion or exclusive commerce, but as a bond of peace, and was exchanged for its full value in ivory.

That the Portuguese factory after its destruction on the left bank of English river by some French cruisers was removed to the right bank in Temby, is true; but for the land they held there, they paid an annual present in the way of quit-rent to Kapell, who has never admitted that they had any right there without his own express permission. Moreover if it should be admitted, which can hardly be imagined, that two pieces of blue dungaree and ten gallons of rum and water, and for which twice the value is paid, can give a dormant right to exclusive dominion, even this is admitted to have been forfeited of late years by the Portuguese.

No admission of any negotiation ignorant of the geography and policy of these countries can give the Portuguese rights over the natives which they had not, have not, nor can have. Claim what they will, in point of fact all the native kings and chiefs on the coasts, even around their very factories, are independent, and hold their own lands free from tribute or service. They administer their own laws, and in many cases make the Portuguese themselves subservient to them.

It certainly is otherwise in the Colony of the Rios de Sena, and in parts of the captaincy of Sofala, where the lands actually belong to the Crown of Portugal; yet for those of Sofala the Quiteve still expects his Imperial dues.
The Portuguese are at this very time hemmed into their factories at Sofala, Mombone, Sena, and Tete. Then not to admit that the nations of Inhambane, the Quiteve, the Boro-

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longs, the Maraves, and the Regulos north of the Zanbezi, are independent of them, is preposterous. These are not acts of rebellious subjects, but operations of independent people. This even all their officers admit. On what foundation then is their claim to dominion built? merely that they have established themselves on a few points of coast, have marked the whole continent for their own, and have scarcely been molested and never had their title questioned by any European nation. These are the negative rights of Portugal to dominion on this coast, except on those points mentioned where she obtained a right by conquest, and has actually established a dominion and jurisdiction.

But for the Bay of Delagoa, it must be considered as a point of so much importance as regards our Cape Colony, that I would certainly treat for their falling back at once to Inhambane, that is, to Cape Correntes, as an equivalent to Great Britain for not forming foreign relations with the nations further north. But even the governor here does not attempt to set up a plea for dominion in Maypoota where the Singapore was seized by his sub-governor in English river. I have to inform you also that I have received here the remains of the property belonging to that vessel which I shall send to the Vice Admiralty Court at the Cape by the first opportunity. I have, &c.

(Signed) W. F. W. Owen, Captain.

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Extracts from a Letter from Commodore Nourse to J. W. Croker, Esqre.
His Majesty's Ship Andromache, AT SEA rn THE MOZABIQUE CHAKNEL, December 15th 1823.
SIR, I have the honour to acquaint you of my proceedings in His Majesty's ship Andromache from my quitting Algoa Bay on the 22nd of October last. On the 3rd of November I anchored in English River in Delagoa Bay, in order, with a view to my further proceedings, to complete the ship in wood and water, and, by the presence of the Andromache, to inspire the natives with confidence in the English, and to check any interruption or interference by the Portuguese with English vessels that might be trading peaceably with the natives. All this has been executed quietly, and without any dispute or disagreeable circumstance. The commandant of the Portuguese fort having promised to abstain from any interference, acquainting me that he had represented to his Government the proceedings of Captain Owen. On the 17th November [quitted Delagoa Bay (Signed) Joseph Nourse, Commodore.

Letter from John Barrow, Esqre., to R. Wilmot Horton, Esqre.
ADMIRALTY OFFICE, 9 April 1824.
SIR, I am commanded by my Lords Commissioners of the Admiralty to transmit to you, for the information of Earl Bathurst, copies of two letters from Captain Owen of His Majesty's ship Leven, dated at Mozambique the 9th and 11th of October last, numbers 58 and 60, containing information respecting the Portuguese settlements on the East Coast of Africa, and the slave trade carried on in that quarter. I am, Sir, &c.
(Signed) Jno. Barrow.

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Letter from W. H. Lys, Esqre., to P. G. Brink, Esqre.
PORT OFFICE, 12th April 1824.
SIR,-I beg leave to acquaint you for the information of His Excellency the Governor that the master of the
ship Nereid (who arrived this day from Delagoa Bay) reports that a popular native iattal chief (after
refusing to enter into amicable arrangements with the Portuguese Governor) on the 23rd of February last
surprized him and his escort of about 50 soldiers whom together with about 300 of his people they
massacred, that the country was in a general state of warfare and it was supposed the fort of Delagoa would
be destroyed and the Portuguese eventually driven out of the country. The natives had evinced every
friendly disposition towards the English. I have, &c.
(Signed) W. H. Lys, Officer of Health.

Letter from the REVEREND DR. PHILIP to P. G. BRINK, ESQRE.
CAPE TowN, CAPE OF GOOD HOPE,
13th April 1824.
MY DEAR SIR:-YOU requested me to give you my sentiments on the importance of De la Goa Bay to this
Colony and to the general interests of the British Empire. After making all the inquiries on these questions
in my power I am sorry to say that my success has been much less than my diligence. On other points
connected with this bay I have abundance of information but I have been able to obtain very little indeed,
on those on which you request my opinion.
In reference to the first question as to the importance of De la Goa Bay (considered as an appendage to the
British Empire) to this Colony, I submit the following remarks :It is difficult to say to what extent this
possession might be beneficial to the Colony but it is obvious from facts respecting the state of the Eastern
Coast of Africa, and that of the interior immediately behind the coast, that it might open many new

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channels, which might occasion a considerable increase to our commerce.
The bay itself abounds in fish of excellent qualities: it is well known to furnish the best station for whale
fishing on the whole coast; the rivers are well furnished with seals and hippopotami; and from the
surrounding country might be collected vast quantities of honey, bees wax, dye woods, skins, hides, and
ivory. The Portuguese at the factory carry on a pretty brisk trade with the natives, and the English might
carry on trade to a much greater extent, were they in possession of a station on this bay. Even now the
cotton cloths brought by the Portuguese vessels find their way at least several hundred miles into the
interior; there is at this time in Cape Town, a piece of cloth of the Surat manufacture, found on a Mantatee
woman after the battle of Lattako. From this circumstance it is evident, that the goods imported by the
Portuguese, had reached beyond the name of the importers, for the Mantatees had never heard of firearms
till they came in contact with the Griquas.
If the merchandize of the Portuguese, in spite of their bad faith, bad policy and cruelty to the natives, finds
its way so far beyond them, it is not unreasonable to suppose that a few respectable British houses on the
bay might add to the trade of this Colony, by gaining the confidence of the natives, and opening new ways
into the interior.
Considerable quantities of ivory are every year exported from De la Goa Bay. Some small vessels from the
Cape have since it was visited by Capt. Owen got valuable cargoes from thence, and we have certain
information that vast quantities of that commodity (that is now of no value in the interior) would soon be
conveyed to the coast, could the natives fully depend upon the white people residing there.
Having spoken against the policy, and bad faith of the Portuguese on the coast, it may be proper to remark
that this reference is made chiefly to De la Goa Bay. In the captaincy of Senna and at lozambique some
attention is paid to the characters of the persons appointed, and the Government looks at the conduct of the
officials in those districts, but the Portuguese establishment in English River at De la Goa Bay is a mere
factory, and the person at the head of it is restricted by no laws, but such as he lays down of himself. The
policy pursued

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by the Portuguese at this bay is to keep the natives in a state of constant hostility among themselves, and if
the conquerors refuse to sell their plunder at the price fixed upon by the purchasers, they are instantly
crushed by the arms of the factory, or by some other tribes employed for the purpose.
It is obvious that while such a state of things exists, there can be very little trade with the interior, and that
the first step towards the civilization of that part of Africa and to a consequent increase of trade, would be
to establish a system at the bay of a pacific and liberal character. Give encouragement to the arts of peace,
gain the confidence of the natives, shew to the tribes around the bay the advantages they would reap by becoming the medium of a profitable trade between the residents at the bay and the tribes of the interior, and a considerable advance will be made towards the attainment of an important Colonial object. In seeking to improve the interests of the Colony we are not to despise objects because the profits are at first small. If we except the revenue obtained from the precious metals the sources of wealth are generally speaking trifling at the beginning. The foreign trade of Great Britain was at one period confined to a single bottom. The circumstances which have raised the greatest nations in the world to their elevated sites have in the first instances arisen from gains scarcely perceptible, and there is nothing connected with the trade of this Colony so trifling that it may not one day contribute to its wealth and greatness. An expensive establishment at De la Goa Bay might not perhaps be advisable in present circumstances, a single fort with two hundred men on the island of St. Mary or on the River Mapoota, with an occasional visit from His Majesty's ships on this station, might answer every purpose, so far as trade with the natives is concerned. The Mapoota is an excellent river, it is navigable above forty miles for vessels of seventy or a hundred tons burden, and by lighters and large boats, it may be navigated above 70 miles from its estuary. Temby lies between English River and the Mapoota and the chief who claims the southern bank of the river and both sides of it at a short distance from the bay, is anxious that the English should build a fort in his territory. His people is the most powerful of all in this quarter, his people are more civilized and enterprising than any others in the neighbourhood of the bay, and the chief himself possesses considerable natural talents, and is wholly independent of any other power. He is uncle to the present king of Temby, and the Portuguese are dependent upon him for the supplies necessary for the consumption of the factory, which they obtain by barter. Perhaps the island of St. Mary at the mouth of the bay would be the most healthy spot for a fort, but if one were to be built on the mainland, the banks of the Mapoota in every respect appear the most eligible. The British Government has at present scarcely any alternative but either to accept the surrender made to Captain Owen or to lose any advantages the Colony may derive from a trade with this bay. It is at present scarcely safe for a small vessel to go to De la Goa Bay, except when an English ship of war is in the neighbourhood. Vessels have lately been seized on trifling pretexts and relieved by the timely intervention of our power. The Portuguese are at present quiet under the apprehension that the surrender of Temby has been accepted by the British Government and that they may be speedily punished for any trespass they may commit on our merchantmen; but if it is once known that England has ordered her flag at this Bay to be taken down, an attempt will instantly be made by the factory to establish an exclusive trade. I do not conceive that there is anything in the claims of the Portuguese to prevent the English Government from accepting the cession of Temby or of any district in the neighbourhood that may be ceded by its own native chiefs. The power of the Portuguese at De la Goa Bay is confined to their fort, the surrounding tribes are as independent of them as the Caffers are of us. Secondly you wish to know, how far the possession of this Bay might promote the general interests of the British Empire. Whatever has a tendency to encrease the export of the colony and to open new channels for our commerce must tend to the general interests of the mother country; but there are advantages of a more direct nature that are entitled to a separate consideration. It is pretty generally known, that the American Government has for several years past, been on the look out for a favourable port, between their own shores and India, and it is also known that De la Goa Bay has been recommended to congress with that view. A slight attention to the coast will show, that if De la Goa Bay is not the only port open to the American Government, it is far the best, not already occupied by us, and it must appear evident on reflection that in the bands of America, it might afford that power the means of doing great injury to our India trade, and to this colony. Were America in possession of De la Goa Bay, one of the first things she would attempt in the event of war, would be, to arm the savage tribes, between this Bay and the colony, and to excite them to attack us, and it is obvious from the description of savages, the Griquas have lately had to contend with, the extended and defenceless state of our frontiers, particularly towards the north and north-east, that such a system would be expensive to the British Empire, and ruinous to this colony.
Directed by the vindictive and enterprising spirit of America the frontiers of our colony in South Africa would soon present such scenes as we shudder to read of, as having happened along the lines which separate British America from the territories of the United States. I have &c.

(Signed) JOHN PHILIP.

[Original.]

Letter from LORD CHARLES SOMERSET to EARL BATHURST.
CAPE OF GOOD HOPE, 22nd April 1824.

My LORD, - I have the honor to acknowledge the receipt of your Lordship's despatch of the 10th October last No. 77, requiring me to collect whatever information I might be able to obtain with respect to Temby and to state if I consider that the formation of any post in De la Goa Bay would be a desirable measure as far as regards the interests of this colony.

In reply I have the honor to state, that I have not been able to discover any one capable of giving the slightest information relative to Temby or Delagoa Bay except the Reverend Dr. Philip the superintendent of the missions of the London Records of South-Eastern Africa.

Missionary Society in South Africa and I have reason to believe that he has chiefly drawn his information from Captain Owen, consequently I fear that his communication will not add to the information your Lordship is most probably already in possession of from the Admiralty. I however do myself the honor to transmit a copy of it. I beg to add that I received no information whatever on the subject from Captain Owen except that which I had the honour to transmit to your Lordship.

With regard to the advantages of Delagoa Bay as a Port, I conceive that the reports of Commodore Nourse and Captain Owen (who have each of them visited that place) are much more to be relied on than any opinion I can form on that head. As a station of communication with this colony, by land, it is, and must for many years be impracticable; the tribes of Caffres who inhabit the intermediate country being so entirely uncivilized and savage as to render the attempt dangerous and hopeless. All accounts agree in the extreme unhealthiness of the vicinity of Delagoa Bay. I have &c.

(Signed) CHARLES HENRY SOMERSET.

P.S. Having also received a report from the officer of health here, Mr. Lys, on the state of affairs at Delagoa Bay I beg to transmit a copy of it herewith for your Lordship's information.

[Copy.]

Letter from Mr. J. WHITWORTH to COMMODORE NOURSE.
ON BOARD THE Nereid, 29th April 1824.

SIR, - The Reverend Mr. Threlfall requests me to say in answer to your request, that immediately after the departure of the Andromache and the Orange Grove, last year, from Delagoa Bay, the Portuguese Governor manifested a decided disposition to subjugate the native states, and threatened them with immediate war, if they would not accede to his terms.

In December he caused the Portuguese flag to be raised in Temby, and appointed three soldiers to guard it. About the middle of the same month the secretary of the King of Maiboota ceded that state to the Portuguese Governor, without the knowledge of the king. The king of course refused submission. The governor disappointed, immediately sent a company of soldiers with a great number of the natives of Mafooma against Maiboota and destroyed many houses and some lives. The King of Matoll to whom the King of Maiboota was tributary, joined the latter against the people of Mafooma, for assisting the Portuguese. The governor raising all his force went to Matoll with a determination to remain in camp, till he got the king's head: he made his attack at night, some of the people were slain, but most fled. He remained in camp about ten days, when the heavy rains drove him to his own place. The king then sent a messenger to the governor, suing for peace, and proposing terms, but the governor cut off his ears, nose, and lips, and returned him to the king with a message that he would destroy them. After long resistance, the King of Matoll sent a present to the governor, with many of his subjects, as a ratification of the treaty which the governor had proposed to them, and they invited him to come to Matoll the following day to hoist his flag there. In consequence of this, the governor, his brother in law, military captain, 43 soldiers, and most of the natives of Mafooma, went to Matoll, when, the people seizing their opportunity sprung upon them and killed all, except three soldiers and a few of the Mafoomas. When this news reached the few remaining Portuguese, they fled into the fort, and were soon surrounded by the
conquerors, who threatened to burn the town, and fall upon the fort itself, unless presents of beads &c. were
sent to them.
These conditions were submitted to, when they retired for the day, but several times after repeated the same
demands. Lieutenant Tiexcoro, whose sickness had hindered him from going to Matoll, became of
necessity the governor, and hired the neighbouring states to come to his assistance against his enemy. The
people of Temby were the first to appear and go against Matoll, driving all before them, and destroying
men, women, and children. The Boatwats and others, coming to the fort to sell cattle were hired to join the
Tembians, and to assist in bringing the King a captive afterwards.
The Tembians not receiving the reward which the Portuguese had promised, assembled in a warlike
position around the fort.

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demanding the cattle, &c., which had been promised. It was reported that the King of Mapoota had
received and protected his brother in law the King of Matoll, and he fearing an attack in consequence of
protecting his brother, summoned all his tributary states to be ready for war, and they were preparing
accordingly with a most determined aspect. This will probably cause the entire destruction of the
Portuguese interest.
For the Revd. Mr. Threlfall, I have, &c.
(Signed) J. WHITWORTH.
P.S.-Mr. Threlfall begs leave to say, if he can add any other communication, in any way that you may
desire, he is yours to command.
[Original.]
Letter from COMMODORE NOURSE to JOHN WILLIAM CROKER, ESQRE.
His MAJESTY'S Ship Andromache,
SimON'S BAY, 1st May 1824.
Sir,-I think it my duty to acquaint you, for their Lordships’ information, of the intelligence which I have
received from the missionary that was taken from this place to Delagoa Bay by Captain Owen, and who has
returned from thence in the Nereid whaler in bad health, and is now together with the crew of that vessel in
quarantine. A copy of a letter, written by his desire, I herewith enclose. I have, &c.
(Signed) JOSEPH NOURSE, Commodore.
[Original.]
Letter from J. W. CROKER, ESQRE., to R. WILMOT HORTON, ESQRE.
A-DIMIRALTY OFFICE, 31st July 1824.
Sir,-I am commanded by my Lords Commissioners of the Admiralty to transmit to you, for the information
of Earl

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Bathurst, a copy of a letter from Commodore Nourse, dated the 1st of May last, with a copy of the one
therein referred to from a missionary who had returned to the Cape of Good Hope from Delagoa Bay. I am,
&c.
(Signed) J. W. CROKER.
[Copy.]
Letter from CAPTAIN C. R. MOORSOM to COMMODORE CHRISTIAX.
HIS MAJESTY'S Ship Andromache,
SIMON'S BAY, 24th May 1825.
SIR,-I have the honour to lay before you a sketch of the relation in which certain portions of the Territories
comprized within the limits of this station stand with respect to us in politics and commerce.
On the general Trade of this settlement I need say nothing, and on the Coasting Trade it is not necessary to
say more than that it is confined, with exception of an occasional Vessel or two, to the limits of the
Colonial Territory.
From the Boundary River, the Keiskamma, to Delagoa Bay, the Coast is possessed by Native Tribes, with
whom hitherto there has been no intercourse, except that referred to in my letter to you of the 18th instant,
relative to the settlers at Port Natal.
Some disputes have occurred, leading to bloodshed, between the Portuguese in Delagoa Bay and the Native
Chiefs, and a Tract of Country, styled Temby, situated on the South Side of English River, was ceded to
Captain Owen of the Leven by its Chief, for the British Government. A sort of Treaty was entered into,
which did not receive the sanction of the Earl Bathurst; and I believe that Temby has subsequently been placed under the Portugueze Flag. One or more Vessels have visited Delagoa Bay for the purpose of barter with the Natives, and, if they continue to do so, the place will require to be looked to. From Delagoa Bay to Cape Delgado is under the nominal authority of the Portugueze. Their actual power is limited to certain spots where Forts are erected and Troops maintained, the

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principal of which are Sofala and Mozambique. Their chief Trade is that in Slaves to Brazil, of whom the export in 1823 was 16,000. The French Vessels from Bourbon also procure Slaves on this coast; and on this subject I refer you to my letter, No. 45, to Commodore Nourse. A traffic is also carried on by Arabs from Muscat, who carry Slaves over to the Comoro Islands, as well as to Muscat; and Vessels from Bombay and Surat, owned by British Subjects, but shewing as it suits them either Portugueze or Arab colours, bring goods along the Coast in the N.E. Monsoon, which they barter, as they proceed, for the productions of the country, and return in the S.W. Monsoon. I am not aware that these latter deal directly in Slaves. There is some Trade with the Portugueze Possessions and the Cape, but it seems to be only partial and carried on at a disadvantage, owing to the high duties exacted. I am not aware however of any instance of illegal exaction on British Merchant Vessels.

From Cape Delgado, the Imaum of Muscat claims right of Sovereignty. His authority may probably really commence with Quiloa. For my opinion on the Slave Trade carried on here, I refer you to my letter, No. 46, to Commodore Nourse.

At the Island of Zanzibar the power and authority of the Imaum of Muscat is full and complete; and I have no reason to suppose that the present Governor permits any infraction of the Treaty, though he can hardly be expected to oppose with energy any attempt made by French Vessels to procure slaves in the vicinity. The Island of Pemba is garrisoned by a Force of the Imaum. This Island was annexed to the Dominions of Mombas, and many Inhabitants of this place, now under our protection, have possessions in it. When Mombas was placed by Captain Owen under the British Flag, and the Blockading Squadron of the Imaum sent away, it was stipulated by that Officer with the Governor of Pemba that, as British Subjects, the people of Mombas were to be protected in the enjoyment of their property, so long as they conformed to the Laws. Many complaints have been preferred both to Commodore Nourse and myself, that the stipulations have not been attended to; but on investigation it did not appear that blame attached to the Governor. Pemba under the Imaum's rule, and Mombas under British protection, will afford abundant source of contention. At Mombas an acting Lieutenant (borne as Supernumery on the Books of the Espiegle,) is stationed with five men. His duty is to receive the moiety of the Port dues, and to prevent all Slave Traffic. The original orders to the Lieutenant first placed in command by Captain Owen embrace a very wide sphere of action. Mombas is one of the places where the Arabs and Vessels from Bombay &c., touch at. The coast Northward, and beyond the Line, is under the control of the Imaum of Muscat, but the right of Sovereignty is claimed by the present Chief of Mombas. On the whole of this coast the right to rule resides in him who has the power to enforce obedience, and this is most extensively exercised by the Muscat Arabs.

The Seychelles Islands are dependencies of the Mauritius, as are also the several groups called the Almirantes, the Cargados, Cosmoledo, and Juan de Nova, with the interjacenting Isles of Costier, Agaliga, Providence, Alphonsa, &c. By means of these Islands a Slave traffic is carried on with Mauritius. New Blacks are introduced into them to supply the place of the old Slaves transferred to the former Island, under the sanction of the Law.

The Comoro Islands receive Slaves from Mozambique by the Arab Vessels; and French Vessels convey them thence to Bourbon. You will see by the Treaty with the Imaum of Muscat, that all Vessels under his Flag are seizable if found with Slaves on board to the Eastward of a line drawn from Cape Delgado to Dice Head. The Trade of Mauritius with Madagascar is considerable, the former drawing from thence all its supplies of cattle and a considerable proportion of salted provisions and of Rice. This traffic is chiefly carried on with Tamatave, Foule pointe, the ports of Antongil Bay, and those of Angontse and Pohemar, to the Northward...
of Cape East; and there are occasional Vessels sent to the Bays of Passandava and Bembatoooka on the N.W. side of the Island.

Our Treaty, 1817, with Radama, King of Ovah, binds him to prevent the export of his people; and from my personal experience of his character, as well as from the fact that his interest is deeply interwoven in the preservation of his relations with us, I am satisfied that Radama will zealously act up to this Treaty. His power and authority, originally only exercised over 2

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apovince of the Interior (Ovah) he has gradually extended, chiefly by conquest. He is now acknowledged Master of the whole Island from the North end to the parallel of 230 on the West side, and 21' on the East. His reduction of the Province of Bogana last year, you will find some account of in the papers docketed "Madagascar."

You are probably aware that the French lay claim to the Sovereignty of the East Coast of Madagascar, and some of their agents have advanced the assertion that this is guaranteed by Great Britain by the Treaty of Paris of 1814. By the eighth article of this Treaty (which is what they allude to, I suppose) we engage to restore Colonies, &c., &c., possessed by France in 1792, with certain exceptions not including Madagascar. France in 1792 possessed Establishments on the Coast of this Island, of which we dispossessed her in the last war; but we did not retain them as possessions; they were given up to the Native Chiefs. As we could not restore what we did not possess, I can see no guarantee in the article above quoted. But the following fact seems to set the question at rest, so far as the opinion of our own Government is concerned.

French Vessels imported into Mauritius live Cattle from Madagascar. If this latter were under French authority, the Trade was legal; if not, the Trade was a violation of our Navigation Laws, which abhor all carriers but our own. I remonstrated against this Trade, and an Order in Council was issued to authorize it. Whence it is clear that His Majesty in Council considered Madagascar a Country not subject to the dominion of France.

The French have an establishment on the small Island of St. Mary's on the East Coast of Madagascar, and there was another found at Fort Dauphin, but I am not sure that this Establishment is kept up. The Slave trade for the supply of the Island of Bourbon is carried on at this part of the Coast; there are Vessels employed in bringing Blacks from Mozambique and the Coast North of Cape Delgado, who are landed in the neighbourhood of Fort Dauphin, and thence conveyed in small craft to Bourbon. Intelligence has reached me of the destruction of a Vessel of the first description by His Majesty's ship Ariadne, but I have no particulars, except that the Vessel is the notorious Slaver the Walter Farquhar, whose papers having come into my possession I left them with Captain Chapman on quitting the Ariadne.

You will observe that the Coast in the vicinity of Fort Dauphin is to the South of the limit of Radama's acknowledged authority, and on this subject I refer you to my letter to Captain Chapman, and the letter No. 3 of this year.

Having been sometimes thrown out by my ignorance of the winds and currents prevailing locally in the seas to the Eastward, I will note in general terms on this subject what may probably be of use to you. In the open Sea the Trade Wind produces a Trade current, the velocity of the latter depending on the force and duration of the former, varying from 10 to 30 miles in 24 hours in general, but occasionally exceeding 40 miles. At Mauritius and around, the wind from April to November is generally from S.S.E. to E.N.E., sometimes S.W., and occasionally Northerly and S.W. From November to April the S. Easterly winds are less constant, and westerly winds more prevalent, and this is the period when Hurricanes sometimes occur at this Island, at Bourbon, and on the East Coast of Madagascar. At the Seychelles from March to December the winds are generally S. Easterly; and from December to March N. Westerly, with heavy squalls in January and February. The Currents on the Seychelles Bank are irregular, but generally at a distance from the Islands, governed by the prevailing wind. In the vicinity of all the Groups of Islets, the winds and currents veer from the general course, more particularly from December to March. On the East Coast of Madagascar the winds from April to November or December are from S.S.E. to E.N.E. in the day, but land breezes blow at night; this is the healthy season. The current in this season divides between the parallels of 180 or 19' at the distance of 60 or 80 miles off shore, and one branch sets S.W. the other N.E., the latter after it passes Cape East setting at the rate of 3 knots to the North; the former is not so rapid. I have not been on the Coast in the other Season. On the East Coast of Africa the Trade
Current, which sets with great velocity past Cape Amber, divides at Cape Delgado, and all the year round a Southerly current sets down the Mozambique Coast, whose velocity I have found 60 miles in 24 hours in the S.W. Monsoon, and a Northerly current sets along shore past the Islands Zanzibar and Pemba, and beyond Mombas, whose velocity I found in the N.E. Monsoon above 40 miles in 24 hours. On this Coast the winds are periodical, N.E. and S.W. veering on each side of these points, and interrupted by land breezes by night; the N.E. Monsoon prevails from April to November, these winds blow thro' the middle of the Mozambique Channel about N.N.E. and S.S.W. At the changes of the Monsoons there are generally light winds and calms in mid-channel. On the Bank of Soundings, off the N.W. Coast of Madagascar, the winds during the S.W. Monsoon are chiefly South-Easterly off shore, but interrupted by occasional sea breezes. The Current on the Coast in the S.W. Monsoon is inconsiderable, but sets to the N.E. On the Bank a regular tide ebbs and flows. I have not been on this Coast in the N.E. Monsoon, when it is like the East Coast unhealthy and subject to heavy gales. The Currents among the Comoro Isles are very irregular and rapid; I have not been at any of these Islands myself.

I was surprized on my late attempt to reach Port Natal to find so strong a current setting along that Coast, having imagined that the S.W. Monsoon which has blown since April up the Mozambique would have turned the current across the parallel of 150 along the Madagascar shore, because on that shore in this season, as I before observed, I found a N.E. current. I conclude that the current of the Bank of Agulhas is not only the effect of the Trade Current setting past the South end of Madagascar, but that it receives also the waters which flow along the Mozambique Shore from Cape Delgado, and which seem to be only partially directed by the S.W. Winds.

You will however obtain more detailed and more accurate information from the Surveying Squadron relative to winds and currents, as well as on the Geographical position and Hydrographical line of the Continent and Islands, my movements from point to point having always been as rapid as a very dull sailing ship (the Ariadne) permitted. I have &c.

(Signed) E. R. Moorson, Captain.

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Letter from CAPTAIN OWEN to SENiOR DE BOTELHO, Governor of Mozambique.

Leven, May 10, 1825.

SIR,—In the course of my conference with your Excellency this day, it appeared that you were quite ignorant of the situation, and the political state and relations of Lorenzo Marques, called by others English River, in Delagoa Bay; and that his Excellency, the late Governor, Joao Manoel de Sylva, had not communicated to your Excellency any information on the circumstances which occurred between him and myself during his Government, either with relation to the objects of my voyage, or to the part I had been forced to act with the Portuguese factory at Lorengo Marques; observing that you could not recognize any public acts with this Government in the time of the Constitution, and previous to the late counter-Revolution in Portugal, which re-established the Royal Authority. As I was, and am as ignorant of your Excellency's full meaning in this declaration, which appeared uncalled for by any circumstances existing between us, as you appeared to be of everything relating to the service I have been more than two years employed on, and a great deal of that time within the territorial limits you assign to your Government, I considered it due to the frank ingenuousness with which all my communications with your Excellency's predecessor have been marked, to offer you copies of my correspondence with him on every subject, for the purpose of making you fully acquainted with every circumstance in which I have had a part. But, on looking over the copies of that correspondence, I find it voluminous, and contains much extraordinary matter, and would cost us more time in copying than it is worth. I shall, therefore, merely furnish your Excellency with a brief abstract of my transactions, motives, and objects during the time I have been employed on these coasts, so far as they relate to this Government or its dependencies, without making any reflections whatever on the other topics of your Excellency's communication; but, before I do this, I must beg to be understood that I have two objects only in giving myself the trouble: first, because I have, in a letter dated the 7th instant, preferred a complaint against Captain X. Schmid von Belleker, Governor,
Capitao Mor, a factor at Lorengo Marques, for a most wanton and marked insult to the flag of my nation, by firing on a British merchant vessel, and by striking the flag left in Temby by Commodore Nourse, and hoisting a Portuguese one in its place, at the very time when the question may be before our Courts for adjustment; and also for subjecting the officer of a British vessel to unnecessary insult and indignities; and, secondly, because I really am desirous, on the score of humanity, to make you acquainted with the real state of those countries, to enable your beneficence to withdraw the iron hand and wicked despotism of your subordinates, who too frequently are a curse to the miserable but amiable Africans, repelling every attempt to ameliorate their condition.

The first port I arrived at on this coast was English River in Delagoa Bay, or Lorengo Marques, where I found a small Portuguese factory and fort, commanded by a Captain Jaques Casimir, who had succeeded a Senhor Oliveira, who but a short time previous had killed himself. Under the impression (a false but very common one, founded on ignorance) that all the surrounding country and coast was under Portuguese jurisdiction and authority, I showed Senhor Casimir my papers from the Portuguese Ministry, and asked his permission to survey the rivers, in obedience to my orders, and his protection from the natives where necessary. His answer was, that the whole country was free and independent; that the Portuguese had no authority beyond the precincts of the fort; and that he was in hourly fear himself of an attack by the native Vatwas even in his fort, and they had already laid waste the surrounding country, and therefore that he had no means of furnishing protection to any boats beyond the reach of his guns.

We surveyed all those rivers, and my people were really attacked by several hundreds of the said Vatwas, in their tents, in the middle of a night, but were repulsed with loss. To this circumstance it may be attributed that that body of near 5,000 warriors did not attack your petty fort, as they had promised to do, for I sent their chief a message either to send me hostages for his peaceable conduct, or to quit the country of Matoll, where he was encamped, in twenty-four hours; * he chose the latter, and He was allowed four days, as appears from a note to the copy signed by Captain Owun.

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we again met on the banks of the Manica, and whence I ordered him also to depart. It is, however, most strange that even through all this time the Commandant and officers of your fort traded with these very Vatwas, for their spoils and slaves taken from the people of Temby and Matoll, &c., &c. What claim, then, can Portugal have to a dominion over them or their people? The devastation of the Vatwas, and consequent famine, brought slaves to the fort for almost nothing; but, fortunately, the fort itself was in want, and could not sell food for slaves. This was the state of things, in which I had no other part than that mentioned, when my crews were attacked by malignant fever, to which many of my officers and men fell victims. I took Casimir’s letters for Mozambique, and from Mozambique carried a supply of provisions for Lorengo Marques, at the request of his Excellency Joao Manoel de Sylva. I arrived the 1st of March, 1823, and found one Senhor Miguel Lupe de Cardinas had been sent from Mozambique as Governor. Near the fort there were lying two British merchant vessels, one named the Singapore, of Calcutta; the other, the Orange Grove, of the Cape of Good Hope; also a schooner of my squadron. Of these vessels the greater part of officers and men were dead or dying. Having delivered the provisions to Lupe, and commenced, as was our practice, amicable arrangements, you may imagine my astonishment at learning that Lupe had actually seized the Singapore in a river near twelve leagues from the factory, and had converted her cargo to his own use, and much more which stands recorded before his Excellency Joao Manoel in more than one document. Lupe had actually also sent his soldiers on board the Orange Grove, with orders to cut her cable and to murder the only two persons on board her alive, and to let her drift on shore, where he was actually prepared, at the head of his garrison, to plunder her as a smuggler, and to dispatch the unfortunate on board her if they should have escaped his secret orders. Most fortunately this latter circumstance was not known to me at that time, and it has pleased Almighty God to judge and punish your most infamously wicked Sub-Governor himself. As he lived a man of blood, so he died.

The Singapore and her cargo Lupe delivered to me by my command, and by a future process in a court of justice at the Cape of Good Hope, I was enabled to claim and recover the rest of the property due to that vessel at Lorengo Marques and at Mozambique. But these circumstances had necessarily several concomitants, and were the occasion of some correspondence with his Excellency Jogo Manoel, much too voluminous to copy, but which your Excellency may read if you think proper. The
savage abuse of power of the Sub-Governor of Lorenzo Marques, with respect to the Orange Grove and Singapore, led me to request that his Excellency Jolo Manoel would give instructions that his Governor at that place should desist from visiting with an armed force British merchant-vessels, for whom I left instructions not to submit to any such visitations. And I find with sincere regret that the person at present in power at the factory has had the audacity to recommence a similar system of insults and injury, for which it is my duty to obtain redress, either from your Excellency or by the power with which I am armed by my Government, which I most sincerely entreat your Excellency to spare me the pain of using.

On grounds which would demand too much to recount, the native King of Temby and his chiefs being free from any other obligation, thought proper to beg me to accept for His Britannic Majesty, my master, the sovereignty of their country, to which I acceded until his pleasure should be known; and that country was formally taken possession of in His Majesty's name by the late Commodore Nourse, and the British flag hoisted there on a staff he erected for the purpose. This flag Lupe hauled down, and hoisted a Portuguese flag in its place, and I caused his successor to replace the English flag. But Captain Schmid, it appears, has again committed the same fault, and has sacrificed uselessly some of his people, by pretending to act offensively in that territory. Of this repeated insult it is my duty to demand reparation, as I have done with the accompanying letter, and which I shall take occasion to see rendered.

Such further information as your Excellency may desire in detail may be seen in the copies of my correspondence, which I will with pleasure submit to your perusal; but I really do not possess the means of furnishing you with full copies of it during my projected stay in this port. I have, &c.

(Signed) W. F. W. Owen.
Case and evidence shall be communicated by each Party to the other through their respective Ambassadors or Ministers at Paris. After such communication shall have taken place, each Party shall have the power of drawing up and laying before the President a second and definitive statement, if it think fit so to do, in reply to the Case of the other Party so communicated, which definitive statement shall be so laid before the Arbiter, and also be mutually communicated in the same manner as aforesaid by each Party to the other within twelve months from date of laying the first statement of the Case before the Arbiter.

IV

If, in the case submitted to the Arbiter, either Party shall specify or allude to any Report or Document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof. And if the Arbiter should desire further elucidation or evidence with regard to any point contained in the statements laid before him, he shall be at liberty to require it from either party; and he shall be at liberty to hear one counsel or agent for each Party in relation to any matters which he shall think fit for argument, and at such time and in such manner as he may think fit.

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V.
The Ambassadors, Ministers, or other Public Agents of Great Britain and of Portugal at Paris, respectively, shall be considered as the Agents of their respective Governments to conduct their case before the Arbiter, who shall be requested to address all his communications, and give all his notices to such Ambassadors, Ministers, or other Public Agents, whose acts shall bind their Governments to and before the Arbiter on this matter.

VI.

It shall be competent to the Arbiter to proceed in the said arbitration, and in all matters relating thereto, as and when he shall see fit, either in person, or by a person or persons named by him for that purpose; either with closed doors, or in public sitting; either in the presence or absence of either or both Agents; and either viva voce, or by written discussion or otherwise.

VII.
The Arbiter shall, if he thinks fit, appoint a Secretary, Registrar, or Clerk, for the purposes of the proposed arbitration, at such rate of remuneration as he shall think proper. This, and all other expenses of and connected with the said arbitration, shall be provided for as hereinafter stipulated.

VIII.
The Arbiter shall be requested to deliver, together with his award, an account of all the costs and expenses which he may have been put to in relation to this matter, which shall forthwith be repaid in two equal portions, one by each of the two Parties.

IX.
The Arbiter shall be requested to give his award in writing as early as convenient after the whole case on each side shall have been laid before him, and to deliver one copy thereof to each of the said Agents.

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Should the Arbiter be unable to decide wholly in favour of either of the respective claims, he shall be requested to give such a decision as will, in his opinion, furnish an equitable solution of the difficulty. Should he decline to give any decision, then everything done in the premises by virtue of this agreement shall be null and void; and it shall be competent for the British and Portuguese Governments to do and proceed in all respects as if the reference to arbitration had never been made.

Done at Lisbon, this 25th day of September, eighteen hundred and seventy-two.

(Signed) WILLIAX DORIA.

[Copy.]

Letter from EARL GRANVILLE to LORD LYONS.

FOREOFIRE E, September 10, 1873.

My Lord,—I transmit to your Excellency the case prepared for submission to the President of the French Republic as arbiter, in support of the claim of Great Britain to certain territories formerly belonging to the Kings of Tembé and Mapoeta on the eastern coast of Africa, including the Islands of Inyack and Elephant; and I have to instruct your Excellency to deliver the same, as the case of Her Vajesty's Government, to the
French Minister for Foreign Affairs, accompanying it by an official note, in which you will express the thanks of Her Majesty's Government for the compliance of the President with their request that he would undertake the arbitration.

If the case in support of the claim of Portugal should not have been already sent in, it would be well that both cases should be sent in simultaneously by arrangement with your Portuguese colleague, but at all events the case on the part of Her Majesty's Government must be delivered in before the 25th instant, when the period of twelve months allowed for that purpose by the Protocol of the 25th of September, 1872, will expire.

You will also deliver to the Portuguese Representative at Paris a copy of the case of Her Majesty's Government, in fulfilment of the stipulation to that effect in Article III of the Protocol, and you will receive from him and transmit to me a copy of the case on the part of the Portuguese Government. It would be convenient if you could be furnished with six copies of it.

In addition to the two copies for presentation, I inclose eighteen further copies of the case, six for the French Government, six for the Portuguese Minister, and six to be kept in Her Majesty's Embassy. I am, &c.

(Signed) GRANVILLE.

[Enclosure in the above.]

CLAIMS TO TERRITORIES ON THE EAST COAST OF AFRICA.

Case for Her Majesty's Government.

For several years serious differences have existed between the Governments of Great Britain and Portugal in reference to their respective claims to certain territories on the eastern coast of Africa and the adjacent islands.

By a Protocol signed at Lisbon on the 25th September, 1872, the two Governments agreed to submit their respective claims to the territories and islands in question to the arbitration and award of the President of the French Republic, who should decide thereon finally and without appeal.

These territories are described by the Protocol as formerly belonging to the Kings of Temb6 and Mapoota, on the eastern coast of Africa, including the Islands of Inyack and Elephant, and so far as the Portuguese claim is concerned, extend as far as 26° 30' south latitude.

The chart which is annexed shows a sufficient outline of the territories respectively claimed, but does not reach quite so far south as 26° 30'; and the part which is coloured pink marks the portion to which the British Government asserts a right, contending that the Portuguese dominion reaches south only ad medium filum aquæ of the Dundas, or Lorengo Marques River, the English River, and the little bay of Lorengo Marques, being bounded on the east by the sea, and not extending to the Inyack Peninsula, or to the Inyack and Elephant Islands.

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The chart purports to be a survey of the Bay of Delagoa, which it will be seen is a large indentation on the east coast of Africa extending between latitudes 25° 30' south and 26° 21' south. Nearly in the centre of this large bay is a smaller bay lying between Cape Reuben to the north, and Cape Mawhome to the south. The English River, with its confluents the Mattoll, the Lorengo Marques or Dundas, and the Temb6, falls into this smaller bay.

The Portuguese contend that although Delagoa Bay means the Bay of Bays or the Great Bay, yet that the words Delagoa Bay and Lorengo Marques Bay are convertible terms, and that at all events the smaller bay must be comprehended in the expression, and taken as a part of Delagoa Bay.

The English Government, on the contrary, maintain that, accurately speaking, the term Lorengo Marques is in no sense applicable to the large bay, but is strictly confined to the smaller bay. The Portuguese factory or fort called Lorengo Marques is situated on the left or north bank of the English River, nearly at the point where the river falls into the little or Lorengo Marques Bay. The Island of Elephant is nearly opposite the centre of the small bay, and lies about twenty miles to the east of it. South of Elephant is Inyack Island, and again south of Inyack Island is Colatto Point, forming the extremity of the peninsula, which joins the mainland, and rounds the southern extremity of Delagoa Bay, of which the western shore, intersected however by the river Mapoota, is continued north, round Mawhome Point, up to the south or right bank of the English River.
The territories in dispute, and coloured pink on the chart, were, as the Protocol admits, at some time the property of the Kings of Temb6 and Mapoota.

The main questions for the consideration of the Arbiter are whether those Kings have in any way, either by conquest, cession, or otherwise, ceased to be the possessors of these territories, or, of any, and what portion of them. And if the Kings of Temb6 and Mapoota, or either of them, be no longer independent, whether the Portuguese or the British Government has acquired a right to the dominion over those lands.

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On the part of the British Government it is contended1. That these several territories, though discovered by the Portuguese, were never, in fact, taken possession of, occupied, or held by the Portuguese, whose dominions to the south were always bounded by the Dundas or Lorengo Marques, and by the English River, and to the east by the sea, and were at no time extended to Elephant and Inyack Islands, or to the Inyack Peninsula.

2. That the whole country south of the Dundas or Lorengo Marques River and English River, and to seaward, was free and independent: the native inhabitants under their chiefs, retaining absolute dominion over, and possession of, these territories, over which the Portuguese exercised no jurisdiction.

3. That these chiefs, with the consent of the natives, and in exercise of their independent rights ceded by Treaty, in 1823, the sovereignty over these territories to the Crown of Great Britain.

The grounds of this contention on the part of Her Majesty's Government will appear from the following statements of facts, official documents, and correspondence, and the arguments fairly deducible therefrom. The British Government in 1822 fitted out a small squadron under the command of Captain Owen, for the purpose of surveying the south-east coast of Africa, the coast of Madagascar, and the adjacent seas.

At this time little, if anything, was accurately known in England of the condition of the native tribes on this part of the coast of Africa; whether they were free and independent, and if so, whether they had any form of Government or not; and if they had a Government, what might be that form of Government. Or whether they were subject, and, if so, in what manner or degree, to the Crown of Portugal.

The British Government knew that the Portuguese held some possessions on the south-east coast of Africa, since those possessions were referred to in the XXIVth Article of the Treaty of 1810; and in the IInd Article of the Additional Convention to the Treaty of the 22nd January, 1815, for the purpose of preventing any illicit traffic in slaves, which Convention was signed in London on 28th July, 1817.

IX.

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Some information had also been derived from the masters of ships, who, for the purposes of the whale fishery, or of trade, had been on the coast.

The British Government, therefore, in order to obtain the aid, if required, of the Portuguese authorities on the coast, and at the same time to show all proper deference to the Portuguese Government, directed a letter to be written to M. de Oliveira, the Portuguese Chargé d'Affaires in London, requesting him to furnish Captain Owen with letters to the Portuguese authorities on the eastern coast of Africa, desiring them to afford to Captain Owen such refreshments and assistance as the ships of the squadron under him might be in need of, in the event of their touching at Mozambique, or any other Portuguese settlement on the African coast.

This letter was sent on 22nd February, 1822, and the request then made was complied with, Captain Owen being furnished with the papers required.

The first port on the coast at which Captain Owen arrived was English, or Lorenço Marques River, in Delagoa Bay.

Captain Owen, in a letter to his Excellency Senhor X. de Botello, Governor and Captain-general of Mozambique, dated the 10th of May, 1825, gives a brief abstract of all the transactions in which he took part, or of which he had any knowledge, at Lorenço Marques.

This letter, which is material since it purports to give a history of the facts upon which a correspondence between the two Governments of Great Britain and Portugal subsequently took place, contains the following more important statements

"The first port I arrived at on this coast was English River, in Delagoa Bay, or Lorenço Marques, where I found a small Portuguese factory and fort, commanded by a Captain Jacques Casimir, who had succeeded a Senhor M. Oliveira, who, but a short time previous, had killed himself. Under the impression (a false, but very common one, founded in ignorance) that all the surrounding country and coast was under Portuguese
jurisdiction and authority, I showed Senhor Casimir my papers from the Portuguese Ministry, and asked his permission to survey the rivers in obedience to my orders, and his protection from the natives when necessary. His answer was, that the whole country was free and independent; that the Portuguese had no authority.

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beyond the precincts of the fort; and that he was in hourly fear himself of an attack by the native Vatwas even in his own fort; and that they had already laid waste the surrounding country ; and therefore that he had no means of furnishing protection to my boats beyond the reach of his guns.” 

In accordance with this statement the surveys of English River, and of its confluents, the Rivers Mattoll and King George, and of the whole of Delagoa Bay, Elephant and Inyack Islands and Inyack Peninsula and the neighbouring coast were made without either assistance or hindrance from the Portuguese.

It is not necessary for the discussion of the point before the Arbiter to consider whether the Governor at the time of Lorengo Marques, or Captain Owen, was right in the action which each took in reference to the English ships the Singapore, Orange Grove, Eleanor, or His Britannic Majesty's ship Albatross, referred to in this letter of Captain Owen.

The conduct of those officers, however, led to a correspondence between the two Governments, in which the questions now submitted for arbitration were first raised.

This correspondence, and the annexed documents and the convention of 1817 contain the whole case on which the claims of the two Governments were then, and have down to the present time been, based. In this correspondence the rights of the Portuguese are founded upon:

1. Discovery.
2. The erection of fortresses and establishments.
3. Acts and compacts entered into between the Portuguese and the natives.
4. The general admission by civilized nations of the rights of Portugal as evidenced by charts.
5. The language of the Treaties and Conventions between Great Britain and Portugal, and particularly the 1st Article of the Convention of 1817.

I. The mere fact of discovering, apart from possession and occupation, cannot, it is submitted, establish an absolute and permanent right to dominion. Indeed, the Marquis de Palmella admits as much, when he relies upon the other grounds.

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2. The raising of a fortress, and the maintaining a garrison in such a fortress, is beyond contradiction, an absolute occupation and possession of the ground upon which the fortress stands, and of the ground covered by the guns of the fortress.

But the question remains, to whom does the country beyond the range of the guns belong? Where, as in the present case, the fortress is placed on the bank of a river, it may well be that the river marks the limit of occupation.

How then is the territorial extent of a dominion depending upon the possession of a fortress to be measured and ascertained? Not by any arbitrary theory, which might fail in its application to a particular instance, but by the real facts of each individual case practically tested.

For instance, it could not, in the case of the Fort Lorengo Marques be successfully contended that the occupation of that fort by the Portuguese Governor and his garrison gives the Crown of Portugal a right to an indefinite extent of territory to the southward and westward. Some limits must necessarily exist, and be determined at least in those directions.

The independence or dependence of the inhabitants becomes the only test which can be relied on in order to define those limits.

As far as the governor of the fortress, in the name of his Sovereign, can and does exercise authority and jurisdiction, so far the country and its inhabitants are under the control and government of the country to which that fortress belongs.

That control and government cease at the moment and at the places where the jurisdiction no longer exists, and the authority no longer is or can be exercised.

Her Majesty's Government contends that the powers of the Governor of Lorengo Marques and of Portugal, as represented by him, have never reached the south or right banks of the Dundas or Lorengo Marques and English Rivers.
The proof of this dominant and governing fact is to be found in the conduct of the natives and of the Portuguese themselves, and in the acts and compacts entered into between the Portuguese and the natives, as well as those made between the natives and the British.

In a subsequent communication (page 48) from the Portuguese Government a reference is made to the passage in Horsburgh's directions, where it is stated that on entering the river the ruins of the Portuguese fort were seen on the right, that is, the south bank. There is a reason to believe that these were the ruins of a fort which the Portuguese, after the destruction of their fort on the north bank, were allowed by the natives to erect temporarily, and for permission to build and occupy which they paid a quit rent to the natives.

The ruins have long since disappeared, and with the exception of this permission to temporary occupation of a small piece of ground, the Portuguese have never held a foot of ground nor set up a single factory or establishment south of the river.

Her Majesty's Government is unable to give any weight to the argument drawn by the Marquis de Palmella from the supposed consent or acknowledgment of the European nations as shown by the charts of geographers.

These charts can only be evidence that the great bay was sometimes called the Bay of Lorengo Marques, which might very well be from the fact of the fort of that name being within the bay, or from the name of the first navigator in those waters; but it is no proof of the extent of Portuguese dominion on the shores of, or on the islands in, that bay.

The chart of the survey in Appendix I is a proof how little reliance can be placed upon a mere name, and that no inference, much less an argument, can be drawn from the use of a name.

Captain Owen was the most unlikely person in the world, from his disputes with the Portuguese, his knowledge of the facts, and his transactions with the natives to admit a point in favour of the Portuguese claim to territory or jurisdiction over the whole shore washed by the waters of the Bay of Delagoa, yet he calls his chart a survey of Delagoa Bay or Lorengo Marques.

And no greater reliance can be placed upon the fact that the tracing or colouring of these charts places the whole of the larger bay within the Portuguese territory; the real state of these countries being till recently little known by, and of little interest to, any European nations.

5. The treaty or contract between King Capella and the Portuguese governor in 1794, to which the Marquis de Palmella refers, is a grant made by that king to the Crown of Portugal of a small portion of land extending along the sea coast.

It is difficult, owing to the confusion caused by different names having been given to the same places and rivers to ascertain precisely where this small tract of land, the subject of the gift, lay. Possibly it was situated at no great distance from the Fort of Lorengo Marques, certainly it was on the shore, and as certainly it was part of the territory of the King Capella, with whom the governor of the Portuguese fort, on behalf of the Crown of Portugal, treated as with a free and independent sovereign holding possession of and exercising dominion over territories a part of which he was able to grant away, and a part of which the Portuguese were willing to accept from him.

Her Majesty's Government submits that this compact and act entered into between the native king and the Portuguese, the only document of the kind, which the Marquis de Palmella refers to of a date earlier than 1823, proves that at least in 1794 the tribes on the coast were, and certainly that King Capella was, free and independent, and is strongly in contrast with the statement in the Marquis de Palmella's letter of the 22nd May, 1828, written in answer to Lord Dudley's letter of the 5th December, 1827.

The Marquis there, after referring to the rights supposed to be acquired by the Portuguese in virtue of their being the first discoverers, says, "Cette raison suffit sans doute pour démontrer qu'aucune autre nation n'en avait pris possession avant eux, mais elle ne suffirait pas pour 'tablir leur droit, si elle n'avait 6t6 suivie d'une possession maintenue sans dispute pendant plusieurs siecles et fortifiée par la reconnaissance des peuples qui habitent ce pays formellement consignées dans des Conventions et des documents aussi valides, sans doute, que la Convention que le Capitaine Owen a induit le Chef de Mapoota A conclure avec hi, et qui out sur cette dernibre l'avantage incontestable de [la priorit6 de date]."
Her Majesty's Government admits that the documents are of the same weight as evidence of the rights of the chiefs, and will only observe that the grant to the Portuguese is of a small piece of ground, the grant to Great Britain is of the whole territory, which the Portuguese Crown is now claiming.

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The Marquis de Palmella, in this same letter of 22nd May, 1828, makes some remarks upon the half-savage, half-civilized state of the native tribes, and the effect that state may have upon the validity and effect of any Convention made with them.

These remarks are as applicable (indeed, the Marquis says as much) to the Conventions made by them with the Portuguese, as to those made with the English in 1823.

The Marquis de Palmella, therefore, with great fairness annexes to his letter of May 28, 1827, the treaties or conventions made in 1823, between the English and the natives.

Her Majesty's Government having shown that the Portuguese Government had no right, save by a temporary and permissive occupation, over any part of the territories of the Kings of Temb6 and Mapoota, and that those kings were free and independent, and treated as free and independent sovereigns and not as vassals by the Portuguese authorities; it is now the proper place to show when and in what manner the rights which Her Majesty's Government claims were ceded to the Crown of Great Britain by the Kings of Temb6 and Mapoota by conventions in 1823, and to examine those documents carefully.

The conventions made with the English were:
1. A treaty of commerce made with Makasane, King of Mapoota, on the 3rd of August, 1823. This treaty was to last for four years, and opened the trade in the River Mapoota on the payment of certain tolls.
2. A treaty of amity and friendship between the subjects of the King of Great Britain, and the subjects of the same Makasane, King of Mapoota, made on the 23rd August, 1823. There were, as will be seen from the treaty itself, various provisions for the opening of trade, the establishment of settlements, the abolition of the slave trade, and matters of law and regulation in the Kingdom of Mapoota.

It is impossible to read these two treaties and not be convinced that the King of Mapoota acted in every respect as a free and independent sovereign at the time when he signed them.

He opened trade into, and out of, his dominions, he imposed tolls and restrictions upon this trade, allowed the establishment of settlements on his territories, and all this he did of his own free will, for the benefit of his people, and without the least appearance, internally from the terms of the treaty or externally from the suggestion of fraud or force, of having been coerced or tricked into the surrender of his own or any other person's rights.

But Her Majesty's Government admits that these treaties do not confer upon Her Majesty any territorial rights, or any right to dominion or jurisdiction over the lands belonging to Mapoota other than the leave to trade and establish settlements in the nature of factories.

Information appears to have soon reached the Governor of Lorengo Marques that these two conventions or treaties had been made with the English, and he, without delay, proceeded to take measures to defeat or nullify them.

He claimed to have obtained from the King of Mapoota the declaration dated 8th October, 1823. In this declaration it is said that, the Most Illustrious the Governor of Lorengo Marques covenants to afford the King of Mapoota all the protection in his power, because the King recognises the Portuguese alone as the lords and discoverers of all these lands, so that the ancient relations continue in force; and no validity can attach to any negotiation, or convention with any nation except with the Government of Portugal. The King of Mapoota, then, by the very terms of the declaration, was at liberty to make a declaration agreeing to recognize the Government of Portugal, and therefore was not in a state of vassalage, as represented by the Marquis de Palmella, to the Crown of Portugal. The power of making an agreement implies the ability to refuse to make such agreement, and is a mark and test of independence. If the King of Mapoota had that power in respect of Portugal in October, 1823, he had the same power in respect of Great Britain in August, 1823, and the declaration obtained by the Portuguese in October cannot make invalid the English treaty of August. It is submitted that the declaration obtained by the Governor of Lorengo Marques in October, 1823, is a strong proof of the power to make the treaties of August, 1823, and of the rights of Great Britain under that treaty.
In March, 1823, a convention was made on behalf of the King of Great Britain with Mayott, King of Temb6, whose ancestor had made the treaty already referred to with the Portuguese in 1794.

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By this treaty Mayott, or Macetas, King of Capella, describing himself as king of all the lands situated between the English and Dundas Rivers on the one side, and the River Mapoota on the other, commonly called Temb6, after one of his forefathers, who settled the land, did, by the power and authority devolved on him by the much lamented death of his grandfather, the late King Capella, freely cede the full sovereignty of the lands of Temb6 and Mapoota to the King of Great Britain on certain conditions.

The object of this cession is said to be to secure the protection of Great Britain against the oppression of native tribes and of European nations, more particularly the Portuguese. The means by which the object is to be obtained are the surrender of the whole territory to the Crown of Great Britain, exactly as the small piece of ground had in 1794 been ceded to Portugal by the former king of the same nation.

The effect, however, of this treaty of March, 1823, is sought by the Portuguese Government to be invalidated by an Act of the 20th October, 1823. This Act recites that on the day preceding King Capella had gone to the Portuguese factory to do the accustomed homage to the factory, in order that the factory might cause him to be acknowledged King of Temb4. And that having done the homage, without which he could not be so acknowledged, he was immediately recognized as king of the whole territory of Temb6, binding himself, as was his duty according to ancient customs, to acknowledge himself subject to the factory.

The date of this document raises a very great doubt of its genuine character. In March, 1823, Capella represented himself to be de facto and de jure King of Temb6; why should it be necessary for him to do any homage to the factory to confirm his title and authority? Why should he delay doing that homage, if it was necessary, for so long a time as six months?

There is nothing to show, nor any suggestion, that Mayott, or Macetas, King Capella, who made the treaty in March, 1823, with the English, was not the same person with Macetas, King Capella, who is stated to have done homage to the factory in October, 1823. And it is to be observed that the treaties made with the English are signed by the King Capella, whilst these declarations said to have been made at the Portuguese factory do not even purport to have been signed by him, but were signed by some other persons.

The language of this Act, as well as the language of the declaration of 20th October, contrast unfavourably with the language of the English treaties. The latter bear the appearance of being the expression of a genuine wish on the part of the native chiefs to enter into the treaties with Great Britain. It is barely possible that those chiefs should represent themselves as free and independent unless they were so in fact, nor is it credible that the English officers, who knew the state of the country, and who entered into those treaties, should have dealt with those chiefs as free and independent, when in point of fact they were the vassals and subjects of the Crown of Portugal, which power had a fort and garrison on the opposite bank of the river in the immediate neighbourhood.

On the other hand the documents procured by the Governor of Loreno Marques, in October, 1823, look like a contrivance by which the treaties made with the English might be rendered ineffective, and at the same time an admission of dependence and subjection, quite needless if the fact were so, be obtained from the native chiefs.

In corroboration of this view the attention of the Arbiter is here invited to the singular document inclosed, also in the letter of the Marquis de Palmella, and called an act of the declaration made by the King Macetas Capella, and by all the principal persons and secretaries of Temby, and dated the 20th October, 1823, and signed by the Portuguese.

The statement put into the mouth of the King, and said to have been applauded by his attendants, to the effect, and in answer to the questions put by the Portuguese, that the lands belonged to the Portuguese and were the property of the Portuguese, and had not been and could not be delivered up to the English, were so contradicted by the grant of lands to a limited extent to the Portuguese by the document of 1794 already referred to, that it is not possible to avoid suggesting a fraudulent contrivance on the part of the Portuguese commandant.
This pretended dependence and subjection is quite in contra-
diction to the free gift of a part of the territory in 1794, and the assertion is, therefore, incredible.
The power to cede and make over a part is a positive and direct assertion of the right of the grantor to hold
and keep the part not granted, is an equally distinct and positive admission by the grantee that he has a right
only to the part ceded to him, and of his title to hold that part so ceded by force and virtue only of the grant.
Her Majesty's Government, therefore, submits that the Arbiter may form a safe and just opinion upon the
claims referred to him from the review of these documents, which are the only instruments of the kind of
which Her Majesty's Government has any knowledge.
They prove. That in 1794 the then King Capella was a free and independent chief, retaining from, or
alienating to the Portuguese such portions of his territory as seemed good to him in the exercise of his own
full rights.
2. That in 1794 the Portuguese treated with the then King Capella as an independent sovereign, accepted
from him such part as he was pleased to grant them out of his dominions, and allowed him to enter upon
and hold, without restriction, that part of his territory which he did not choose to grant to them.
3. That from 1794 to 1823 King Capella and his successors did no act which lessened their authority or dominion.
4. That in 1823 the then King Capella ceded his territory between the Dundas and English Rivers and the
Mapoota River to the Crown of Great Britain, as he had full right to do. That the Act of October, 1823,
does not invalidate that cession, and consequently that Great Britain is entitled to the sovereignty of the
territory so ceded, and that Portugal has no territorial rights south of the River Lorengo Marques, or English
and Dundas Rivers.
5. That the territory over which the Crown of Portugal has of right exercised dominion and jurisdiction,
being thus bounded on the south by the English River, that Crown has no territorial or other rights to the
east of the Mapoota River, or on the shores washed by the waters of Delagoa Bay, south of the English
River, or to the Inyack Peninsula, or to Inyack and Elephant Islands.

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6. That the territories so situated, named or described, belonged to the King of Mapoota, who made the
treaty of August, 1823, with Great Britain. That the King of Mapoota was a free and independent chief for
the purposes of that treaty, which cannot be invalidated by the Portuguese Act of October, 1823.
The Marquis de Palmella insists strongly on the IIth Article of the Convention of the 28th July, 1817, as
furnishing the most evident proof of the explicit and formal acquiescence of the British Government in the
rights of sovereignty possessed by the Crown of Portugal over all the territory on the eastern coast of Africa
between Cape Delgado and the Bay of Lorengo Marques, and he suggests that Captain Owen in making
treaties with the chiefs of Temb6 and Mapoota must have been ignorant of this convention.
This Argument of the Marquis de Palmella is referred to and repeated with some triumph by the successive
ministers of Portugal, who have had to communicate with the British Government on the subject, and they
all, with the exception of Count Figaniere e Morao, who cordially admits the reason why the last letter of
the Marquis de Palmella was not answered, assume that the silence of the British Government proceeded
only from the irresistible force of the argument of the Marquis.
Her Majesty's Government submits to the consideration of the arbiter that the effect contended for by the
Portuguese Government cannot be given to this convention.
The convention itself had no reference to the limits or boundaries of the Portuguese possessions on the
eastern coast, but merely regulated the traffic in slaves.
The words are: The territories in which the traffic in slaves continues to be permitted under the treaty of the
22nd of January, 1815, to the subjects of His Most Faithful Majesty, are the following:“1. The territories
possessed by the Crown of Portugal upon the coast of Africa to the south of the equator; that is to say, upon
the eastern coast of Africa, the territory lying between Cape Delgado and the Bay of Lorengo Marques; and
upon the western coast, all that which is situated from the 8th to the 18th degree of south latitude.
“2. Those territories on the coast of Africa to the south of the
equator, over which His Most Faithful Majesty has declared that he has retained his rights, namely”The
territories of Molembo and Cabinda upon the western coast of Africa, from 5' 12' to 80 south latitude.”
It is submitted on the part of the British Government1. That the words of this article do not admit the possession by Portugal of all the territory lying between Cape Delgado and Lorengo Marques, but permits the traffic in slaves from the territory possessed by Portugal between those two places. This is clear from the use of the word all in reference to the extent of Portuguese territory on the western coast, and the omission of the word "all" in reference to the territory on the eastern coast.

If the whole territory between Delgado and Lorengo Marques had been intended, the words would have been, "on the eastern coast of Africa, all the territory lying between Cape Delgado and the Bay of Lorengo Marques; upon the western coast, all that which is situated between the 8th and 18th degrees of south latitude." If it be asked, what, then, is the extent of territory on the east coast which Great Britain admits by this convention to have been possessed by Portugal, the answer is not far to seek for.

The admission comprehends those islands and settlements on the coast over which the Portuguese exercised jurisdiction and held the dominion, such as Ibo, Mozambique, Quelimane, Sofala, Angola, the Zambezi, and Lorengo Marques.

That this is the true construction of the article is further shown by the fact that the extent of Portuguese territory into the interior country is not named, much less recognized, and cannot consistently with any rule of international law, or the practice of nations, be extended indefinitely into the interior. The limits in that direction must be confined to the territory actually held by the Portuguese, and not by others.

The test of possession into the interior is occupation and dominion, and the same test must be applied to land lying north and south of any Portuguese fort or factory.

The accuracy and precision of the language in the one case, compared with the vague and indefinite expressions in the other case, mark clearly that the whole territory defined on the western coast was intended; those parts only of the territory described on the eastern were intended which the Portuguese held and occupied.

2. Delagoa Bay is not the expression used in the article, but the Bay of Lorengo Marques.

If the distinction between these two bays, which is contended for by the British Government, is well founded, then it is clear that the right interpretation of the article must be "the territory lying between Cape Delgado and the Bay of Lorengo Marques, possessed by the Crown of Portugal." This interpretation would limit the territorial rights of Portugal consistently with the fact, and includes the fort and factory of Lorengo Marques as the southernmost limit, as Cape Delgado was the northernmost limit of the possessions of Portugal.

3. The Marquis de Palmella, in his letter of 22nd May, 1828, assuming that the Bay of Lorengo Marques means the larger bay, argues that the word "exclusively," or the word "inclusively," must be understood after the words Lorengo Marques, for otherwise, as he says, the point in the bay where the Portuguese possessions ended, would have been expressly named.

The word "exclusively" could not, as he contends, be the word to be understood, because, as a matter of fact, the Portuguese had possessions within the bay. And therefore he concludes that the word "inclusively" must be understood.

Is the argument well founded? Is there any necessity for supposing that either word, "exclusively" or "inclusively," must be understood in order to give effect to the article?

If, as was well answered by Sir A. Magenis, the word "inclusively" is to be understood, and the larger bay be intended, the result would be to give to Portugal territory far south of any possessions which she has hitherto held.

The word "inclusively," therefore, could not have been in the intention of contracting parties. The English negotiator would have objected to the word if it was to be inserted; the Portuguese negotiator would not purposely have suppressed the word, and by an artifice have gained an unworthy advantage for his country. The facts of the case were palpable; no understanding or reservation was needed; neither word was required to make the article plain and intelligible when put in relation to the existing state of things.

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The article meant, as has been pointed out, the territory possessed by Portugal, so far as she possessed territory on the Bay of Lorengo Marques, and not beyond the natural boundary of the river, upon the left or northern bank of which she had her last establishment to the south.
This correspondence between the two Governments arose out of circumstances connected with the seizure by the Portuguese of the English brig Eleanor, and her subsequent release and dispatch to England by Captain Owen.

The discussion, however, at a very early period, assumed (as has been seen) a much more important aspect, showing the real ground of controversy between the two countries.

The matter of the Eleanor, indeed, was put an end to, and the Portuguese Government paid a sum of money to the owners of the Eleanor as compensation for the illegal conduct of the authorities in respect to the seizure of that vessel.

This payment, however, was made upon grounds entirely distinct from any territorial question.

The political state of affairs in Portugal at the time (1828) prevented all further discussion on the respective rights of the two Governments to territorial rights on the east coast of Africa; and with the exception of a remonstrance on the part of the English Government in 1855 against the alleged facilities afforded by the Portuguese for the introduction of arms and ammunition through the territory held by them in Delagoa Bay, no communication on the subject passed between the two Governments until 1858.

A correspondence took place at that time between the two Governments with reference to the seizure by the Portuguese authorities at Lorengo Marques of the British cutter Herald, on King George River, for a breach of the general Customs Regulations for the Province of Mozambique. In this case the Portuguese Government finally admitted that the Portuguese authorities were in the wrong, and paid compensation to the British subjects whose property had been seized, and whose persons had suffered injury.

But the question in that case, as in the subsequent case of the Agnes, were quite distinct from the matters now before the arbiter, and the case is only noticed in order that no question which has arisen between Portugal and Great Britain on the records of South-Eastern Africa.

On the 5th November, 1861, possession was formally taken by Her Majesty's ship Narcissus, of Inyack and Elephant Islands, in the name of Her Majesty, and those islands were declared to be dependencies of the British Colony of Natal.

Against this Act the Governor of Lorengo Marques at once protested, and the Governor of Mozambique also protested when he received information of the transaction.

And, on 22nd February, 1862, Count Lavradio, then Portuguese Minister in London, wrote to Lord Russell, Secretary of State for Foreign Affairs, stating the facts which had been communicated to him in reference to the occupation of Inyack and Elephant Islands, requiring a strict investigation to be instituted upon the alleged acts, and a reparation for the proceeding, which he described as inexplicable.

Count Lavradio was answered that Her Majesty's Minister at Lisbon had been instructed to communicate to the Portuguese Government the reply of Her Majesty's Government to his note.

On the 18th March, 1862, Sir A. C. Magenis, in accordance with the instructions which he had received, wrote to the Marquis de Loulé.

Sir A. Magenis denied in explicit terms the right of the Portuguese Government to any territory south of Lorengo Marques, and he stated that such territory had been fully and lawfully ceded to the British Crown, and that Her Majesty's Government adhered to the view taken by Lord Dudley in his note of 5th December, 1827, to the Marquis de Palmella, both as to the limits of the Portuguese territory and as to British rights.

Arguing on the terms of the 11th Article of the Convention of 1817, Sir A. Magenis pointed out the practical distinction between the Bay of Lorengo Marques, which is a small bay in front of the Portuguese factory so-called, and at the mouth of a river also called Lorengo Marques, and the large bay called Delagoa Bay, and he showed that, if the Portuguese Convention were right, and that the words of the Convention comprised the shores of the larger bay, they would extend the Portuguese territory for many miles south of the most southern of their establishments.

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He observed that the original Portuguese factory was situated on the left or northern bank of the Loiengo Marques river, and although, after the destruction of that factory by some French cruizers, it was removed to the southern bank in the Tembè territory, yet the Portuguese paid an annual present as a quit rent for the lands they so temporarily occupied to King Capella.
No answer was returned to this note of Sir A. Magenis, but in October, 1862, it appeared that Viscount Sa de Bandeira, who was then filling the post of Foreign Minister at Lisbon during the temporary absence of the Marquis de Loulé, suggested in conversation with Mr. Herries, that all the conflicting territorial claims of Portugal and Great Britain in Africa should be finally adjusted by a general convention embracing the whole of the questions in dispute.

This proposal was not official, and Her Majesty's Government did not entertain the suggestion, because it referred not merely to the territorial question on the south-east coast, but also to the similar question on the western coast, and some difficulty existed at the time against referring the latter question.

A correspondence between the two Governments, extending over several years (1863 to 1866), began in 1863.

This correspondence, however, related to the alleged seizure of a British vessel the Agnes in the King George River by the Portuguese authorities of Lorengo Marques; the correspondence, therefore, has no bearing at all upon the rights now in question.

It is right, however, to state that, on a full consideration of the circumstances of that case of the Agnes, the British Government admitted the Portuguese authorities to be free from all blame.

In 1868 the attention of the British Government was called to a Proclamation of the President of the Transvaal Republic, from which it appeared that, with the view of obtaining a suitable harbour that Republic proposed to annex to its territories the whole course of the River Umsuti, otherwise Maputa, on the grounds that that river had its rise in territory belonging to the Republic, that the mouth of the river in Delagoa Bay had been declared free by the English Government in 1867, and that there existed a suitable harbour on the east coast, which was not in possession of any European power.

Immediate action was taken upon this Proclamation being known, and the authorities of the Transvaal Republic were informed that Her Majesty's Government claimed the territory situated on the banks of the Maputa, and had never declared that river to be free.

Her Majesty's ship Petrel was also sent to ascertain if any settlement had been made upon, or any possession taken of any part of the territory, over which Her Majesty's Government claimed dominion.

The Portuguese Government, assuming that the object of the British Government in sending the Petrel was to take possession of Tembô and Maputa, at once protested against this act, and Senhor Figaniere e Morao, the Portuguese Chargé d'Affaires in London, addressed a note on the subject to Lord Clarendon, in which he repeated the assertion of the rights of Portugal, and the grounds of those rights previously brought forward by the Marquis de Palmella.

In this letter of Senhor Figaniere e Morao will be found the true reason why no answer was sent to the letter of the Marquis de Palmella, in which the grounds of the Portuguese claim were first stated.

The Arbitrator will observe that, in all the communications made by the several Portuguese Ministers, subsequent to the letter of the Marquis de Palmella, the same reasons are alleged in support of the alleged Portuguese rights. And in each of the communications it is stated, with some air of triumph, that the reasons of the Marquis were not to be refuted, and never were answered.

The real cause, however, of this silence on the part of Great Britain, is cordially admitted by Senhor Figaniere e Morao. He says, "the correspondence was interrupted in consequence of the civil war which broke out in Portugal in that year."

The silence of the British Government may rather be attributed to consideration for the calamities of Portugal, than to the impossibility of answering the arguments of the Marquis de Palmella.

To the note of Senhor Figaniere e Morao an answer was sent, and that correspondence ended, with a further letter of acknowledgment from Senhor Figaniere e Morao.

Shortly, however, after this attempt on the part of the Transvaal Republic, negotiations were set on foot between the Portuguese Government and the authorities of that Republic, which, to all appearance, led to the conclusion of a Treaty of

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Amity and Peace, and Boundaries, which will presently be noticed.
In the meantime it became known that the Portuguese had, on the 5th April, 1869, taken possession, by an armed force, of the northern end of the Island of Inyack, and Sir C. Murray wrote to the Duke de Saldanha on the subject.

Senhor C. Bento de Silva answered Sir PO. Murray, that orders had been given to withdraw the Portuguese garrison from Inyack, upon the grounds that, while negotiations were pending, it appeared to him that neither of the two Powers should occupy the territories in question.

Some misapprehension appears to have existed in the mind of the Portuguese Minister for Foreign Affairs in thinking that any negotiations respecting Delagoa Bay were then pending between the two Governments; but this misapprehension is of no importance to the solution of the question upon which the decision of the Arbiter is now sought by both Governments.

After a further correspondence the troops were withdrawn.

Matters were, however, brought to a crisis by the publication of a Treaty between the South African Republic and the Portuguese Government, which was ratified in July, 1870.

The XXIIIrd Article, and 2nd paragraph of this Treaty, stated the southern boundary of the Portuguese possessions to be on a line with 26° 30’ south latitude.

The fact of this Treaty having been made, soon reached the knowledge of the British Government, and Her Majesty's Representative at Lisbon, Sir C. Murray, wrote to the Marquis d'Avila, the Portuguese Foreign Minister, on 25th April, 1871, and formally protested against the right of Portugal to treat as a part of the Portuguese territory lands which Great Britain had officially, distinctly, and uniformly declared to be no part of the Portuguese possessions.

A further letter, asking for information from the Portuguese Government in reference to a Proclamation of President Pretorius, was written to the Marquis d'Avila by Sir C. Murray on 26th April, 1871; and no answer having been returned to either of these letters, Mr. Doria, Charge d'Affaires at Lisbon, wrote on 24th May, 1871, to the Marquis d'Avila, requesting the favour of an answer.

This answer was written on the 3rd July, 1871. The Marquis d'Avila, in this answer, repeats the arguments used by the Marquis de Palmella in his letter to Lord Dudley, in May, 1828, to which the attention of the Arbiter has already, in pages 8, 9, 14, 16, 21, been called at considerable length, and the Marquis d'Avila then proceeded to state that the British Government had not replied to the Marquis de Palmella's letter, but had allowed thirty-three years to elapse in silence, not being able to refute the arguments of the Portuguese Ambassador, and had then seized the northern ends of Inyack Island and Elephant Island - an act which the Marquis d'Avila characterizes as an assumption of the right on the part of the British Government to interpret by themselves alone an Article of the Convention of 1817.

But when the Marquis d'Avila thus spoke of the British occupation of Inyack and Elephant Islands, he must have forgotten, for the moment, the more recent occupation of the former island by the Portuguese.

And the very next sentence but one in his letter, in which he writes that the most recent recognition of the rights of Portugal to the boundary line of 26° 30’ south latitude is the treaty with the South African Republic, seems a strong instance of an arbitrary interpretation put upon the article of the Convention of 1817 by the Portuguese themselves.

The fact may be that the Portuguese Government availed itself of the opportunity of the treaty with the South African Republic to obtain this species of recognition from the Republic to oppose to the well-known contention of the British Government that the true limit of the Portuguese territory was the River Lorengo Marques, near the centre of Delagoa Bay.

To a subsequent application made by Mr. Doria on 17th July, 1871, the Marquis d'Avila declined to make any further reply than that contained in his letter of 3rd of July.

At this period the British Government, by a note, 28th September, 1871, suggested that the differences between the two Governments should be submitted to the arbitration of a third Power; an offer which had been previously made on the part of Portugal by the Marquis Sa de Bandeira in a note to Sir C. Murray, on 3rd of February.

Her Majesty's Government, however, declined at that time to refer the difference between the two Governments on the south-
east coast of Africa to arbitration, because other matters were at the time referred with reference to
territories on the west coast.
To this proposal on the part of Her Majesty's Government to submit the matter to the arbitration of a third
Power, the Portuguese Government willingly acceded on the 26th October, 1871.
Ultimately, and on the suggestion of the British Government, M. Thiers, then President of the French
Republic, was chosen as Arbiter, an office which he was pleased to accept.
In order to fix with precision the question to be referred to the Arbiter, a letter was addressed to Senhor
Corvo on 25th January, 1872, requesting him to furnish, on behalf of the Portuguese Government, the exact
limits of the territory claimed by Portugal, accompanied by a map or plan of those limits.
This request was complied with on 19th February, 1872, in a letter addressed to Sir C. Murray by Senhor
Corvo, in which he recapitulated the grounds upon which Portugal claimed the territories in dispute, gave a
short history of the several acts on the part of both Governments, already stated at length in this case,
annexed a map showing the limits of territorial possession claimed by Portugal, and marked by a blue
tracing, and stated that "on the south the line of boundary of the Portuguese is placed in 26° 30' south
latitude from the sea as far as the ridge of interior mountains called Lobombo."
This claim to territory, extending to 26° 30', goes beyond the Bay of Delagoa to the south, and includes land
which in no sense can be brought within the contention of the Portuguese Government, so constantly put
forward in the correspondence, that under the 1nd Article of the Convention of 1817 Great Britain had
acknowledged the rights of Portugal to the southern extremity of Delagoa Bay, inclusive.
After some delay in settling the exact tenor of the Protocol, this instrument was signed at Lisbon on 25th
September, 1872, and nothing remained except to obtain the consent of the Arbiter to act in that capacity.
The Representatives of England and Portugal accordingly each addressed a note in identical terms on 1st
November, 1872, to M. de Remusat, to which they received an answer, dated 6th of November, from M. de
iR6musat, signifying the consent of

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the President of the French Republic to accept the office of Arbiter.
Her Majesty's Government, relying upon the facts which have now been laid before the Arbiter, and the
conclusions which both in law and equity are to be drawn from these facts, leaves the decision of this case
to the judgment of the Arbiter, with perfect confidence that his experience and discrimination will bring
him to the right solution of the question.

Letter from COUNT DE SEISAL to LORD LYTTON.
LÉGATION DE PORTUGAL, PARIS, le 15 Septembre, 1873. MY LORD,
Aux termes du Protocole signé à Lisbonne le 25 Septembre, 1872, entre les Plénipotentiaires du Portugal et de la Grande Bretagne, qui
confie au Président de la République Française l'arbitrage du conflit existant entre le Portugal et la Grande Bretagne au sujet de la souveraineté du territoire situé au sud de la Baie de Lourenço Marquez, il a été
stipulé que les deux Gouvernements devront présenter à l'arbitre, dans le délai de douze mois, le mémoire
ou exposition de leur droit.
Ce délai étant prêt à expirer, j'adresse aujourd'hui à son Excellence le Ministre des Affaires Etrangères de la
République Française le mémoire imprimé dont j'ai l'honneur de vous envoyer ci-joints six exemplaires;
l'un vous est destiné, my Lord, et les autres au Gouvernement de Sa Majesté Britannique. Veuillez, &c.
(Signé) COMTE DE SEISAL.

[Enclosure in the above.]
BAIE DE LOURENÇO MARQUES.
Question entre le Portugal et la Grande Bretagne soumise à
l'Arbitrage du Président de la République Française.
MIÉMOIRE PRÉSENTÉ PAR LE GOUVERNEMENT PORTUGAIS.
LE droit qui, dans son essence, est une des plus belles conceptions de notre raison, celle des nécessités
morales d'action ou
d'inaction entre les hommes, le droit existe pour les individus aussi bien que pour la société. Les nations, de
même que les particuliers, ont des nécessités morales d'action ou d'inaction: la raison humaine souffre si
ces nécessités sont violées; elle est satisfaite si on les observe.
Sans doute les nations sont indépendantes. Elles ne reconnaissent, au-dessus d'elles, ni législateur chargé de décréter, ni juridiction pour statuer, ni force légale pour les contraindre à ce qu'elles doivent faire ou ne pas faire dans leurs relations respectives, et pour transformer en nécessité de fait les nécessités morales du droit.

Si la guerre fut trop souvent le seul moyen de résoudre les conflits entre nations; leur bon sens repousse aujourd'hui cette sorte de duel judiciaire dans lequel la cause la plus juste n'est pas toujours la cause victorieuse.

La substitution de l'arbitrage à la voie des armes, admise déjà chez les anciens, et déclarée en 1863 par le Sénat des États-Unis comme clause qui doit être insérée dans les Traités à conclure avec les autres nations, est le moyen naturel de déoider toutes contestations qui pourraient surgir entre les peuples; et il occupe actuellement l'attention de l'Institut de France, éveillée par l'intéressant mémoire de Ch. Lucas.

Un conflit existant depuis quelques années entre le Portugal et la Grande-Bretagne au sujet de la souveraineté du territoire situé au sud de la Baie de Lourenço Marques, les deux Gouvernements, animé de l'esprit le plus conciliateur, ont enfin résolu, par le Protocole du 25 Septembre 1872, d'en soumettre définitivement la solution à l'arbitrage du Président de la République Française, mission qu'il a bien voulu accepter, sur la demande des deux parties.

Au termes de ce Protocole, les deux Gouvernements doivent présenter à l'arbitre, dans le délai de douze mois, le mémoire cu allégation justificative de leur droit.

Tel est l'objet et le but de ce travail qui est divisé en six parties.

PREMIERE PARTIE.

Chapitre I.-Description de la Baie de Lourenço Marques et son importance.

De l'immense domaine colonial que possédaient les Portugais, il leur reste encore, dans l'Afrique orientale, la province de Mozambique, qui commence au Cap Delgado au nord, vers le 10° 41' de latitude, et finit au sud dans la Baie de Lourenço Marques (que les Anglais nomment Delagoa Bay) au 26° 30' de latitude, et qui embrasse près de 400 lieues de littoral.

A l'entrée de la baie se trouvent deux pointes dont l'une, au nord, celle du Manhiça, est formée par l'île de Benguelene, et l'autre, au sud, par l'île de l'Unhaca ou Inhaca (les Anglais écrivent Inhyac). L'île de l'Unhaca, que nous appelons aussi île Sainte-Marie, est séparée par un canal étroit et rocheux du Cap Sainte-Marie ou Colato, où finit la côte des Pumées (Fumos) proprement dite, qui commence au Cap Sainte-Lucie.

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Cette île, d'une élévation de 240 pieds au-dessus du niveau de la mer, a six milles de longueur dans la direction du nord-est au sud-ouest et quatre de largeur; elle est importante autant par sa position que par son climat tempéré, qui en fait une espèce de sanitarium.

A peu de distance et plus à l'intérieur vers le nord-ouest, se trouve la petite île des Elphants également nommée île des Portugais à cause du grand nombre de Portugais qui, en 1588, y trouvèrent un refuge après
le naufrage du vaisseau "SaintThomas," et y moururent des fièvres. A marée basse on peut s'y rendre de l'île de l'Unhaca en ayant de l'eau jusqu'aux genoux.

L'île ou îlot des Eléphants forme, avec celle de l'Unhaca au sud de la baie, un port excellent qui est désigné sur les cartes modernes sous le nom de Port-Melville.

La baie a quatorze lieues dans sa plus grande largeur, du nord au sud; entre ces deux îles et l'embouchure du fleuve de Saint-Esprit elle est large de cinq lieues de l'est à l'ouest.

Sur presque tous les points elle est très-profonde et offre un mouillage qui varie de 6 à 12 brasses, et qui, dans quelques endroits, va jusqu'à 20 brasses, comme entre les bas-fonds de Cockburn et l'île Ohefine. C'est un parage à l'abri de tous les vents, et qui peut contenir un grand nombre de navires et leur offrir un refuge contre les tempêtes et les vents qui règnent à l'embouchure du canal de Mozambique; ce qui fait que cette baie est considérée comme la meilleure de toute l'Afrique australe et orientale.

Trois grands fleuves descendent de l'intérieur et viennent se jeter dans la baie de Lourenço Marques; le mouvement de la marée s'y fait sentir sur un parcours de quelques lieues. Ce sont: JManhiça au nord, le Mapouto au sud, et le Saint-Esprit presque au centre. Le Manhiça (que les Anglais nomment King George's River) se jette au nord dans la baie, à trois lieues de distance du fleuve Saint-Esprit; en face de son embouchure se trouve l'île de Benguelene ou du Miel, qui partage le fleuve en deux canaux.

L'île des Citrons (Linzôes) est située à 9 milles de l'embouchure. A 80 milles de distance, le fleuve se divise en deux branches. La première suit la direction du nord-est, prend, a une distance de 3 ou 4 milles, celle du nord-ouest et aboutit à

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une lagune au pied de la montagne du Musuate Grande. La seconde se dirige pendant 9 milles vers l'est, fait quelques détours vers le sud-est, coule ensuite au nord-nord-est, et continue enfin vers le nord-ouest jusqu'à ce qu'elle rencontre la montagne du Musuate; après l'avoir contournée, elle prend le nom de la rivière Sabe (ou des Sables Blancs), qui vient s'y jeter, ainsi que l'Incomati.

Diogo de Couto croyait que ce fleuve prenait sa source, ainsi que le Nil, dans le Grand Lac; le Hollandais Jacob de Bucquoi lui a assigné une source qui coïncide à peu près avec le lac Ngami; et Owen pensait qu'elle était située sous 200 de latitude sud; mais ce n'étaient que des suppositions erronées car l'Incomati, le Save, et l'Unguenia, qui joignent leurs eaux dans le Manhiça, prennent tous les trois leur source entre les 250 et 26° de latitude et les 30° et 31° de longitude.

Le Mapouto (que les Anglais nomment Mapoota River) connu parmi les indigènes sous le nom de Anzette, suivant l'ortographe Portugaise, ou sous celui de Umzuti suivant l'ortographe Anglaise, vient se jeter à l'angle sud de la baie. Il est navigable sur un parcours de 60 milles jusqu'aux flancs de la montagne du Lebombo ou du Musuate, à un peu plus d'un mille de distance de la pointe appelée Ponta alta de MafunQ, ou Pointe-Rouge qui s'élève de 200 pieds au-dessus du niveau de la mer et en face de laquelle se trouve, sur la rive sud, la pointe Mahona (Mawhone).

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Ce fleuve du Saint-Esprit, que nous avons aussi appelé fleuy e de Lagoa au commencement du seizième siècle, et que les Anglais désignent depuis 1823 sous le nom d'English River, se trouve à l'est de la baie. C'est le fleuve le plus fréquenté depuis que nous avons entamé des relations commerciales avec les régules de l'intérieur, vers la moitié de ce même siècle. Sur sa rive nord sont bâties la forteresse et la ville Portugaises, à un peu plus d'un mille de distance de la pointe appelée Ponta alta de MafunQ, ou Pointe-Rouge qui s'élève de 200 pieds au-dessus du niveau de la mer et en face de laquelle se trouve, sur la rive sud, la pointe
navires tirant 13 pieds d'eau peuvent remonter ce fleuve jusqu'à 19 milles, distance à laquelle parvient l'eau salée.

Il y a encore dans la baie, outre les îles de r Unhaca et des Eléphants, qui en forment la pointe sud, deux autres îles, savoir: la Grande Chefine (que les Anglais nomment Chefeen) et la Petite Chefine, que les indigènes appellent île des Molungsos, c'est-à-dire, des blancs. Elles sont situées toutes deux à peu de distance du continent entre l'embouchure du fleuve du Saint-Esprit et celle du Manhiça, mais beaucoup plus près de cette dernière. Entre la Petite Chefine et la terre, il existe un canal connu sous le nom de barre des baleiniers.

La Grand Chefine, à laquelle nous avons aussi donné le nom d'île dos Passaros (des Oiseaux) contient des forêts épaisses qui sont notre propriété et où les habitants de la ville de Lourenço Marques vont couper du bois pour leur usage et leur consouimation. Nous avons cinq descriptions Portugaises fort intéressantes de la baie, qui datent du seizième siècle, et du commencement du dix-septième.

Celle d'Alvaro Fernandes, de 1552; celles de Manuel de Mesquita Perestrello, de 1554 et de 1575; celle de Joào Baptista Lavanha, de 1597; et celle de Diogo de Couto, de 1611. Nous les donnons dans l'appendice 1r, à cause de l'intérêt qu'elles offrent.

L'importance que les conditions naturelles de la baie du Lourenço Marques lui ont acquise, augmente chaque jour pour d'autres motifs.

La pression du monde Européen sur le Continent Africain, qui s'est déjà fait sentir, en Egypte, en Algérie et au Cap de BonneEspérance, agit maintenant dans l'Afrique australe avec une grande puissance. La fièvre de l'or y attire une émigration considérable de l'Europe, de l'Amérique et même de l'Australie. Des lignes de navigation côtière et des réseaux de routes et de chemins de fer y sont en projet; néanmoins, il est toujours difficile d'escalader et de traverser des milliers de kilomètres de collines et de ravins pierreux qui séparent de la Colonie du Cap la région productrice du diamant. On pense avec raison qu'il est bien plus simple de gagner immédiatement la région dès plateaux en partant de la baie de Lourenço Marques.

D'un autre côté, les Boers de la République de Transvaal, avec le même besoin que celui qu'ont les Monténégrins d'avoir un port dans l'Adriatique, préfèrent se mettre d'accord avec la nation Portugaise pour faire l'importation et l'exportation par cette baie, et abandonner les ports du Cap et de la Colonie du Natal, à cause de leur éloignement et afin que leur commerce ne passe pas forcément, comme cela a eu lieu jusqu'à présent, par les mains des Anglais qui, disent-ils, les menacent d'annexion.

Conclusions de ce chapitre : 1. La baie de Lourenço Marques constitue l'extrémité sud des possessions Portuizaises dans l'Afrique Orientale.

2. Elle est la meilleure et la plus importante baie de cette région.


4. Trois fleuves importants s'y jettent: le Manhiça, au nord; le Mapouto, au sud, et le Saint-Esprit, au centre.

5. Sur la rive nord, et à l'embouchure de ce dernier, qui est l'estuaire de trois rivières qui y affluent (le Tembe, le Matolla, et le Lourenço Marques), sont situés la ville et le fort de Lourenço Marques.

Chapitre II. Découverte et Exploration de la Baie.

La baie de Lourenço Marques fut découverte au commencement du seizième siècle par les Portugais qui lui donnèrent le nom de baie de Lagoa. Elle prit ensuite celui de Lourenço Marques, du premier d'entre eux qui l'explora régulièrement et y alla avec Antonio Caldeira pour établir le commerce quelques années après, en 1544.

Il faut distinguer les deux faits de la découverte et de l'explora-

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formée par le Cap Sainte Marie. Ce fait est prouvé par la lettre écrite de Mozambique par Pedro Quaresma au roi Don Emmanuel, et datée du 31 Août 1506.

Dans ce document on parle de la baie comme d'une chose déjà découverte et connue: la découverte en doit donc avoir eu lieu entre le premier voyage de Vasco de Gama (1497) et l'année 1506.

La première exploration de la baie fut faite en 1544 par Lourenço Marques et Antonio Caldeira, qui allèrent y établir le commerce avec les indigènes.

Don João de Castro partant pour l'Inde en 1545, écrivait au roi Don Jean III, en Juillet de cette même année, que Lourenço Marques avait commencé dans cette baie le commerce du cuivre et de l'ivoire. Dans sa réponse en date du 8 Mars 1546, le roi lui ordonnait d'envoyer de nouveau Lourenço Marques à la baie, afin qu'il y établît définitivement le commerce des fleuves.

Les services rendus dans cette commission et dans quelques autres par Lourenço Marques ayant été pris en considération, il reçut sa nomination à l'emploi de secrétaire de la factorerie de Cochim dans l'Inde, par Lettre Royale du 11 Février 1557.

Conclusions de ce chapitre :
10 En 1506 la baie de Lourenço Marques était découverte par les Portugais.
20 En 1554 elle fut explorée pour la première fois par les Portugais Lourenço Marques et Antonio Caldeira. Elle reçut du premier des ces navigateurs le nom sous lequel elle est encore connue de nos jours.
3' Eu récompense des services qu'il rendit dans cette commission et dans d'autres commissions importantes, en établissant nos

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relations avec les indigènes, Lourenço Marques fut nommé, le 11 Février 1557, secrétaire de la factorerie de Cochim.

Chapitre III. -Dénomination de la Baie.
A sa découverte la baie fut connue sous le nom de baie de Lagoa. C'est sous ce nom qu'elle figurait sur les cartes Portugaises du commencement du seizième siècle, comme le rapportait Manuel de Mesquita Perestrello en 1554.

Elle est indiquée sous ce nom de Lagoa, sur la carte de Diego Ribero de 1529, qui est à la bibliothèque de Weimar, sur celle de Diogo Homem, de 1558, qui existe au Musée Britannique, et sur le globe terrestre de Francort de la première moitié du seizième siècle (a bahia de Lagoa).

Cette désignation de baie de Lagoa avait pour origine la persuasion où étaient les Portugais, persuasion fondée sur les rapports des indigènes, que les fleuves de Lagoa et Manhiça prenaient leur source (comme le Nil) dans un grand lac de l'intérieur.

Après l'exploration de Lourenço Marques, en 1544, la baie reste connue sous le nom de baie de Lourenço Marques, le fleuve de Lagoa sous celui de Saint-Esprit, et un des fleuves qui se jettent dans cet estuaire avec le Matolla et le Tembe, sous celui de Lourenço Marques.

Ainsi le nom de Delagoa Bay, donné par les Anglais à la baie après la visite que le Capitaine Owen y fit en 1822, n'est pas même nouveau: c'est la reproduction Anglaise des mots Portugais bahia de Lagoa, nom qui la désignait primitivement et avant l'exploration Portugaise de 1544.

Aucune doute ne peut subsister au sujet de ce nom de Lourenço Marques qui, depuis cette époque, désigne la baie, quoique les Anglais prêtendent aujourd'hui qu'il ne désigne pas Delagoa Bay, mais simplement l'anse ou petite baie formée par le fleuve Saint Esprit (English River) en face de l'établissement Portugais. Dans la crainte d'élargir outre mesure le cadre de ce mémoire, parmi les nombreux documents que nous pourrions fournir, nous n'en prendrons que quelques uns à partir du seizième siècle, que nous citons à l'appui de notre assertion.

Seizième siècle.-La baie est désignée sous ce nom:
10 Dans le routier de Perestrello, fait en 1575 et dont nous nous occupons dans le chapitre suivant.

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20 Sur la carte d'Afrique de Filippo Pigafetta, dédiée à l'évêque de S. Marc, Antonio Migliori, et gravée à Rome en 1590; la Baie de Lourenço Marques, ainsi que le fleuve du Saint-Esprit y sont indiquées sous le nom Portugais :-Marques, Rio de S. Espirito.

Dix-septième siècle.-La baie figure sous la même dénomination :10 Dans le " Nuevo Atlas 6 teatro de todo el mundo en el cual se contienen los mapas y descripciones," etc., de Juan Janssonio, publié à Amsterdam en 1653.
2 Dans le "Occidentalium tractus Indiarum orientalium a Promontorio Bonoe Spei ad C. Comorin," publié par Frédéric Witt à Amsterdam.
3 Sur la carte de l'Inde depuis le Cap de Bonne Espérance, publiée à Amsterdam en 1680 par Joannes van Keulen (Lourenço Marques).

Dix-huitième siècle.-Au dix-huitième siècle elle est indiquée sous le même nom:

Et non-seulement sur les cartes Françaises, mais encore sur les cartes Anglaises, savoir:

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 Dix-neuvième siècle.-Pendant ce siècle la baie porte encore le nom de Lourenço Marques que lui donnent les Anglais euxmêmes.
1. Sur le "IMapa de Africa" publié en 1801 par don Juan Lopez, géographe du Roi-(Bahia de Lourenço Marques).
3. Sur la carte de la baie dressée en 1822 par le Capitaine Owen lui-même par ordre de l'Amirauté, et publiée en 1827(Delagoa Bay or Lourenço Marques).
4. Sur la carte d'Afrique d'Arrowsmith, de l'édition de 1841-Delagoa Bay or Lourenço Marques).
5. Sur celle de James Wild de 1846-(Bay Delagoa or Lourenço Marques).
7. Dans les instructions nautiques de l'Anglais James Horsbourg-(La Baie Delagoa, à laquelle on donne aussi le noin de Lourenço Marques qui l'a découverte, etc.).
8. Dans " l'African Pilot" du Capitaine Horsey-(Delagoa Bay was formerly called Lourenço Marques after his discovery).

Au commencement du seizième siècle, nous avons aussi changé le nom du fleuve de Lagoa en celui de fleuve Saint-Esprit. Il sufira, pour s'en convaincre, de comparer entre eux les ouvrages géographiques de ce siècle:

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1. Le "Nappa Mundii" sur parchemin, fait en 1542 par ordre de François 1, Roi de France, et généralement attribué à Henri II-(Rio de Alagoa).
3. Le "Mappa Mundii" de Gérard Mercator (Duisbourg, 1569), où on lit -Rio di Lago (a) primum, nunc R. del Spirito Santo.

5. La "Carte d'Afrique" de Philippo Pagafetta, de 1590, déjà citée (Rio de S. Spirito). Le fleuve porte encore la même désignation sur les cartes du dix-septième siècle, entre autres sur celle de Antonio Sanches de 1623, qui se trouve au Musée Britannique de Londres-(Rio de S. Spirito).

En 1704, "L'Afrique selon les Relations les plus Nouvelles, dressée sur les Mémoires du Sieur de Tillemont" - (Rio del Spirito Santo).


Et enfin le "Map of Africa," de Herman Moll, dédié à Charles, Comte de Petreborrow et Monmouth-(Sâit Esprit or Delagoa R.).

Conclusions et résumé de ce chapitre: 1. La Baie de Lourenço Marques, découverte par les Portugais avant 1506, a porté le nom de Baie da Lagoa, sous lequel on la désignait dans les ouvrages géographiques du seizième siècle.

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2. Après avoir été explorée par le Portugais Lourenço Marques en 1544, elle fut désignée sous ce nom dans les documents géographiques, depuis la seconde moitié du seizième siècle jusqu'au dix-neuvième siècle.

3. En 1822, le Capitaine Owen et les Anglais qui l'ont imité commencèrent à donner à la baie le nom de Delagoa Bay, reconnaissant toutefois eux-mêmes que son nom avait été jusqu'alors Baie de Lourenço Marques.

4. Le nom de Delagoa Bay n'est pas même nouveau. C'est la reproduction Anglaise de Baie de Lagoa, mots par lesquels elle a été primitivement désignée par les Portugais au commencement du seizième siècle, avant l'exploration de Lourenço Marques.

5. Il y a par conséquent, identité parfaite entre la Delagoa Bay des Anglais et la Baie de Lourenço Marques des Portugais.

6. Le fleuve Saint-Esprit (auquel les Anglais donnent le nom de English River sur leurs cartes, à partir de 1822) est le même qui, au commencement du seizième siècle, portait, ainsi que la baie, le nom de fleuve de Lagoa.

Chapitre IV.-Eoeploations maritimes et terrestres depuis le Cap de Bonne-Espérance jusqu'à la Baie de Lourenço Marques.

Ce n'était pas uniquement la soif des conquêtes qui nous portait à établir notre domination dans les régions lointaines de l'Afrique Australe. Mûs directement par l'intérêt du commerce,, de la géographie et de l'hydrographie ou poussés indirectement par la force des circonstances, nous effectuâmes au seizième siècle non-seulement l'exploration maritime de la baie, mais encore l'exploration par terre et dans l'intérieur de la Cafrière, du Cap et de la côte du Natal jusqu'à Lourenço Marques, comme nous allons le démontrer. Nous n'ignorons pas que le récit de ces voyages d'exploration est superflu pour les besoins de notre cause, nous tenons cependant à le faire, ne fit-ce que pour détruire les piétentions des Anglais qui désirent même priver notre nation de la gloire qui peut lui en revenir.

Section 1.- E eplorations Maritimes.

Nécessaires ont été nos principales explorations maritimes de la "Baie de Lourenço lMarques" au seizième siècle.

1. La première exploration fut faite en 1506 d'après les ordres Recorl of South-Eastern Afria.

que le Roi don Emmanuel donna, en 1505, à Cyde Barbudo et à Pedro Quaresma, lors de leur expédition à la recherche de Francisco de Albuquerque et de Pedro de Mendonza, que l'on croyait perdus entre le Cap de
Bonne-Espérance et Sofala. Toute la côte comprise entre ces deux points fut explorée, et plus spécialement la Baie de Lourenço Marques. Ainsi que nous l'avons fait remarquer au chapitre II, le compte-rendu de ce voyage fut envoyé de Mozambique au Roi don Emmanuel par Pedro Quaresma le 31 Août 1506.

2. La seconde eut lieu en 1527, lorsque Diogo Botelho Pereira reçut l'ordre de parcourir la côte du Cap de Bonne-Espérance jusqu'au Cap des Courants à la recherche de Luiz de Menezes, disparu deux ans auparavant, à son retour de l'Inde.


4. La quatrième eut lieu en 1575, par ordre du Roi don Sébastien, qui chargea Manuel de Mesquita Perestrello de reconnaître la côte de l'Afrique australe depuis le Cap de Bonne-Espérance jusqu'au Cap des Courants.

A la suite de ce voyage pendant lequel il étudia la Baie de Lourenço Marques (où d'ailleurs il avait déjà été en 1554) Perestrello écrivit une notice dans laquelle les latitudes et les directions des principaux points sont désignées avec une exactitude d'attirant plus remarquable qu'à cette époque il ne pouvait s'aider des instruments perfectionnés dont nous disposons aujourd'hui. Aussi son travail fut-il regardé comme digne d'être traduit et inséré par Manneville dans le "Neptune Oriental."

5. La cinquième fut accomplie avant 1598 par Aleixo da Motta, cosmographe de la ligne des Indes, qui visita et étudia la baie, comme on le voit dans son "Roteiro da Navagação da India," ouvrage pour lequel il s'aida du travail de Perestrello et qui fut traduit en Français et publié à Paris en 1664 par Thévenot, dans la deuxième partie de ses " Relations de divers voyages curieux."

A la suite de ces explorations, on dressa, dès le commencement du seizième siècle, des cartes maritimes et géographiques, telles que la "Carta Universal" de 1527 et la carte de Diego Ribero de 1529, qui existe à la bibliothèque de Weimar, ainsi que d'autres déjà citées au chapitre III; Perestrello fait mention de ces cartes H2.

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dans son compte rendu du naufrage de 1554, dont nous parlons plus loin.

Section 2.-Explorations en Caf rerie, depuis le Cap jusqu'à la Baie de Lourenço Marques.

Voici quelles furent les principales explorations faites par les Portugais dans l'intérieur de la Caf rerie depuis le Cap et la côte du Natal jusqu'à la baie de Lourenço Marques.


A Ivaro Fernandes, contre-maître de ce galion, a laissé de cette expédition en Caf rerie (expédition composée de 500 personnes dont 380 périrent ou s'égarèrent) une notice importante intitulée: "Histoire de la très-notable perte du grand galion Saint-Jean, dans laquelle on raconte les innombrables travaux et les grands malheurs qu'éprouva le Capitaine Manuel de Sousa de Sepulveda, etc., lequel se perdit en l'année 1552, Je 24 Juin, sur le territoire de Natal."

2. La seconde exploration eut lieu en 1554. Le vaisseau "Saint-Benoît," de la ligne des Indes, commandé par Fernão Alvares Cabral, se perdit, le 22 Avril, sur la côte du Natal, près du fleuve Infante. Les naufragés au nombre de 322 (98 Portugais et 224 esclaves) résolurent de continuer leur voyage par l'intérieur de la Caf rerie jusqu'à la baie de Lourenço Marques. Ils partirent le 29 et y arrivèrent le 7 Juillet, après 68 jours de marche. Manuel de Mesquita Perestrello, l'un des naufragés, a laissé de cette expédition, dans laquelle périrent 260 personnes, une curieuse relation que fut imprimée dix ans plus tard (Coimbre 1564) sous le titre: "Naufrage du vaisseau Saint-Benoît Capitaine Fernão Alvares Cabral, qui s'est perdu le 22 Avril, 1554, sur la côte du territoire de Natal, près du fleuve de l'Infante."

3. La troisième fut effectuée en 1588 par l'équipage et les 100

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passagers du vaisseau "Saint-Thomas," de la même ligne, naufragé le 16 Mars, sur la côte des Fumées par 270 20' de latitude, près du fleuve de Simão Dote. Cette expédition, dirigée par le commandant Estevão de Veiga, partit le 23 Mars et arriva à la baie le 10 Avril. Le chroniqueur de l'Inde, Diogo de Couto, en a laissé
une relation curieuse et importante, qui a été publiée à Lisbonne en 1611: "Relation du naufrage du vaisseau 'Saint-Thomas.'"

4. La quatrième fut faite en 1593 par l'équipage et les passagers du vaisseau "Saint-Albert," de la ligne des Indes, qui naufragèrent le 27 Mars sur le Penedo das Fontes. Ils partirent de ce point le 3 Avril, sous la conduite de Nuno Velho Pereira, et ils arrivèrent à la baie de Lourenço Marques le 27 Juin, après avoir parcouru près de 300 lieues en deux mois et vingt-quatre jours. Déduction faite des voyageurs morts pendant le trajet, l'expédition se composait, lors de son arrivée à la baie, de 182 personnes, dont 117 Portugais libres et 65 esclaves. João Baptista Lavanha, premier cosmographe du Roi, publia à Lisbonne, quatre ans après (1597), par ordre du Gouvernement Portugais et sous le titre de: "Naufrage du vaisseau 'Saint-Albert' et itinéraire de ceux qui purent se sauver," l'itinéraire ou journal de ce voyage, travail d'une haute importance, à cette époque, pour la géographie de l'Afrique australe. Malgré la mauvaise rédaction de ce travail, Ternaux-Compan nos en fit un analyse ou un extrait qu'il publia à Paris dans ses "Archives des voyages ou collection d'anciennes relations," etc.

5. La cinquième exploration fut entreprise en 1623 par l'équipage et les passagers du vaisseau "Saint-Jean-Baptiste" qui, parti le 1er Mars de Goa pour Lisbonne, sous les ordres de Pedro de Moraes Sarmento, naufragèrent le 1er Septembre sur la côte de Natal, sous le 330 degré de latitude sud: de là les naufragés se dirigèrent par l'intérieur jusqu'à Sofala. L'expédition se composait de 279 personnes. Francisco Vaz de Almada en a publié à Lisbonne, en 1625, une notice intéressante intitulée: "Traité du désastre survenu au vaisseau 'Saint-Jean-Baptiste,' et du voyage que les personnes qui se sauvèrent, firent depuis le 330 degré au Cap de Bonne-Espérance où il fit naufrage," etc. Lisbonne, 1625.


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Il résulte de ce que nous venons d'exposer, que le voyage de Cowie et Green, colons Anglais, accompli par terre depuis le Cap de Bonne-Espérance jusqu'à la baie de Lourenço Marques au dix-septième siècle, et dont les détails se trouvent dans le "South African Advertiser," journal du Cap, de 1830, et dans le "Asiafie Journal," de Londres, de la même année, n'est pas, comme les Anglais le prétendent, le premier voyage fait par terre entre ces deux points, puisqu'il y avait déjà trois siècles que cette partie de la Cafrie était explorée par nous. Il est à regretter que le célèbre écrivain Walckenaer ait affirmé une telle inexactitude dans sa "Collection des relations des voyages."

Conclusions de ce chapitre: 1. Les Portugais ne se sont pas bornés à découvrir la baie de Lourenço Marques et à y établir (comme nous le verrons plus loin) leur domination et leur souveraineté. Dans l'intérêt de l'hydrographie et de la géographie, ils firent des explorations maritimes dans la baie et en entreprirent d'autres dans l'intérieur, depuis le Cap de Bonne-Espérance et la côte du Natal jusqu'à ce point.

2. Les principales explorations maritimes effectuées dans la baie pendant le seizième siècle, ont été au nombre de cinq, savoir: en 1506, 1527, 1544, 1575 et 1598.

3. Dès les premières années du seizième siècle, ces explorations eurent pour résultat le levé de cartes géographiques et maritimes, parmi lesquelles on compte la mappemonde ou carte universelle de Weimar, de 1527, la carte de Diego Riber, de 1529, etc.

4. Du commencement du- -seizième siècle jusqu'à la moitié du 102

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dix-septième les principales explorations terrestres de la côte du Natal, par l'intérieur de la Cafrie jusqu'à la baie, ont été au nombre de six.: en 1552, 1554, 1588, 1593, 1623, et 1647.

Ainsi qu'il l'issue des comptes rendus respectifs, ces explorations terrestres ont suivi deux lignes, l'une plus à l'ouest près de la côte (ce furent les premières, et l'autre plus à l'intérieur (ce furent les dernières).
6. C'est donc à tort que les Anglais prétendent que le voyage de Cowie et Green, colons Anglais, accompli pendant ce siècle à la baie de Lourenço Marques, ait été le premier voyage fait par terre entre ces deux points.

Chapitre V. - Description de l'établissement de Lourenço Marques et des territoires que lui sont soumis.

Section 1. - Du district de Lourenço Marques, de son étendue et de ses limites.

Lourenço Marques est un des sept districts ou divisions de la province de Mozambique. Il embrasse la côte depuis le 26° 30' de latitude sud jusqu'au district d’Inhambane, en touchant au cap des Courants par 24° 7' de latitude sud, sur un parcours de 68 lieues, et s'étend dans l'intérieur jusqu'au territoire de la République du Transvaal.

Lourenço Marques est borné à l'est par la mer, au nord par le district d’Inhambane, au sud et à l'ouest par une ligne, tirée du 26° 30' de latitude sud, qui se dirige vers l'ouest jusqu'aux montagnes de Lebombo ou de Musuate, ensuite vers le nord-nord-est jusqu'au mont Pokioeiteskop, qui se dirige vers le sud-nord-est jusqu'à la montagne de Chicundo, du fleuve, s'élève de 200 pieds au-dessus du niveau de la mer.

Telle est la ligne des limites au sud et à l'ouest établie entre le Gouvernement Portugais et la République des Boers par le Traité du 29 Juillet 1869.

Outre la ville et le fort de Lourenço Marques, le district possède, dans l'intérieur, la colonie de Saint-Louis, dont nous nous occuperons dans la section 14.

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Section 2. - De la ville, chef-lieu du district.

La ville, chef-lieu du district de Lourenço Marques, est située par 25° 58' de latitude sud et 41° 35' de longitude est du méridien de Lisbonne, sur la rive gauche du Saint-Esprit (English River) à un mille et un tiers de Ponta alta de Mafoumo ou Ponta Vermelha qui, à l'embouchure du fleuve, s'élève de 200 pieds au-dessus du niveau de la mer.

Nous parlerons plus loin de l'origine de l'établissement et des différentes modifications qu'a subies cette ville placée sous le patronage de Notre-Dame de la Conception.

La forteresse fut restaurée en 1864; on y construisit une caserne, une infirmerie, une pharmacie, une cuisine et des logements pour les officiers et les sergents. A l'extérieur on éleva un rempart garni de huit pièces d'artillerie, une poudrière et un magasin pour abriter les objets appartenant à l'État; plus tard, en 1867, sous l'administration du Capitaine d'Artillerie Frederico Augusto Gourgell, alors Gouverneur du district, une nouvelle ligne de défense fut construite. Cet ouvrage, commencé le 1er Avril et achevé le 31 Octobre de la même année, se compose de quatre batteries ainsi nommées: 31 Juillet, Saint-Pierre, Saint-Antoine, et Saint-Jean.

La ville est coupée par différentes rues tirées au cordeau, bordées de plus de soixante-dix maisons en pierre, de plus de quarante autres en pierre et terre glaise, garnies de terrasses, et de quelques rares constructions en bois.

L'établissement possède deux fontaines d'une eau excellente, l'une placée près de la plage, au sud de la ville et servant d'aiguade aux navires, l'autre placée hors de la ville; outre ces fontaines, l'établissement a encore l'eau du lac qui sert aux besoins des habitants.

Au delà de la seconde fontaine, dans un lieu désert nommé Mochamba, on donnait la sépulture aux Chrétiens; mais en 1864 on construisit un cimetière plus convenable.

Section 3. - Climat et température.

Dans cette contrée, l'année se partage en deux saisons: l'été ou saison des pluies, qui dure de Septembre à Mars, et l'hiver, d'Avril à Septembre. Le baromètre s'élève lorsque soufflent les vents du sud, et tombe sous l'influence des vents du nord.

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Quoique situé sous une zone tempérée, le district de Lourenço Marques est plus insalubre que l'île de Ibo (Cap Delgado) qui se trouve sous le 120° 30'. Depuis 1837, il y règne une sorte d'iangine pernicieuse, gangrénue ou putride, nommé matuniça ou mapute en langue indigène, qui est devenue endémique et
contre laquelle les nègres emploient un vomitif préparé avec de l'écorce de oibaca, ce qu'ils prétendent être un remède souverain.

Le Gouverneur Caetano da Costa Mattoso écrivait, dans sa dépêche officielle du 23 Juin, 1828, à l'égard de la situation du fort: "Cette place est située dans un terrain bas dominé par des montagnes et entouré de marécages permanents qui rendent précaire le sort des habitants sujets à des fièvres continuelles et trop souvent mortelles, ou à des maladies qui les empêchent de se rendre utiles à la nation : et cependant il existe, en face et sur la rive droite du fleuve, un emplacement plus sain, plus élevé, facile à défendre et possédant de l'eau et des terres excellentes pour la culture."

Section 4.-Population.
La population Portugaise de l'établissement a successivement augmenté; pour s'en convaincre il suffira de remarquer qu'après être restée longtemps stationnaire, elle a subi dans ces dix dernières années, de 1862 à 1872, l'accroissement constant que résume cette note:

<table>
<thead>
<tr>
<th>Année</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1862</td>
<td>1,081</td>
</tr>
<tr>
<td>1863</td>
<td>1,098</td>
</tr>
<tr>
<td>1872</td>
<td>2,670</td>
</tr>
</tbody>
</table>

Le nombre des esclaves enregistrés dans ce district en vertu du Décret du 14 Décembre 1854 était de 207 à la date du 20 Mai 1865. Aujourd'hui il n'y a plus d'esclaves, l'esclavage étant aboli dans toutes les colonies Portugaises.

Section 5.-Peuples soumis à notre domination.
Outre les indigènes qui vivent dans la ville et le fort, quelques peuplades dépendent du district. Ce sont, au nord et au nord-est, celles des régules ou chefs Mafoumo (dont les terres entourent le fort), Pamana, Nahota, Magaia et Cherinda; à l'ouest celle du chef Matola; au sud-ouest celle du Catembe ou Tembe, et au sud celle de Mapouto.

Section 6.-Agriculture.
Le terrain qui entoure le fort de Lourenço Marques, déjà hors du tropique, produit un grand nombre des fruits de l'Europe, aussi savoureux que ceux du Portugal, entres autres des melons et des pastèques. Quant à la vigne, si on la cultivait sur toute la côte du sud, elle donnerait indubitablement des résultats identiques à ceux que l'on admire au Cap de Bonne-Espérance.

Au bas de la montagne, au nord du fort et au-delà du lac, on trouve quelques vergers (machambas) de peu de valeur et qui sont cultivés par leurs propriétaires, Mafoumo, Mahota, Pamana, Magaia, Cherinda et Mouamba, au nord et à l'est, Cateinbe, Unhaca, Mapouto et Empanhel, au sud, sont les points de tout le district où l'agriculture est le plus répandue. De là nous viennent différentes denrées telles que le riz, le maïs, le millet, le manioc, les haricots, l'archide ou pistache de terre, les légumes, la citrouille, etc.

L'état de l'agriculture (écrivait en 1865 au Gouverneur Général le Capitaine Antonio de Sousa Teixeira, Gouverneur par intérim), est languissant, attendu que les nègres de ce district s'occupent presque exclusivement de la chasse à l'éléphant et laissent aux femmes le soin de cultiver la terre; c'est pourquoi les denrées de provenance indigène se trouvent à un prix exorbitant; chaque anija coûte 960 réis; le riz est fort rare et se vend à 920 réis la panja; quant au manioc, on ne le cultive qu'en très-petite quantité.

Section 7.-Commerce.
A Lourenço Marques, comme dans toute l'Afrique, le commerce fut, longtemps et sous différentes formes, un monopole de l'Etat. Un Edit du 10 Juin 1755 le rendit libre pour les nationaux, à l'exception pourtant du commerce de la verroterie, qui ne fut

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déclaré libre à son tour que par l'Edit du 7 Mai 1761. Enfin le commerce ne fut ouvert aux étrangers, sauf les exceptions des Traités, que par le Décret du 17 Octobre 1853.

Aujourd'hui, le commerce national et le commerce étranger du district ont acquis une certaine importance. Parmi les principales maisons commerciales établies actuellement à Lourenço Marques, on distingue celle des Portugais Paiva Raposo, Diocleciano Fernandes das Neves, et Nandim de Carvalho & Compagnie, les maisons Françaises de Fabre et Fils, et Régis Ainé de Marseille; les établissements des Indiens Antonio Gabriel de Gouveia, Manuel Francisco de Sousa et José de Sant'Anna da Gama; les maisons des Maures Ibramo Dahud, Mussa Agy Ibramo et Ismael Nur; celles des Banians Vachicande Premichande, Jugul das Dubob, Ceragy Cadiiri, Navangy Sauchande, Givr' Carva, Curugy Daugy, Othmechand Lakmechand, Jughudas Verichande et autres.

Le commerce avec l'intérieur se fait au moyen d'échange de marchandises telles que les cotonnades, les toiles de la côte, les foulards teints et imprimés, la poudre, les armes, la verroterie, l'eau-de-vie, les pioches, le cuivre, l'étain, le plomb, &c.

Les marchandises que l'on reçoit en échange sont l'ivoire d'éléphant et d'hippopotame, les cornes de rhinocéros femelle, les cuirs d'animaux tels que le bouf, le buffle, le zèbre; les peaux d'angonha de nungo, &c.


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1870-1871. La valeur des importations et des exportations qui, en 1866, avait été de 205:687 fr., s'éleva, en 1871, à 357:618 fr.

La réforme du tarif des douanes de Mozambique, décrétée le 12 Novembre, 1869, le Traité de Commerce avec les Boers et l'établissement inévitable d'une ligne régulière de bateaux à vapeur entre la métropole et la province de Mozambique, soit par le Canal de Suez, soit par le Cap, doivent aider le commerce à atteindre d'énormes proportions, surtout maintenant qu'est devenue bien évidente la tendance d'une partie du commerce de Port-Natal à se porter sur Lourenço Marques.

Section 8.-Monnaies, poids et mesures.
Toute la monnaie nationale du royaume, les monnaies Françaises et Anglaises d'or et d'argent, les onces Espagnoles et les aigles des Etats-Unis ont cour sur la place Lourenço Marques.

On se sert encore dans la colonie des anciens poids, arroba, arratel, et subdivisions, excepté à la douane, où l'on emploie déjà les nouveaux poids du système métrique.

Les mesures de solides et de liquides sont celles du royaume; toutefois la mesure de capacité des solides qui est le plus communément employée est la mesure du pays même, la panja et ses subdivisions. La panja correspond à un alqueire et trois quarts; elle se divise en comegaes et ceux-ci en demi-comegaes et en quarts.

Section 9.- Communications.
Lourenço Marques est en communication régulière avec la capitale de la province et les autres ports au moyen des navires de la place. Ces voyages se font de Lourenço Marques à la capitale pendant les moussons d'Avril et d'Août, et de la capitale à Lourenço Marques en Novembre et en Juin. Outre ces communications, un service régulier de courrier par voie de terre est établi entre la colonie, Inhambane et la République des Boers: de plus, une Ordonnance Ministérielle en date du 10 Mars, 1855, a décidé l'ouverture d'une route qui reliât cette République à Lourenço Marques et qui fût appropriée à l'usage des chars-wagons.

Cette amélioration n'a pas encore été réalisée; mais depuis le Traité entre le Portugal et la République des Boers, il existe un projet de chemin de fer qui devra lier Lourenço Marques avec
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Pretoria, capitale de cette République, chemin de fer très important, et au sujet duquel de récentes propositions ont été soumises au Gouvernement Portugais.

Section IO.-Gouvernement et Administration Générale.

Lourenço Marques constitue aujourd'hui un des districts de la Province de Mozambique; comme les autres districts il est administré par un gouverneur spécial qui reçoit 1,000,000 réis de gratification, et dont la nomination émane du Gouverneur Général en vertu du Décret du 31 Octobre, 1838: toutefois quelques-uns de ces gouverneurs de district ont été, dans ces derniers temps, nommés directement par le Gouvernement de la métropole.

Section II.-Administration des Finances.

Comme dans les autres districts de la province, l'administration des finances à Lourenço Marques est entre les mains d'un délégué le la Junte des Finances de Mozambique, composée du gouverneur avec présidence, d'un surintendant-trésorier et d'un greffier. La dépense faite est de 42,000 réis, appointements des deux fonctionnaires, et de 20,000 réis d'expédition.

Déjà en 1787 on avait ordonné l'établissement d'une douane à Lourenço Marques, mais le gouverneur de Mozambique, Antoine Emmanuel de Mello e Castro, négligea l'ordre donné et la douane ne fut créée qu'en vertu du Décret du 17 Octobre, 1853.

Le personnel de cette administration est ainsi composé: Un directeur, un secrétaire vérificateur, un trésorier, un portier, deux douaniers, un patron de barque et des rameurs.

La dépense totale de ce personnel se chiffre au budget par 1,192,000 réis.

Le tarif de douane aujourd'hui en vigueur et qui a remplacé celui du 18 Octobre, 1856, est le tarif décrété pour Mozambique le 12 Novembre, 1869.

Dans ce tarif le district de Lourenço Marques est spécialement favorisé, car depuis 1779 on reconnut la nécessité d'une différence profitable au district dans les droits de douane. Tandis que les autres ports du sud payaient 30 pour cent, Lourenço Marques ne fut astreint à payer que 8 pour cent, encore réduits à 6 en 1787 sous l'administration du gouverneur Antonio Manuel de Mello e Castro, en vertu des Ordonnances Royales du 5 et du 109

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19 Avril, 1785, alors que fut faite une réduction de 25 pour cent sur tous les droits de douane.

Section 12.-Administration Militaire et Administration de la Marine.

La force militaire se compose actuellement de 120 hommes du 3me bataillon de chasseurs d'Inhambane, et fournit des détachements aux îles de Benguela au nord, et de l'Unhaca au sud; ce dernier détachement s'est néanmoins retiré en signe de la bonne foi du Gouvernement Portugais, à partir du moment où le différend avec l'Angleterre a été soumis à un arbitrage.

Quant à l'administration de la marine, le district de Lourenço Marques dépend du capitaine du port de Mozambique, qui a les attributions d'intendant. Pour le service du port il y a un capitaine major, aux appointements de 24,000 réis.

Section 13.-Administration Ecclésiastique et Instruction.

Le district de Lourenço Marques forme une des paroisses de la prélate de Mozambique, sous l'invocation de Notre Dame des Remèdes, autrefois, comme celle de Sofala, à la charge des religieux de Saint Dominique.

Le service religieux coûte à l'État 220,000 réis pour le curé, et 24,000 réis pour le sacristain.

Sui les huit écoles de 1ère classe qui appartiennent à la province de Mozambique par le Décret du ler Septembre, 1854, Lourenço Marques en possède une en vertu de l'Ordonnance Ministérielle du 14 Novembre, 1857, exécutée en 1860. Le 25 Avril, 1861, l'établissement de l'école a été approuvé par ordonnance du 13ième de la Marine; déjà dès 1855, le gouverneur Vasco Guedes de Carvalho e Menezes avait fait créer dans le district une école régimentaire. Le professeur d'instruction primaire reçoit 200,000 réis.

Section 14.-De la Colonie de Saint Louis.

En 1845 le régule Makaxulle vendit à Jean Albazini, ViceConsul Portugais près la République du Transvaal, une portion de territoire placée à cinq jours de marche à l'intérieur de Lourenço Marques, au nord du parallèle du 260 sur les rives du Save. Ce territoire s'étend en largeur jusqu'à l'Incomate; avec,
lequel il confine et se trouve à moitié chemin entre la frontière de la République et notre établissement. Le 8 Avril, 1868, Jean Albazini en fit don au Gouvernement Portugais.

Ce citoyen, aidé par quelques Portugais habitant le district de Pretoria dans la République du Transvaal et par quelques familles Hollandaises, proposa au Gouverneur de Mozambique l'établissement, sur ces terrains, d'une colonie Portugaise.

Par Ordonnances du 25 et du 28 Mai, 1869, le Gouverneur autorisa cet établissement sous le titre de Colonie de Saird-Loui.q, en hommage au Roi de Portugal, et nomma Jean Albazini chef provisoire de cette colonie, avec toutes attributions administratives et judiciaires: un détachement de 50 hommes fut destiné à cette colonie.

Ce nouvel établissement, se trouvant, par sa position spéciale, le point forcé des communications commerciales des Boers avec Lourenço Marques, doit prendre un rapide développement.

Section 15.-Communications avec la République du Transvaal.

Trois voies principales de communication existent actuellement entre le district Portugais de Lourenço Marques et la République du Transvaal.

La première part d'Origstad, aujourd'hui presque abandonnée à cause de son insalubrité, descend les pentes de Kathlamba ou Drakensberg, suit le Save ou Sabia, croise le bas Incomati et vient aboutir au nord de la ville de Lourenço Marques. Ce chemin a une longueur de 200 milles; les chars à bœufs le parcourrent en 10 ou 12 jours; toutefois il est moins facile que les deux autres, attendu qu'il traverse un plus grand espace de terrain infesté par la mouche tsétsé.

La seconde de ces voies, qui présente un parcours de 100 milles, sort du district de Neiv-Scotland par une gorge des montagnes de Kathlamba, quitte la rivière Anzete (Umzuti), prend à l'est en croisant les monts de Lebombo ou uitsuate, et suit le Catembe jusqu'à la mer.

La troisième est la plus facile quoique n'étant pas la plus courte. Elle suit le bas Anzete ou Mapouto et vient aboutir à la baie. Sur ce chemin, comme sur le précédent, le terrain infesté par la mouche tsétsé a fort peu d'étendue.

A l'égard de ces voies actuelles de communication, un rapport fort remarquable fut écrit en 1870 par Francisco da Costa Leal,

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secrétaire de la Commission Diplomatique Portugaise envoyée dans le Transvaal, et publié dans le "Bulletin de la Province de Mozambique."

Conclusions de ce chapitre:
1. Lourenço Marques est un des districts qui composent la province de Mozambique, et s'étend sur une longueur de 68 lieues de côtes, comprenant la baie de ce nom, depuis le district d'Inhambane, au nord, touchant au Cap des Courants, jusqu'au 26° 30' de latitude sud.
2. La ville et le fort de Lourenço Marques, contenant une population Portugaise de 2,670 âmes, se trouvent sur la rive nord du fleuve du Saint-Esprit, par 25° 58' de latitude sud.
3. Dans ce district, important par son commerce intérieur et extérieur, se trouvent régulièrement établis le Gouvernement et l'Administration Générale, ainsi que les administrations des finances, de la guerre, de la marine, du culte et de l'instruction publique.
4. Sont soumises à la domination et à la souveraineté Portugaises, outre les populations indigènes du nord et du nord-est de la baie (à l'égard desquelles ne s'élève aucune contestation), celles de Tembe et de Mapouto au sud, qui sont l'objet du conflit.
5. Nous avons occupé militairement, avec de l'artillerie et de l'infanterie, outre la forteresse, l'île de Benguelene, point nord de la baie.
6. Nous avons quitté l'île de l'Unhaca, point sud de la même baie, et nous en avons retiré nos forces militaires, afin de montrer le respect du Portugal pour l'arbitrage, depuis que nous avons proposé ce moyen de résoudre le différend.

Chapitre VI.-Développement matériel et moral du district.

Des écrivains Anglais malveillants envers le Portugal ou des individus auxquels les renseignements suffisants fussent défaut, n'ont pas craind de porter des jugements erronés, et ont accusé la nation Portugaise de ne pas savoir mettre à profit les vastes ressources qu'offre le district de Lourenço Marques,
donnant ainsi à entendre que, placée entre des mains Anglaises, cette Colonie présenterait des résultats tout autres. 

Quoique l'on ne puisse admettre que pour de semblables motifs une nation puisse être expropriée d'une partie de son territoire, et malgré que le différend existant avec l'Angleterre ne doive pas être résolu par des motifs d'intérêt, il convient néanmoins de ne pas laisser sans réponse des accusations aussi peu fondées, et de montrer, à l'aide des faits, que le Portugal a mis tous ses efforts à aider au développement du district de Lourenço Marques, matériellement et moralement, en rendant faciles les communications, en encourageant l'industrie et le commerce, et en soutenant l'instruction civile et religieuse.

Pour rendre faciles et multiplier les communications, le Portugal a établi un service postal régulier jusqu'à la République du Transvaal; il a ordonné le 10 Mars, 1855, la construction, entre cette République et Lourenço Marques, d'une route à l'usage des chars-wagons; il a enfin traité en 1869 de l'établissement d'un tram-way, projet auquel on a préféré celui de l'établissement d'un chemin de fer à l'égard duquel des propositions sont déjà soumises au Gouvernement Portugais et à celui de la République du Transvaal, affaire qui est encore à décider.

Pour encourager l'industrie, le Portugal a créé celle de la pêche en grand, ce qui est prouvé par l'établissement de la Compagnie Portugaise de la pêche à la baleine, fondée en 1817 grâce à l'initiative du Gouverneur de Mozambique, Cavalcante de Albuquerque, et à João Pereira de Sousa Caldas (assassiné peu après par les Cafres excités par une influence étrangère), pêche pour laquelle on a fait venir des engins du nord de l'Amérique; il a donné une forte impulsion à la chasse de l'éléphant, industrie très importante pour le commerce de l'ivoire et qui a conduit les Portugais à étendre leurs explorations du côté sud de la baie jusqu'aux domaines de Panda, Roi des Zoulous, ainsi que nous le démontrerons dans la quatrième partie de ce mémoire; il a enfin livré à l'étude des hommes de la science et des industriels, dans le Musée Colonial de Lisbonne, les échantillons des richesses naturelles de cette importante contrée.

Quant au commerce, par Décret Royal du 13 Novembre, 1824, le Gouvernement a créé la Compagnie Commerciale à laquelle il a accordé pour 24 ans le privilège de tout le trafic de la baie, compagnie qui avait pour Directeur Vicente Thomés dos Santos, et à laquelle il concéda de nouveaux privilèges par Ordonnance Ministérielle du 27 Octobre, 1825. Quoique l'objet principal de cette compagnie fût le commerce, elle était encore créée dans un but de culture et de colonisation, car elle s'obligeait à soutenir 25 familles que le Gouvernement envoyait chaque année dans la Colonie.

Le commerce de la baie ayant été ouvert aux étrangers en 1853, on publia un nouveau Tarif de douane qui a attiré dans la Colonie un grand nombre de négociants; des maisons Françaises importantes s'y trouvent établies et sont dans les meilleurs rapports avec les autorités Portugaises, car elles respectent nos lois et nos règlements et contribuent d'une manière puissante au développement matériel du district.

Quant à l'instruction, le Gouvernement a créé dans le district deux écoles primaires, l'une civile, l'autre militaire, comme nous l'avons dit dans la section 13, et il a maintenu le service religieux de la Mission Catholique de Lourenço Marques, dépendant de la prélature ou préfecture ecclesiastique de Mozambique.

Enfin, dans l'intérêt de la science, le Gouvernement a joint aux explorations hydrographiques des siècles antérieurs celle qui fut faite au dix-huitième siècle dans toute la baie par la frégate de guerre commandée par Antonio José de Mello, et celle qui, de nos jours, a été entreprise par la canonnière Marie Anne en 1871, sur tous les fleuves qui débouchent dans la baie, et dont les résultats sont consignés dans l'intéressant rapport auquel nous avons fait allusion plus haut et qui a été publié dans le “Bulletin de la Province de Mozambique.”

Chapitre VII.-Notie sur les tribus Cafres au nord et au sud de la Baie de Lourenço Marques.

Les indigènes qui peuplent le nord et le sud de la baie appartiennent à la grande famille des Cafres, laquelle forme, avec celle des Saouahlili, les deux grandes divisions de la race principale qui habite l'Afrique.
australe et orientale. Nous avons donné à ces Cafres le nom générique de Landins ou Vatoud-, du nord ou du sud, suivant la région qu'ils occupent. Toutes ces tribus peuvent réunir 80,000 hommes armés, dont la plupart savent faire usage des armes à feu, quoique celles dont ils se servent habituellement soient la zagaie et la rondache, qu'ils manient avec une grande dextérité. Ces Cafres, outre la langue Portugaise qu’ils parlent plus ou moins correctement, ont un langage ou dialecte particulier à la Baie de Lourenço Marques et aux territoires qui en dépendent.

Ce dialecte dérive de celui du Kafir Tsouana et diffère de ceux de Mozambique et du bassin du Zambèze, qui sont des dialectes Makoua. En 1842 le Docteur William Peters, Professeur de Médecine et Membre de l’Académie (le Berlin, ayant visité ces contrées, s’occupa du dialecte de Lourenço Marques, au sujet duquel on connaît les travaux de William White, d’Appleiards et surtout de Bleek.

Section 1.-Tribus du nord et du nord-est de la Baie.
Au nord et au nord-est de la baie se trouvent les territoires de Manhiça ou Magaia, Injote, Moamba, Cherinda et ceux de Mafoumo et Matolla, gouvernés par leurs régules. Tous, excepté les deux derniers, sont soumis au puissant régule Mouzilla, chef de la race ou tribu des Amatabelas, notre vassal, qui habite plus au nord, dans les forêts de Sofala, sur le territoire Madanda, près de la rivière Buzi. La ville et le fort Portugais sont situés sur le territoire de Mafoumo, qui s’étend sur la rive nord du Saint-Esprit. L’actuel et puissant régule Mouzilla (Umzilla) ayant succédé à son père le célèbre Manicousse, dut soutenir une lutte acharnée contre son frère, le féroce Maoueva, qui lui disputait le pouvoir. En cette occurrence il s’adressa au Gouvernement Portugais auquel il demanda un secours qui lui fut accordé. Après une campagne de plus d’une année, pendant laquelle nos armes furent victorieuses, la lutte se termina par les combats du 17 et 20 Août, 1862, dans les plaines de Moamba. Pour prix de ce puissant secours, le 2 Décembre, 1861, Mouzilla cédait à la Couronne Portugaise, dont il se déclara de nouveau vassal et tributaire, les territoires de Moamba, Cherinda, Manhiça et Injote, en deçà de la rivière Buzi. Ces territoires payèrent dès lors un tribut au Portugal et se trouvèrent entièrement affranchis de la domination de Mouzilla. Déjà le 5 Avril, 1805, le chef de Moamba avait fait don à la Couronne Portugaise des terres de Mafodîno, Mafouno Branco et Palane, alors que José Antonio Caldas était Gouverneur de Lourenço Marques.

Section 2.-Tribus du sud et du sud-ouest.
Au sud et au sud-ouest se trouvent les tribus du Mapouto et de Tenbe, de la race des Amazouasi. Le Mapouto embrasse aujourd’hui tout le territoire situé entre le fleuve de ce nom et les îles de l’Unhaca et des Eléphants, il s’étend dans l’intérieur et touche aux terres du Panda, Roi des Zoulous. Ce territoire est gouverné par un régule qui, aux seizième et dix-septième siècles, était désigné sous le titre de Roi de l’Unhaea et qui, aujourd’hui, est connu sous celui de régule ou Roi de Mapouto. Le Roi actuel est Missongue ou Nasinguile, fils de Touma et de Molaty; il commence à régner en 1850, à la mort de son grand-père Macassana (qui avait gouverné le Mapouto depuis le commencement de notre siècle), son père Touma étant mort avant cette époque. Le Mapouto se divise en plusieurs districts ayant chacun son chef. Un de ces districts est formé de l’île de l’Unhaca, qui est toujours gouvernée par un parent ou une parente du régule. Le derider chef de l’Unhaea fut la cousine de Missongue, à qui les Portugais donnaient le titre de Reine de l’Unhaca, et qui était fille de Mfiringouana, fille aînée elle-même du vieux Macassana. Le régule Xissongue fit assassiner il y a quelques années sa cousine et sa tante Minguana, sous prétexte qu’elles conspiraient contre lui, et remplaça cette Reine de l’Unhaca par sa sous Gohica. Le territoire de Tembe ou Catembe comprend au sud-ouest toute la région qui s’étend au bord de la baie, depuis le fleuve Mapouto jusqu’à la rive sud du Saint-Esprit; il pénètre dans l’intérieur jusqu’aux frontières du régule du Musuate qui règne sur les montagnes du Lebonbo.
Ce territoire, également divisé en petits districts, est gouverné par des régules à qui depuis de nombreuses années nous avons donné le titre de Capella qu'ils joignent à leur propre nom. Ainsi, le régule actuel dont le règne commença en 1857, se nomme Bacute Capella, et son prédécesseur, qui fut proclamé régule en 1823, se nommait Maietta Capella.

Conclusions de ce chapitre:
1. Les indigènes du nord et du sud de la baie appartiennent

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tous à la grande famille des Cafres et parlent, outre le Portugais, un dialecte particulier, qui est une branche du Kafir Tsuana.


3. Les peuples de Maouto occupent le territoire situé entre le fleuve de ce nom et les îles de l'Unhaca et des Eléphants; ce territoire est divisé en districts et gouverné par un régule connu autrefois sous le nom de Roi de l'Unhaca et aujourd'hui sous celui de régule de Mapouta. Le Roi actuel est Missongue ou Nasinguile.

4. Les peuples de Tembe ou Catembe occupent le territoire qui se trouve entre le Mapoulo et la rive sud du Saint-Esprit, et qui est également divisé en districts et gouverné par un régule qui prend le titre de Capella. Le régule actuel est Bacute.

5. Les peuples du nord et du nord-ouest sont gouvernés par différents régules soumis au puissant Mouzilla, qui lui-même est vassal du Portugal et vit dans les forêts de Sofala.

DErjXIÈME PARTIE.


L'histoire de l'établissement de la souveraineté Portugaise dans la Baie de Lourenço Marques peut se diviser en trois époques: la première s'étend depuis l'exploration de Lourenço Marques en 1544 jusqu'au commencement du dix-septième siècle; la seconde depuis le commencement du dix-septième siècle jusqu'au milieu du dix-huitième; la troisième depuis ce temps jusqu'à nos jours.

Section 1.-Première Époque (1544-1600).

A cette première époque les Portugais se considérant, suivant les idées et le droit public du siècle, maîtres de la baie qu'ils avaient découverte et commencé d'explorer en 1544, ne jugèrent pas nécessaire d'y établir une fortification permanente. Ils affirmèrent leur souveraineté en exerçant le monopole de la navigation et du commerce sur ce point, et en occupant toute la baie au moyen de factoreries au sud, au nord et au centre, sur le fleuve du Saint-Esprit. Nous exercions le monopole du commerce en y envoyant chaque année, de l'Inde ou de Mozambique, un vaisseau pour l'échange de l'ivoire, du cuivre, etc., ce qui constituait le commerce de la baie, ainsi que l'assurent les écrivains de ce temps.


Section 2.-Seconde Époque (1600-1744).

Pendant la seconde époque, c'est-à-dire, du commencement du dix-septième siècle, jusque vers le milieu du dix-huitième, nous suivîmes le même système d'occupation au moyen de factoreries; mais déjà en 1635 l'établissement Portugais de la Baie de Lourenço Marques était regardé comme ayant une grande
importance et faisait partie du vaste district de Sofala, l'un des trois qui formaient la circonscription de Mozambique.

A cette époque, nos possessions de l'Afrique orientale étaient divisées en deux circonscriptions: celle de Mombasa, qui s'etendaient du Cap Delgado à Zanzibar, et aux îles adjacentes, et celle de Mozambique, qui comprenait les districts de Sofala, de Mozambique et de Zambèse ou rivières de Cuama; ces faits se trouvent consignés dans le Breve Tradado, ouvrage encore inédit, écrit en 1635 par Pedro Barreto de Rezende, secrétaire du Comte de Linhares, Vice-Roi de l'Inde, et dont un exemplaire existe à la Bibliothèque Nationale de Paris.

Partageant l'opinion de Barreto de Rezende, sur l'importance de Lourenço Marques, un officier distingué de la marine Française qui a sérieusement étudié l'histoire de l'Afrique orientale, écrit les lignes suivantes:" Le capitaine de Sofala avait le monopole du commerce sur toute la côte comprise entre cette point et le Cap de Bonne Espérance, où il existait deux comptoirs assez importants, l'un par 260 de latitude sud, dans la Baie de Lagoa ou de Lourenço Marques, nom du premier Portugais qui, pour le traite de l'ivoire, alla y établir des relations régulières avec les Cafres; l'autre celui de Inhambane."

Et notre établissement ne pouvait pas ne pas avoir cette importance, puisque déjà en 1647 il comptait une population de trois cent âmes, comme cela est prouvé par ce qu'écrivait, trois ans plus tard, Bento Teixeira Feyo dans la "Relation du naufrage des vaisseaux Sacrement et Notre Dame de Atalaya, imprimée à Lisbonne en 1650, et que nous avons déjà cité plusieurs fois.

A cette époque, comme l'assure ce dernier, il y avait déjà dans la Colonie une chapelle et un aumônier pour la desservir.

Dans les dernières années du dix-septième siècle pourtant, un fait eut lieu qui, s'étant reproduit au commencement du dix-huitième siècle, nous obligea de changer notre système d'occupation.

Le 19 Octobre 1688, ils y envoyèrent la galiote Noord, sous le prétexte de faire des sondages dans la baie et d'en dresser la carte, mais en réalité dans le but de s'en emparer, en achetant le Gouverneur Portugais, João Jacques. Le Lieutenant-Colonel de l'armée Anglaise Southerland raconte ce fait et ajoute qu'une semblable tentative était d'autant plus étrange que la Hollande vivait en paix avec le Portugal et que cette baie était la propriété des Portugais depuis deux siècles: in the possession of the Portuguese for the last two hundred years. Cette tentative ayant échoué, les Hollandais changèrent de système et, abusant de la faculté de faire le commerce dans nos Colonies, faculté qui leur était concédée par l'Article IV du Traité de paix du 6 Août, 1661, entre le Portugal et les Provinces Unies, ils tentèrent de fonder une petite factorerie commerciale dans la baie, près de notre établissement, avec la permission du Gouverneur Portugais qui, selon le droit et les idées de l'époque, n'aurait pas dû la leur accorder puisque le Portugal s'était réservé le monopole du commerce sur ce point soumis à sa domination.

Dans ce but, ils armèrent en 1721 deux ourques commandées par Guillaume van Taak, qui jetèrent l'ancre dans la baie le 3 Avril. La petite factorerie fondée par eux et gouvernée par Xoning, dévastée par la maladie, fut peu de temps après -détruite par les Cafres. Plus tard ils renouvelèrent encore leur tentative, mais elle fut abandonnée en 1734 ou 1735. Instruit de ces faits et de la tolérance de ses Délégués envers les Hollandais, le Gouvernement Portugais donna des ordres positifs au Marquis de Louriçal, qui partit pour les Indes le 7 Mai 1740, en qualité de Vice-Roi, lui enjoignant de ne souffrir dans la baie aucun établissement étranger; de semblables instructions furent encore données à son successeur, le Marquis de Castello Novo, le 25 Mars, 1744.
En même temps, le Gouvernement décida que la baie serait convenablement fortifiée, et il ordonna, outre la construction de factoreries permanentes, le commencement de travaux réguliers de fortification.

Section 3.-Troisième Époque (1744-1782).

Pendant cette troisième époque, notre occupation, affirmée par les factoreries et le village sur le fleuve du Saint-Esprit, est

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garantie par des fortifications établies sur la rive droite de ce fleuve, sur le territoire du Tembe ou Catembe, dans l'île de l'Unhaca, à la pointe sud de la baie et dans l'île Chefine.

Dans les ouvrages de quelques écrivains, même étrangers, nous trouvons une mention impartiale de nos fortifications de la baie de Lourenço Marques, au dix-huitième siècle, tant dans la ville même de Lourenço Marques, sur la rive sud du fleuve du SaintEsprit (English River), que dans l'île de l'Unhaca.


Jacob Frankens, dans la narration qu'il écrivit en 1759 de son voyage à Lourenço Marques, fait pareillement mention de la forteresse Portugaise.

Le Baron de Puffendorf, dans son "Introduction à l'Histoire Moderne, Générale et Politique de l'Univers," édition de M. de Grâce (Paris, 1759), fait aussi mention de notre fort de l'Unhaca: "Vers l'embouchure de la rivièr de Maniça on trouve le Royaume d'Inhambane. Les Portugais ont au midi un fort qu'on appelle Inhaque."

Berenger l'indique également, en 1732, dans sa suite de la géographie de Bushing: "Vers le sud les Portugais possèdent le fort d'Inhaque."


Le fort, situé sur la rive sud du Saint-Esprit, fut agrandi en 1755, d'après un ordre envoyé en 1752 au Gouverneur-Général de Mozambique, Francisco de Mello e Castro. Toutefois, jugeant plus convenable notre établissement sur la rive nord, nous nous y transportâmes en 1781, et nous construisîmes, sur les terres du régule iMatolla, la ville et le nouveau fort, dont la dépense, jusqu'en 1790, monta à 160,000,000 réis (888,000 fr.).

C'est là que nous sommes restés jusqu'à ce jour, faisant le commerce et occupant avec nos forces militaires, outre le fleuve du Saint-Esprit, la pointe nord de la baie, dans l'île de Benguelene, à l'entrée de Manhiça, et l'île de l'Unhaca, au sud. Néanmoins, en attendant la juste décision qui doit mettre fin à ce différend, et dans le but de rendre bien évidente la bonne foi Portuigaise, nous avons évacué ce dernier point depuis que cette affaire a été soumise à l'arbitrage.

Dans les premières années de notre siècle, James llorsburg fait mention des restes de notre première fortification sur la rive sud du fleuve Saint-Esprit: "Vis-à-vis de cette pointe, dit-il, on voit, sur la rive opposée, les ruines d'un fort Portugais."

L'existence, au dix-huitième siècle, du fort Portugais sur la rive sud de ce fleuve est également reconnue en 1823 par le Capitaine Owen lui-même dans une lettre au Gouverneur de Lourenço Marques, et en 1862 par le Ministre Anglais à Lisbonne, Sir Arthur C. Magenis, dont une note en date du 18 Mars; et, quoiqu'il prétende atténuer la valeur de cet aveu en disant que le Portugal payait pour ce droit un tribut annuel comme cens (fôro) au Roi de Tembe, qui se nommait le Capella, il ne prouve et ne pourra jamais prouver son assertion, qui est en tout ses points inexacte; ce ministre confond des choses essentiellement différentes, car les Portugais sont dans l'usage de faire des présents à ces rois, leurs vassaux, quand ceux-ci viennent payer leur tribut annuel.

Conclusions de ce chapitre:

1. L'histoire de l'établissement Portugais dans la baie de Lourenço Marques se divise en trois époques: la première de 1544 à 1600; la seconde de 1600 à 1744, et la dernière de 1744 jusqu'à nos jours.


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4. Les tentatives d'ailleurs infructueuses des Hollandais pour s'établir dans la baie vers la fin du dix-septième siècle et le commencement du siècle suivant nous conduisirent, dans la première moitié du dix-huitième siècle, à défendre nos droits de premiers occupants au moyen de fortifications.

5. Ces fortifications, ainsi que le démontre le témoignage des étrangers eux-mêmes, se trouvaient placées au sud de l'Unhaca, au nord dans la baie de Benguelene et dans la Chefine, et au centre sur le fleuve du Saint-Esprit (English River).

6. Le fort se trouvait primitivement sur la rive gauche de ce dernier fleuve, sur le territoire du Tembe; il en reste, de l’aveu des Anglais eux-mêmes, quelques ruines; plus tard il fut transporté sur la rive nord, où on le voit encore aujourd'hui.

7. Nous occupions ainsi le fleuve du Saint Esprit et les pointes nord et sud de la baie, mais nous avons quitté la pointe sud (celle de l'Unhaca), depuis que le différend a été soumis à l'arbitrage, et afin de prouver notre bonne foi, notre respect pour l'arbitre et la confiance que nous avons dans notre droit.

Chapitre I. - Système de domination suivi par les Portugais.

1. La Couronne Portugaise, d'après le droit public de cette époque, avait acquis la possession de ces territoires par le fait de leur découverte par les Portugais, et cela au moyen de grandes dépenses d'argent, au prix de l'existence de nombreux citoyens et avec un immense profit pour les nations de l'Europe.

2. Le but des Souverains Portugais étant, non seulement le commerce, mais aussi la civilisation des indigènes au moyen de la propagation de la foi, ils faisaient rechercher l'amitié et le vasselage des régules, soumettant les uns à un léger tribut en signe de sujétion, exemptant les autres de ce tribut et accordant même à quelques-uns d'entre eux des pensions, suivant les services qu'ils prêtaient à la Couronne Portugaise; c'est donc une grave erreur que de supposer que le Portugal n'avait de souveraineté que là où on lui payait un tribut.

3. La Couronne Portugaise ne voulut jamais priver les indigènes de la propriété de leur territoire; elle reconnut même leurs droits de propriété, et les laissa libres; c'est pourquoi elle acceptait des donations ou cessions, et leur achetait même des terrains, agissant en cela comme tout gouvernement d'un pays peut le faire envers ses propres citoyens.

4. Quant à la manière de jouir de la possession de ses domaines, le Portugal suivait deux systèmes; chez les peuples dont la fidélité pouvait être ébranlée par la crainte des invasions des Turcs, des Sarrasins ou d'autres, il élevait en toute hâte des forts, mais chez ceux où une semblable éventualité n'étaient point à redouter ou bien, là où cette dépense n'était pas nécessaire, et surtout sous les climats pestilentiels, il se contentait d'établir de simples factoreries et d'y envoyer des navires, pour les besoins du commerce.

5. Sur les points où le Portugal n'avait pas construit de forts, l'amitié et l'obéissance des peuples étaient telles, que cette dépense eût été superflue.

6. Le Portugal jouissait publiquement et paisiblement de sa souveraineté sur ces colonies, souveraineté respectée par toutes les nations.

Fidèles à ces principes, les Portugais ne privèrent jamais les différents régules de la baie de la propriété de leurs terres, ils se contentaient de considérer comme vassaux ces régules qui, en signe de soumission à la Couronne Portugaise, leur donnaient chaque année une certaine quantité d'ivoire et de cornes de rhinocéros,
des bestiaux, du riz ou d'autres provisions, et recevaient en échange un présent (saguate) composé d'habillements et d'eau-de-vie, et quelques-uns même une pension mensuelle.

Conclusions de ce chapitre:
1. Le Portugal, dans la manière dont il a exercé sa domination sur les territoires qu'il a acquis en Afrique depuis le quinzième siècle, s'est toujours laissé guider par un esprit de civilisation et d'humanité.
2. Nous cherchions à gagner l'amitié des Chefs indigènes, nous contentant de leur vasselage.
3. Nous leur avons toujours laissé intact le droit de propriété;

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C'est pourquoi nous en acceptions des donations ou des cessions de terrains.
4. Nous nous contenterions de leur vasselage, et nous recevions seulement comme signe de leur dépendance un léger tribut; à quelques-uns d'entre eux nous faisions remise de ce tribut, à quelques autres même nous accordions une solde ou pension.
5. Nous étions réservé le monopole du commerce et de la navigation, nous établissions des factoreries et n'élevions de forts, en général, que dans les contrées où notre droit et notre propriété pouvaient être menacés par des étrangers.
6. L'Angleterre a une parfaite connaissance de notre système de domination, grâce à l'exposé qu'à ce sujet le Chargé d'Affaires Joao Pereira Dantas adressa à la Reine Elisabeth le 22 Mai, 1562.

Chapitre III. Manifestations de notre Souveraineté.

Les actes suivantes peuvent, entre autres, être indiqués comme des manifestations de notre souveraineté dans la baie de Lourenço Marques.
1. Le titre ou dénomination de Senhores da conquista, navegaçao e commercio da Ethiopia, Arabia, Persia e India, etc. (maîtres de la conquête, de la navigation et du commerce de l'Ethiopie, de l'Arabie, de la Perse, et de l'Inde) que les monarques Portugais ont pris depuis le Roi don Manuel, après l'arrivée de la flotte de Vasco da GCama en 1499, et qu'ils conservent encore aujourd'hui et ont ajouté à l'ancien titre de Reis de Portugal e dos Algarves, d'auqem e d'alem mar em Africa (rois de Portugal et des Algarves, en deçà et au-delà de la mer en Afrique).

Ce titre n'était pas un titre de prétention, il constituait un titre de possession; il fut toujours l'expression d'un fait incontesté et non un simple titre de mémoire, comme le dit Kluber. Le mot Ethiopia, qui y est employé, désigne l'Afrique orientale, ainsi que le remarque le Vicomte de Santarem. En effet, pour le Portugal, ce titre n'était point une banalité: il signifiait le fait de la domination et de la possession de ces contrées. L'un des hommes les plus versés dans la géographie de l'Afrique, M. d'Avezac, le reconnaît lui-même quand il dit, en parlant de Jean II: "Le Roi Jean II ajouta à ces titres officiels celui de Seigneur de Guinée. Toutes les côtes jusqu'alors recon-

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nues par ses sujets semblèrent désormais former un seul domaine dont une prise de possession solennelle était constatée."
2. L'occupation et la possession de la baie depuis le seizième siècle, d'abord au moyen de factoreries établies au nord et au sud dans l'Unhaca et au centre de la baie sur le fleuve du SaintEsprit et dans l'île Chefine, et plus tard à l'aide de fortifications, comme cela a été démontré dans le chapitre 1 de la troisième partie.
3. Le monopole du commerce pour le compte de l'Etat, sous différentes formes, jusqu'en 1755, épisode à laquelle il fut déclaré libre pour les nationaux par une Ordonnance du 10 Juin, à la seule exception de la verroterie, déclarée également libre par Ordonnance du 7 Mai, 1761, et jusqu'à l'époque où le commerce fut ouvert aux étrangers par Décret du 17 Octobre, 1853; et le monopole de la navigation jusqu'au moment où nous ouvrîmes nos colonies aux étrangers, comme nous l'avons déjà fait remarquer.
4. L'expulsion des étrangers, qui prétendaient s'établir dans nos colonies et y faire le commerce, ce que nous prouvons par les faits suivants: (1.) Les ordres donnés, ainsi que nous l'avons déjà dit, aux Vice-Rois de l'Inde leur enjoignant de ne pas souffrir dans la baie la présence des Hollandais qui tentaient d'y établir leur commerce. (Seconde partie, chapitre i.) (2.) Le Lieutenant-Colonel Anglais William Bolts, au service Autrichien de la Compagnie Asiatique de Trieste, autorisée par l'Impératrice Marie-Thérèse dans une lettre du 5 Juin, 1775, prit en 1777 le commandement d'une expédition transportée par le vaisseau Joseph et Thérèse, et qui se dirigea vers l'Inde
après avoir touché à Lourenço Marques et y avoir laissé quelques troupes avec de l'artillerie. Le Gouverneur de l'Inde protesta sans retard contre cet attentat à la souveraineté Portugaise et rendit compte de ce fait au Gouvernement de la métropole dans les lettres officielles du 28 et du 30 Avril, 1778. Dans sa réponse du 15 Mars, 1779, le Gouvernement le chargea d'envoyer une expédition militaire dans la baie pour en chasser les intrus.

Cet ordre fut exécuté en 1781 par le Gouverneur de l'Inde don Frederico Guilherme de Sousa qui, le 19 Janvier de la même année, fit embarquer sur la frégate de guerre Sainte-Anne, de quarante canons, un corps de troupes composé de deux com-

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pagnies d'infanterie et de cipayes et d'un détachement d'artillerie de campagne, le tout placé sous les ordres du Lieutenant-Colonel Joaquim Vicente Godinho de Mira et formant un total de 500 hommes. L'expédition toucha à Mozambique le 20 Février suivant, parvint dans la baie de Lourenço Marques le 30 Mars et y resta jusqu'au 4 Mai.

En exécution des ordres du Gouvernement, le commandant de l'expédition détruisit, le 1 Avril, l'établissement Autrichien du fleuve du Saint-Esprit, et, le 21, des magasins qui avaient été construits dans l'île de l'Unhaca; il s'empara de deux navires nommés Prince Ferdinand et Comte de Paoli; il fit sortir de la baie un bâtiment Anglais de Bombay qui s'y était rendu pour y faire le commerce, et reçu enfin l'hommage de soumission des régules de Catembe ou Tembe, et de l'Unhaca au sud, et de ceux de Mafoumo et Matolla au nord.

L'Angleterre ne protesta point contre ces faits; elle ne peut même alléger son ignorance à cet égard puisqu'un navire marchand Anglais commandé par Thomas George fut chassé de la baie en cette occasion, que ces événements furent connus du monde entier, et que même ils sont rapportés par quelques écrivains Anglais, parmi lesquels David Macpherson, qui en parle dans son livre, "The History of the European Commerce with India."

Le Ministre d'Autriche à Lisbonne, le Chevalier de Lebzeltern, s'empressa, par lettre du 10 Janvier, 1782, de communiquer l'événement au Prince Kaunitz Reitberg, lequel lui ordonna, par sa dépêche du 23 Février (dont il l'autorisait à donner connaissance au Gouvernement Portugais), de demander des explications à ce sujet, ce qu'il exécuta.

Le Gouvernement Portugais soutint ses droits, que d'ailleurs la Cour de Vienne ne contestait pas, ne se plaignant que de la manie re dont on les avait fait voler; et par dépêche du 9 Avril il donna des instructions sur l'affaire et sur notre droit au Comte d'Oeynhausen, notre Envoyé près la dite Cour, en lui ordonnant également de faire savoir au Gouvernement Autrichien que, par déférence envers Sa Majesté Impériale on allait faire remettre aux armateurs les navires capturés et mettre en liberté les prisonniers, mais qu'on espérait que pareil attentat ne se renouvelerait plus. Notre Ministre exécuta ces ordres et en rendit compte par

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dépêche du 11 Mai; la Cour de Vienne se déclara satisfaite, et ainsi finit cet incident diplomatique. (3.) L'expulsion à coups de canon, d'un navire Anglais, qui s'était introduit en 1815 dans la baie et cherchait à y faire la contrebande, au mépris de la loi, expulsion contre laquelle l'Angleterre n'éleva ni réclamation ni protestation. (4.) La confiscation du navire marchand Anglais Eleonor of London, près du fleuve Mapouto en 1825, et celle d'une goélette également Anglaise qui, en 1828, faisait un commerce défendu sur le même fleuve; nous n'insistons pas toutefois sur ces deux faits, car ils sont postérieurs à ce fameux titre de cession invoqué par l'Angleterre.

5. Le châtiment infligé aux tribus dont la conduite, pour quelque fait isolé et heureusement assez rare, méritait une répression; ce dont il nous suffira d'indiquer les exemples suivants:

(1.) Par rapport au Tembe ou Catembe, la sévère punition que nous infligâmes en 1552 à une tribu de ce territoire, alors que nous incendiâmes un village et que nous punîmes de mort son chef Macamana, pour avoir insulté et accablé de coups Bastião de Lemos, Capitaine d'un navire Portugais, fait qui conduisit le régule de Tembe à nous offir toutes les réparations possibles et à établir avec nous une paix durable, ainsi que le rapporte Perestrello dans son récit du naufrage du vaisseau Saint-Benoît.

(2.) Par rapport au Marouto, le châtiment qu'il subit en 1824, alors que Teixeira était Gouverneur par intérim, châtiment infligé à une tribu qui s'était soulevée et que le régule de Tembe nous aida à punir. Ainsi
l'avoue le narrateur même de l'expédition d'Owen, tout en défigurant, comme d'habitude, les faits:
"Teixeira, who now succeeded to the command, was obliged to call upon one of the other Powers for assistance. Mayetta instantly came forward, being the constant enemy of Machacane: but as soon as the latter heard of Mayetta's intention he attacked Temby, but was drawn into an ambush by his more skilful enemy, where the greater part of his soldiers were destroyed."

Chapitre IV.-Rapports des Portugais avec les régules du sud et du sud-ouest (Tembe et Mayouto).

Laissant de côté l'histoire de nos rapports avec les régules du nord et du nord-est de la baie, dont le territoire ne fait pas 128

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l'objet du conflit, et qui ne nous est pas contesté, rapports au sujet desquels, en tous cas, nous en avons suffisamment dit dans le chapitre 7, section le de la 2e partie, nous devons parler de ceux que nous entretenons avec les deux régules de la partie contestée, ceux du Tembe ou Catembe et du Mapouto.

Depuis le commencement du seizième siècle, nos relations avec les régules du Tembe ont toujours été des plus cordiales: nous nous bornerons à citer quelques faits à l'appui de cette assertion.

1. En 1552, à l'occasion du châtiment sévère que nous infligeâmes à un village, le régule vint faire sa soumission et demander la paix, comme nous l'avons déjà dit dans le Chapitre III.

2. Les régules ont accepté de bon gré notre souveraineté, et se sont considérés comme nos vassaux.

3. En signe de soumission ils nos ont toujours payé un tribut, et ils venait et viennent encore, à leur entrée au pouvoir, se faire investir de l'autorité dans notre forteresse et prêter foi et hommage au Roi de Portugal, comme nous le dirons dans le Chapitre VI de la 4e partie de ce Mémoire.

4. En qualité de vassaux, ils avaient recours au Gouvernement Portugais et lui demandaient des secours lorsque quelque révolte des tribus Cafres les mettait en danger, comme cela eut lieu en 1793 et en 1819; de même, en cas de guerre, si nous avions besoin d'eux, ils venaient, par une sorte d'hommage-lige, mettre leurs efforts à notre service, ainsi que cela arriva en 1824 alors qu'ils nous aidèrent à étouffer un soulèvement dans le Mapouto.

5. Ils allèrent même jusqu'à nous faire une donation expresse de leurs terres en 1794.

6. Ils reçurent de nous le titre de Capella.

Au dix-huitième siècle les régules du Tembe étaient fort puissants, car non-seulement ils dominaient toute la partie sud de la baie, mais encore ils avaient soumis le régule même du Mapouto ou de l'Unhaca, comme on l'appelait jadis. Leur importance à cette époque était rapportée par quelques écrivains qui s'occupaient de cette partie de la Cafrerie, tels que White et Pinkerton: "Dans la partie méridionale, il y a un roi appelé Capelleh (Capella), dont les domaines s'étendent à une distance d'environ 170 milles dans l'intérieur et environ 85 sur le rivage de la mer."

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Aujourd'hui leur pouvoir est quelque peu amoindri et le régule de Mapouto est complètement indépendant de celui du Tembe.

Depuis le seizième siècle, nous entretenons aussi des rapports d'amitié avec les régules de l' Unhaca ou Mapouto.

Pour le prouver il suffira de citer les faits suivants:

1. Le régule qui gouvernait en 1544, à l'époque où la baie fut explorée par Lourenço Marques, prit le nom de Garcia de Sà, d'un Portugais auquel il ressemblait; il avait les Portugais en grande amitié et vivait encore en 1552, ainsi que l'écrit Alvaro Fernandes qui le connut particulièrement, dans son "Récit de la perte du galion Saint-Jean."

2. Dans cette même année, Pantaleão de Sa', comme l'affirme le même Alvaro Fernandes, rendit à ce régule le service de l'aider, avec 20 Portugais et 500 Cafres, contre un chef révolté d'un district situé vers le sud.

3. Nous entretinmes les mêmes rapports d'amitié avec le fils de Garcia de Sà qui gouverna jusqu'en 1587.

4. Le fils de ce régule, petit-fils de Garcia de Sà, qui commença de régner en 1587, était également fort dévoué aux Portugais, ainsi que sa sour mariée dans les contrées du sud, aux Dunes d'Or (Medaes de Oiro), près du fleuve de l'Abondance.

En 1593, Nuno Velho Pereira intercéda, près de ce régule de l'Unhaca, en faveur du Roi Gimbacucuba, qui gouvernait vers le sud, dans le but de faire rendre à ce dernier les terres qui lui avaient été usurpées en 1597. Ce fait est raconté par João Baptista Lavanha, dans son "Récit du Naufrage du vaisseau Saint-Albert."
5. A ce régule succéda Sangane qui fut dépouillé par son successeur Manganheira. Celui-ci gouvernait en 1623, toujours dans les meilleures relations avec nous, ainsi que cela est rapporté en 1635 par Francisco Vaz de Almada, et en 1650 par Bento Teixeira Feyo, dans les récits déjà mentionnés des naufrages des vaisseaux Saint-Jean-Baptiste et Notre-Dame de Atalaia.

6. Ce régule Sangane, qui, après avoir été dépouillé de l’Unhaca par Manganheira, occupait encore une étendue de territoire entre le fleuve Mecpouta et le Tembe, reçut, le 3 Avril, 1623, en récompense de sa fidélité aux Portugais, la Croix du Christ, suspendue à une chaîne d’or, que le Capitaine Pero de Moraes lui-même lui passa au cou.

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7. Ces régules, comme ceux du Tembe, acceptèrent notre souveraineté, se considérèrent comme nos vassaux, prêtèrent foi et hommage à la Couronne Portugaise, nous payèrent un tribut et reconnaissent même notre souveraineté par écrit en Octobre 1823.

TROISIÈME PARTIE.
Chapitre I.-Nature du différend qui existe entre le Portugal et l’Angleterre au sujet de la Baie de Lourenço Marques.

La Grande-Bretagne conteste au Portugal la possession d’une partie de la baie de Lourenço Marques; elle réclame la souveraineté du territoire du Tembe et de Mapouto, à partir de la rive sud du fleuve du Saint-Esprit (English River) jusqu’aux îles de l’Unhaca et des Éléphants et ne reconnaît au Portugal que son droit sur la partie qui, de la rive du Saint-Esprit où nous avons la forteresse, s’étend vers le nord. Le Portugal soutient son droit sur toute la baie, c’est-à-dire, jusqu’au 26° 30’ de latitude sud. La Carte No. 2 montre clairement la portée de ces prétentions réciproques.

Si l’est fait justice à la réclamation du Portugal, les limites sud de ses possessions dans l’Afrique Orientale s’étendront jusqu’au 26° 30’ de latitude sud et embrasseront toute la baie de Lourenço Marques.

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Lorsque le Gouvernement Anglais envoya dans l’Afrique Orientale le Capitaine Owen dans le but d’étudier la partie nord de la côte du Cap de Bonne-Espérance, Lord Londonderry, Ministre des Affaires Etrangères, demanda, dans une lettre officielle datée du 2 Février, 1822, au Chevalier d’Oliveira, Chargé d’Affaires du Portugal à Londres, la faveur de recommander ce Capitaine aux autorités Portugaises établies dans ces contrées, ce qui fut promptement accordé. À son arrivée à Lisbonne, le 23 du même mois, le Capitaine Owen obtint encore des lettres de recommandation du Ministre de la Marine et des Colonies, l’Amiral Quintella, ainsi qu’il l’avoue lui-même dans la description ou le rapport de son voyage, publié en 1833.

Le Capitaine Owen partit de Lisbonne et arriva dans la baie de Lourenço Marques avec les navires Leven et Barracouta le 27 Septembre, 1822; il y resta jusqu’en Novembre et y revint encore dans les premiers mois de 1823 et en Septembre de l’année 1825.

Pendant tout ce temps, le capitaine commet une suite d’attentats contre la nation Portugaise, abusant de la bienveillance que lui avait témoignée le Gouvernement et des recommandations qu’il en avait obtenues pour les autorités chargées de le représenter.

Profitant d’une mésintelligence survenue entre les gens du régule de Tembe (qui d’ailleurs n’était point encore installé et reconnu comme tel) et le Gouverneur Portugais, à cause de la mort d’un indigène, le Capitaine Owen mit tous ses efforts à les détacher de leur soumission à la Couronne Portugaise, et essaya de les gagner au moyen de présents; il fabriqua un écrit sur lequel il mit la date du 8 Mars, 1823, écrit d’après lequel le régule de Tembe aurait cédé à la Grande-Bretagne la souveraineté de son territoire, puis, usant du droit de la force, il alla planter le drapeau Anglais, non seulement sur les terres du Tembe mais
encore sur celles du Mapouto. Nous examinerons plus loin la valeur de cet écrit, qui porte le cachet de la fausseté.

Il est à remarquer que le vieux régule Capella était mort en Septembre, 1822, et que, d'après un ancien usage, le décès du régule doit être tenu secret pendant un an; ce n'est qu'au bout de ce temps que son successeur est proclamé. Le Capitaine Owen, pour échapper à cette difficulté et donner quelque vraisemblance à la cession qu'il espérait obtenir, s'ingénia à faire croire que par exception et par faveur pour lui, le nouveau régule avait été proclamé aussitôt après la mort de son prédécesseur: "By an ancient law, not a man in the kingdom dared to mention it during one year. Jpon this occasion, however, the ancient custom was departed from, and within two months after the death of King Kappel, his grandson and successor Mayetta was proclaimed." Ce fait est absolument faux puisque ce ne fut qu'après l'année révolue et suivant l'usage, que le régule Maietta fut proclamé (le 19 Octobre) et qu'il vint rendre hommage à notre souveraineté dans le fort Portugais.

Le Capitaine Owen, dans une lettre du 9 Mars, 1823, eut l'audace de faire connaître cet attentat au Gouverneur Portugais de Lourenço Marques. A la suite de cette tentative d'usurpation du Capitaine Owen, Joseph Nourse, Commandant des Forces Navales de l'Angleterre au Cap de Bonne-Espérance, en donna communication aux navires marchands Anglais, au moyen d'instructions ou de passeports en date du 1 Juin, 1823. Non content encore de cela, le Capitaine Owen fabriqua deux autres pièces qu'il fit passer pour des Traités de Commerce faits avec le régule de Mapouto, datées du 3 et du 23 Août, et dans lesquelles le régule était sensé mettre son territoire sous le protectorat de la Grande-Bretagne. Dans la cinquième partie nous apprécierons la valeur de ces pièces.

Dans une lettre du 26 Août, Owen fit également part au Gouverneur de Lourenço Marques de ce nouvel attentat. En arrivant à Mozambique, le Capitaine Owen eut encore l'impudence de rendre compte de ces faits au Gouverneur-Général Jean Emmanuel da Costa, dans une lettre écrite le 7 Octobre, 1123, à bord de son navire le Leven. Il cherchait à s'excuser, alléguant que le Portugal n'avait aucun domaine au-delà des limites du fort de Lourenço Marques; que le régule du Tembe avait insisté auprès de lui pour lui faire accepter la souveraineté du territoire; qu'à cette condition seulement il avait pu obtenir des hommes pour l'aider et que, uniquement pour cette cause (on these conditions only), et placé dans cette situation (situated as I was) il était devenu pour lui de toute nécessité (it became a matter of necessity) d'accéder aux vœux du régule et du peuple.

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De retour dans la baie le 18 Avril, 1824, Owen fit de nouveau arborer dans le Tembe le pavillon Anglais par le Lieutenant Johnes accompagné d'une troupe de marins qui arrachèrent le drapeau Portugais, après quoi il quitta la baie le 21 Mai, profitant, pour l'accomplissement de ce nouvel outrage, du trouble où se trouvait le fort, à cause de la mort récente du Gouverneur effectif Lupi de Cardenas et de celle de Teixeira, qui l'avait remplacé par intérim, le fort n'étant plus commandé en ce moment que par un sous-officier nommé Maximiano José Fernandes. Le 28 Août, 1825, le Capitaine Owen revint dans la baie avec la corvette Leven, le brick Barracouta, et une goélette. Le 30, il s'empara du brick Eleonor of London, qui avait été saisi pour avoir fait la contrebande dans le Mapouto, tua d'un coup de fusil tiré de son navire un tambour de la garnison, et, le 31, il vint assiéger le fort, menaçant de le raser à coups de canon s'il ne se rendait dans les vingt-quatre heures! Devant l'énergique attitude du Gouverneur de Lourenço Marques, Owen renonça à l'accomplissement de ses menaces; il eut néanmoins la hardiesse d'envoyer une compagnie de ses hommes arracher du Tembe le drapeau Portugais qu'il emporta en Angleterre et de laisser au même Gouverneur des instructions dans lesquelles, d'ailleurs, il reconnaissait que le différend qui existait au sujet de la possession du Tembe devrait être plus tard résolu par les deux Gouvernements: le Gouverneur Portugais fit part de tous ces faits à son Gouvernement dans les dépêches officielles du 5 Septembre, 1825, et du 6 Juin, 1826, dont les copies furent envoyées au Ministre de Portugal à Londres afin d'appuyer ses réclamations.

Et maintenant, qu'ont fait les intéressés contre cette série d'attentats ? Le 8 Octobre, 1823, le régule Macassana Maxilleme protesta contre cette fausse cession du Mapouto, déclarant qu'il ne reconnaissait que les Portugais comme maîtres de ce territoire et que toute convention faite avec une autre nation devrait être regardée comme nulle; il signa cette déclaration conjointement avec
son frère et Premier Secrétaire Camana et avec Miguel Lupi de Cardenas, Gouverneur de Lourenço Marques.
Le régule du Tembe, Maietta Capella, protesta également le

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20 Octobre, dans sa ville de Machanja, déclarant en présence de sa cour, de ses parents et de ses Secrétaires et en celle du Gouverneur de Lourenço Marques et d’autres témoins:
1. Que lui et son peuple étaient Landins, fils de Capella, qui était né des Molungos (Portugais).
2. Qu’il n’avait signé aucun écrit au Capitaine Owen, ni cédé aucun territoire à l’Angleterre, ce qu’il n’aurait pu faire puisque tout le territoire appartenait aux Molungos (Portugais).
3. Que s’il avait reçu du Capitaine Owen quelques vêtements, cela avait été en échange de boeufs et d’ivoire, et que si le Capitaine croyait pour cela avoir reçu donation de ces terres, il était dans une complète erreur.
4. Que lui et les siens s’étaient toujours regardés comme des sujets du Portugal; qu’ils possédaient un monument commémoratif en pierre et un drapeau Portugais; et que même, avant de se rendre à bord du navire de ce Capitaine, ils avaient prévenu le Gouverneur Portugais.
5. Et qu’ils demandaient un détachement pour protéger le drapeau Portugais, sur le territoire du Tembe, contre toute insulte.

Dans le but de rendre cette déclaration plus authentique et comme en cette circonstance se trouvaient dans la baie deux goélettes Anglaises qui avaient pour subrécargue un nommé Macuard, ce dernier fut invité par le Gouverneur ainsi que d’autres Anglais alors dans la baie, à assister à cette solennité afin que la déclaration du régule ne pût être plus tard regardée comme fictive ou comme extorquée par la violence. Les Anglais vinrent assister à cette cérémonie, mais ils refusèrent d’en signer le procès-verbal, ce qui fut constaté par le greffier dans ce même procès-verbal.

D’autre part, le Gouvernement Portugais, prévenu de ces événements par le Gouverneur de Mozambique, s’empressa d’envoyer, en date du 29 Mai, 1824, à son Ministre en Angleterre, le Comte de Villa Real, les instructions nécessaires pour protester contre les violences pratiquées par le Capitaine Owen et demander une juste réparation. Ces instructions furent répétées le 7 du mois d’Août de la même année et accompagnées de toutes les pièces sur lesquelles s’appuyait la réclamation; le 15 Avril et le 21 Octobre, 1826, ainsi que le 17 Mars et le 28 Avril, 1827, ces mêmes instructions furent renouvelées au Marquis de Palmella.

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Le 17 Juin, 1826, le Marquis de Palmella, Chargé d’Affaires du Portugal près la Cour de Londres, adressa une note à Sir George Canning, Ministre des Affaires Etrangères, note dans laquelle il protestait contre l’attentat commis par le Capitaine Owen, et en demandait réparation. Le Ministre Anglais répondit qu’il attendait, pour s’éclaire sur les faits énoncés, l’arrivée du Capitaine Owen, qui devait avoir lieu prochainement, et, le 25 Avril, 1827, sa réponse fut que le Capitaine Owen s’était justifié de son procédé par le doute où il était à l’égard du droit que possédait le Portugal sur lés deux districts de Tembe et de Mapoutou, qui avaient été, disait-il, cédés à l’Angleterre par leurs régules respectifs; le Ministre concluait en demandant des informations sur les droits que la Couronne Portugaise pouvait avoir sur ces districts. Le Chargé d’Affaires de Portugal à Londres répondit, le 23 Mai suivant, que les droits de la Couronne Portugaise s’appuyaient: sur la priorité incontestable de la découverte; sur le fait de l’établissement de nos factoreries défendues par le fort de Lourenço Marques; sur les conventions ou actes de reconnaissance multipliés depuis de nombreux siècles par les chefs des peuples de la côte qui avaient toujours accepté la souveraineté du Portugal; sur la reconnaissance constante de ce droit par les Gouvernements Européens qui l’avaient toujours respecté, comme il était facile de s’en assurer par le simple examen des cartes géographiques; et enfin, sur l’Article II du Traité du 28 Juillet, 1817, par lequel la Grande Bretagne elle-même reconnaissait la souveraineté du Portugal sur la côte orientale d’Afrique, depuis le Cap Delgado jusqu’à la Baie de Lourenço Marques.

En outre, dans ses notes du 23 Mai, 1827, et du 22 Mai, 1828, notre Chargé d’Affaires réfuta l’argument basé sur ce que les Anglais nommaient des cessions faites par les régules du Tembe et de Mapoutou; il démontra que ces cessions étaient subreptices; il produisit différentes copies d’Actes et de Déclarations authentiques et d’ancienne date qui prouvaient les relations de souveraineté existant entre la Couronne
Portugaise et les susdits régules et, parmi ces pièces enfin, il fit valoir les déclarations déjà mentionnées des régules de Tembe et de Mapouto, déclarations par lesquelles ils reconnaissaient non seulement que le Portugal était seul maître de leurs terres, mais encore qu'ils

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n'auraient pu en faire don à Sa Majesté Britannique puisqu'elles appartenaient au Roi de Portugal. Lord Dudley, qui remplaça Mr. Canning au Ministère des Affaires Étrangères, répondit le 5 Décembre, 1827, à la note de notre Ministre datée du 22 Mai de la même année, et, ne pouvant faire prévaloir ses arguments, il tenta de soutenir que, pour ce qui regardait le Traité de 1817, lorsque dans ce Traité on avait reconnu notre souveraineté dans l’Afrique orientale depuis le Cap Delgado jusqu’à la Baie de Lourenço Marques, au sud, cela n’avait pas été inclusivement, c'est-à-dire que la baie n’avait pas été comprise dans cette reconnaissance de notre territoire.

Dans sa note du 28 Mai, 1828, notre Ministre détruisit victorieusement l'interprétation du Ministre Anglais, et fit ressortir que, par le Traité où il était dit que nos possessions s'étendaient jusqu'au Cap Delgado jusqu'au sud de la Baie de Lourenço Marques, on ne pouvait en aucune manière entendre en exclure la baie, qu'elle y était naturellement comprise, et cela d’autant plus clairement que la Couronne Portugaise y possédait de nombreux établissements depuis plusieurs siècles.

La question en resta là ; le Gouvernement Britannique ne répondit jamais à la note du 28 Mai, 1828, qui réfutait celle de Lord Dudley ; il garda le silence pendant trente et trois années jusqu'à ce que, en 1861, ses agents recommencèrent, contre tous les principes du droit et même de la courtoisie, une tentative de véritable usurpation qu'il est nécessaire de rapporter.

Section 2–Seconde Époque (1861-1869).

Le Commissaire Portugais de la Commission Mixte du Cap de Bonne-Espérance avait communiqué au Gouvernement de la Métropole, dans ses dépêches officielles du 20 Mars et du 22 Juin, 1855, que le Gouvernement de la Colonie Anglaise manifestait le désir de posséder une partie de la Baie de Lourenço Marques et que le Gouverneur du Cap, Sir George Grey, formait, disait-on, le projet de visiter la baie. Ces bruits, qui alors ne se traduisaient pas par des faits, se renouvelèrent cinq ans plus tard avec plus de raison d'être, attendu que les événements vinrent bientôt en confirmer la valeur.

Le Contre-Amiral de la Marine Anglaise, Henry Keppel, commandant le navire Brisk, ayant jeté l'ancre dans la Baie cle

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Lourenço Marques le 27 Juillet, 1860, envoya le jour suivant une dépêche officielle au Gouverneur Portugais et au Gouverneur Général de Mozambique, leur déclarant que l'Angleterre regardait comme lui appartenant le territoire situé au sud de la même baie, à quoi le Gouverneur Général répondit le 7 Août en maintenant le droit du Portugal, mais en exposant que toute contestation à cet égard devrait être soumise aux Gouvernements des deux pays.

Le 2 Novembre, 1861, le Cape Argus, journal du Cap, publiait que le navire de guerre Narcissus, de l'Amiral Walker, avait quitté la Colonie à direction de la Baie de Lourenço Marques, dans le but d'aller y arborer le drapeau de la liberté. (" So the vessel, it is said, is only gone to plant the flag of freedom on the shores of Delagoa Bay.")

Dans une dépêche officielle du 12 du même mois, le Commissaire Portugais de la Commission Mixte du Cap prévenait le Gouvernement de ce bruit. Les événements vinrent justifier cette nouvelle car, d'après une dépêche du 4 Octobre adressée par le Duc de Newcastle au Gouverneur du Cap, le Narcissus, sous le commandement du Capitaine Bickford, entrait effectivement dans la baie et, le 5, faisait le simulacre de planter un drapeau sur l'Ile de l'Unhaca, après quoi il se retirait sans faire d'autres démonstrations.

Le 25, le journal officiel du Cap publiait une nouvelle annonçant que ce jour là le drapeau de la Grande Bretagne avait été arboré sur les Îles de l'Unhaca et des Eléphants, qui venaient d'être déclarées Possessions Anglaises et annexées à la Colonie de Natal!!

Le Commissaire Portugais de la Commission Mixte protesta immédiatement contre ce fait dans sa dépêche officielle du 5 Décembre qu'il adressa au Gouverneur du Cap ; celui-ci lui déclara, dans sa réponse, que sa réclamation allait être envoyée au Gouvernement de Sa Majesté Britannique.
En outre, ce Gouverneur déclara verbalement au Commissaire Portugais que son Gouvernement avait agi avec le consentement du Gouvernement Portugais en annexant ces îles à la Colonie de Natal; et M. Pritchard, Secrétaire de l'Amirauté, montra dans une lettre adressée le 10 Août au Commissaire, qu'il était dans la même persuasion au sujet d'un accord entre les deux Gouvernements. De tous ces faits le Commissaire PORTUGAIS donna connaissance au Gouvernement de Sa Majesté Très-Fidèle dans une dépêche officielle datée du 21 Décembre.

Le Comte de Lavradio, Ministre de Portugal à Londres, protesta sans retard au nom de son Gouvernement, dans une note datée du 22 Février, 1862, dont réception lui fut accusée le 28 du même mois, par Lord John Russell, qui lui déclara en même temps que le Ministre de Sa Majesté Britannique à Lisbonne communiquerait au Gouvernement Portugais la réponse de l'Angleterre au sujet de sa réclamation.

Cette note diplomatique fut précédée d'une conférence qui eut lieu le 21 entre Lord John Russell et le Comte de Lavradio, conférence dans laquelle Lord John Russell déclara verbalement à notre Ministre que les Îles de l'Unhaca et des Éléphants étaient nécessaires au Gouvernement Anglais pour réprimer la traite des nègres. Le Comte de Lavradio fit part de cette conférence au Gouvernement Portugais dans sa dépêche du 25 Février.

Le 17 Mars, 1862, Sir Arthur G. Magenis, Ministre de Sa Majesté Britannique, répondit à la note envoyée le 22 Février par le Ministre de Sa Majesté Très-Fidèle à Londres, en essayant de justifier le procédé de son Gouvernement, basé d'une part sur ce que le territoire au sud de la baie de Lourenço Marques, où se trouvaient situées les deux îles, appartenait à la Couronne d'Angleterre et de Mapouto, et, d'autre part, sur ce que le Gouvernement Anglais, en s'emparant des îles susdites, n'avait d'autre but que celui d'empêcher la traite des noirs dans les possessions Portugaises.

Et il ajoutait qu'on ne pourrait pas lui opposer:

1. L'Article II du Traité entre le Portugal et l'Angleterre, qui représente la baie de Lourenço Marques comme l'extrémité sud des possessions Portugaises dans l'Afrique Orientale; attendu que la baie de Lourenço Marques, à laquelle ce Traité fait allusion n'est point la baie de Lourenço Marques ou Delagoa Bay, mais bien la petite baie ou anse du fleuve du Saint Esprit qui fait face à l'établissement Portugais placé sur la rive nord de ce fleuve.

2. Le fait de l'existence d'un établissement Portugais au sud, sur le territoire du Tembe; attendu que pour avoir cet établissement les Portugais donnaient au Roi un présent ou un cens annuel (fóro); et encore parce que, si les Portugais avaient regardé la rive sud comme leur appartenant, ils n'auraient point fait leur principal établissement sur la rive nord.

Section 3.-Troisième Epoque (1869-1871).

Dans une dépêche officielle du 4 Avril, 1869, le Consul-Général de Portugal au Cap communiquait au Ministre des Affaires Etrangères que le bateau-à-vapeur Peterel était revenu mystérieusement de East London, port de Cafrerie, dans la baie de Lourenço Marques, et que lui, Consul, soupçonnant que ce voyage n'avait pas été seulement entrepris dans un but de croisière, am ait appris d'un officier de la Marine Anglaise que des ordres transmis de Londres au Commodore de la station navale lui enjoignaient d'envoyer un bateau-à-vapeur "prendre possession des terres de Tembe et de Mapouto" au sud de la baie. Le Chargé d'Affaires de Portugal à Londres, Figanhire Morão, protesta le 21 Juin, et demanda des explications au sujet des ordres singuliers de Lord Clarendon. Dans une note du 27 Août, 1869, le Ministre Anglais déclara à notre Chargé d'Affaires "que le Gouvernement Britannique, non plus que les autorités Anglaises du Cap, n'avait donné aucun ordre relativement à une prise de possession de ces territoires."

A l'occasion de la négociation entamée entre le Portugal et la République du Transvaal, négociation qui aboutit au Traité du 29 Juillet, 1869, dans lequel les limites sud des possessions Portugaises sont placées sous le 26° 30' (comprenant ainsi toute la Baie de Lourenço Marques), l'Angleterre renouvela diplomatiquement l'exposé de ses prétentions à la partie sud de la baie, dans les notes de son Ministre à
Lisbonne du 25 et du 26 Avril, et de son Chargé d’Affaires, de Mai 1871, auxquelles le Gouvernement Portugais répondit dans une note du 3 Juillet suivant.

Le même Chargé d’Affaires répliqua dans sa note du 17 Juillet, et déclara que, en vertu d’une dépêche officielle de Lord Granville, son Gouvernement ne reconnaissait au Portugal aucun droit sur la partie méridionale de la baie.

En cette occurrence, et comme il convenait aux deux parties de terminer pour toujours ce différend d’une manière honorable et au moyen d’un arbitrage, comme cela avait déjà été proposé dans les notes du 5 Janvier et du 3 Février, 1869, du Marquis de ‘Sk da Banleira, kidrcsées au M instir( Anglais à, l isbnu, Sir

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Conclusions de ce chapitre:

1. L’Angleterre conteste au Portugal la partie méridionale de la baie, c’est-à-dire, les territoires de Tembe et de Mapouto depuis la rive sud du fleuve de Saint Esprit jusqu’à la pointe sud de la baie formée par les Iles de l’ Unhaca et des Éléphants;

2. Le Portugal affirme que ces territoires lui appartiennent, que la baie entière est sienne, et que sa souveraineté s’étend, par conséquent, jusqu’au 260 30’;

3. Les prétentions de l’Angleterre à la souveraineté de la partie méridionale de la baie se sont manifestées à trois époques;

4. Le différend a été suscité par de certains Traités en date de Mars et d’Août 1823, que le Capitaine Owen, de la marine Anglaise, assura avoir fait avec les régules de Tembe et de Mapouto, et contre lesquels protestèrent immédiatement les régules et le Gouvernement Portugais;

5. Notre réclamation contre les nombreuses violences du Capitaine Owen fut tellement énergique que la dernière note de notre Chargé d’Affaires à Londres, du 22 Mai, 1828, resta sans réponse;

6. Le Gouvernement Anglais qui, depuis cette date (22 Mai, 1828) avait gardé, pendant trente-trois années, le plus profond silence à cet égard, déclara les Iles de l’ Unhaca et des Éléphants annexées à la Colonie de Natal, et par une dépêche officielle du Duc de Newcastle, en date du 4 Octobre, 1861, il y fit arborer le drapeau Anglais, tout en laissant croire aux autorités Anglaises qu’il agissait ainsi avec le consentement du Gouvernement Portugais;

7. Ce simulacre de prise de possession eut lieu le 5 Novembre de cette même année 1861, et se borna à l’action de planter dans l’ Unhaca le drapeau Anglais, qui disparut presque aussitôt;

8. Le Gouvernement Portugais protesta sans retard contre ce fait, et la tentative de l’Angleterre au sujet des Iles de l’ Unhaca et des Éléphants n’eût pas d’autres suites; quant aux territoires de Tembe et de Mapouto, les Anglais n’eurent même pas l’idée

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d’en prendre possession, comme le déclara Lord Clarendon le 27 Août, 1869 ;

9. A l’occasion enfin du Traité fait entre le Portugal et la République du Transvaal (Traité dans lequel notre droit fut reconnu jusqu’au 260 30’), l’Angleterre en 1871, renouvela ouvertement ses prétentions à toute la partie méridionale de la baie;

10. Par le Protocole du 25 Septembre, 1872, il fut enfin résolu que ce différend serait soumis à un arbitrage.

QUATRIÈME PARTIE.

Titres sur lesquels s’appuient les droits du Portugal à la partie contestée de la Baie de Lourenço Marques.

Les droits de la nation Portugaise à la partie contestée par la Grande-Bretagne dans la Baie de Lourenço Marques, ainsi qu’à toute la baie, s’appuient principalement et subsidiairement sur les suivants titres:

1. La découverte et l’exploration de la baie par les Portugais au seizième siècle.

2. L’occupation et la possession de la baie pendant trois siècles.

3. La nature même de la baie, qui forme l’accès du territoire occupé par les Portugais, et qui ne leur est pas contesté.
4. La donation faite par l'Empereur du MVonomotapa au commencement du dix-septième siècle.
5. La donation faite par le régule de Tembe.
6. La reconnaissance expresse des régules ou Chefs des tribus respectives de Tembe et de Mapouto.
7. La reconnaissance des droits du Portugal par les nations de l'Europe.
8. La reconnaissance de ce droit par le Gouvernement Anglais lui-même.
Ces titres font l'objet des chapitres qui divisent cette quatrième partie.

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Chapitre I.- Priorité de la découverte et de l'exploration de la Baie par les Portugais au seizième siècle.
Personne ne conteste la priorité de la découverte et de l'exploration de cette baie au seizième siècle ainsi que des fleuves et des territoires que en dépendent.
A cette époque, la découverte, selon les idées alors en vigueur, était un titre légitime d'acquisition de droit; c'est pourquoi la valeur de ce titre doit être jugée d'après les principes juridiques admis à la même époque.
Les titres de presque toutes les nation aux territoires possédés par elles en Europe, dit Wheaton, dérivent, dans leur origine, des conquêtes postérieurement confirmées par une longue possession et par les rapports internationaux auxquels tous les pays ont pris successivement part. Leurs droits aux territoires découverts par Christophe Colomb dans le Nouveau Monde et à ceux qu'elles occupent en Asie et en Afrique, dérivent aussi originalement de la découverte, de la conquête et de la colonisation pendant le seizième siècle et ses suivants.
D'après les idées en vigueur parmi les nations de l'Europe aux quinzième et seizième siècles, les peuples payens qui habitaient les contrées nouvellement découvertes étaient considérés comme appartenant légitimement aux conquérants Chrétiens de ces mêmes contrées: ceci était, à cette époque, une maxime de politique et de droit; c'est pourquoi dans toutes les guerres, tous les traités ou toutes les conventions motivées par les ambitions rivales des différentes nations de l'Europe, et ayant pour l'objet la possession de territoires sur le continent Américain, les droits des Indiens étaient complètement mis de côté ou abandonnés à la discrétion des États auxquels ces Indiens étaient livrés par les Conventions des différentes Puissances.
L'Angleterre reconnaissait et admettait alors ce principe ou ce titre de droit. Les lettres patentes données par Henri VII à Jean Cabot et à ses descendants les autorisaient, en qualité de ses vassaux ou lieutenants, à découvrir toutes les îles, pays ou provinces appartenant à des infidèles, à les soumettre et à les occuper.
La Reine Elisabeth autorisait également Sir Humphrey Gilbert à découvrir et à occuper toutes les contrées ou îles habitées par des peuples payens et non déjà placés sous la domination de princes ou de peuples Chrétiens. Selden, dans son "Mare Clausum," alla même jusqu'à vouloir déduire de ce principe que Gilbert, ayant parcouru l'océan et étant entré dans le port de Saint-Jean, à Terre-Neuve, avait, par ce fait, acquis, à la Grande-Bretagne, le domaine de la mer qu'il avait parcourue.
La découverte étaient tellement, au moment de sa réalisation, un titre de droit, que ce titre a été invoqué au siècle dernier et même pendant le siècle actuel.
Les États-Unis appuyèrent principalement leurs prétentions au territoire de l'Orégon sur: la découverte du fleuve Columbia par le Capitaine Gray, de Boston, en 1792; l'exploration du cours de ce fleuve depuis sa source jusqu'à la mer, par les Capitaines Lewis et Clarke en 1805 et 1806; la priorité de l'occupation des ports de ce territoire par des citoyens Américains; l'acquisition, enfin, par le Traité de 1819 fait avec l'Espagne, de tous les titres que cette Puissance avait à la possession de ce territoire, titres basés sur sa découverte par des sujets Espagnols.
En vertu encore de la découverte, les États-Unis prirent, le 19 Novembre, 1813, possession de la Nouvelle-Beevah, île à laquelle le Capitaine American David Porter donna le nom de Maddison.
Par la même raison, et parce que la valeur du titre doit être appréciée d'après le droit en vigueur à l'époque de l'acquisition de ce droit, la priorité de la découverte fut considéré comme un titre légitime lors du différend soulevé entre le Portugal et l'Angleterre au sujet de l'île de Boulama dans la Guinée, et admise comme une des bases du jugement arbitral rendu le 21 Avril, 1870, en faveur du Portugal par le Président des États-Unis: "And it appearing that the said Island of Bolama, and the said mainland opposite thereto, were discovered by a Portuguese navigator in 1446," &c.
Ce jugement ayant été prononcé entre les mêmes parties qui plaident aujourd'hui leur cause auprès du Président de la République Française, établit un droit incontestable et par conséquent l'Angleterre ne peut contester que la priorité de la découverte soit un titre à la propriété de la baie de Lourenço Marques, puisque cette priorité de découverte a été ainsi considérée par le jugement prononcé à l'égard de l'île de Boulama.

Et contre ceci on ne peut objecter que la décision du Président

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des Etats-Unis dans cette question entre le Portugal et l'Angleterre constitue seulement chose jugée quant au dispositif et non quant aux motifs de la sentence; les motifs objectifs de toute sentence appartenant intégralement à son dispositif et, comme la sentence, constituant chose jugée.

Cette doctrine déjà soutenue par Boehmer et par d'autres jurisconsultes a été dernièrement appuyée de l'autorité du célèbre Savigny.

Chapitre II.-Occupation et possession pendant trois siècles.

Nous n'ignorons pas qu'en droit international les occasions pratiques d'appliquer les principes de la possession et de la prescription sont rares aujourd'hui, et qu'à notre époque la démonstration du droit de propriété internationale repose sur d'autres bases.

La prescription acquisitive du droit privé ne peut être aujourd'hui invoquée comme elle l'était souvent par les Princes à l'époque où les territoires extrêmement divisés formaient pour eux une propriété patrimoniale et donnaient lieu à des contestations comme celles, par exemple, qui furent soumises à la décision du Parlement de Paris entre la maison d'Autriche et le iRoi de Pologne au sujet de la Bohême et d'une partie de la Mloravie, et qui étaient relatives à la succession de l'Empereur Sigismond.

Toutefois la possession remplit de nos jours un rôle important dans le droit international. Trois principaux systèmes partagent les jurisconsultes et les écrivains qui s'occupent de droit.

Les uns (et telle est la doctrine la plus générale, professée par Wheaton) entendent que la possession pendant longtemps d'un territoire par une nation exclut par elle-même le droit de toute autre en vertu d'un assentiment général, lequel assentiment se considère, ou comme un contrat tacite ou comme un droit positif et respecté par toutes les nations qui ne pourraient agir autrement sans compromettre leurs propres droits aux territoires qu'elles occupent; "L'usage constant et approuvé des nations," dit-il, "montre que quel que soit le nom qu'on donne à ce droit, la possession non interrompue par un Etat d'un territoire ou de tout autre bien pendant un certain laps de temps, exclut les droits de tout autre Etat à cet égard."

D'autres reconnaissent la possession internationale comme titre

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de droit à peine applicable à quelque partie d'un territoire occupé dans des régions lointaines ou à la fixation de limites.

Enfin d'autres n'admettent pas cette possession comme titre de droit, mais seulement comme considération subsidiaire ou confirmative d'autres titres de propriété.

Sous quelque aspect, toutefois, que nous envisageons la possession internationale, elle est en faveur du Portugal, soit comme titre de droit indépendant de toute autre, soit comme considération subsidiaire et confirmative des autres titres.

La possession Portugaise réunit toutes les conditions juridiques relatives à la nature et ; la durée de la possession, parce qu'elle est fondée en titre, qu'elle a toujours été exercée à titre de propriété, et qu'elle est publique et continue.

Elle est fondée en titre parce qu'elle provient de la découverte et de l'occupation, ce qui au seizième siècle constituait un titre d'acquisition du domaine international.

Elle a été exercée à titre de propriété (animo domini) parce que, depuis trois siècles, nous occupons comme propriétaires la baie de Lourenço Marques, affirmant notre droit et notre souveraineté, l'appuyant d'une forteresse et de fortifications, et la défendant lorsqu'elle était attaquée ainsi qu'elle le fut par les Autrichiens dans le siècle dernier, comme nous l'avons déjà dit plus haut.

Nous n'avons pas été détenteurs précaires ou au nom d'autrui ayant interviert notre titre de possession. Si nous eussions occupé la baie à titre de secours et de protection donnés aux régules, ou si nous l'eussions prise comme hypothèque d'une créance quelconque, ainsi que les firent les Vénitiens qui occupèrent
Mantoue pour garantir les quatre millions prêtés à Henri de Gonzague, Duc de Mantoue, ou ainsi qu'en usait le dernier Duc de Bourgogne, Charles-le-Téméraire, recevant en hypothèque de l'Empereur Frédéric III, l'Alsace et une partie de la Forêt-Noire, nous ne pourrions invoquer cette occupation ni nous en prévaloir; mais notre possession de Lourenço Marques a toujours été exercée à titre de souveraineté.

Elle a été publique, parce qu'elle s'est toujours manifestée par des actes publics et connus de tous. Elle a enfin été continue parce qu'elle n'est pas constituée par des actes passagers, intermittents ou transitoires, mais par une occupation permanente pendant trois siècles et par l'exercice constant de notre souveraineté dans toute la baie.

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Et que l'on ne vienne pas dire, pour contester notre possession, que nous n'avons pas actuellement des établissements dans toute la partie sud de la baie. (Tembe et Mapouto.)

En premier lieu, si nous acceptons la discussion sur le point de la possession matérielle du territoire, nous répondrons que, pour conserver la possession de toute la baie, il n'était point nécessaire de la couvrir, toute, d'établissements.

1. Parce que, suivant la doctrine de Dioclétien et de Maximien, dans la Const. 4, Cod. de acquir. posses. :
   "Licet possessio nudo animo adquiri non possit, tamen solo animo retineri potest "; d'où ils concluent: "Si ergo prSdiorum desertam possessionem non delinquendi affectione, transacto tempore non coluisti, sed culturam eorum distulisti, proejudicium ex transmissi temporis injuria generari non potest;" principe qui est passé dans la jurisprudence moderne et qui est enseigné par Troplong: "La possession n'a pas besoin pour se conserver d'un fait corporel extérieur, l'intention suffit elle persévère tant qu'une volonté contraire ne vient pas la détruire."

D'où il résulte que, quand même l'Id Portugal n'aurait pas aujourd'hui un seul établissement dans la partie sud de la baie il n'en conserverait pas moins solo animo sa possession.

2. Parce que la possession ne s'exerce pas seulement au moyen d'établissements, mais aussi par l'exploitation des propriétés, suivant leur destination ; et, abstraction faite des établissements, le Portugal a exercé sa possession dans toute la partie sud de la baie par la chasse à l éléphant sur le territoire de Tembe et de Mapouto, pendant la saison propice, si bien que les chasseurs Portugais ont même poussé leurs excursions jusqu'aux terres de Panda, Roi des Zoulous; possession qui, selon le droit, ne s'exerce pas par des actes quotidiens, suivant la doctrine de Paul dans la Loi 3, § 11, Dig. de acquir. posses.; "Saltus hibernos, estivosque animo possidemus, quamvis eos certis temporibus relinquamus."

3. Parce que la possession se conserve également au moyen de vestiges, car ils prouvent sa continuité surtout lorsque la volonté de non-abandon est manifeste; et ces vestiges sont encore bien visibles dans le Tembe, dans les ruines de notre premier fort dont l'existence n'est pas contestée, et dans le monument commémoratif que nous avons élevé sur ce territoire en 1796. En effet, suivant Troplong, la possession et sa continuité sont L2

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prouvées par des vestiges et des restes de constructions qui auraient jadis servi à la défendre, parce que les vestiges sont en quelque sorte des actes permanents et continus qui attestent l'existence du droit que l'on possède et sont autant de preuves que l'on n'abandonne pas ce droit.

C'est la même doctrine qui, longtemps auparavant, fut soutenue en France par d'Argentré: "Per signa enim talia . retinetur juris possessio: per signum enim retinetur signatum. Sunt enim ista actus permanentes et continui. Quare consultunt auctores scolastici ut dirutis oedificiis, quam maxime pali, ridicoe et vestigia conservantur; quia in talibus consistit et conservatur possessio. Quare manente signo, nemo libertatem contra habentem pr escribit, propter retentionem possessionis in signo permanente."

4. Parce que la possession, à l'égard du territoire de Mapouto dont fait partie l'île de l'Unhaca, est prouvée par le fait de notre sortie de l'île, effectuée uniquement pour montrer notre respect envers l'arbitrage, fait qui démontre l'existence de la possession et de l'occupation antérieure.
Mais la discussion doit être principalement envisagée sous Id point de vue de la souveraineté, qui est un droit, et par conséquent comme possession de droits, et dans ce cas nous répondrons:

1. Que le Portugal a exercé sa souveraineté sur toute la baie, y compris les territoires de Tembe et de Mapouto, chaque fois qu'il a eu besoin de la manifester, ainsi que cela a été démontré dans le Chapitre III de la troisième partie de ce mémoire.

2. Que, selon les principes de droit, consacrés par le Président Fabre et, plus récemment, par Troplong, la continuité de la possession des droits s'affirme par des actes réitérés de temps en temps, suivant la nécessité que nous avons de faire usage de ces droits.

"Jurium incorporalium quasi possesio (dit le premier) in actibus discontinuis et inducitur et probatur per duos actus uniformes et unus actus potest sufficere, si toto tempore quod hominium memoriam complctititur, non nisi semel casus evenerit, in quo uti jure suo actor potuerit, sive a quibus causam habet."

"Des actes réitérés de temps en temps (écrit le second) à certains intervalles inégaux, conformément aux besoins de l'usager, suffiraient pour établir juridiquement la continuité."

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3. Que ces mêmes principes sont reconnus par la Cour de Cassation de France, dans un arrêt du 5 Juin, 1839: "La possession (y est-il dit) s'exerce suivant la nature de l'objet auquel elle s'applique, et celle qui ne peut se manifester qu'à de certains intervalles par des faits distincts et plus ou moins séparés, n'en est pas moins continue par cela seul qu'elle a été exercée dans toutes les occasions et à tous les moments où elle devait l'être, et qu'elle n'a pas été interrompue, soit par la cessation absolue d'actes, soit par des actes contraires."

Si pourtant (ce que l'on ne peut admettre que par pure hypothèse et toutes réserves faites) les deux premiers titres étaient périmés par l'abandon, du Portugal, ainsi que le soutiennent quelques écrivains Anglais qui prétendent que le Portugal a abandonné la baie, qu'elle fut ensuite occupée par les Hollandais, puis abandonnée par eux pour être plus tard occupée par les Autrichiens, l'expulsion de ces derniers eu 1781 aurait acquis aux Portugais, à titre de conquête affirmée par leur établissement jusqu'aujourd'hui et par la reconnaissance des régules, un nouveau droit sur la baie.

Chapitre III.-La Baie forme l'accès du territoire non contesté.

Indépendamment des considérations qui découlent de la découverte, de l'exploitation, de l'occupation et de la possession il en existe une autre qui, par la nature même de la baie, rend incontestable le droit du Portugal.

La baie de Lourenço Marques devait être forcément Portugaise, du moment où le Portugal possédait, à l'embouchure du fleuve du Saint Esprit qui s'y jette, un fort et un village, parce que, d'après le droit des gens, sont considérés comme dépendances d'un territoire les baies et les ports naturels ou artificiels qui forment l'accès de ce même territoire.

Cette doctrine, déjà reconnue par le droit Romain dans la L. 15 Dig. de publicanis, a été transmise aux nations modernes et reçue par les publicistes et les codes de toutes les nations.

La France nous en fournit le premier exemple: "Tout ce que nous avons dit des parties de la mer voisine des côtes" (écrit Vattel) "se dit plus particulièrement et à plus forte raison des rades, des baies, et des détroits, comme plus capables d'être occupés, et plus importants à la sûreté du pays."

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"Le territoire maritime de chaque Etat comprend les ports, baies, rades, golpes, embouchures des fleuves," dit Pradier-Fodéré en annotant ce passage de Vattel.

"On doit ranger sur la même ligne que les rades et les ports, les golpes et les baies, et tous les enfoncements connus sous d'autres dénominations lorsque l'entrée peut en être gouvernée par l'artillerie ou qu'elle est défendue naturellement par des îles, par des bancs ou par des rochers. Dans tous ces cas, en effet, il est vrai de dire que ces golpes ou ces baies sont en la puissance de l'Etat maître du territoire," &c. (écrit Théodore Ortolan).

"Les parties de la mer qui pénètrent dans le territoire continental, tels que les golpes et les baies appartiennent au territoire maritime," écrit le Baron Ferdinand de Cussy.
Cette même opinion est soutenue par de Mforeuil, qui ajoute: "En effet, il est certaines parties rapprochées des terres, participant en quelque sorte de leur condition, où ces causes cessent plus ou moins d'exister et où par conséquent ces droits (de propriété et d'emprise) peuvent avoir lieu," etc. "La pleine mer," écrit encore Eug. Ortolan, "n'est susceptible ni de propriété ni d'emprise de la part d'une nation à l'égard des autres Le même raisonnement ne serait pas exact quant aux parties plus restreintes de la mer, telles que les ports et les rades, les golfses et les baies c'est ce qui forme le territoire maritime Dans ces limites la nation exerce une possession réelle et permanente, elle est à même d'éloigner toute action étrangère." En Italie, cette même doctrine est également professée par les jurisconsultes et les publicistes:

"Tout ce qui a été dit à l'égard des côtes de la mer doit se dire à plus forte raison des baies, détroits et ports, lesquels dépendent manifestement, ou plutôt font partie du pays qu'ils embrassent J'ai dit à plus forte raison, parce qu'ils importent plus à la sûreté du pays," écrit le Comte Lucchesi Palli. Les Allemands n'élèvent aucun doute à l'égard de ce même principe :

"Au territoire maritime," dit Kluber, "appartiennent les districts maritimes ou parages susceptibles d'une possession exclusive, sur lesquels l'Etat a acquis (par occupation ou con-

Records of South-Eastern Africa. vention) et conservé la souveraineté. De ce nombre sont 20 les parties de l'océan qui s'étendent dans le territoire continental de l'Etat, si elles peuvent être dominées par le canon des deux bords, ou que l'entrée seule puisse en être défendue aux vaisseaux (golfses, baies et cales)."

"Les dépendances d'un pays," dit Hefter, "en sont seules exceptées, et sont regardées comme telles 20 les ports et havres, soit artificiels soit naturels, qui forment l'accès d'un territoire Toutes les autres parties de la haute mer ... sont complètement libres."

Parmi les Américains, il nous suffira d'indiquer Wheaton: "Par rapport aux ports, aux havres, aux baies... le droit de propriété exclusif d'un Etat peut être maintenu sans que pour cela les principes énoncés au sujet de la pleine liberté de la mer soient ébranlés. En effet, l'Etat dont le territoire est baigné par ces eaux a le pouvoir physique d'agir perpétuellement sur elles, et en même temps le droit d'en exclure tout autre Etat, deux choses qui constituent la possession.' Enfin l'Angleterre admet ce principe et en exagère même l'application en s'attribuant, par une extension de ses droits sur les eaux des côtes, une espèce de souveraineté ou au moins la jouissance exclusive de certaines parties de la haute mer, et en comprenant sous la dénomination de King's chambers les baies situées entre deux promontoires. En admettant toutefois et par simple hypothèse que les Portugais n'eussent jamais eu d'autre établissement que celui qui est situé à l'embouchure du fleuve du Saint-Esprit (English River), la situation de la baie la constituait depuis le seizième siècle dépendance obligée du territoire dont elle formait l'accès, et cela d'autant plus que ni à cette époque ni dans les siècles suivants ce droit n'avait été contesté. Chapitre IV.-Donation, faite par l'Empereur du Monomotapa. Si les titres que nous avons énumérés n'étaient pas par euxmêmes suffisants pour légitimer les droits du Portugal, l'hommage prêté comme vassal, le 24 Mai 1629, au Roi de Portugal par l'Empereur ou Roi du Monomotapa, viendrait confirmer ces droits. Les domaines de ce souverain s'étendaient alors du nord au sud de l'Afrique orientale depuis le Coucma ou Zamb'èze.

5ecords of South-Eastern África. jusqu'aux petits royaumes voisins du Cap de Bonne-Espérance, comprenant ainsi la baie de Lourenço Marques même au delà du 260 30'." Le document qui se trouve dans les archives de l'Inde Portugaise, relativement à cette vassalité, a été publié dans le "Bulletin du Gouvernement de l'Etat de l'Inde" et est annexé aux autres documents. La souveraineté du Roi du Monomotapa s'étendait au dixseizième siècle jusque sur la baie de Lourenço Marques; ce fait est confirmé par le témoignage des géographes et des historiens de cette époque:
Philippus Ferrarius dans le "Novum Lexicon Geographicum," de l'édition de Michel Antoine Baudrand, de 1695: "Spiritus Sancti Fluvius (Fleuve du Saint-Esprit) Lusitanus fluvius Africæ in Aethiopia inferiori et in regione Monomotapa."


Corneille, dans le "Dictionnaire Universel, géographique et historique," édition de Paris, de 1708: "Cet empire s'étend du nord au sud, depuis le Couama jusqu'aux petits royaumes qui sont aux environs du Cap de Bonne-Espérance. Des petits rois dont les États sont compris entre le Cap et le Magnica, reconnaissent le Roi de Monomotapa pour leur souverain."

De sorte que, si le Portugal n'avait pas déjà acquis la souveraineté de la baie de Lourenço Marques, elle se trouverait comprise dans la cession faite en 1629 par le Roi du Monomotapa à la Couronne Portugaise.

Chapitre V. - Donation faite par le régule Capella, du Tembe.

La donation faite à la Couronne Portugaise en 1794 par le régule du Tembe, vient ajouter un titre spécial à ceux que nous avons déjà cités relativement au territoire de ce nom.

Ce régule ayant été détrôné à la suite d'une révolte de ses sujets du Tembe i'éclama, en qualité de vassal de la Couronne Portugaise, la protection du Gouverneur de Lourenço Marques, José Correia Monteiro de Mattos, qui rétablit son pouvoir.

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Reconnaissant de ce service, le régule Capella, quoique déjà sujet et vassal de la Couronne Portugaise, voulut faire encore plus, et, le 10 Novembre 1794, en présence de ses conseillers et de ses parents, spontanément et de sa propre volonté il fit une donation au Portugal de ses terres dont le gouverneur prit immédiatement possession consacrée par serment du roi fait suivant les rites et usages du pays. Le greffier des finances royales, João Gonçalves de Sequeira, dressa du tout un acte authentique qui fut signé par les assistants.

En signe de cette prise de possession, on érigea dans le Tembe, en 1796, une colonne aux armes de Portugal dont, en Octobre, 1823, l'existence a été attestée par le régule Maietta.

Chapitre VI.- Reconnaissance de notre Souveraineté par les régules du Tembe et du Mapouto.

Comme actes de reconnaissance expresse et solennelle de la souveraineté Portugaise par les régules du sud de la baie, nous avons, de la part du Tembe, qui en fut toujours le plus puissant:
1. L'acte pratiqué par le Roi Capella le 5 Avril 1781 devant le chef de l'expédition Portugaise envoyé dans la même année, de l'Inde, pour détruire l'établissement essayé par les Autrichiens dans la baie de Lourenço Marques, expédition dont nous avons déjà parlé.
2. L'acte renouvelé par ce même régule à l'occasion de la donation faite à la Couronne Portugaise le 10 Novembre 1794 dans les mains du gouverneur de Lourenço Marques, José Correia Monteiro de Mattos, donation dont nous avons déjà fait une mention spéciale dans le chapitre précédent.
3. Celui qui fut célébré par l'autre Capella, son petit-fils et légitime successeur Maietta, le 20 Octobre, 1823, en présence du Gouverneur Portugais Miguel Lupi de Cardenas, et des grands et conseillers de sa cour à l'occasion de son installation au pouvoir, alors qu'il se déclara sujet et vassal de la Couronne Portugaise.
4. Enfin, celui de l'actuel Capella, son successeur, nommé Bacute, quand, dans les premiers jours de 1857, il prit le Gouvernement de Tembe, et demanda sa confirmation au Gouverneur de Lourenço Marques, qui le fit installer au pouvoir

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avec toutes les formalités d'usage par un de ses délégues; acte et cérémonie dont il fut rendu compte au Gouvernement Portugais dans un rapport en date de Mai 1857 par le Gouverneur-Général de Mozambique et qui fut notifié aux Cortes par le Marquis de Sa da Bandeira, alors Ministre de la Marine, dans son compte-rendu du II Mars, 1859.

Quant au régule de Mapouto, le Portugal, outre la reconnaissance tacite, possède la reconnaissance expresse faite par le régule Macassana Maxillem, le 8 Octobre, 1823, en présence du Gouverneur de Lourenço Marques, Miguel Lupi de Cardenas.
Owen lui-même, ou l'auteur des "Narratives of Voyages," reconnaît la vérité de ce que nous avançons: "The Captain (Owen) by the aid of some Mattolese, who speak a little Portuguese, carried on a long conversation with Matchakany, who told him, amongst other things, that he considered the King of Portugal as his brother, the Portuguese having always been his friends."

Il résulte de ce passage qu'Owen avoue avoir entendu dire à Macassana lui-même, qu'il était frère du Roi de Portugal et très ami des Portugais; que le même Macassana parlait Portugais et que pour s'entendre avec lui, il avait été obligé de ce faire accompagner d'interprètes connaissant cette langue.

Ce régule est resté jusqu'à sa mort, qui eut lieu en 1850, dans l'obéissance du Portugal, et ces rapports d'amitié et de bonne harmonie se sont continués sous l'actuel régule Missongue ou Nasinguile, son petit-fils.

Et ce dernier est tellement attaché aux Portugais, qu'ayant eu connaissance du conflit soulevé entre l'Angleterre et Portugal à l'égard de l'île de l'Unhaca, il offrit, en 1870, au Gouvernement Portugais de lui faire une donation de la propriété territoriale de cette même île dont la souveraineté appartenait déjà à la Couronne Portugaise, donation qu'il fit, en effet, entre les mains du Gouverneur de Lourenço Marques, José Auguste de S' e Simas.

Comme actes de reconnaissance tacite et conséquence de notre souveraineté, les régules nous ont envoyé et nous envoient chaque année, à titre de tribut, une certaine quantité d'ivoire et de cornes de rhinocéros femelle et quelquefois du bétail et reçoivent de nous un saguate ou présent consistant en vêtements et eau-de-vie.

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L'ex-greffier de Lourenço Marques, dans sa plainte contre le Gouverneur-Général, fait mention du tribut payé dans ce siècle et avant 1823.

Le Capitaine Owen fait lui-même mention du tribut consistant en 3 ou 400 dents d'éléphant qui fut envoyé par les régules du Tembe et de Napouto en Octobre 1823, alors qu'ils déclaraient ne vouloir reconnaître d'autre souveraineté que celle du Portugal: "A caravan consisting of about one thousand natives, arrived at the factory bringing between three and four hundred elephants' teeth."

Et ce qui est encore plus remarquable, c'est que Chaca lui-même, le célèbre et féroce Roi des Zoulous, qui fit tant parler de lui lorsque, poussé par la soif des conquêtes, il parvint dans le nord jusque près de Lourenço Marques, fit solliciter l'amitié du Roi de Portugal et lui offrit d'être son tributaire.

Enfin, la preuve la plus irrécusable de la reconnaissance de nos droits par les indigènes de Mapouto est ce nom même de Mapouto pour lequel le régule de ce territoire quitta celui d'Unhaca (qu'il prenait de l'île de ce nom comprise dans ses domaines) et qui fut également donné au fleuve Ânzete (Unzuti).

En effet, Mapouto, dans la langue d'un grand nombre des peuplades de l'Afrique occidentale et orientale, signifie Portugais ou blancs, comme le reconnaît le Révérend S. W. Koelle, dans sa "Polyglotta Africana."

Ainsi, par exemple, dans l'Afrique occidentale, près de Saint-Sauveur du Congo, on trouve le village de Banza-pouto, qui est un village Portugais, et toutes les peuplades de cette région donnent au Roi de Portugal le nom de Mani-pouto.

De sorte que territoire ou fleuve de Mapouto signifient territoire ou fleuve des Portugais ou du Roi des Portugais, désignation des plus significatives puisqu'elle provient des indigènes.

L'auteur des "Narratives of a Voyage" traduit le mot Mapouto que les Anglais prononcent Mapootta, par le mot huile, ce qui dénonce une complète ignorance, attendu que huile en langue Cafre se dit Mafourra et non Mapootta.

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Chapitre VII.-Reconnaissance des droits du Portugal par les nations de l'Europe.

La reconnaissance des droits du Portugal et de sa possession en Afrique ressort du témoignage que fournissent tous les documents géographiques, de celui qui émane des écrivains et aussi du fait de la non-contestation de ces droits par les autres nations.

Section 1.-Documents géographiques.

Des ouvrages géographiques à partir du seizième siècle, ouvrages déjà produits au Chapitre II de la Première Partie de ce Mémoire, consacré à la dénomination de la baie de Lourenço Marques et qu'il est inutile de reproduire, il résulte évidemment:
1. Que la baie, dans toute son étendue, est, par ces ouvrages, considérée comme Portugaise;
2. Que, par conséquent, les limites de la possession Portugaise au sud de la baie se trouvent nécessairement par 260 30'.

Section 2. -Ecrivains Français.
Parmi les écrivains Français du dix-huitième siècle nous citerons:
1. Guillaume Delisle, Premier Géographe du Roi de France, lequel, dans la carte du Congo et du pays des Cafres qui fait partie de son atlas géographique, écrivait en 1722 la note suivante, au dessous de l'île de l'Unhaca, à peu près au 260 30': "Inhaque où commence le Gouvernement de Mozambique," reconnaissant ainsi que toute la baie de Lourenço Marques, en y comprenant l'île de l'Unhaca et le territoire de ce nom jusqu'à ce parallèle, faisait partie de la province Portugaise de Mozambique.
2. De La Martinière, écrivant en 1768, reconnaît positivement que cette baie se trouve comprise dans le territoire Portugais puisqu'il dit que le Gouvernement ou province de Mozambique commence en terre ferme de l'Unhaca: "Inhaque en terre ferme et près de l'île de ce nom. C'est où commence le Gouvernement de Mozambique.
3. Saint-Janvier, dans son "Atlas Universel," publié à Venise en 1786 (2 partie, pl. 39) confesse que notre domaine commence à l'Unhaca, puisqu'il reconnaît l'existence de nos fortifications sur ce point: "Baye de Laurent Marques ou du SaintEsprit, où est le fort Inhaque aux Portugais."

Dans le siècle actuel:
1. Malte-Brun, dans sa géographie universelle, édition de Th. Lavallée: "La côte Africaine depuis la baie de Lagoa (Lourenço Marques) jusqu'au Cap Delgado est censée appartenir aux Portugais, qui y ont en effet quelques établissements on y trouve deux établissements Portugais: celui de Lourenço Marques dans la baie de Lagoa; celui d'Inhambane," etc.
2. iHorner, dans la relation de son voyage à la côte orientale d'Afrique : "Oubliée de l'Europe pendant le moyen âge, cette contrée fut, en 1498, visitée pour la première fois par Vasco da Gama. Le grand navigateur se rendit maître d'une partie de la côte, et se contenta de faire reconnaître le ROI de Portugal comme suzerain des roitelets du pays."

Hoefer, maintes inexactitudes sur l'Afrique australe, écrit toutefois: " Les indigènes ont entretenu un trafic suivi avec les Portugais qui avaient établi un port et un comptoir dans la Baie de Lagoa. Les principaux objets de commerce étaient, comme aujourd'hui, la poudre d'or, les dents d'éléphant, et l'ambre gris, la cire et la gomme."

Ecrivains Allemands et Suisses.
Parmi les écrivains Allemands nous citerons le Baron de Puffendorf, lequel, dans son "Lexicon Geographieum" publié à Milan après sa mort par Jean Com, en 1627, et réimprimé plus tard avec additions par Baudrand, à Paris en 1670 et à Padoue en 1695, désigne, ainsi qu'Hoffmann, le fleuve du Saint-Esprit comme fleuve Portugais, ce qu'il n'aurait pas fait si nous eussions été considérés comme uniquement possesseurs d'une partie de la baie: " Spiritus Sancti Fluvius; vulgo (rio de lo Espirito Santo), lusitanus fluvius Africoe in *Ethiopia.

Parmi les écrivains Suisses nous mentionnerons:
1. Dans le dix-septième siècle, le philologue Jean Jacques Hoffmann qui, dans son "Lexicon Universal," tant dans l'édition de Bâle de 1667 que dans celle de Leyde de 1698, fait figurer le fleuve du Saint-Esprit comme fleuve Portugais, ce que certes il n'aurait pas fait s'il ne nous eût considérés comme légitimes maîtres de la Baie de Lourenço Marques: "Spiritus Sancti Fluvius; vulgo (rio de lo Espiritu Santo), lusitanus fluvius Africoe in *Ethiopia."

Ecrivains Anglais.

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1. Que la baie, dans toute son étendue, est, par ces ouvrages, considérée comme Portugaise;
2. Que, par conséquent, les limites de la possession Portugaise au sud de la baie se trouvent nécessairement par 260 30'.

Section 2. -Ecrivains Français.
Parmi les écrivains Français du dix-huitième siècle nous citerons:
1. Guillaume Delisle, Premier Géographe du Roi de France, lequel, dans la carte du Congo et du pays des Cafres qui fait partie de son atlas géographique, écrivait en 1722 la note suivante, au dessous de l'île de l'Unhaca, à peu près au 260 30': "Inhaque où commence le Gouvernement de Mozambique," reconnaissant ainsi que toute la baie de Lourenço Marques, en y comprenant l'île de l'Unhaca et le territoire de ce nom jusqu'à ce parallèle, faisait partie de la province Portugaise de Mozambique.
2. De La Martinière, écrivant en 1768, reconnaît positivement que cette baie se trouve comprise dans le territoire Portugais puisqu'il dit que le Gouvernement ou province de Mozambique commence en terre ferme de l'Unhaca: "Inhaque en terre ferme et près de l'île de ce nom. C'est où commence le Gouvernement de Mozambique."
3. Saint-Janvier, dans son "Atlas Universel," publié à Venise en 1786 (2 partie, pl. 39) confesse que notre domaine commence à l'Unhaca, puisqu'il reconnaît l'existence de nos fortifications sur ce point: "Baye de Laurent Marques ou du SaintEsprit, où est le fort Inhaque aux Portugais."

Dans le siècle actuel:
1. Malte-Brun, dans sa géographie universelle, édition de Th. Lavallée: "La côte Africaine depuis la baie de Lagoa (Lourenço Marques) jusqu'au Cap Delgado est censée appartenir aux Portugais, qui y ont en effet quelques établissements on y trouve deux établissements Portugais: celui de Lourenço Marques dans la baie de Lagoa; celui d'Inhambane," etc.
2. iHorner, dans la relation de son voyage à la côte orientale d'Afrique : "Oubliée de l'Europe pendant le moyen âge, cette contrée fut, en 1498, visitée pour la première fois par Vasco da Gama. Le grand navigateur se rendit maître d'une partie de la côte, et se contenta de faire reconnaître le ROI de Portugal comme suzerain des roitelets du pays."

Hoefer, maintes inexactitudes sur l'Afrique australe, écrit toutefois: " Les indigènes ont entretenu un trafic suivi avec les Portugais qui avaient établi un port et un comptoir dans la Baie de Lagoa. Les principaux objets de commerce étaient, comme aujourd'hui, la poudre d'or, les dents d'éléphant, et l'ambre gris, la cire et la gomme."

Ecrivains Allemands et Suisses.
Parmi les écrivains Allemands nous citerons le Baron de Puffendorf, lequel, dans son "Lexicon Geographieum" publié à Milan après sa mort par Jean Com, en 1627, et réimprimé plus tard avec additions par Baudrand, à Paris en 1670 et à Padoue en 1695, désigne, ainsi qu'Hoffmann, le fleuve du Saint-Esprit comme fleuve Portugais, ce qu'il n'aurait pas fait s'il ne nous eût considérés comme légitimes maîtres de la Baie de Lourenço Marques: "Spiritus Sancti Fluvius; vulgo (rio de lo Espirito Santo), lusitanus fluvius Africoe in *Ethiopia."

Ecrivains Suisses.
Parmi les écrivains Suisses nous mentionnerons:
1. Dans le dix-septième siècle, le philologue Jean Jacques Hoffmann qui, dans son "Lexicon Universal," tant dans l'édition de Bâle de 1667 que dans celle de Leyde de 1698, fait figurer le fleuve du Saint-Esprit comme fleuve Portugais, ce qu'il n'aurait pas fait s'il ne nous eussions été considérés comme uniquement possesseurs d'une partie de la baie: " Spiritus Sancti Fluvius; vulgo (rio del Espiritu Santo), lusitanus fluvius Africoe in *Ethiopia."

Ecrivains Anglais.
Parmi les écrivains Anglais nous citerons: 

1. Salmon, qui écrivait en 1755, en se rapportant à Sofala, qu’en effet les Portugais possédaient le commerce de toute la côte: "And indeed they have the trade of the whole coast almost to themselves."

2. Le Lieutenant-Colonel Southerton qui, parlant des prétentions des Hollandais sur la baie vers la fin du dix-septième siècle, confesse que cette baie est depuis plus de deux cents ans propriété du Portugal: "In the possession of the Portuguese for the last 200 years."

3. Dans la séance de la Société Géographique de Londres, du 13 Novembre, 1871, et à l'occasion de la lecture du journal de l'exploration du Limpopo par Frédéric Elton, un membre de la Société fit observer qu'il était fâcheux pour le commerce Anglais que les navires de cette nation qui faisaient le voyage du Cap n'eussent pas un port entre Simon's Bay et Delagoa Bay (Lourenço Marques), et que, en conséquence, il demandait que l'Angleterre étendit ses possessions jusque là: "He therefore recommended that England should extend her South African possessions to that bay."

4. Charles C. Michell, lieutenant-colonel de l'armée Anglaise, et Inspecteur-Général des territoires du Cap de Bonne-Espérance, écrivant au Due de Palmella, Ministre Portugais, en date du 15 Juillet, 1843, joignit à sa lettre une esquisse indiquant les frontières des colonies Anglaises au Cap, celles du territoire occupé par les Boers révoltés et celles de la colonie Portugaise de Lourenço Marques: par cette esquisse (qui forme la carte No. 3 annexée à ce mémoire) on voit que ce fonctionnaire Anglais comprend dans le domaine Portugais "non-seulement toute la Baie de Lourenço Marques, mais plus encore que ne réclame le Portugal quisqu'il porte nos frontières au delà du 260 30' de latitude sud."

5. Enfin le rédacteur du journal Anglais The Diamond News and Griqualand West Government Gazette, publié en Afrique dans les champs des Diamants à De Beer's New Rush, South African Diamond Fields, écrivant dans le numéro du 13 Mai de cette année (1873) sur la nécessité et l'importance pour l'Angleterre de l'acquisition de la Baie de Lourenço Marques, reconnaît notre possession et notre droit, en soutenant l'avantage d'obtenir du Portugal la cession de la baie: - It is the easiest thing in the world (dit-il) to prove to England that Delagoa Bay will turu out a good investment for the necessary expenditure to induce Portugal to transfer that port to Great Britain."

Si la baie n'était pas Portugaise, comment le Portugal pourrait-il la céder à la Grande-Bretagne?

Section 3.- Gouvernements.

Notre droit a été reconnu par tous les Gouvernements de l'Europe. Les uns l'ont reconnu expressément, les autres tacitement.

La reconnaissance tacite de ce droit s'est traduite par le respect de notre possession pendant plus de trois siècles.
Il a été reconnu expressément : 1. Par l'Autriche, alors que, réclamant en 1781 contre l'expulsion des agents de la compagnie impériale qui avaient été abusivement établis dans la Baie de Lourenço Marques, elle se déclara satisfaite de nos explications.

2. Par le Saint-Siège, attendu que le Roi de Portugal ayant demandé au Pape Paul V la création de la prélature ou administration épiscopale de Mozambique, démembrant dans ce but partie du territoire appartenant à l'archevêché de Goa, dans l'Inde, le Saint-Père, par sa bulle du 21 Janvier, 1612, In supereminenti militantis Ecclesim, accédé à la demande du roi et lui désigna le territoire de la nouvelle prélature, qui s'étendait alors au sud jusqu'au Cap de Bonne Espérance, et dans lequel se trouve comprise la Baie de Lourenço Marques. Les Portugais ayant abandonné le Cap de Bonne Espérance qui, au dix-septième siècle, fut occupé par les Hollandais, la Colonie du Cap fut seule séparée de la prélature de Mozambique, et resta soumise au régime ecclésiastique du vicaire apostolique de l'Ile Maurice jusqu'à la création d'un Vicariat Apostolique spécial érigé par Grégoire XVI suivant bref Papal Ex Munere _Pastorali du 6 Juin, 1837. De même le territoire de Zanzibar au nord, qui n'appartient déjà plus au Portugal, constitue une Mission Spéciale séparée de la prélature de Mozambique qui s'étend aujourd'hui du Cap Delgado, au nord, jusqu'à Lourenço Marques au sud, inclusivement.


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Chapitre VIII.-connaissance de nos droits par le Gouvernement Anglais.
A tout ce que nous avons exposé vient se joindre la reconnaissance par le Gouvernement Anglais lui-même de nos droits et de notre possession des terres découvertes dans l'Afrique Occidentale et Orientale, reconnaissance qui date du seizième siècle, ainsi que nous allons le démontrer pas les faits suivants.
I. Au commencement d'Avril, 1561, l'Ambassadeur Portugais, Manuel de Araujo, se plaignit à la Reine Elisabeth d'Angleterre, au nom du Roi don Sébastien, de ce que quelques navires Anglais étaient allé trafiquer sur la côte Del-Mina, ce qu'ils n'auraient pas dû faire attendu que les Provinces d'Afrique découvertes par les Portugais, ainsi que leur commerce et leur navigation, étaient la légitime propriété du Portugal, propriété acquise par les prédécesseurs de don Sébastien au prix de grands sacrifices d'argent et de sang, et qui n'avait jamais été disputée à la nation Portugaise par aucun Souverain.
Cette réclamation eut pour résultat la promulgation de la lettre patente d'Elisabeth d'Angleterre du 24 Avril, 1561, où elle disait que, quoiqu'il ne lui parût pas juste que l'on empêchât ses sujets de naviguer vers les terres soumises au Roi de Portugal, elle désirait avertir les Anglais de s'abstenir d'envoyer leurs navires dans les ports de l'Afrique, qui se trouvaient sous la domination du Roi de Portugal.
La Reine donna cet ordre le, 1er Mai de la même année, dans une lettre adressée au Grand Amiral (High Admiral of England); ce qui fut communiqué au Roi de Portugal par une lettre du 22 Novembre suivant.
2. Un certain Grinvil ayant, en 1571, sollicité du Gouvernement Anglais la permission d'armer des navires, elle lui fut accordée sous condition qu'il ne pourrait faire aucune découverte dans les contrées déjà visitées par les Espagnols et les Portugais, fait qui fut communiqué au Gouvernement Français par La Mothe Fénélon, Ambassadeur de France en Angleterre, dans une dépêche datée du 4 Juin, 1571.
3. Dans l'Article 12 du Traité du 29 Juin, 1642, fait entre Don Jean IV de Portugal et Charles I d'Angleterre, la Grande-Bretagne reconnaît expressément la souveraineté de la Couronne Portugaise sur la côte qui s'étend au-delà du Cap de Bonnelx.

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Espérance, où se trouve comprise la Baie de Lourenço Marques:”Item quod conventio treguae facta inter D. Michaelem de Noronham, Comitem de Linhares, Prorregem Goae et Willielmum Methwold, Praesidem Anglorum in India Orientali 20 Januari, 1635, stilo novo, inter subditos utriusque regis in India Orientali, et in omnibus ditionibus serenissimi Regis Portugalliae ultra Caput Bonae Spei, continuabantur et observabantur.’
- Les territoires (dit le texte Portugais) que la Couronne de Portugal possède sur les côtes d'Afrique au sud de l'Équateur, savoir: sur la côte orientale d'Afrique, le territoire compris entre le Cap Delgado et la Baie de Lourenço Marques, etc.

"The territories (dit le texte Anglais) possessed by the Crown of Portugal upon the coast of Africa to the south of the Equator, that is to say: upon the eastern coast of Africa the territory laying between Cape Delgado and the Bay of Lourenço Marques, etc."

A cet argument irréfutable tiré de l'Article 2 de la Convention de 1817, l'Angleterre a opposé:
1. En réponse aux notes diplomatiques du Due de Palmella (1827-1828): que la baie de Lourenço Marques, en tant que limite sud des possessions Portugaises devait s'entendre exclusivement.
2. Dans une note de son Chargé d'Affaires à Lisbonne: que les mots baie de Lourenço Marques ne désignent pas véritablement la baie de ce nom (Delagoa Bay), mais bien la petite baie située devant l'établissement Portugais sur le fleuve du SaintEsprit (English River).

La première objection est inadmissible, attendu que, non seulement l'Angleterre ne pourrait seule décider au sujet de l'interprétation du Traité, puisqu'il constitue un contrat bilatéral, mais aussi parce que, si elle le faisait, cette interprétation serait inacceptable à cause de son absurdité et de la contradiction (u'elhu renferme:

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1. Parce que la désignation de la baie de Lourenço Marques comme limite sud des possessions Portugaises dans l'Afrique orientale, ne peut pas s'entendre autrement que inclusivement, de même que la désignation du Cap Delgado comme limite nord a toujours été comprise inclusivement par toutes les nations et par l'Angleterre elle-même;
2. Parce qu'il eût été impossible de sous-entendre ce mot exclusivement, car le Portugal n'aurait pas en ce cas signé un Traité qui l'aurait ainsi dépossédé de toute cette baie où, depuis plus de trois siècles, il avait établi sa souveraineté;
3. Parce que l'Angleterre, réclamant seulement la partie sud et ne contestant pas au Portugal la souveraineté de son établissement et de sa forteresse au nord, lui reconnaît contradictoirement un droit sur une moitié de la baie, alors que, en présence de la lettre du Traité, ou il a droit à toute la baie (si l'on accepte, comme cela doit être, le mot inclusivement), ou bien il n'a droit à aucune partie de cette baie (si l'on sous-entend, ainsi que l'exige l'Angleterre, le mot exclusivement);
4. Parce que toutes les nations, reconnaissant aujourd'hui notre droit et notre souveraineté sur la baie de Lourenço Marques, confirment ainsi la seule interprétation possible du Traité. L'on peut indiquer, comme la preuve la plus récente de cette reconnaissance, le Traité de Commerce et de limites fait avec la République des Boers, le 29 Juillet, 1869, traité dans lequel les limites sud de notre territoire sont fixées par une ligne droite tirée du 260 30' de latitude sud;
5. Parce que, la disposition du Traité étant claire et précise, on ne peut admettre aucune interprétation restrictive de sa lettre, suivant la règle enseignée par Wolf: “Standum omnino est is quae verbis expressis, quorum manifestus est significatus, indicata fuerunt, nisi omnem a negotiis humanis certitudinem removere volueris,” et répétée par Vattel: “Quand un acte est conçu en termes clairs et précis, quand le sens en est manifeste et ne conduit à rien d'absurde, on n'a aucune raison de se refuser au sens que cet acte présente.

La seconde objection n'a pas une plus grande valeur:1. Parce que cette seconde objection est en contradiction avec la première; attendu que, tandis que d'après le système de la première objection les mots baie de Lourenço Marques sont pris comme équivalents de Delagoa Bay pour être entendus exclusivementM2

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2. Parce que les mots baie de Lourenço Marques ayant toujours désigné la baie à laquelle les Anglais ne commencèrent à donner le nom de Delagoa Bay qu'en 1823 (ainsi que nous l'avons démontré au Chapitre II de la première partie) ces mots doivent être forcément compris, dans la Convention de 1817, dans le sens

qui leur était alors et qui leur fut toujours appliqué, ce qui constitue encore une règle d'interprétation des traités, formulée par Vattel: "Le nom des pays doit s'entendre suivant l'usage reçu alors car on ne présume point que des ignorants ou des sots soient chargés d'une chose aussi importante."

3. Parce que l'Angleterre, si elle ne voulait pas se servir de ces mots dans l'unique acception qu'ils avaient à cette époque, aurait dû s'en expliquer, et comme elle ne l'a pas fait, elle devra en subir les conséquences, ainsi que l'enseigne la règle de Vattel: "Si celui qui pouvait et devait s'expliquer nettement et pleinement ne l'a pas fait, tant pis pour lui; il ne peut être reçu à apporter subséquemment des restrictions qu'il n'a pas exprimées; ce qui n'est que l'application de la maxime du droit Romain: 'Pactionem obscuram uis nocere, in quorum fuit potestate legem apertius conscribere.'

4. La reconnaissance expresse de notre souveraineté sur la baie de Lourenço Marques, contenue dans l'article 2 de la Convention du 28 Juillet, 1817, se trouvait déjà sous-entendue dans le Traité du 19 Février, 1810, puisque l'article 21 de ce Traité assurait aux Anglais le commerce avec les possessions Portugaises de la côte orientale d'Afrique: "All trade with the Portuguese possessions situated upon the eastern coast of the continent of Africa which may have been formerly allowed to the subjects of Great Britain, is confirmed and secured to them."

5. Pour les deux Gouvernements, cette généralité des mots possessions Portugaises de la côte orientale comprenait la baie de Lourenço Marques; pour le Gouvernement Portugais, parce que, ayant alors la possession de cette baie et s'y trouvant établi, il ne doutait en aucune façon de son droit, et pour le Gouvernement Anglais, parce qu'il n'élevait aucune prétention à la baie ou à une partie de la baie.

6. Encore dernièrement la Grande-Bretagne a reconnu le droit du Portugal. Panda, Roi des Zoulous, se plaignit en 1855, de ce que les chasseurs Portugais de Lourenço Marques, poursuivant les éléphants au sud de la baie, s'avançaient de son côté au point d'envahir les forêts qu'il s'était réservées sur son territoire, et il pria le Gouverneur Anglais du Cap de Bonne-Espérance, Sir George Grey, de demander au Gouvernement Portugais qu'un pareil fait ne se renouvelât pas, ce que le Gouverneur fit dans une dépêche officielle datée du 28 Février 1855, et adressée au Commissaire Portugais de la Commission Mixte du Cap. On sait que Panda est un régne indépendant avec lequel l'Angleterre a fait un Traité en 1843, et dont le territoire est situé entre les possessions Anglaises du Cap et de Natal, et la partie sud de la baie de Lourenço Marques.

Or, si la partie sud de la baie de Lourenço Marques, par laquelle les chasseurs Portugais envahissaient les terres de Panda, avait appartenu à l'Angleterre et non au Portugal, les autorités Anglaises auraient eu recours aux autorités Portu-165

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possession de l'Unhaca, ces autorités déclaraient que tout cela s'était fait avec le consentement et l'approbation du Portugal (!), approbation qui supposait nécessairement notre droit.

CINQUIÈME PARTIE.

Réfutation des prétentions de l'Angleterre.

L'Angleterre réclame la souveraineté de la partie sud de la baie, c'est-à-dire, des territoires de Tembe et de Mapouto, en y comprenant les îles de l'Unhaca et des Eléphants. Elle appuie ses prétentions : 1. Sur la cession qu'elle prétend que les respectifs régules lui ont faite de ces territoires en 1823, par l'entremise du Capitaine Owen de la marine Britannique.

2. Sur le désir de mettre obstacle à la traite des nègres et d'encourager tout commerce licite dans la baie de Lourenço Marques.

Le principal de ces arguments est le premier, l'autre n'est que subsidiaire. Examinons la valeur de chacun d'eux.

Chapitre I.- Examen du premier argument présenté par l'Angleterre (Conventions faites avec les régules en 1823).

Ce premier et principal argument présenté par l'Angleterre comme base de ses prétentions à la partie sud de la baie de Lourenço Marques et tiré des Traités faits avec le régule du Tembe le 8 Mars, et avec celui du Mapouto le 3 et le 23 Août 1823, n'a aucune valeur: 1. Parce que ces Traités, considérés dans leur forme et dans leur fond, sont fictices -

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2. Parce que, quand même ils ne seraient pas fictices, ils n'eùraient pas moins nuls dans la forme et dans le fond;

3. Parce qu'ils ne pourraient produire aucun effet favorable aux prétentions de l'Angleterre,

Développons chacun de ces points.

Section 1.- Les Traités sont fictices.

La fausseté des Traités se démontre par des arguments extrinsèques et intrinsèques ou que l'on déduit de ces documents mêmes.

Elle se démontre par des arguments extrinsèques. 1. A l'égard des deux régules de Mapouto et de Tembe, par leur déclaration faite en Octobre 1823, protestant immédiatement contre les prétendues conventions qu'ils n'èrèrent formellement avoir faites.

2. Spéciallement à l'égard du régule de Tembe, par la déclaration faite le 1 Juin, 1823, par le Commandant des Forces Navales Britanniques au Cap, Joseph Nourse, qui disait qu'Owen avait reçu les pièces portant la cession faite par le régule Capella, des mains du chef Slangella; d'où il résulte, de l'aveu des Anglais eux-mêmes, que ce ne fut pas le Roi Capella en personne (lequel comme nous l'avons vu, nie la cession) qui remit le document au Capitaine Owen ni qui traiita avec lui, mais bien un chef subalterne, ce qui, en se combinant avec la protestation du Roi, est une preuve de plus de la fausseté de ce document ou d'une mystification faite au Capitaine Owen.

Les arguments intrinsèques que l'on déduit de ces documents mêmes prouvent jusqu'à l'évidence que ces documents sont faux; ces arguments découlent de la langue dans laquelle sont rédigés ces documents, de la signature des régules, de la manière dont leurs noms sont écrits, et ce quelques-unes de leurs dispositions.

De la langue dans laquelle ils sont rédigés

1. Parce que la cession du Tembe figure dans ces documents comme ayant été faite spontanément et écrite par le régule Capella le 8 Mars, envoyée à Owen et acceptée par ce dernier le 19 du même mois; or, comme il est certain que le Roi n'écrivait pas l'Anglais, langue inconnue dans le Tembe, l'impossibilité où il était de rédiger un document en Anglais ou de le faire écrire dans cette langue qu'il ne comprenait même pas devient donc évidente.

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2. Parce que les deux traités à l'égard de Mapouto sont écrits en Anglais; or, il est avéré que le régule Macassana n'avait aucune connaissance de cette langue et ne parlait que le Portugais, ainsi que l'avoue Owen, lui-même, puisqu'il dit que, lorsqu'il avait à s'adresser au régule, il employait comme interprètes des noirs qui parlaient Portugais: "The Captain (Owen) .. by the aid of some Mattolese, who spoke a little Portuguese. carried on a long conversaison."
3. Parce que la langue Portugaise étant très répandue dans la baie, il était tout simple que les régules qui comprenaient cette langue et l'employaient aussi bien que leurs sujets, s'en servissent dans cette circonstance.

De la signature des régules:
1. Parce qu'il est dit dans ces documents qu'ils ont été signés par les régules, alors qu'il est avéré que ni eux ni leurs prédécesseurs savaient écrire.
2. Parce que les régules sont dans l'usage d'ajouter à leur nom écrit par celui qui dresse un contrat, un simple signe dont nous donnons le fac-similé.

De la manière dont leurs noms sont écrits:
1. Parce que la signature du régule de Tembe, telle qu'elle se trouve dans le Traité, est Kapel, ainsi que les Anglais désignent le titre du roi, alors que ce titre s'écrit et se prononce comme en Portugais, Capella, ce qui prouve que quelques Anglais sont les seuls auteurs et de la signature et du document.
2. Parce que la signature du Chef de Mapouto est écrite à la manière Anglaise, Makasane, tandis que ce nom s'écrit et se prononce Macassana.

De quelques-unes de leurs dispositions:
1. Parce que, dans le préambule du Traité fait avec le Tembe, le régule Maietta Capella se donne le titre de roi des territoires compris entre le English River et Dundas, et le fleuve Mapouto; or il est inadmissible que le roi ait pu donner le nom de English River au fleuve du Saint-Esprit et celui de Dundas au fleuve de Lourenço Marques, son confluent, noms par lesquels les indigènes n'ont jamais désigné ces fleuves.
2. Parce qu'aucun des lecteurs de l'Article 11 de ce supposé contrat ne pourra croire qu'un régule des tribus à moitié sauvages du Tembe ait eu, en 1823, la velléité d'imposer, comme condition de la cession de ses terres, l'établissement du jury (jurymen) en matière civile et criminelle sur son territoire, à une époque où un grand nombre des nations civilisées n'avaient pas encore implanté chez elles cette institution!

Disons la vérité: les documents nommés actes de cession ou contrats ne sont que des pièces controuvées par le Capitaine Owen ou par quelque Anglais qui aurait voulu le mystifier.

Owen les pressa de les accepter, leur déclarant que c'était la liste des marchandises qu'il leur destinait. Ces écrits n'étaient autre chose que les prétendus Traités! Tous commentaires sont superflus.

On ne doit certainement pas oublier ce que E. Ortolan écrit si judicieusement sur un pareil sujet: "Les Conventions qui doivent aboutir à un engagement de céder une portion du territoire sont d'une telle gravité, que, outre les règles communes pour toutes les Conventions, les lois de chaque nation ont assujetti celles-ci à des conditions particulières nécessaires à la validité de leur existence."

Et l'Angleterre peut-elle soutenir que dans ces prétendus traités ont été observées les règles qu'elle suit elle-même lorsqu'elle traite avec d'autres peuples ?

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Section 2.-Les cessions sont nulles dans la forme.

Alors même que les traités avec les régules du Mapouto et du Tembe ne seraient pas une fiction, ils n'auraient aucune valeur juridique, ni dans la forme ni dans le fond. Ils n'auraient aucune valeur dans la forme:
1. Parce que, d'après les principes du droit des gens, la validité d'un Traité dépend des pouvoirs du plénipotentiaire; or, le Capitaine Owen, de la Marine Britannique, indépendamment qu'il n'était pas personnage public ayant par sa position qualité pour faire des Traités, n'avait, alors que ses fonctions le lui permettaient, aucun pouvoir du Gouvernement Britannique pour traiter avec les régules de la Baie de Lourenço Marques, circonstance qui rendrait les contrats doublement nuls dans la forme. Et, non-seulement il serait impossible au Gouvernement Anglais de prouver qu'Owen avait ces pouvoirs, mais encore les instructions qui lui furent données par l'Amirauté Anglaise en date du 4 Février, 1822, établissent le contraire, ces instructions se bornant à déterminer des études sur l'hydrographie de la côte orientale d'Afrique, comme on le voit à la page 6 et suivantes du tome i.
de l'ouvrage déjà cité, "Narrative of Voyages, &c., under the direction of Captain W. F. W. Owen : London, 1833."

2. Parce qu'alors même que cette nullité de forme pût être couverte par une ratification des deux Parties Contractantes, ce qui s'admet quelquefois en droit de gens, cette ratification n'a eu lieu ni de la part de l'Angleterre ni de celle des régules du Mapouto et du Tembe, qui ont, au contraire, immédiatement et spontanément déclaré, dans le courant de cette même année 1823, qu'ils ne reconnaissent d'autre souveraineté que celle des Portugais, déclaration qui rendait impossible et nulle toute ratification ultérieure de l'Angleterre.

3. Parce que l'acte pratiqué par Owen, quand il traita sans qualité pour le faire, ne peut même être assimilé aux simples 2ponsiones qui, lorsqu'elles outre-passent le mandat des délégués des Gouvernements, peuvent être postérieurement rendues valides; nous prendrons comme exemples de ces dernières, dans le dix-huitième siècle, la Convention de Reichenbach, de 1790, et celle qui eut lieu entre le Duc d'York et le Général Brune en 1799, et antérieurement, dans le seizième siècle, celle qui fut passée entre les Suisses et la Trémouille qui, pour sauver Dijon assiégée par eux, en 1513, renonça, au nom de Louis XII, au Duché de Milan, et s'obligea à payer 600,000 écus. De la part d'Owen il n'y a pas eu excès, mais bien défaut complet de pouvoirs.

4. Parce qu'alors même qu'Owen eût eu pouvoirs et qualité pour traiter, le régule Maietta ne les possédait pas en 1823, attendu que, suivant la loi et les coutumes du Tembe, le successeur du régule ne peut être proclamé qu'une année après le décès de son prédécesseur, ainsi que l'avoue lui-même le Capitaine Owen; or le vieux Capella étant mort en Septembre 1822, Maietta ne pouvait faire cession le 8 Mars 1823, puisque l'année n'étant pas écoulée, il ne devait être proclamé régule et ne le fut, en effet, que le 20 Octobre suivant. De sorte que les prétendues conventions imaginées par le Capitaine Owen entre lui et les deux régules sus-nommés sont trois fois nulles dans la forme: par la manque de qualité personnelle et de pleins pouvoirs d'Owen, par l'impossibilité où elles se trouvaient d'être ratifiées et, enfin, par le manque d'autorité de Maietta en Mars, 1823.

Section 3.-Les cessions sont nulles dans le fond. Les dites Conventions seraient nulles dans le fond.

1. Parce qu'elles n'ont pas signifié la libre expression de la volonté des régules, condition essentielle à la validité des conventions ou traités asservis, en général, aux règles substantielles des contrats. Et les régules ont prouvé que ces conventions n'étaient pas la libre expression de leur volonté (aussitôt qu'ils ont su que le Capitaine Owen assurait qu'ils s'étaient soumis à l'Angleterre) en signant le 8 Octobre de cette même année 1823, le document par lequel ils déclaraient ne reconnaître pour suzerains de leurs terres que les Portugais, et n'avoir pu céder à Sa Majesté Britannique des terres qui depuis tant d'années appartenaient à la Couronne Portugaise; quant au régule de Tembe, il marqua plus particulièrement qu'il désapprouvait les actes d'Owen, en arrachant de son propre mouvement le drapeau Anglais que le capitaine avait fait arborer sur son territoire.

Les Anglais eux-mêmes avouent ce fait, mais ils veulent toutefois faire accroire que le Roi Maietta du Tembe n'a nié cette cession que contraint et obligé par le Gouverneur Portugais de Lourenço Marques, Lupi de Cardenas, ainsi que l'avance l'auteur d'un article inséré en 1873 dans le journal Anglais "Ocean highways, the Geographical Recorder," qui se publie à Londres: "Soon after this cession (dit-il), Senhor Lupe de Cardenas, the Governor of Lorenço Marques, resolved to subjugate the whole of the surrounding country. lis first measure was to induce Nayetta to deny the cession, which he effected by a threatening demonstration with a few soldiers. He then hoisted the Portugese flag on the Tembi, and, subsequently, on the Umzuti.'

Toutefois, cette explication que donnent les Anglais de la protestation des régules, qu'ils attribuent à la violence employée par le Gouverneur Portugais, ne s'appuie sur aucun argument sérieux :

1. Parce qu'elle se trouve en contradiction avec leur affirma-
morale que matérielle, eût pu forcer un régule qui dispose de plus de 20,000 hommes armés à protester contre une nation aussi puissante que l'Angleterre ?

2. Parce que cette explication se trouve démentie par cela même que les régules ont fait leur déclaration en présence des Anglais qui étaient à bord de deux navires alors dans la baie, et qui furent expressément invités à assister à cet acte.

L'Angleterre ne put rien objecter aux protestations des régules de Tembe et de Maputo, faites en 1823:1. Parce que ces protestations ont immédiatement suivi les abus commis par le Capitaine Owen, dès que ces abus ont été connus.

2. Parce que les actes de cet officier n'avaient pas été ratifiés par le Gouvernement Britannique. Cette ratification d'ailleurs, eût-elle été possible, ne pouvait avoir lieu du moment qu'une des parties non-seulement s'y refusait mais encore réclamait et protestait contre la convention qui lui était attribuée.

3. Parce que du moment où le Gouvernement Anglais déclare hautement qu'aucune annexion de territoire, grand ou petit, ne peut avoir lieu sans le consentement bien explicite des habitants demandant cette annexion, ainsi que Lord Gladstone l'a dit dans la séance du Parlement du 25 Juin, 1872, en réponse à la demande faite par un membre de ce même Parlement de l'établissement d'un protectorat dans les Iles de Fiji ou de leur annexion, comment ce même gouvernement pouvait-il annexer les territoires de la partie sud de la Baie de Lourenço Marques, quand les régules de ces territoires déclarent ne vouloir être vassaux que de la Couronne Portugaise, et réclamer contre la prétendue cession ?" Her Majesty's Government (dit à cette occasion Lord Gladstone) would annex no territory, great or small, except in conformity with the well-understood and sufficiently ascertained desire of the inhabitants of the territory proposed to be annexed."

4. Parce que la protestation des régules est confirmée par leurs actes ultérieurs et par les indigènes eux-mêmes montrant leur bonne volonté d'être annexés en massacrant les équipages des embarcations Anglaises, ainsi que le dit un sujet Anglais

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Tames Horsbourg, quand, en avouant que ce sont les Portugais qui maintiennent les relations avec les indigènes, il ajoute que l'on ne peut avoir confiance en ces derniers " surtout lorsqu'on envoie des embarcations dans les rivières avec des objets d'échange, car en semblable circonstance, ces indigènes ont massacré les équipages des embarcations."

Les dites Conventions seraient encore nulles dans le fond:

2. Parce qu'ainsi même que les conventions auraient été librement consenties par les régules, ils n'avaient pas plus le droit de les faire que l'Angleterre n'avait celui de les accepter.

Les régules ne pouvaient faire ces conventions parce que les territoires de toute la baie appartenant au Portugal qui, depuis trois siècles, y exerce sa souveraineté (ainsi que cela est démontré dans la quatrième partie de ce mémoire) la cession des territoires serait nulle, puisqu'elle concernerait une chose appartenant à autrui.

L'Angleterre pouvait d'autant moins accepter cette cession qu'ayant, six ans auparavant, reconnu les droits du Portugal sur toute la baie, ainsi que le prouve l'Article II de la Convention du 28 Juillet, 1817, elle ne pouvait alléguer son ignorance, sachant bien que les territoires que l'on prétend cédés appartenaient au Portugal et étaient occupés par nous.

Et cette cession pouvait d'autant moins être suivie d'effet, que le Portugal a immédiatement protesté contre les prétentions de la Grande-Bretagne.

C'est un principe indiscutable que l'on ne peut transmettre à autrui plus de droits qu'on n'en possède ou des droits que l'on n'a pas: Nemo plus Juris in alium transferre potest quam ipse in re habet.

De ce principe, auquel le droit Romain ne donnait pas un sens aussi général, mais que la jurisprudence moderne admet unanimement, résulte la nullité de tout contrat par lequel un individu dispose, comme lui appartenant, du bien d'autrui. De pareils actes sont expressément frappés de nullité dans le Code Civil Français, par l'Article 1599 relatif à la vente mais applicable à toute espèce d'aliénations.

La force de notre droit prévaudrait nécessairement contre la cession, prévaudrait même contre la con quête, si l'Angleterre s'armait de ce dernier titre plutôt que du premier. Lorsque cette nation, en 1662, vendit à la France la ville de Dunkerque

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qu'elle avait prise aux Espagnols, elle comprit la fragilité de son titre, et cette vente eût été nulle si la Convention du 27 Octobre de la même année ne fut venue la consacrer dans le Traité d'Utrecht par l'acquiescement de l'Espagne, ainsi que la Grande-Bretagne elle-même l'a confessé.

Section 4.-Les Conventions ne pourraient produire aucun effet. Les Conventions avec les régules n'auraient pu avoir aucun effet favorable à l'Angleterre parce que, en admettant même la validité de ces Conventions l'Angleterre n'a pas rempli les conditions auxquelles s'obligeait le Capitaine Owen en échange de cette prétendue cession du régule du Tembe.

Les Conventions sont de nature indivisible; les articles servent de conditions aux autres articles et l'inexécution des uns entraîne celle des autres. C'est un principe de droit naturel professé par Grotius et admis dans l'ancien et le nouveau droit Français: "Omnia. pacta apposita subeunda et ferenda sunt, si eo uti velit, aut ex toto recusanda conditio contractus," écrivait d'Argentré sur l'Article 423 de la Coutume de Bretagne.

Ceux qui ont écrit sur le droit des gens se divisent en deux camps à l'égard de la nullité d'un Traité dont les Articles n'ont pas été observés.

Les uns admettent la nullité quand la violation atteint les Articles connexes (connexi) et ne l'admettent pas lorsqu'elle concerne les articles divers (diversi). C'est le système de Wolf, suivi, à quelques modifications près, par Pinheiro Ferreira.

D'autres prétendent que la violation d'un seul article, quel qu'il soit, entraîne la nullité d'un Traité, s'il n'est protégé par une stipulation contraire. Telle est la théorie de Grotius, déjà cité, de Vattel et de Wheaton.

Mais ils s'accordent tous sur ce point; que l'inexécution de toutes les conditions d'un Traité de la part d'une des parties délie l'autre partie.

Et les régules se sont si bien considérés comme déliés de tout engagement envers l'Angleterre, que, jusqu'à ce jour, ils ont sans cesse agi en sujets du Portugal; en 1857 le régule actuel nommé Bacute a, sur sa demande, été confirmé dans le Gouvernement de son respectif territoire par les Portugais et un délégué du Gouverneur de Lourenço Marques a présidé à son installation.

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et en reçu hommage de vassalité, ainsi que nous l'avons dit plus haut.

Spécialement à l'égard du 3Mapouto, les deux Traités, alors même qu'ils ne seraient ni controuvés ni atteints de nullité, et qu'ils comprendraient une cession ou un protectorat de territoire, n'en resteraient pas moins sans effet, attendu que, de ces prétendus Traités, il ne résulte pour l'Angleterre aucun droit de propriété ou de souveraineté sur le territoire de Mapouto ni sur les îles de l'Unhaca et des Éléphants.

Dans le premier de ces Traités, en date du 3 Août, 1823, sont à peine indiqués les droits d'entrée des navires Anglais à leur arrivée à Mapouto; savoir: cinq pour cent pour les grands navires et quatre pour cent pour ceux de moindre importance. Si ces documents avaient une valeur quelconque, il en ressortirait tout au plus une preuve de souveraineté en faveur du régule de Mapouto à qui l'Angleterre paierait des droits, mais non une preuve que la propriété du territoire de ce régule appartienne à l'Angleterre; de sorte que ce document, loin de démontrer la souveraineté de l'Angleterre, démontre qu'elle n'a aucun droit sur ces territoires.

Le second de ces prétendus contrats, en date du 27 Août, accorde à peine à l'Angleterre le droit d'établir une colonie à 3lapouto, sur l'emplacement désigné par le régule à la condition que cette colonie s'établirait dans les dix années fixées pour la durée des stipulations de ce second Traité.

D'où il résulte:

1. Que, par ce Traité, le régule de Mapouto ne cédait nullement son territoire à l'Angleterre.

2. Qu'il était uniquement permis à l'Angleterre d'établir une colonie sur les terres que le régule désignerait.

3. Que le Traité n'avait de valeur que pendant dix années et que cette faculté d'établir une colonie cesserait pour l'Angleterre si elle n'eût profité dans ce délai de dix années.

Et c'est avec de pareils titres en main que l'Angleterre prétend s'emparer du Mapouto et des îles de l'Unhaca et des Éléphants !

Notre respect pour l'arbitre, et le sérieux que doit imposer une question de cette nature, font taire les réflexions qu'ils offrent naturellement à l'esprit.

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Chapitre II.-Réfutation du deuxième argument présenté par l'Angleterre.
Le second argument de l’Angleterre fondant sa prétention sur le besoin qu’elle a des îles de l’Unhaca et des Éléphants pour s’opposer à la traite des nègres, est inadmissible:
1. Parce qu’il ne s’agit pas de savoir si l’Angleterre juge convenable, dans un but quelconque, de s’emparer de ces îles, mais seulement si elle a ou non quelque droit sur ces mêmes îles.
2. Parce qu’il serait intolérable et contraire à la morale et au droit que, pour éviter la traite des nègres, qui est un crime, on prit à une nation une partie de son territoire, ce qui constitue un acte non moins condamnable, alors que l’on pourrait s’opposer à ce trafic par d’autres mesures légitimes.
3. Parce que, en outre, le prétexte de la traite des noirs à Lourenço Marques en 1823 est dénúé de tout fondement. Ce ne sont pas les Portugais qui l’affirment, mais les étrangers euxmêmes; déjà en 1822, dans ses "Variétés politico-statisques sur la Monarchie Portugaise," Balbi écrivait à l’égard de ce district:
"-Il n’en sort point d’esclaves parce que les habitants détestent le commerce."  Et peu après, en 1824, les "Annales Maritimes et Coloniales " de France disaient: " A la Baie de Lagoa, où la race Cafre domine, la traite des esclaves cesse entièrement.
4. Parce que la nation Portugaise a toujours été jusqu’à ce jour l’ennemie déclarée de la traite des nègres; elle l’a combattue de toutes les manières et a complètement aboli l’esclavage dans ses colonies.
5. Et ces faits sont tellement exacts, que l’Angleterre elle-même a récemment sollicité le Portugal d’employer diplomatiquement son influence sur le Sultan de Zanzibar, afin que ce Souverain aboît la traite des noirs dans ses États, alors que pour être logique et cohérente dans ses idées, elle eût dû appliquer aux territoires de Sultan les mêmes principes qu’elle veut faire valoir dans la question de Lourenço Marques, en tâchant de s’emparer des États de ce prince, pour en finir avec le trafic des esclaves.

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Chapitre III.-Le droit de l’Angleterre (si elle eût eu ce droit) serait périmé.
En admettant que les prétendues cessions de 1823 eussent donné quelque droit à l’Angleterre, ce droit serait périmé, d’après les principes soutenus par le Gouvernement Anglais.
Lord Howard, dans une note adressée, le 8 Août, 1843, au Ministre des Affaires Étrangères en Portugal, à l’égard de la question relative à la souveraineté de l’île de Boulama, dans la Guinée (question résolue en faveur du Portugal par le Président des États-Unis) déclara que la nation Portugaise avait abandonné ses droits sur cette île, puisqu’elle était restée onze mois sans répondre à la note de Lord Palmerston du 9 Juin, 1841.
"The undersigned (écrivait-il) is further to state that it was reasonable that Her Majesty's Government should expect that, if an answer could be given to the note of June 9, 1841, maintaining the right of Great Britain to the island of Bolama, such answer would be given And that, not having been given, Her Majesty's Government are justified in considering that Portugal acquiesced in the claim asserted by Great Britain."
Or, l’Angleterre ayant laissé sans réponse la dernière note du Duc de Palmella, écrite en 1828, jusqu’au nouvel attentat commis en 1861, c’est-à-dire pendant un intervalle de trente-trois années, aurait, par ce fait, abandonné ce droit si elle l’eût possédé; et elle ne peut contester cette conclusion, qui découle de sa doctrine et non de la nôtre.
Chapitre IV.-Appréciation des procédés du Gouvernement Anglais ou plutôt de ses autorités dans la question en litige.
La démonstration juridique de la futilité des titres invoqués par l’Angleterre, doit se compléter par un examen rapide de ses procédés ou plutôt des procédés de ses agents; nous présenterons simplement les faits, laissant à l’esprit éclairé de l’arbitre le soin de les commenter.
1. La possession, pendant trois siècles, de la Baie de Lourenço Marques par la nation Portugaise, est sue du monde entier et surtout de l’Angleterre, qui l’a reconnue en 1817, dans un Traité fait avec le Portugal, son plus fidèle allié.
2. Sous prétexte d’études d’hydrographie sur la côte orientale
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d’Afrique, le Gouvernement Anglais sollicite en 1822, pour le Capitaine Owen, des lettres de recommandation du Gouvernement de Sa Majesté Très-Fidèle adressées aux autorités Portugaises dans cette région.
3. Le Capitaine Owen, abusant de la faveur qui lui est accordée, commet les attentats les plus inouïs contre la souveraineté Portugaise; il s'empare à main armée d'un bâtiment marchand retenu en séquestre pour délit de contrebande, insulse le Gouverneur Portugais, menace de raser la forteresse et tue un soldat d'un coup de feu tiré de son bord.

4. Ces attentats du Capitaine Owen, étrangers toutefois à la question de souveraineté débattue entre les deux Gouvernements, n'ont pu, jusqu'à ce jour, obtenir satisfaction ni réparation, malgré les énergiques réclamasions du Portugal!

5. Non content d'outrager le Gouvernement Portugais dans la personne de ses Agents, le Capitaine Owen, par ses intrigues, a essayé (mais sans succès) d'indisposer contre nous les régules de la baie, et de les exciter à se révolter contre la souveraineté Portugaise.

6. Il a fabriqué, en 1823, de prétendus traités avec les régules de Tembe et de Mapouto (traités niés par les régules), et a porté l'audace jusqu'à arracher du Tembe le drapeau Portugais.

7. Il a reconnu, en 1825, que l'Angleterre ne pourrait recueillir les effets de cette cession sans que la question fût préalablement résolue entre les deux Gouvernements, ce qui montre les doutes qu'il avait lui-même au sujet de son propre ouvrage.

8. Le Portugal réclama, et l'Angleterre, embarrassée par la valeur de la réclamation, se dispensa de répondre à la dernière note que l'Ambassadeur Portugais lui adressa eu 1828.

9. Le Gouvernement Portugais cessa ses démarches, persuadé que le silence gardé par l'Angleterre impliquait son consentement et la reconnaissance de notre droit; et de fait, l'Angleterre n'a depuis pratiqué aucun acte qui pût faire supposer qu'elle conservait la moindre prétention.

10. En 1861, sans un seul mot d'explication au Gouvernement Portugais et après un silence de trente-trois années, l'Angleterre déclare l'annexion des îles de l'Unhaca et des Eléphants à la Colonie du Natal et envoie un navire de guerre placer son drapeau sur l'une d'elles. (Ce drapeau disparut immédiatement.)

Le simple récit de ces faits parle plus haut que les commentaires que l'on pourrait y ajouter.

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Chapitre V.-Les Anglais n'ont aucune confiance en leur prétendu droit.

Enfin, tel est le peu de confiance que les Anglais ont dans leur droit, que le Vice-Amiral H. Hall, dans une lettre adressée par lui à l'éditeur de "l'Ocean Highways," de Londres, et publiée dans le numéro de Février, 1873 (p. 354), dit que l'Angleterre devrait étendre ses possessions d'Afrique jusqu'à la partie sud de la Baie de Lourenço Marques, si elle ne l'avait pas déjà fait : "And the sooner we extend our domination to its southern part, if we have not dose already!"

Quelle est donc cette contrée qu'un Amiral Anglais ignore en 1873 avoir été ou non déjà acquise par son pays? Et doit-on s'étonner de cette ignorance, alors que le Gouvernement Britannique lui-même, après avoir fait, en 1861, un simulacre de prise de possession de l'île de l'Unhaca (qui fait partie du Mapouto) et y avoir fait arborer le drapeau Anglais, aussitôt retiré, déclarait, dans une note de Lord Clarendon, en date du 27 Août, 1869, qu'il n'avait ordonné ni l'occupation du Tembe ni celle du Napouto ?

SIXIÈME PARTIE.

Conclusions finales.

Nous avons exposé le fait et le droit applicable à la question.

Les preuves que nous présentons sont des documents irréfutables et des témoignages d'auteurs plus ou moins contemporains des faits, ou d'écrivains insuspects.

Déjà dans les anciens temps, il était d'usage d'invoquer le témoignage des historiens, et s'il nous fallait en citer des exemples, l'antiquité Grecque nous en fournirait deux, relatifs à des différendes survenus entre Priène et Samos et qui furent soumis, le premier à l'arbitrage du Roi Lysias, et le second à celui des juges de Rhodes. Dans ces deux cas, les arbitres invoquèrent l'autorité des historiens pour rendre leurs décisions, que le temps même a respectées et qui se trouvent aujourd'hui dans le "Corpus Inscriptionum Graecarum.'

Il est temps de conclure: donc, en vue de l'exposé du fait et du droit:

Attendu que, suivant le droit public en vigueur en Europe au seizième siècle, la découverte de territoires dans les régions occupées par les infidèles était un titre légitime à l'acquisition de la souveraineté de ces
territoires, et que le Portugal possède, en vertu de ce titre, la totalité de la Baie de Lourenço Marques, non-seulement déjà découverte par les Portugais en l'année 1506, mais encore explorée par eux depuis 1544;
Attendu que le droit du Portugal ne s'est pas borné uniquement à ce titre, mais s'est rendu immédiatement effectif par l'occupation et la possession de la baie, occupation et possession qui datent de plus de trois siècles, à partir de 1544;
Attendu que la possession, soit qu'on la considère comme possession de droit civil, soit comme possession de droit public à l'égard du droit de souveraineté dans cette région, c'est-à-dire comme possession de territoire ou comme possession de droits, s'est toujours exercée dans toute la baie;
Attendu que la possession du territoire s'est manifestée d'abord par l'établissement de factoreries sur les rives du Saint-Esprit (English River) dans l'île Chefine, dans le Manhiça au nord et dans l'île de l'Unhaca au sud; ensuite par la construction, depuis le dix-huitième siècle, d'une fort sur la rive droite du Saint-Esprit, dans le Tembe, fort dont il reste encore des vestiges et qui fut plus tard transporté sur la rive gauche ou nord où il existe aujourd'hui; et enfin par l'occupation militaire de l'île de Benguelene, à l'embouchure du Manhiça, et de l'île de l'Unhaca;
Attendu que la possession de la souveraineté de toute la baie, en y comprenant le Tembe et le Mapouto, est prouvée par les actes de souveraineté au moyen desquels le Portugal a toujours affirmé son droit, soit par le titre de maître de ces contrées, joint aux autres titres des Rois de Portugal, soit par l'exercice exclusif de la navigation et du commerce, soit par le châtiment des tribus rebelles, soit par la construction de forteresses, soit enfin par l'expulsion des étrangers lorsqu'ils tentèrent de s'y établir, ainsi que cela eut lieu avec les Autrichiens en 1781 ;
Attendu que l'occupation et la possession du Portugal, soit qu'elle se considère comme un moyen subsidiaire d'augmenter la valeur du titre de la découverte, soit comme simple possession

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pour être maintenue, ou enfin, comme possession regardée comme moyen d'acquérir, réunit toutes les conditions juridiques de la possession ;
Attendu que, si le droit du Portugal sur la baie de Lourenço Marques n'avait pas été déjà affirmé dans le dix-septième siècle, il l'eût été en 1629 par la cession faite par le Roi du Monomotapa, dont les domaines s'étendaient encore au delà de cette baie et jusqu'au Cap de Bonne-Espérance;
Attendu que la souveraineté du Portugal a été reconnue par les régules de la baie qui se regardent comme vassaux de la Couronne Portugaise et qui, l'affirment, non-seulement par une série de faits incontestés, mais encore par reconnaissance expresse et même écrite;
Attendu que ce droit a également été reconnu dès le seizième siècle, tacitement et expressément, par les ouvrages géographiques, par les écrivains et par les Gouvernements de l'Europe;
Attendu que, dans l'hypothèse, toutefois imaginaire, du manque absolu de titres antérieurs à 1781, l'expulsion des Autrichiens dans cette même année serait un autre titre légitime, celui de la conquête, confirmé par l'occupation et la possession constantes jusqu'à ce jour;
Attendu que les titres sur lesquels s'appuie l'Angleterre pour contester au Portugal et revendiquer pour elle-même la souveraineté d'une partie de la baie, dans le Tembe et le Mapouto, ne peuvent prévaloir contre le droit de la nation Portugaise;
Attendu que les Traités que l'on prétend avoir été faits, en 1823, entre les régules et le Capitaine Owen et qui constituent le premier argument de l'Angleterre, ne peuvent avoir aucun effet juridique; d'abord parce qu'ils n'ont aucune authenticité, ensuite parce qu'ils ont été déniés par ces deux régules et enfin, parce que, si réellement ils n'étaient pas fictices, ils n'en seraient pas moins nuls dans la forme, vu le manque de qualité du Capitaine Owen pour traiter, et le manque de ratification de ses actes par le Gouvernement Anglais, ratification d'ailleurs rendue impossible par les déclarations des régules; et attendu qu'il serait nuls dans le fond, puisqu'ils ont pour objet l'aliénation d'un bien appartenant à la Couronne Portugaise et dont les régules ne pouvaient aucunement disposer;
Attendu, en outre, que des Traités faits avec le régule de Mapouto, alors même qu'ils seraient authentiques et valables, il

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ne résulterait aucune cession à la Grande-Bretagne du territoire de Mapouto ni des îles de l'Unhaca et des Eléphants;
 Attendu que le Capitaine Owen, tant à l'égard de ces prétendues cessions qu'à celui de tous les attentats qu'il a commis, s'est rendu coupable de la plus insigne perfidie, abusant des lettres de recommandation qui lui avaient été accordées par le Gouvernement de Sa Majesté Très-Fidèle près des autorités Portugaises de l'Afrique Orientale, à la sollicitation du Gouvernement Anglais lui-même;

Attendu que la nécessité de l'abolition de la traite des nègres (deuxième argument de l'Angleterre) non-seulement s'appuie sur un fait inexact, mais encore ne pourrait juridiquement donner lieu à ce qu'une nation fût dépouillée d'une partie du territoire qui lui appartient;

Attendu que le droit du Portugal est reconnu par l'Angleterre elle-même dans le Traité de 1817 par lequel la baie eût considérée comme limite sud des possessions Portugaises dans l'Afrique Orientale, ce qu'établissent encore d'autres documents;

Attendu que, ni le Gouvernement Britannique lui-même, ni les hommes les plus compétents de la nation Anglaise n'ont foi dans ce prétendu droit de souveraineté de la Grande-Bretagne;

Attendu, enfin, que la baie de Lourenço Marques, dans toute son étendue, atteint le 26° 30' de latitude sud, ainsi que le démontre le simple examen des cartes géographiques;

Il devra sembler au juge arbitre:

1. Que le droit du Portugal à toute l'étendue de la baie de Lourenço Marques est incontestable et s'étend, par conséquent, jusqu'au 26° 30';

2. Qu'ainsi est dénuée de tout fondement la prétention de l'Angleterre sur la partie méridionale de cette même baie, qui comprend les territoires de Tembe et de Mapouto, ainsi que les Iles de l'Unhaca et des Eléphants.

Si l'Angleterre est trop puissante et trop riche pour avoir à craindre, dans un arbitrage, l'effet de la jalousie des autres nations, comme l'écrivait encore cette année le Vice-Amiral Hall à propos de ce différend, le Portugal, lui, malgré sa faiblesse relative, a une foi entière dans la justice de sa cause et nourrit la ferme conviction que ses droits seront reconnus par l'arbitre, chef d'une nation qui, mieux que toute autre, sait que la force du droit est toujours supérieure au droit de la force, et qu'au-dessus de

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toutes les nations, quelque puissantes qu'elles soient, il est, ainsi que le dit Cicéron, une loi éternelle et immortelle qui les domine: Omnes gentes et omni tempore una lex, et sempiterna et immortalis, continebit.

[Copy.]

Letter from the EARL OF DERBY to LORD LYONS.

FOREIGN OFFICE, September 8, 1874.

My LORD,—With reference to your despatch of the 28th of July, I now transmit to your Excellency two printed copies of the Counter-Case of Her Majesty's Government in the Delagoa Bay arbitration, one of which you will present to the President of the French Republic, and the other to M. Mendes Leal, the Portuguese Minister at Paris, with whom your Excellency will place yourself in communication as regards the presentation of the Cases to Marshal MacMahon. I likewise transmit to your Excellency eighteen further copies of the Counter-Case, six for the use of the French Government, six for the Portuguese Minister, and six to be kept in Her Majesty's Embassy.

I am, &c.

(Signed) DERBY.

[Enclosure in the above.]

Reply on behalf of Her Majesty's Government to the Portuguese Memorial.

Her Majesty's Government does not deem it necessary to go back so far as the year 1558 to find a reason for placing its confidence in the impartiality of the Arbiter. Her Majesty's Government believes, and with reason, that he will determine the differences which have unhappily, and for so many years, existed between Portugal and Great Britain, upon the evidence and the facts placed before him, without any reference to matters remote in date and having no bearing upon the question submitted to him.

Nor will Her Majesty's Government cite so respectable an

authority as Cicero to convince or persuade the Chief of the great French nation that the law of force is inferior to the force of law, which is one eternal and immortal, and governs all nations.
But there are in the Portuguese Mémoire some errors in fact and some statements of law and principle which Her Majesty's Government cannot allow to pass unchallenged.

For instance, the Arbiter will find an error, small, indeed, as a fact, but deriving an importance from the Treaty concluded in 1869 between Portugal and the Transvaal Republic in the description of the southern limits of Delagoa Bay. The southern limit of that bay geographically is not 26° 30' as laid down in page 1 of the Mémoire, but 26° 22' south latitude.

In other respects the description of Delagoa Bay and of the adjacent territories and of the rivers flowing into it is sufficiently accurate.

No argument, however, in favour of the Portuguese claim can properly be drawn from the statement of the importance of the Bay of Delagoa, or from the assertion that the Transvaal Republic wishes to place itself in harmony with the Portuguese, for the purposes of importation and exportation by means of the bay; and intends to abandon the harbours at the Cape and in Natal, because, among other alleged but unfounded reasons, the English threaten to annex the territory of the Republic.

This passage in the Portuguese Mémoire is so evidently framed with a view of preparing the mind of the Arbiter for the Treaty with the Transvaal Republic, that the matter is noticed at once, though it may be necessary to refer hereafter to the Treaty in detail.

There is no doubt that the Portuguese discovered the bay, nor is there any doubt that the fort and establishment of the Portuguese on the north bank of English or St. Esprit River were founded by the Portuguese and called Lorengo Marques. And it is true, as admitted in the English Case, that geographers, and even Captain Owen so late as 1823, called the whole bay Delagoa or Lorengo Marques Bay.

The imperfection of early charts is, however, well known.

D'Anville and Busching, in the middle of the last century were the founders of geography as a science. D'Anville consecrated a long life to the work of replacing the errors of former times by more accurate conceptions, and his vast erudition and sound criticism gained for him the name of the French Ptolemy.

He reformed mathematical geography, Busching devoted himself to historical geography and the actual states of empires and nations.

No conclusion, however, can be derived even from the best and most modern charts in which the names Delagoa and Lorengo Marques are indifferently applied to the larger bay. But the smaller bay, as in the Convention of 1817 between Portugal and Great Britain, would be more properly called Lorengo Marques as the estuary of the river known by that name, and so distinguishing it from the greater bay of which it forms a part.

The perfect identity between the Delagoa Bay of the English and the Bay of Lorengo Marques of the Portuguese is certainly not established by the argument from charts.

In reference to the voyages of discovery, whether by sea or land, made by the Portuguese, no doubt if the question for decision were the fact of discovery, the Portuguese would be able to show that they were the first discoverers; but the question is one of the right by occupation and possession, and not one of the fact of discovery or of right derived from discovery, not followed by occupation.

It is remarkable, however, that not one of the six so-called explorations by land referred to in the Portuguese Case, was undertaken for any national or scientific purpose. They were all the result of shipwreck on the coast, and performed by persons who were seeking their own personal security by reaching a civilized settlement, which the survivors ultimately found on the left bank of the river at Lorengo Marques.

The travels of Messrs. Cowie and Green at least, as undertaken by volunteer explorers, contrast favourably with the wanderings of shipwrecked Portuguese. And it is not, therefore, singular that Walkenaer should have said that the English were the first explorers of this part of Africa.

The observations on the population, climate, and produce of Lorengo Marques and its neighbourhood have not, apparently, any connection with the question referred to the Arbiter.

These would probably remain the same, whatever the decision may be, and whether the disputed territories were awarded to

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Great Britain or to Portugal. At all events, the population and produce will not be likely to diminish, and the foreign trade and commerce would probably increase if the decision were favourable to Great Britain. But the alleged subjection of the natives to the Portuguese is an averment of grave and real importance; and the statements made in support of that averment should be considered with the greatest care and most closely examined.

It appears that the tribes to the north and north-east pay to the Portuguese Government, according to the produce of the land cultivated by them, a stated amount of provisions for the negroes employed by the Government. The tribes, however, to the south and south-west, that is, the tribes occupying the territory in dispute, are said to give, as tribute, ivory, rhinoceros horns, and sometimes cattle. These are some of the very articles which constitute the commerce by barter or exchange with the interior. The Arbiter will observe and give a proper weight to the distinction between the regulated payment from the tribes to the north and north-east and the uncertain amount of so-called tribute, uncertain in quantity as well as in kind, said to be given by the tribes to the south and south-west.

It is submitted, on the part of Her Majesty's Government, that the Portuguese Government would not leave so important a proof of dominion on the one side, and of vassalage on the other, as the payment of tribute in so vague and undefined a state. No specified sum or ascertained equivalent to be given as tribute is even named. In reality nothing is given by these tribes as tribute to the Portuguese; but ivory, horns and cattle are brought to market and exchanged for the articles supplied by the Portuguese in their Settlement of Lorengo Marques.

The second and third sections of Chapter V, first part of the Portuguese Memoire, afford a strong proof that the Portuguese dominion does not extend to the right banks of the Lorengo Marques and English Rivers. The fort itself was restored in 1864, and four new batteries were constructed in 1867. The town has been considerably improved, and the population has largely increased.

In 1828 the Governor, Caetano da Costa Matoso, wrote that a 186

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site more healthy, more elevated, more easily defensible, and possessing water and fertile lands existed opposite Lorengo Marques, on the right bank of the river. The only assignable reason why the Portuguese Government has since 1828 remained in, enlarged and improved the site of their unwholesome and inconvenient establishment on the left bank, is that the ground on the right bank did not, and does not, belong to them.

It is obvious that the lands sold in 1845 by the Chief Makaxalla, said to be five days' journey from Lorengo Marques, and situated north of the 26th parallel, formed to that time no part of the Portuguese territory. The first section of Chapter VII, Part I, of the Portuguese Memoire, contains statements which seem singularly at variance with some arguments urged by the Portuguese in support of their claim. If the Portuguese Government is well founded in its claim by right of discovery and occupation, and by the evidence from travellers, ancient authors, historical documents, old charts, and payments of tribute, how does it happen that, in 1861, Mouzella, as the price of the help given him in the war with his brother by the Portuguese, should have ceded to the Crown of Portugal Moamba, Cherinda, Manhica, and Injote? And still more strange is the admitted fact, that, on the 5th April, 1805, the Chief of Moamba gave to the Crown of Portugal the territories of Mafoumo, Mafoumo Branco, and Palane, the town and fort of Lorengo Marques being, as appears from the statement in this chapter, on this territory of Mafoumo, and the plan of the bay annexed to the Portuguese case, showing the position of Mafoumo and Cherinda, to the north of the English or S. Esprit River.

The conclusion seems obvious, and is this, that even on the north side of the river the Portuguese hold now and have held from the first of their settling on this part of the coast of Africa, only so much land as was ceded to them by the native chiefs, and they could protect by their guns. This chapter is a strong corroboration of the facts and arguments stated and put forward in the original case on the part of the Government of Her Britannic Majesty, and proves the little foundation, or rather the absence of all foundation, for the 187

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claim of the Portuguese to any territory on the south side of the river, since even on the north side their possessions were so lately acquired and held on so feeble a tenure.

The documents 14, 15, and 16 annexed to the Portuguese Case are, it is submitted, the most convincing proofs of the independence of the tribes immediately to the north and northeast of the fort of Lorengo Marques down to the dates of 1805 and 1861. They make it quite unnecessary to trouble the Arbiter with any reference to the second part of the Portuguese Case.

On that part of the Portuguese Case it is sufficient to observe that the statements and documents are quite consistent with the fact that the Portuguese endeavoured to establish a monopoly of commerce on the coast, and a dominion over the natives, but utterly fail to show that the natives ever surrendered the exercise of their independence except for short and few periods when overawed by Portuguese ships and troops, or in the few cases where the chiefs on the north bank of the river sold or yielded their lands to the Portuguese. These cessions have almost all been made in quite recent times, and none of them was made of land or territory south of the river.

The difference in the boundary, as claimed by Great Britain and Portugal, is correctly stated in Part III, Chapter I. But why the line proposed by Great Britain should be more ideal than the line traced on 26° 30' seems hard to say, particularly as 26° 30' starts from no definite point on the coast, and is more to the south than the southern extremity of Delagoa Bay.

The Arbiter will find very little, if any, discrepancy between the account given in the third part of the Portuguese Case of the origin and phases of the differences raised in reference to the matter in dispute, and that contained in the history and documentary evidence set out in the English Case; but some inferences are drawn and some statements made in the Portuguese Case, either by inadvertence or in invidiam, and to prejudice the judgment, which it is necessary but not agreeable to expose.

The letter of recommendation which Captain Owen, at the instance of Lord Dudley, received from the Portuguese authorities, is put forward as an admission on the part of Great Britain of the rights of Portugal. But no notice is taken of the fact that 188

The expedition was sent to survey the whole coast, on parts of which, for instance, the very fort of Lorengo Marques, Inhambane, and Mozambique, the Portuguese were known to have settlements. And the prominent statement of Captain Owen in his letter to the Governor of Mozambique that "the impression that all the surrounding country about Delagoa Bay was under Portuguese jurisdiction and authority, was false," is not noticed in the least.

And the passage in this letter from Captain Owen immediately following, and referring to the admission of Senhor Casimir, the Governor of Lorengo Marques, that the whole country was free and independent; that the Portuguese had no authority beyond the precincts of the fort; and that the Governor was in hourly fear of an attack by the native Vatwas even in his fort; and that they had already laid waste the surrounding country; and that he had no means of furnishing protection to any boats beyond the reach of his guns, is passed over in silence. Yet the Portuguese must have known the contents of this letter sent to the Governor of Mozambique, and the Portuguese Case is full of references to Captain Owen's narrative of voyages to explore the shores of Africa, where a similar statement is made.

With reference to the documents relied upon by the two Governments, Her Majesty's Government will not exchange such words as "fabricate," "the stamp of forgery," "falsehood," "audacity," and "impudence," so freely used by the compilers of the Portuguese Memoire in their observations upon Captain Owen's conduct, believing that the use of such language is beneath the dignity of two great Powers, who are laying such evidence as each may have before the eminent person to whose decision the facts are referred.

The history of the brig Eleanor, for the detention of which vessel it will be remembered that the Portuguese Government paid damages, is apparently introduced for the purpose of representing that the Portuguese drummer was wilfully shot, and yet the direct contrary is the fact. The man was killed by accident, and the Governor of the fort admitted such to be the case. The compilers of the Portuguese Case should have known this, for the whole transaction is told in the narrative of the voyages with which they are evidently familiar.

The most inexcusable negligence, however, on the part of

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those who prepared the Portuguese Case, is to be found in page 56. Lord Dudley is there represented to have never answered the Portuguese note of the 22nd May, 1828; and the impression intended to be made by this representation is, that the reasons alleged in this note of the 22nd May in favour of the Portuguese claims were unanswerable. The true reason is admitted by Senhor Figaniere e Morao, who says the correspondence was interrupted in consequence of the civil war which broke out in Portugal in that year. Great Britain having, as was and is still believed, acquired the right to the territories of Mapoota and the islands, certainly acted from time to time upon that belief, and when the Treaty between the Portuguese and the Transvaal Republic became known, the British Government at once determined to have the question settled, not willing to have her rights quietly extinguished by a Treaty between two foreign Governments. Whether Great Britain was right or wrong the Arbiter will determine once for all. But Her Majesty's Government sees with some astonishment the strong remarks upon the British occupation of Inyack and Tembe made in their case by the Portuguese, who had themselves also forcibly occupied Inyack, and afterwards, by a stroke of the pen, assumed a dominion over the whole territory in question in their Treaty with the Transvaal Republic in 1869-70.

The fourth part of the Portuguese Case is very remarkable. In discussing, in the 19th century, a right of territory by occupation or cession, one does not see how an appeal can be made with effect to the ideas on the consequence or effect of discovery which prevailed in the 16th century. Of course, where continual occupation, or recognized dominion, has followed upon discovery, then the case is materially varied. Only in this latter case the right is not founded upon discovery, but upon occupation, or that which amounts to occupation. Such was evidently the principle of the decision in the Bulama Case, of which only a part of the award is given in the Portuguese text, though the whole award is properly inserted in the document No. 78.

The modern and right principle is thus stated by Yattel ("Droit des Gens," I. 1, § 207), "When a nation finds a country uninhabited, and without an owner, it may lawfully take possession of it, and after it has sufficiently made known its will in this respect, it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation, and this title has usually been respected, provided it was soon after followed by a real possession."

To the same purport Martens ("Precis du Droit des Gens," § 37,) writes: "Suppos6 que l'occupation soit possible, il faut encore qu'elle ait lieu effectivement, que le fait de la prise de possession ait concouru avec la volont6 manifeste de s'en approprier l'objet. La simple declaration de volont6 d'une nation ne suffit pas, non plus qu'une donation Papale ou qu'une Convention entre deux nations pour imposer d'autres le devoir de s'abstenir de l'usage ou de l'occupation de l'objet en question. Le simple fait d'avoir ét6 le premier A decouvrir ou i visiter une ile, &c., abandonnee ensuite, semble insuffisante meme de l'aveu des nations, tant qu'on n'a point laisse de traces permanentes de possession ou de volont6, et ce n'est pas sans raison qu'on a souvent disput6 entre les nations si des croix, des poteaux, des inscriptions suffissent pour acqu6rir ou pour conserver la propri6t6 exclusive d'un pays qu'on ne cultive pas."

Every word in these passages tells against the Portuguese claim. The land, when discovered, was not uninhabited, when discovered was not, and has not since been occupied or cultivated by the Portuguese, who have left there no sign of their occupation except a stone, of whose existence no trace is to be found, save in the suspicious narrative of events said to have occurred after the cession made to Captain Owen. The Portuguese M6moire, in Part IV, Chapter VII, seeks to show that several European nations have acknowledged the right of Portugal to the territories in dispute. The direct contrary certainly seems to be the fact. Thus, the French authorities conceived the Portuguese territory to begin at "Inhaque en terre ferme, et prbs de l'ile de ce nom, c'est de commence le Gouvernement de Mozambique."

The German writers, cited in the Portuguese M6moire, are to the same purport: "Les Portugais ont au midi un fort qu'on appelle Inhaca." So the Swiss: "Vers le sud les Portugais poss6dent le fort d'Inhaque."

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description which agrees exactly with the situation of the fort and town of Lourenço Marques, and destroys all pretence for saying that the Portuguese have occupied, or had establishments or factories, or one establishment or factory, or even a hut, except the attempted settlement, soon abandoned, of a few Portuguese on the shores of the Maputo so far back as 1589, and a small fort, whose abandonment is proved by its ruins.

When, therefore, Malte Brun, in the edition of 1857, says: "La cote Africaine depuis la Baie de Lagoa jusqu'au Cap Delgado est cens'e appartenir aux Portugais, qui y ont en effet quelques établissements," he evidently means from that part of the Bay of Lagoa on which the Portuguese have establishments, meaning with Delisle and de la Martiniere that part of the Great Bay which is near Inyack Island and on the mainland.

Her Majesty's Government desires no better proof against the pretensions of Portugal to a dominion south of Inyack than that contained in page 79 of the Memoire in these words: "Dans le dix-huitième siècle le polygraphe B'renger, qui dans sa rédition de la G'ographie de Busching, indique l'Unhaca comme point de départ de nos domaines. Vers le sud les Portugais possèdent le fort d'Inhaque."

The small number of establishments or factories held by the Portuguese on the eastern coast of Africa, and the extremely limited extent of the authority exercised, or dominion held over the natives by the Portuguese, is well described, pages 452, 458 of vol. I, "Documents sur l'Afrique Orientale," by Guillain, an author to whom the Portuguese Memoire refers with satisfaction at p. 36 of the Mémoire. Reading the Convention of 1817, with the information afforded by M. Guillain the English construction of the 1Ind Article of that Convention seems incontrovertible.

Scarcely any authority is referred to which says that the Portuguese ever held possessions to the south of the fort, which is evidently the fort of Lorengo Marques, or any possessions on the islands or in the peninsula.

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The passage from Horsburg's Directory, which is quoted at page 39 of the Memoire, is in the following words: "There is a good watering-place on the southern shore opposite to the anchorage, and a little above Point Talloqueen, a long sandy point on the same side. There is a small rivulet where the Portuguese have a resident; opposite the point on the other side of the river the ruins of the Portuguese fort are visible." On the following page Horsburg speaks thus of the Portuguese and natives: "Although the Portuguese still retain a little intercourse with the natives, ships which trade here, ought not to place much confidence in them, particularly if boats are sent a great distance up the rivers with goods to barter, for in such cases the natives have been known to attack them and massacre the crews. Elephants' teeth are procured in barter for India goods and coarse stuffs of various kinds."

The English authorities which are referred to are writing or speaking loosely in reference to the boundary question, and a glance at Colonel Michell's map (No. 87, Portuguese documents) will satisfy the Arbiter that his plan was not drawn with a view to, and is of no authority whatever upon, the question referred. This drawing of Colonel Michell's seems, from the Portuguese Memoire, to have been annexed to a letter written by the Colonel to the Portuguese Minister in 1843. The letter is not among the documents, and Her Majesty's Government has no knowledge of the contents of that letter, for what purpose, or how it came to be written. Evidently, the author of the drawing, who was the Government Surveyor at the Cape, and not at Natal or Delagoa Bay, had very little knowledge of the different territories whose frontiers he proposed to trace. And the Portuguese themselves repudiate his authority, 'for they admit that he brought their boundary far south even of the territorial limits which they now seek to obtain. Mr. Pritchard, whose letter to M. Duprat is document 65, was merely secretary to the Admiral, and writes evidently without authority.

Colonel Sutherland, in the passage cited in the Portuguese Memoire, speaks not of the Bay, but of the "place, which they must have known to have been in the possession of the Portuguese for the last 200 years." He is commenting upon the instructions issued to the Commander of the Noord, directing a survey of Rio de la Goa, not Bahia de la Goa.

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To point this distinction it is only necessary to refer to preceding portions of Colonel Sutherland's book.
At page 207 he mentions, among the instructions to one of the Dutch surveying vessels, "You will not touch at the bays Hout, Struys, Vis, Mossel, Content, and de la Goa, which have been visited." This was in 1670 and anterior to the date of the survey of the Rio de la Goa, which is referred to in the Portuguese Memoire, and shows that earlier than 1688 the Bahia de la Goa had been visited, and a further visit was unnecessary.

On page 216 of Colonel Sutherland's book he mentions the visit of an English vessel to the Rio de la Goa for four weeks, thus distinguishing, in Colonel Sutherland's own words, between the Rio de la Goa and the Bahia de la Goa.

Again, on page 313, it is stated that the despatch to the Chamber upon the survey held in the Rio de la Goa mentions that "they found a very good bay, where a great number of vessels, great and small may lie, and into which several rivers discharge themselves." Upon a reference to the chart this description will be found to apply far more accurately to the smaller bay or estuary into which the Rivers Matto], Lorengo Marques, and Tembe discharge themselves, than to the large bay, which was then already well known as the Bahia de la Goa.

It is, therefore, submitted to the Arbiter that, in the extract referred to in the Portuguese Memoire, Colonel Sutherland is speaking of the Rio de la Goa and not of the Bahia de la Goa. If so, the alleged admission of Colonel Sutherland has no bearing on the question before the Arbiter.

The casual observation of Sir Henry Rawlinson will not have any weight in deciding a question of territorial right arising out of the relations and proceedings of the two Governments in respect to that territory.

No doubt many writers in the seventeenth and eighteenth centuries speak of the river on which the fort and town of Lorengo Marques are built as Fluvius Lusitanus, and as the fact is that the Portuguese did then and still hold the fort and town, the expression is not to be objected to. Yet, as the Tembe and Mapoota territories are the subject-matter of the present reference, and the River Mapoota is in those territories, evidence that the Mapoota was ever called Fluvius Lusitanus would be much more satisfactory, particularly as the sovereign rights of King Monamotapa are said to have extended in the seventeenth century to the Bay of Lorengo Marques, and Phillippus Ferrarius in 1695, and Boffman in 1698, speak of the River "Spiritus Sancti fluvius Luscitanus fluvis in regione Monamotapa," evidently meaning that the bank on one side, at least, was in the country of Monamotapa, though owing to a Portuguese establishment known to be on the other side, the river might generally be called a Portuguese river.

The argument drawn from the formation of the bay, and from the suggestion that, because the Portuguese occupy the approaches to the bay, therefore the whole bay and its shores belong to Portugal, fails altogether. The Portuguese do not command the approaches to the bay. Inyack Island, which forms part of the territory of Mapoota, has never been in their possession except when occupied for a short time by troops, who left when the object of their expedition was over, and the Portuguese would certainly have placed long since some building as a hospital or sanatorium on a healthy place like Inyack if they had had the territory.

The conclusion is, that the Portuguese have, at the most, the possession only of one side of the entrance into the bay, and that entrance is too wide to be commanded by the Portuguese guns.

Thus, the facts which are required to support the principle contended for in Part IV, Chapter III, of the Portuguese Memoire, do not exist, and consequently there is no room for the application of the principle. With the exception of the Transvaal Republic, no Government has recognised the extent of dominion to 260 30' now claimed by Portugal.

The Treaty made in 1869 is open to serious observations, and particularly against the Government of Portugal, which concluded that Treaty, although in the introduction to the Memoire, at page 2, that Government admits that a conflict had been for some years pending between Portugal and Great Britain with reference to the rights of sovereignty extending over that very country asserted by the Portuguese in the Treaty with the Transvaal Republic to belong exclusively to Portugal. But Her Majesty's Government will not repeat here the observations made upon this Treaty in the English Case, to which the attention of the Arbiter is again requested.
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Still it is singular that Portugal, which, notwithstanding this admitted long pending conflict, assumed in this Treaty the indisputable right to the debatable territory, and now relies upon its own assertion of that right as an evidence of title, should object that England has no right alone to put a construction upon the Ind Article of the Convention of 1817.
That Article, however, is in its terms before the Arbiter, who will form his opinion from history, the correspondence between the two Governments, and the documents adduced, whether or no the British construction that the Lorengo Marques and English River, and the small bay so-called, is the southern limit of the Portuguese dominions, as admitted in that Convention. The argument for the English construction is in pages 14 to 17 of the Case on behalf of Her Majesty's Government.
With reference to the Treaties made by Captain Owen, and the measures subsequently taken by the Portuguese to throw a light upon, or entirely set aside as null ab initio, those Treaties, sufficient, perhaps, has already been said in the case of Her Majesty's Government. Yet it may not be out of place briefly to answer here some of the points suggested in the Portuguese Memoire.
If Captain Owen's Treaties are in English, those of the Governor of Lorengo Marques are in Portuguese.
And the internal evidence from form, ideas, and words, is at least as European in the one set of acts as in the other.
Nor, it is submitted, can much, if any, stress be placed upon the manner in which the names or titles of the native chiefs were spelt. The writer, Portuguese or English, would endeavour to represent in writing the sound as it caught his ear, and would best be produced by letters in his own language.
If the natives stated that they accepted the Treaties on the assurance that Captain Owen said they were but a list of goods, which he intended to send them, they must have done this to deceive the Portuguese. Her Majestys Government are confident that no British officer would be guilty of so gross an act of perfidy; and the fact admitted by the Portuguese that the Treaties were at once made known to them disproves the assertion now made for the first time, notwithstanding the immediately subsequent and long correspondence between the two Governments.
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The acts of Captain Owen were ratified by the British Government, and the Treaties made by him are good in that respect. And if the Chiefs were, as was then contended, and is now contended, free and independent, both parties were competent to contract.
The Treaties, moreover, contained internal evidence that they were made by the Chiefs at their own free will, and with full knowledge of their contents and meaning "in conformity with the well understood and sufficiently ascertained desire of the inhabitants of the territory."
To argue that the natives had no power to make these Treaties with Captain Owen because they were subjects to the Portuguese is a petitio principii. The assertion itself is found in the so-called Act of Declaration of the 20th of October, 1823, Appendix V, and Inclosure 5 of the Case on behalf of Her Majesty's Government, a document apparently without a native signature or mark.
To say that any English were present as witnesses to such a document as this, or any other similar document brought forward in proof of their rights by the Portuguese, is to show a great deficiency of reliable evidence. And on this point the variance of expression in the two passages of the Mémoire referring to the alleged presence of the English subjects is somewhat singular. In page 54 the presence of the English is described as absolutely voluntary on their part, whilst on page 96 it appears that the English were expressly invited to be present.
From both accounts it is clear that, if any English were present, of which the only evidence is the statement of the writer of the proces-verbal, it is probable that they did not understand what was said or transacted, and it is certain that they did not in any manner assent to what is alleged to have been done.
If the design in expressly inviting their presence was to obtain a semblance of assent, the design failed signally.
How far the natives considered that they had given up their independence to the Portuguese, may be judged by the event which followed.
Lupe de Cardenas, the Governor of Lorengo Marques, attempted to hoist the Portuguese flag on Tembe. He and twenty-six of his men were then killed by the natives; an ensign and thirteen black soldiers, who survived, were obliged to surrender, and submit to the terms of King Mayetta.
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This fact is not unknown to the compilers of the Portuguese Memoire, for it is related in the very number of Ocean Highways (February, 1873) to which they refer in page 103. The argument founded on the partial use of the Portuguese language by the natives is as valuable as the argument would be that the Island of Madeira belonged to the English because English is, to some extent, spoken and understood in Madeira.

And, in reference to the establishments in the town of Lorengo Marques by the Portuguese, whether military or civil, religious or educational, commercial or political, it is obvious that every civilized community, however small, must possess such; and they prove nothing in favour of a right of sovereignty beyond the reach of those establishments, in the present case, to the south of the Lorengo Marques and English River.

The Arbiter is lastly referred to page 107 of the Portuguese Memoire, where a passage is translated from a letter by Admiral W. H. Hall. The English words are correctly transcribed in the note, and mean exactly the reverse of the French in the text. Admiral Hall is arguing against a reference of the matter to arbitration, and he says in effect, that England should not submit her case to arbitration, because she is subject to, and has reason to apprehend, the jealousy of other nations. The Portuguese translators, misconceiving the whole line of the Admiral's argument, and not understanding the words which he uses, make him say that England is too powerful and too rich to have anything to fear from a reference to arbitration.

Her Majesty's Government does not adopt the argument of Admiral Hall, but protests against the perversion of his words and argument for the sake of the antithesis which follows, and the purpose of raising a prejudice.

The mistake, however, may be the result of ignorance and carelessness, and, so far, be accidental, and is unimportant, because it is presumed that the Arbiter will not form his judgment upon the unauthorised statements of irresponsible writers to the public newspapers, but upon the acts of the two Governments.

In conclusion, Her Majesty's Government is not concerned with, and does not deny, the general principles on which so great a stress is laid, and to which so many references are made in the Portuguese Memoire. But Her Majesty's Government does rely upon the historical facts and documents which show that the Portuguese never occupied, as Lords or Sovereigns, any territory to the south of the Lourenço Marques and English Rivers or on the adjacent islands. That the Chiefs and natives of those territories were never the vassals of, or tributary to, the Portuguese Crown, and, being free and independent, were, by right of the law of nations, able to make, as they did make with the English, Treaties, which, to them, seemed good and proper, and which Treaties, so long as they did not touch the rights of other nations, were valid, have never been set aside, or abrogated, or receded from, and are now binding and indefeasible, Gave by the mutual assent and consent of the Contracting Parties.

[Copy.]
Letter from LORD LYTTON to the EARL OF DERBY.
PARIs, September 15, 1874.
MY LORD,-I have the honour to acknowledge the receipt of your Lordship's despatch of the 8th instant, together with the copies of the British Counter-Case in the Delagoa Bay question. I have disposed of them in accordance with your Lordship's instructions in that despatch, and have the honour to inclose copies of the notes which I have addressed respectively to the French Minister for Foreign Affairs and to the Portuguese Minister here on this occasion. I have, &c.
(Signed) LYTTON.
P.S.-As the bag is closing I have received from the Portuguese Minister the Counter-Case, which he has submitted on behalf of his Government, and I beg to transmit herewith the six copies destined for the use of Her Majesty's Government.

[Enclosure in the above.]
BAIE DE LOURENÇO MARQUES.
Question entre le Portugal et la Grande Bretagne soumise à l'Arbitrage du Président de la République Française.

Deuemine Mémoire du Gouvernement Portugais (Réplique au Mémoire Anglais).

La croyance dans les principes de la justice ne doit jamais être abandonnée, même lorsque les différends qui divisent les peuples ne sont soumis à aucun arbitrage et dépendent des hasards de la fortune ou du sort des armes.

S'il y a des siècles ou des époques néfastes, qui font que la conscience humaine hésite et arrive même à douter de la Providence devant le triomphe de criminelles audaces, tôt ou tard la justice ne s'en manifeste pas moins dans toute son éclatante splendeur.

"La civilisation," a dit Châteaubriand, "ne décrit point un cercle parfait et ne se meut pas en ligne droite. Elle est sur la terre comme un vaisseau sur la mer; ce vaisseau, battu par la tempête, louvoie, revient sur sa trace, tombe au-dessous du point d'où il est parti; mais enfin, à force de temps, il rencontre des vents favorables, gagne chaque jour quelque chose dans son véritable chemin, et surgit au port vers lequel il avait déployé ses voiles."

En dépit de certaines apparence mal comprises, l'histoire n'est point une école de fatalisme, elle est un long plaidoyer en faveur de la liberté.

Pour les peuples comme pour les individus, la foi dans ces principes et la défense de la justice sont un devoir sacré; tous doivent réunir leurs efforts pour en assurer le triomphe soit par les moyens que la force leur permet d'employer, soit en se sacrifiant aux heures où la faiblesse et l'abandon sont leur partage; personne ne doit oublier l'admirable exemple du peuple Danois qui, placé entre l'incendie de sa flotte et le bombardement de sa capitale, soutenait avec héroïsme le droit des neutres hautement proclamé en son nom par le Comte de Bernstorff.

Si ces notions du juste, la bonne foi, le respect des Traités, devaient l'emporter sur des doctrines que le caprice seul peut soutenir, il semblerait superflu de répliquer au mémoire du Gouvernement Anglais et d'ajouter de nouveaux arguments à ceux que déjà, dans un précédent travail, nous avons soumis à la haute appréciation de l'arbitre chargé de prononcer sur l'affaire de Lourenço Marques.

Néanmoins le Protocole du 25 Septembre, 1872, par lequel le Gouvernement Portugais et le Gouvernement Britannique ont eu recours à l'arbitrage a établi dans son Article 3 le droit de réplique et dans son Article 4 la faculté, pour les deux parties, de faire défendre leur cause par des avocats, en présence de l'arbitre; l'Angleterre n'ayant point renoncé au droit de réplique, le Portugal se voit forcé dans la nécessité d'user du même droit.

C'est là le motif et l'objet de ce second mémoire ou de cette réplique qui se trouve divisée en cinq parties.

Dans la première nous opposons à l'Angleterre une exception péremptoire d'ilégitimité de personne qui lui est un empêchement à nous contester la souveraineté d'une partie du territoire (le Mayouto) qui fait l'objet du différend.

Dans la seconde, toute en faisant abstraction de cette exception, nous examinons la valeur des arguments que le Gouvernement Anglais oppose à nos titres à la souveraineté de la baie dans toute la partie méridionale (Tembe et Mayouto) qu'il nous conteste; et nous produisons de nouveaux arguments qui prouvent que notre droit était déjà reconnu par l'Angleterre en 1721.

Dans la troisième nous détruisons la valeur des titres produits par elle dans le but d'établir sa souveraineté sur les territoires qu'elle convoite.

Dans la quatrième partie nous démontrons que l'Angleterre ne peut s'appuyer sur son ignorance des faits; que son désir de posséder la baie est fort ancien et a toujours été déçu; et que ce désir, dans l'esprit de quelques écrivains Anglais semble lié à celui (nullement partagé, nous en sommes sûrs, par le Gouvernement Britannique) de nuire plus ou moins directement à la France.

Dans la cinquième partie enfin, faisant le résumé de toute la question, nous finissons en réclamant, au nom de la justice et de l'équité, un jugement favorable au Portugal et nous indiquons, dans des appendices, les questions de fait et de droit qui font l'objet de notre premier mémoire et de la présente réplique.

Quelque incroyable que cela paraisse, c'est écrit en toutes lettres dans le mémoire!
Le défaut de qualité, et par conséquent l'exception péremptoire, est prouvé par l'aveu de la partie elle-même devant l'arbitre, aveu qui constitue la plus sûre et la plus puissante des preuves, ainsi que l'établit l'Article 1356 du Code Civil Français, d'accord avec le droit Romain.

Et si l'Angleterre avoue son défaut de qualité pour reclamer le territoire de Mapouto et, d'après la lettre de la loi Romaine, ne peut résister à son propre témoignage (testimonioque proprio resistere), la conséquence en est que sa réclamation doit être repoussée : "non vales agere tua non interest," même par le principe du droit Français et universel : " Celui qui est sans intérêt est sans action," principe qui était déjà consacré par le droit Romain :" si nihil interest cessat actio ;" "agere poterit quoniam interest illius ;" "nihil petitoris interest."

Mais admettons qu'il n'en soit pas ainsi (ce que nous ne faisons que par simple hypothèse) et examinons la valeur des raisons présentées par l'Angleterre.

Le mémoire Anglais est divisé naturellement en deux parties essentielles: dans la première on essaie de détruire les droits du Portugal, dans la seconde on cherche à établir ceux de l'Angleterre.

Suivons le mémoire dans chacune de ces deux parties et démontrons l'inanité de cet écrit où le défaut de justice le dispute à l'absence de logique.

DEUXIÈME PARTIE.

Appréciation des Arguments présentés par le Mémoire Anglais pour combattre les différents Titres produits par la Nation Portugaise.

Dans les différents chapitres de la quatrième partie du mémoire dans lequel nous avons défendu les droits du Portugal, nous avons exposé les bases ou titres sur lesquels, principalement et subsidiairement, s'appuyait notre droit à toute la Baie de Lourenço Marques, mais nous n'y avons pas fait alors de distinction entre les titres principaux et les titres subsidiaires; c'est ce que nous allons faire maintenant.

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Si la question pendante est de la plus haute importance pour le Portugal, ce qui, nous l'espérons, l'obligera à pardonner l'étendue que nous avons donnée à ce travail, elle n'offre pas un moindre intérêt aux hommes d'étude qui suivront les phases d'un différend ayant pour objet une baie qui, sur la côte de Sofala, constitue le point extrême sud de la province Portugaise de Mozambique, dans l'Afrique Orientale.

En effet, le penseur doit ressentir une curiosité pleine d'intérêt pour une contrée qui, aux premiers âges, a entendu murmurer les noms de Tyr et de Salomon, qui n'est pas restée étrangère aux grands faits de conquête et de civilisation résumés dans les noms d'Alexandre et de César, qui a ressenti le contre-coup de la secousse imprimée au monde par la venue de Mahomet, qui a vu ses mers rougies par les luttes gigantesques de l'Orient et de l'Occident, qui fut, pendant de si nombreuses années, disputée par les Chrétiens et les sectaires du Prophète et qui, quoique éloignée du centre de l'activité humaine, ne s'en est pas moins trouvée en contact avec les plus grandes nations et liée aux événements les plus considérables.

Le développement donné à la force productive et aux richesses de cette province sera pour elle, aussi bien que pour la métropole, le rachat des erreurs du passé; ses ressources dûment mises à profit par la nation Portugaise, comme le témoigne la concession du chemin de fer de Lourenço Marques à Pretoria, le seront encore plus facilement aujourd'hui que le génie de la civilisation, en perçant l'Isthme de Suez et en creusant la terre classique de l'Egypte, vient de contraindre la Méditerranée et l'Océan Indien à s'unir dans un indissoluble embrassement à travers les plaines sablonneuses de la patrie des Pharaons.

Jiémoire.

PREMIÈRE PARTIE.

Illégitimité de l'Angleterre pour contester au Portugal la Souveraineté du Territoire de Mapouto.

Nous opposons à l'Angleterre son défaut de légitimité pour contester au Portugal le droit sur le territoire de Mapoutou, défaut qui est classé en jurisprudence parmi les nullités extrinsèques.

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attendu qu'il provient de l'incapacité d'agir du demandeur ou de l'incapacité de se défendre du défendeur.

Cette nullité qui constitue une véritable exception péremptoire du fond peut, suivant le droit, être présentée en tout état de cause; c'est pourquoi nous la présenterons et la développerons maintenant, quoique nous en ayons déjà parlé dans notre premier mémoire.
Cette exception est justifiée par le principe qui établit que, pour figurer dans une instance judiciaire, la partie doit se trouver dans la situation exigée par la loi pour pouvoir réclamer ce qu'elle prétend lui appartenir, ou, comme on le dit en jurisprudence Française, avoir qualité pour agir; hors de cette situation, le droit allégé manque de base.

Ainsi, celui qui réclame en justice le paiement de la créance d'une succession doit alléguer et prouver sa qualité d'héritier: "celui qui réclame une chose comme sienne doit alléguer et prouver son droit de propriété sur cette chose."

En demandant à l'arbitre un jugement par lequel le territoire de Maputo serait déclaré lui appartenir et non au Portugal, l'Angleterre devait alléguer et prouver son droit de propriété ou de souveraineté sur ce territoire.

Mais elle reconnaît d'une manière explicite et formelle que le titre qu'elle produit ne lui donne aucun droit; elle avoue donc ce défaut de qualité ou cette illégitimité de personne que le Portugal lui oppose avec tant de raison comme fin de non-valoir.

Passons à la démonstration de ce qui précède.

Le mémoire (case) du Gouvernement Anglais dit que la question à résoudre par l'arbitre est de savoir à qui, de l'Angleterre ou du Portugal, appartient la souveraineté des territoires de Tembe et Mapauto, et il assure, à la page 3, que les respectifs régules de ces contrées en ont cédé à l'Angleterre la souveraineté.

Mais un peu plus loin, ce même mémoire, oubliant ces deux propositions et tombant dans une déplorable contradiction, déclare explicitement que le Gouvernement Anglais reconnaît que les deux Traités faits avec le régule de Napouto "ne lui donnent aucun droit territorial ou aucun droit de domaine ou de juridiction sur les territoires de Mapauto" :- "Her Majesty's Government admits that these Treaties do not confer upon Her Majesty any territorial rights or any right to dominion or jurisdiction over the lands belonging to Mapoota."

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Quelque incroyable que cela paraisse, c'est écrit en toutes lettres dans le mémoire!

Le défaut de qualité, et par conséquent l'exception péremptoire, est prouvé par l'aveu de la partie elle-même devant l'arbitre, aveu qui constitue la plus sûre et la plus puissante des preuves, ainsi que l'établit l'Article 1356 du Code Civil Français, d'accord avec le droit Romain.

Et si l'Angleterre avoue son défaut de qualité pour réclamer le territoire de Maputo et, d'après la lettre de la loi Romaine, ne peut résister à son propre témoignage (testimonioque proprio resistere), la conséquence en est que sa réclamation doit être repoussée :- " non vales agere tua non interest," même par le principe du droit Français et universel :" Celui qui est sans intérêt est sans action," principe qui était déjà consacré par le droit Romain :- " si nihil interest cessat actio ;" "agere poterit quoniam interest illius;" " nihil petitoris interest."

Mais admettons qu'il n'en soit pas ainsi (ce que nous ne faisons que par simple hypothèse) et examinons la valeur des raisons présentées par l'Angleterre.

Le mémoire Anglais est divisé naturellement en deux parties essentielles: dans la première on essaie de détruire les droits du Portugal, dans la seconde on cherche à établir ceux de l'Angleterre.

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DEUXIÈME PARTIE.

Appréciation des Arguments présentés par le Mémoire Anglais pour combattre les différents Titres produits par la Nation Portugaise.

Dans les différents chapitres de la quatrième partie du mémoire dans lequel nous avons défendu les droits du Portugal, nous avons exposé les bases ou titres sur lesquels, principalement et subsidiaremment, s'appuyant notre droit à toute la Baie de Lourenço Marques, mais nous n'y avons pas fait alors de distinction entre les titres principaux et les titres subsidiaires, c'est ce que nous allons faire maintenant.

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4. La reconnaissance de nos droits par les régules mêmes de la partie contestée (Tembe et Mapouto) ;
5. La reconnaissance de ce droit par les nations de l'Europe ;
6. La reconnaissance spéciale de l'Angleterre elle-même. Tous ces titres ont fait l'objet des Chapitres 1, 2, 3, 6, 7, et 8 de notre premier Mémoire.

Nous considérons comme titres subsidiaires: 1. La donation faite par l'Empereur du Monomotapa (objet du Chapitre 4) du 24 Mai, 1629, titre sur lequel nous aurions à nous appuyer si déjà avant cette époque notre droit sur la baie ne nous eût été acquis par la découverte jointe à l'occupation et à la possession. 
2. L'expulsion des Autrichiens de la baie en 1781 dont nous avons fait mention à la fin du Chapitre 11, car si à cette époque notre droit n'eût point été déjà solidement établi par d'autres titres, cette expulsion aurait pris le caractère de conquête, ce qui alors était un titre légitime d'acquisition. 
3. La donation faite, le 10 Novembre, 1794, par le régule du Tembe de la propriété d'une partie de son territoire (sujet du Chapitre 5). Nous considérons ce titre comme subsidiaire encore sous un autre point de vue que nous développerons plus bas, parce qu'il n'a point été invoqué comme titre de souveraineté mais bien de propriété, choses qui sont complètement différentes. 

Le Mémoire Anglais ne s'est pas occupé de tous ces titres; il a confondu d'une manière tout-à-fait déplorable les titres principaux avec les titres subsidiaires, sans avoir saisi la différence bien sensible qui existe entre eux et qui est chose courante en matière de droit; il n'a pas non plus compris que les titres subsidiaires ne sont invoqués que par pure hypothèse ou sous un autre point de vue. 

"Les conclusions subsidiaires," dit Bioche, "indiquent, soit les prétentions auxquelles on se réduit pour le cas où le juge ne voudrait pas adjoindre les conclusions principales, soit les preuves 

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que l'on demande à faire à l'appui des conclusions principales qui ne sont pas suffisamment justifiées."

Cette explication donnée, les seuls titres attaqués par l'Angleterre sont la découverte, l'occupation et la possession, la reconnaissance par les régules et les nations civilisées et celle de l'Angleterre elle-même par la Convention de 1817. 

Nous examinerons dans des titres distincts, en suivant la méthode déjà employée dans notre premier mémoire, la valeur des arguments produits contre chacun de ces titres.

**TITRE 1.**

Arguments contre le Titre de la Découverte. 
L'Angleterre dit (p. 5) que le simple fait de la découverte d'un territoire, sans possession et sans occupation, n'entraîne pas, aujourd'hui, la souveraineté de ce territoire.

Et nous lui opposons que nous n'avons pas présenté le simple fait de la découverte comme base de notre droit; et cela est si vrai que nous avons invoqué l'occupation et la possession de plus de trois siècles. Cependant, alors même que nous eussions présenté ce simple fait de la découverte comme base de notre droit, nous l'aurions fait avec avantage: 

1. Parce que, la valeur du titre ou cause juridique de l'acquisition devant être appréciée d'après les principes juridiques en vigueur à l'époque à laquelle ce titre se rapporte, il est hors de doute que au 16ème siècle, époque de notre découverte de la baie, la découverte était un titre légitime d'acquisition, ainsi que nous l'avons démontré dans notre mémoire à la page 63, et ainsi que l'affirme le célèbre jurisconsulte Bluntschli: "On croyait en Europe, à l'époque des grandes découvertes dans les pays d'outre-mer, que la simple découverte d'un territoire inconnu constituait un titre suffisant pour s'adjuger la souveraineté de ce pays ";

2. Parce que l'Angleterre elle-même reconnaissait et admettait à cette époque la découverte comme titre de droit, et qu'elle pouvait même ce principe jusqu'à l'exagération, ainsi que- nous l'avons démontré en invoquant, entre autres faits, le "Mare Clausum" de John Seldon.

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Et il est à remarquer maintenant que ce livre, dédié à Jacques 1er et traduit ensuite par ordre de Cromwell, n'est pas le produit accidentel et bizarre d'un patriotisme exalté, il est plutôt l'expression presque officielle de l'audacieux dessein de la politique maritime Anglaise, dessein poursuivi à travers les révolutions et les siècles avec cette énergie de volonté qui distingue la nation Britannique et que, encore au siècle dernier, en 1757, Lord Chatham résumait ainsi: "Point de paix que la France ne signe la destruction de sa marine! C'est bien assez qu'on lui permette le cabotage; l'Angleterre doit se réserver la souveraineté exclusive de l'océan !"
3. Parce qu’il est chose jugée entre le Portugal et l’Angleterre, dans l'affaire de Boulama, comme nous l'avons prouvé à la page 54 du premier mémoire, que la simple découverte, comme titre d'acquisition, doit être appréciée suivant les idées de l'époque et considérée, suivant ces idées, comme un titre légitime. 

A toutes ces considérations on peut ajouter que, même suivant les principes du droit des gens moderne, si la simple découverte d'un territoire ne constitue pas un titre suffisant de propriété, c'est seulement quand le territoire découvert a été abandonné sans que celui qui en a fait la découverte y ait laissé de traces permanentes de possession et de volonté, ainsi que le dit Martens: "Le simple fait d'avoir été le premier à découvrir ou à visiter une île, &c., abandonnée ensuite, semble insuffisant tant qu'on n'a point laissé de traces permanentes de possession et de volonté."

Mais le Portugal, en admettant comme pure hypothèse que son premier titre à la Baie de Lourenço Marques dût être apprécié suivant les idées modernes, ne s'est pas borné à découvrir; il a occupé la baie et y a imprimé le sceau de sa personnalité.

TITRE II.
Arguments contre l'Occupation et la Possession.
Les Anglais reconnaissent que nous avons occupé et que nous occupons depuis des siècles la rive nord ou gauche du fleuve du Saint-Esprit, où nous avons un fort, et tout en avouant notre occupation de la partie méridionale de la baie, de la rive droite

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du fleuve vers le sud, c'est-à-dire du Tembe et du Mapouto, ils prétendent que "cela n'a été que temporairement, à titre précaire, et en payant une redevance aux régules."

Afin de détruire complètement ces assertions inexactes de fait et de droit qui concernent un point capital dans la question pendante, nous sommes forcés d'insister sur ce que nous avons déjà écrit dans notre premier mémoire, et de le corroborer par des faits, des documents et des arguments nouveaux, dans les suivants chapitres de ce titre.

Chapitre I.-Occupation et Acquisition de la Possession de toute la Baie et du Territoire en Dépendant.

Nous avons déjà démontrés dans la deuxième partie du premier mémoire, que, depuis l'exploration de la Baie de Lourenço Marques jusqu'à la fin du dix-septième siècle, nous l'avions occupée au moyen de factoreries qui, à cette époque, étaient au nombre de cinq, savoir: une au nord, dans le Manhiça; une autre au sud, dans l'Unhaca; une troisième dans l'île Chefine et les deux dernières sur les deux rives du Saint-Esprit; nous avons également démontré que nous en avions exploité le commerce au moyen des navires qui chaque année y étaient envoyés de Mozambique.

L'existence de ces cinq factoreries pendant le dix-septième siècle est attestée par le témoignage contemporain de Bento Teixeira Feyo, dans son rapport sur le naufrage des vaisseaux Sacramento et Nossa Senhora da Atalaya, qui eut en 1647, rapport publié à Lisbonne en 1650 : "Trois jours après notre arrivée (dit-il) on distribua dans les cinq factoreries les équipes des vaisseaux composés de cent vingt-quatre Portugais et de trente noirs captifs."

Le même historien parle plus particulièrement des factoreries de l'Unhaca, sur le territoire de Mapouto, et de l'île Chefine: "Le Roi de l'Unhaca nous reçut et nous offrit l'hospitalité de bon cœur, il nous apprit que la goëlette de Mozambique était arrivée à l'île Qultufine (Chefine) et qu'elle n'avait pas encore touché à la factorerie de l'Unhaca, comme c'était l'habitude."

Diogo de Couto, dans son récit du naufrage du vaisseau S. Thomé publié à Lisbonne en 1611, fait mention d'un village Portugais établi à douze lieues dans l'intérieur, sur le territoire

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de Mapouto, qui existait déjà en 1589 :" Ils remontèrent les bouches du fleuve Inhaca (Mapouto) et étant descendus à terre ils apprirent que, dans le village où habitait le roi, à douze lieues en remontant le fleuve, se trouvaient quelques Portugais. À cette nouvelle ils ressaisirent les rames, et à grande peine, car ils étaient fort affaiblis, ils remontèrent le fleuve et au bout de douze jours arrivèrent au village où ils trouvèrent Jeronymo Leitão avec quelques compagnons, qui depuis un mois environ étaient partis du fleuve de Lourenço Marques (comme nous l'avons dit plus haut) sur une pirogue chargée d'ivoire."

Les suivants écrivains indiquent spécialement. la factorerie du Manhiça (pointe nord de la baie):
10 En 1625, Francisco Vaz de Almada, dans le récit du naufrage du vaisseau S. João Baptista, publié pendant la même année à Lisbonne :— "Aussitôt que nous eûmes en marche et nous suivîmes la plage jusqu'à ce que nous fussions arrivées sur les terres d'un roi que l'on nomme le Manhissa." C'est sur cette terre que nous avons notre plus vaste factorerie.

20 En 1650, Bento Teixeira Feyo, dont il a été parlé plus haut :— "A grande peine les nôtres parvinrent à l'île Quiufine (Chefine) où ils trouvèrent une goëlette dont l'équipage leur fit accueil ainsi que le Capitaine Diogo Velho da Fonseca, né à Villa Franca de Xira, marié à Mozambique et qui était allé établir les factoreries du Manhiça.

Nous ajouterons encore que, même pendant le dix-septième siècle, nous fortifiâmes une de ces factoreries, celle de l'île Chefine.

Pierre Duval, Géographe du Roi de France, mentionne cette factorerie alors que, écrivant à cette époque (1679) ses "Observations Géographiques sur le voyage de François Pyrard aux Indes," il dit : "Voicy ce qui en reste à la Couronne de Portugal: En Caférie qui est la Coste de Mono-Motapa, le chasteau de Cofala, le Village de Sena, une factorerie avec un petit fort au Cap des Corrientes. Le trafic en toute la coste d'Afrique depuis le Cap de Bonne-Espérance."

Au commencement du dix-huitième siècle, l'occupation au moyen de factoreries fut remplacée par l'occupation au moyen de forts.

Nous fûmes obligés vers cette époque d'établir des fortifications en règle, à cause des dispositions où semblaient être les étrangers.

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de s'emparer de ce point; nous parlons non-seulement des Hollandais dont nous avons démontré les intentions à la page 37 du premier mémoire, mais aussi des Anglais eux-mêmes, comme nous le ferons connaitre plus bas, dans le chapitre 1 de la quatrième partie.

Au moyen des fortifications établies par nous au dix-huitième siècle, nous occupâmes toute la baie et principalement la partie méridionale contestée, celle qui forme l'objet du différend, c'est-à-dire, le Tembe et la Mapoutou, ainsi que nous l'allons démontrer.

Section 1.-Fortifications dans le Tembe et sur les deux Bives du Fleuve du Saint-Esprit.

Notre fort du fleuve du Saint-Esprit se trouvait sur la rive sud, c'est-à-dire sur le territoire du Tembe; il fut agrandi en 1755 d'après un ordre expédié en 1762 au Gouverneur-Général de Mozambique, Francisco de Mello e Castro.

Il en est fait mention par les suivants auteurs:


En 1752 Emmanuel Bowen, ingénieur du Roi d'Angleterre, dans son "Complete Atlas of distinct views of the known world," publié la même année à Londres, dans lequel, au sujet de la baie, on trouve la même indication : - (Portuguese F.)

En 1759, Jacob Frankens, dans le récit qu'il fit de son voyage à Lourenço Marques.

Plus tard, en 1781, nous nous étions établis également sur la rive nord, territoire du régule Matolla, où nous construisîmes un nouveau fort et un village, travaux auxquels, jusqu'en 1790, fut affectée la somme de 1,000,000 francs.

En 1796, pendant la guerre entre la France et le Portugal, ce fort et ce village furent détruits par les corsaires Français; la ré-édification en fut ordonnée plus tard et confiée par le Gouverneur de Mozambique aux soins du Capitaine Luiz José qui arriva à Lourenço Marques le 7 Juin 1799 avec les troupes qu'il avait sous ses ordres.

Cependant, comme la guerre existait entre les régules Moamba et Matolla, habitant la rive nord du fleuve du Saint-Esprit, où se trouvait le fort détruit par les corsaires, le capitaine Luiz José préféra établir un fort provisoire dans le Tembe, sur la rive sud, territoire du régule Capella.
Cet établissement dura jusqu'à ce que le fort et le village de la rive nord fussent rétablis, environ un an; toutefois nous laissâmes dans le Tembe un post militaire avec drapeau et un détachement de soldats. Ce poste existait encore en 1818; le 29 Juin de cette année le Portugais Sousa Caldas y fut assassiné, dans une rixe avec les noirs de ce territoire. De manière que notre occupation du Tembe s'affirme: 1. Au commencement du dix-huitième siècle par un fort qui fut agrandi en 1755 et transporté en 1781 sur la rive nord du fleuve du Saint-Esprit. 2. En 1799, par une fortification provisoire, après la destruction de ce dernier fort par les corsaires Français et jusqu'à sa ré-édification. 3. Par un poste militaire avec drapeau depuis 1800 jusqu'à l'arrivée du Capitaine Owen en 1822. L'existence de notre fort du Tembe, sur la rive sud du Saint-Esprit, est également prouvée 1. Par l'existence de ses ruines dont au commencement de ce siècle James Horsbourg fait mention: "Vis-à-vis de cette pointe," dit-il, "on voit sur la rive opposée les ruines d'un fort Portugais." 2. Par l'aveu que le Capitaine Owen, en 1823, en fit dans une lettre au Gouverneur de Lourenço Marques. 3. Par l'aveu du Ministre d'Angleterre à Lisbonne, dans une note du 18 Mars, 1862. 4. Par l'aveu du mémoire même (case) du Gouvernement Anglais. Et comme témoignage de notre occupation et de notre possession nous fimes placer dans le Tembe, en 1796, un monument dont l'existence était, en 1823, attestée par le régule de cette contrée. Le Gouvernement Anglais, dans le but d'atténuer l'effet de son aveu de notre occupation du Tembe, dit, dans son mémoire, que cette occupation avait été à peine consentie temporairement par les indigènes et encore moyennant le paiements d'un cens ou rente foncière. Il a pourtant oublié de prouver: 1. Que pour établir ces fortifications nous eussions sollicité le consentement des indigènes du Tembe. 2. Que ces indigènes nous eussent accordé une permission temporaire d'occupation. 3. Et que le tout se fût fait sous la condition du paiement d'un cens ou rente foncière. 4. Que pour établir ces fortifications nous eussions sollicité le consentement des indigènes du Tembe. La question que nous nous proposons est de savoir si, après l'occupation du Tembe par notre Gouvernement, durée de deux ans et demi, et l'existence de divers centaines de postes militaires avec drapeaux, celle-ci a pu être faite à la légère et moyennant un cens ou rente foncière. L'un ne pourra objecter à cela que l'aveu est indivisible et que si nous l'acceptons pour ce qui regarde l'occupation du Tembe, nous devons également l'accepter avec les restrictions qui l'accompagnent quant au caractère précaire de cette occupation. En premier lieu, nous n'avons recouru que ex abundanti à l'aveu du Gouvernement Anglais, attendu que l'occupation du Tembe est complètement prouvée par d'autres moyens de preuve. Cependant, en admettant même, par hypothèse, que nous n'eussions aucune preuve autre que celle qui s'appuie sur cet aveu du Gouvernement Anglais, l'objection n'aurait pas pour cela plus de valeur. Il est hors de doute qu'en règle, l'aveu est indivisible; c'est un principe inscrit dans l'Article 1356 du Code Napoléon; mais cette règle, que Weber et d'autres regardent comme n'étant pas applicable à l'aveu qualifié et à l'aveu complexe, n'est nullement applicable au cas dans lequel celui qui fait l'aveu produit un fait nouveau pour en détruire l'effet, comme cela a lieu dans le cas présent alors que, dans le but d'annuler son aveu de notre occupation et de notre possession du Tembe, l'Angleterre prétend que cette occupation n'est que le résultat d'une concession précaire, et de même que cela aurait lieu si un débiteur, tout en avouant sa dette, alléguait une créance en sa faveur qui se compenserait avec cette dette. Dans cette hypothèse l'aveu est divisible; c'est là un point que l'on ne saurait mettre en doute. En droit Romain ceci était une règle courante, et nous en trouvons une application dans la loi 26, § 2 Dig. Depos. ainsi que nous l'indique Le Gentil: "Bien qu'au titre 'de confessis,' il ne se rencontre rien sur la 'divisibilité' ou l'indivisibilité' des aveux, Papinien, dans une de ses sages réponses, montre que la division se pratiquait à Rome, alors qu'un 'prétendu aveu renfermait des confessions et des allégations.'"
Las mismas principios son encore soutenus par les jurisconsultes modernes, parmi lesquels il nous suffira d'indiquer Bonnier, qui s'exprime ainsi dans son "Traité des preuves;" "Mais il doit en être autrement quand celui qui a fait l'aveu allègue, pour en détruire l'effet, un fait entièrement nouveau, par exemple une créance en sa faveur, qui se compenserait avec cette dette."

La Cour de Cassation en France s'est plusieurs fois prononcée en ce sens, en permettant de diviser l'aveu, lorsque on allègue une créance distincte pour opérer compensation de la dette avouée, et, en général, lorsqu'il s'agit de faits distincts et non connexes.

Section 2.-Fortifications dans le Mapouto ou Unhaca.


En 1755 par D. Joseph Vaissete, dans sa "Géographie Historique, Ecclésiastique et Civile:" "Les Mahométans qui l'habitent (Sofala) sont des Arabes qui s'y sont établis avant l'arrivée des Portugais, ces derniers sont maîtres aussi de la forteresse d'Inaqua, située sur la côte."

En 1761 par Nicolas de la Croix, dans sa "Géographie Moderne et Universelle:" "Inhaqua, fort aux Portugais, au midi, c'est où commence leur Gouvernement de Mozambique."

En 1768 par l'Abbé Lenglet du Fresnoy, dans sa "Méthode pour étudier la Géographie:" "Ces derniers (les Portugais) ont encore sur la côte le fort d'Inhaque.


En 1782 par Béranger dans sa suite de la Géographie de Busching: "Vers le sud les Portugais possèdent le fort d'Inhaque."

En 1784, par Saint-Janvier, dans son "Atlas Universel" (21 partie, pl. 39) publié à Venise: "Baie de Laurent Marques ou du Saint-Esprit où est le fort Inhaque, aux Portugais."

En 1790 par H. de Combes, dans sa "Géographie Universelle:" "Inhaqua, au sud, et Kilimani (Quilimane), vers l'embouchure de la Manica, sont deux forts aux Portugais."

Enfin, l'occupation de l'Unhaca à laquelle se rapportent tous ces auteurs fut, par les ordres du Gouverneur de Mozambique, renforcée en 1781 par trente hommes commandés par le Capitaine Belchoir et le Sous-Lieutenant François Mouru.

Section 3.-Fort dans l'Ile Chefine.

Le fort de l'Ile Chefine, auquel, en 1763, le Commandant de la frégate S. José faisait allusion dans sa dépêche au Gouverneur de Mozambique qui fait l'objet du document No. 21 de notre mémoire, existait déjà en 1726, comme on le voit sur la carte de l'ingénieur Hollandais Konink, conservée dans les archives des Pays-Bas et dont nous donnons un fac-simile. Le fort Portugalais de l'Ile Chefine est clairement indiqué sur cette carte.

C'est à ce fort, peut-être peu régulier et qui datait déjà du dix-septième siècle que, comme nous l'avons dit, faisait allusion Pierre Duval.

Chapitre II.-Tendue de la Possession.

La possession du Portugal s'est donc étendue à toute la baie, puisqu'elle comprenait les principaux points qui la dominent, savoir: nord, les factoreries et ensuite les travaux de fortification à l'embouchure du Manhgci, et sur la rive gauche du Saint Esprit; 214

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au sud, les factoreries et les fortifications sur le territoire du Mapouto dans l'Ile de l' Unhaca et sur celui du Tembe sur la rive droite du Saint Esprit, et au centre de la baie la factorerie et le fort de l'Ile Chefine.
Et toutefois pour s'assurer la possession de toute la baie, le Portugal n'avait pas besoin de la ceindre complètement de fortifications et de factoreries.

1. Parce que, quoique la possession s'acquière corpore et animo, le contact avec toutes les parties d'un tout n'est pas indispensable pour l'acquisition de la possession; il suffit, comme le dit Savigny, de la possibilité physique d'exercer sur la chose une action personnelle et d'en écarter toute influence étrangère. Cette possibilité peut résulter de mille causes, entre autres de l'occupation d'une partie du tout. C'était là un principe positivement consacré dans le droit Romain par le Jurisconsulte Paul dans la Loi 1 § 1 du digeste "de posses." : "Non est enim corpore et tactu necesse apprehendere possessionem, sed etiam oculis et affectu;" et par Ulpien dans la Loi 3, § 1 : "Quod autem dixinimus et corpore et animo acquirere nos debere possessionem, non utique ita accipiendum est, ut qui fundum possidere velit omnes glebas <;ircumambulet; sed sufficit quamlibet partem ejus fundi introire."

2. Parce que la doctrine même du droit civil concernant l'étendue de la possession est reçue en droit des gens, et Martens écrit avec raison : "Une nation qui occupe un district doit être censée avoir occupé toutes les parties vacantes qui le composent; la propriété s'étend même sur les places qu'elle laisse incultes, et sur celles dont elle permet l'usage à tous."

3. Parce que, pour ce qui a spécialement trait à la baie, ce principe concernant l'étendue de la possession devait forcément être applicable, alors même que l'occupation n'eût pas compris toute la baie, comme de fait cela a eu lieu, cette même baie formant l'accès du territoire occupé par nous sur le fleuve du Saint Esprit, comme nous l'avons démontré dans le chapitre 3 de la 4e partie de notre premier mémoire.

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Chapitre III.-Connaissance de notre possession par l'Angleterre.

L'Angleterre avoue également notre occupation, non-seulement du territoire du Tembe mais aussi de celui du Mapouto quand elle écrit dans son Mémoire que la nation Portugaise a occupé les territoires de ces deux régules : "The Portuguese Government had no right, save by a temporary and permissive occupation, over any part of the territories of the Kings of Tembe and Mapoota."

Et dans l'espoir de détruire l'effet de cet aveu, elle ajoute que l'occupation a été temporaire et uniquement permise.

Quand même l'occupation d'une partie de la baie n'aurait été que temporaire (ce que nous n'admettons que comme une simple hypothèse) l'argument n'en aurait pas une plus grande valeur du moment que nous avons occupé les principaux points de cette même baie et que l'Angleterre ne peut prouver l'abandon et surtout l'intention de l'abandon.

Pour ce qui est de l'occupation simplement permise par les régules, c'est-à-dire, à titre précaire, dans le sens Romain du mot, voilà ce que l'Angleterre aurait dû prouver mais ce qu'elle ne peut pas faire attendu que nous avons nous-mêmes prouvé le contraire d'une manière évidente à la p. 19 et suiv.

Chapitre IV.-Conditions Juridiques de la Possession du Portugal.

La possession Portugaise réunit toutes les conditions juridiques relatives à la nature et à la durée de la possession, parce qu'elle est fondée en titre, qu'elle a toujours été exercée à titre de propriété et qu'elle est publique, continue et non interrompue.

Section 1.-Elle est fondée en Titre.

Elle est fondée en titre parce qu'elle provient de la découverte et de l'occupation, ce qui au seizième siècle constituait un titre d'acquisition du domaine international.

Section 2.-Elle a été exercée à Titre de Proprité.

Elle a été exercée à titre de propriété (animo domini) parce que, depuis trois siècles, nous occupons comme souverains la Baie de Lourenço Marques, affirmant notre droit et notre souver-

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aineté, l'appuyant d'une forteresse et de fortifications, et la défendant lorsqu'elle était attaquée.

Nous n'avons pas été détenteurs précaires ou au nom d'autrui; nous n'avons pas interverti notre titre de possession. Si nous avions occupé la baie à titre de protection donnée aux régules, ou si nous l'avions acceptée comme hypothèque affectée à l'acquittement d'une obligation, ainsi que le firent les Vénitiens qui occupèrent Mantoue pour garantir les quatre millions prêtés à Henri de Gonzague, Duc de Mantoue, ou ainsi qu'en usa le dernier Duc de Bourgogne, Charles-le-Téméraire, recevant en hypothèque de l'Empereur Frédéric III l'Alsace et une partie de la Forêt-Noire, ou bien comme la Suède occupa Halland, Holm,
Balmstadt et Warbourg, en vertu du Traité de Brömsebro du 31 Août 1645, en garantie de l'exemption accordée par le Roi de Danemark aux navires Suédois dans le passage des détroits de Sund et de Belt nous ne pourrions invoquer cette occupation ni nous en prévaloir; mais notre possession de Lourenço Marques a toujours été exercée à titre de souveraineté.

L'animus domini se révèle de la manière la plus évidente dans tous les faits que nous avons déjà exposés dans le premier mémoire (3ème partie, chapitre 2) comme autant de manifestations de notre souveraineté; tels sont:

1. Le titre pris immédiatement par les Rois de Portugal de suzerains des contrées dans lesquelles la Baie de Lourenço Marques se trouve comprise, titre qu'ils firent graver sur la monnaie destinée à ces contrées, et dont la légende porte: Rex Portugalliae et Dominus Orientalis Africae, fait certifié par l'Anglais Henry Salt: j'ai vu (dit-il) une piastre d'argent Portugaise portant cette légende.
2. L'occupation avec fortifications.
3. L'exclusif du commerce que, conformément aux idées de l'époque, nous y avons exercé jusqu'au moment (1853) où nous permîmes ce commerce aux étrangers qui ne pouvaient s'y livrer avant cette date, à l'exception des Anglais et des Hollandais auxquels des traités antérieurs à cette époque assuraient la faculté de ce trafic.
4. Le châtiment infligé aux tribus rebelles.
5. L'expulsion des étrangers qui tentèrent de s'établir dans la baie et voulurent ainsi abuser de la faculté d'y faire le commerce, comme cela eut lieu avec les Hollandais et, en 1781, avec les Autrichiens.

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6. L'expulsion des navires étrangers qui violaient les conditions de leur admission ou qui, comme les Anglais essayèrent souvent de le faire, voulaient soulever contre nous les indigènes; les deux faits suivants sont présentés comme exemples de ce que nous avançons:

(a) En Juillet 1787, le navire Hollandais "la Perle," vint de Ceylon à Lourenço Marques. Le capitaine de ce navire, C. Int Anker, jugea que pour se procurer des vivres il pouvait traiter directement avec les Cafres de Matolla et Capella, et leur donner des étoffes en échange des denrées dont il avait besoin; il alla même jusqu'à établir des tentes sur le territoire du Tembe. Ce procédé étant en opposition avec les lois alors en vigueur et suivants lesquelles les navires destinés au commerce de la baie devaient préalablement se rendre à Mozambique pour y acquitter les droits, comme cela se trouvait clairement établi dans le § 19 des instructions du 9 Mai 1761, le capitaine se vit contraint par le Gouverneur soit de se soumettre à cette règle, soit de partir immédiatement, ce qu'il fit tout en écrivant au Gouverneur et Capitaine-Général de Mozambique une lettre humiliante pour lui et où il cherchait à excuser sa conduite craignant probablement qu'elle n'eût des suites plus graves.

Le Gouvernement des Pays-Bas ne présenta aucune réclamation au sujet de cette affaire.

(b) Un trois-mâts Anglais de Bombay, sous le commandement de Mr. Ramsden, étant venu dans la Baie de Lourenço Marques en 1815, avec un chargement considérable de marchandises pour y faire le commerce, non seulement s'abstint d'aller auparavant à Mozambique pour y acquitter les droits, suivant la loi, mais encore reçut à son bord des déserteurs de notre forteresse, et s'employa à exciter la rébellion des Cafres contre nous.

Il s'ensuivit que ce navire fut chassé de la baie à coups de canon, fait dont le Gouverneur de Mozambique rendit compte à celui de Bombay. L'Angleterre n'exigea aucune satisfaction au sujet de cet acte énergique de notre part et même le Gouverneur de Bombay, Evan Nepean, présente sur cette affaire au Gouverneur de Mozambique les plus satisfaisantes et les plus gracieuses excuses.

7. L'autorité que nous exerçons sur toute la baie, en réglant l'émigration des Cafres qui sont engagés pour aller travailler à Port-Natal, en exigeant des passeports à leur départ et en
Notre possession a été publique car elle s'est toujours manifestée par des actes publics et connus de tous. Et elle a toujours eu la publicité, non-seulement relative, par rapport à l'Angleterre, mais encore absolue, par rapport à toutes les autres nations.

Section 4. Elle est continue et non interrompue.

Elle a été continue et non constituée par des actes passagers, intermittents ou transitoires, mais bien par une occupation permanente pendant trois siècles et par l'exercice constant de notre souveraineté dans toute la baie sans aucun acte d'abandon.

La continuité de la possession peut se présenter sous trois différents aspects.

La première idée qui s'offre à l'intelligence dans l'ordre de conception est celle d'une continuité de tous les instants, relation active et perpétuelle entre l'homme et la chose; mais cette notion, la plus naturelle pour quiconque n'a pas encore dégagé la possession de son origine, ne tarde pas à être abandonnée. Une possession toujours active ne se rencontre nulle part dans la réalité pratique.

Alors apparaît un autre aspect de la continuité, fondé sur cette considération que la possession doit être l'image de l'exercice du droit de propriété. La possession devient, dans ce système, la jouissance régulière et normale de la chose; et l'intention suffit pour lier entre eux les différents actes de jouissance et en faire une possession continue.

Mais l'esprit ne s'arrête pas là, et dégageant de plus en plus l'élément intentionnel de la possession, il s'élève à une troisième notion de la continuité. Dans la seconde idée que nous venons d'indiquer, l'intention ne suffit que dans les intervalles où l'usage de la chose ne comporte pas un nouveau fait de possession; là où ce fait peut se produire, elle ne saurait en tenir lieu, et si le possesseur néglige de l'accomplir, sa possession cesse d'être continue. Au contraire dans la troisième phase de l'idée de continuité, l'intention tient lieu des faits extérieurs une fois la possession acquise.

De manière que, dans ce troisième système, la continuité existe tant qu'il n'y a pas d'abandon manifesté par l'animus contrarius; et c'est pour cela qu'en consultant les écrits des jurisconsultes Romains, nous voyons qu'ils ne traitent pas séparément de la continuité de la possession de la manière de la conserver, mais qu'ils identifient ces deux choses.

Cette dernière notion de continuité, admise par le droit Romain, a été adoptée par la jurisprudence Française ancienne et moderne, malgré les efforts de Marcadé pour faire prévaloir la seconde notion.

La possession du Portugal dans la baie est continue, soit que nous l'envisagions sous le point de vue du second ou sous celui du troisième système.

Notre possession est, enfin, non interrompue, attendu qu'elle n'a subi aucune interruption soit naturelle soit civile.

De manière que la possession du Portugal réunit toutes les conditions juridiques et n'est atteinte d'aucun vice.

En réclamant le respect du droit qui en résulte, le Portugal s'appuie sur une possession juste et qualifiée et ne prétend pas, comme le Chérée de Térence le disait à Parménon, l'obtenir à tout prix malgré les vices les plus évidents (Eunuch. 11, 4):

"IHanc tu mihi, vel vi, vel clam, vel precario,
Fao tradas: mea nil refert durm potior modo."

Chapitre V.-Conservation de notre Possession.

Et que l'on ne vienne pas dire, pour contester notre possession, que nous n'avons pas actuellement des établissements dans toute la partie sud du baie (Tembe et Mapouto).

En premier lieu, en acceptant la discussion sur le terrain de la possession matérielle du territoire, nous répondrons que, pour conserver la possession de toute la baie, il n'était point nécessaire de la couvrir, tout entière, d'établissements:

1. Parce que la possession ne s'exerce pas seulement au moyen d'établissements, mais aussi par l'exploitation des propriétés,

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Panda, Roi des Zoulous, possession qui, selon le droit, ne s'exerce pas par des actes quotidiens, suivant la doctrine de Paul dans la Loi 3, § 11, Dig. de acquir. possess.: Saltus hibernos, oestivosque animo possidimus, quamvis eos certis temporibus relinquamus.'
2. Parce que, suivant la doctrine de Dioclétien et de Maximien, dans la const. 4, Cod. de acquir posses.: "Licet possessio nudo animo adquiri non possit, tamen solo animo retineri potest ;" d'où ils concluent: "Si ergo proediorum desertam possessionem non delinquendi affectione, transacto tempore non coluisti, sed culturam eorum distulisti, proœjudicium ex transmissi temporis injuria generari non potest;" principe qui est passé dans la jurisprudence moderne et qui est enseigné par Troplong: "La possession n'a pas besoin pour se conserver d'un fait corporel extérieur, l'intention suffit elle persévère tant qu'une volonté contraire ne vient pas la détruire."
C'est en effet un principe de droit en matière possessoire, admis par le plus grande partie des auteurs Français et Belges, anciens et modernes, que celui qui démontre avoir possédé anciennement est censé avoir possédé jusqu'au moment actuel, c'est-à-dire que la possession se conserver solo animo tant et aussi longtemps qu'il n'existe aucun indice signalant l'intention expresse ou tacite de l'abdiquer. 
C'était dans ce sens que Stockmans écrivait: "Antiqua possessio quo non ostenditur amissa creditur durare;" et que les anciens auteurs Français disaient aussi: "Olim possessor, hodie possessor proesumitur, et ex possessione de preterito arguitur possessio de proesenti et medi temporis, nisi contrarium probetur. De proeterito ad proesens proesumptio inductur."
La possession se conserve solo animo tant qu'elle ne se perd pas, et pour qu'on la considère perdue il faut que la perte ait lieu non seulement quant au corpus, mais aussi quant à l'animus.
L'animus comme base de la perte de possession, comprend tous les cas possibles d'une renonciation expresse ou tacite, comme sont la renonciation translativa ou la tradition réelle, l'abandon pur et simple, etc.

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Et comme la renonciation d'où découle l'animus contrarius doit être expresse ou tacite, elle ne peut être présumée. Ainsi l'intention de l'abandon ne pourra résulter de simples actes d'omission ou du simple fait du non-usage; c'est à ces cas que le Code de Justinien appliquait aussi la maxime: Possessio solo animo retinetur.
La question de savoir s'il y a perte de la possession par l'interruption dépend en grande partie des faits accessoires qui se groupent autour de la non-jouissance et qui font souvent entrevoir tacitement l'intention du possesseur de ne plus vouloir posséder; tout résulte des circonstances, de la nature du territoire ou des droits qui font l'objet de la possession, en un mot c'est une question d'intention abandonnée au pouvoir discrétionnaire du juge.
De la part du Portugal, toutefois, il est avéré qu'il n'y eut jamais abandon ou renonciation expresse ou tacite, attendu qu'il a occupé les principaux points de la baie et vu que, sur d'autres points où il n'a pas aujourd'hui de travaux de fortifications, on voit du moins les traces des fortifications anciennes.
Cette doctrine est aujourd'hui reconnue en droit des gens comme elle l'a toujours été en droit civil, ainsi que le dit Kluber: "Le droit de propriété de l'Etat peut, d'après le droit des gens, continuer à exister sans que l'Etat continue la possession corporelle. Il suffit qu'il existe un signe qui dit que la chose n'est ni res nullius ni délaissée;" et cet écrivain n'a fait que reproduire les doctrines professées antérieurement par Christian Thomasius, Groth, Titius et Hanker.
3. Parce que, d'après le droit des gens, il n'est pas nécessaire, pour conserver le domaine et la possession, de couvrir toutes les côtes de batteries permanentes et de forteresses; on peut citer à ce sujet ce qu'écrivit Hautefeuille: "Il est important de remarquer que, pour conserver le domaine il n'est pas nécessaire que le peuple riverain tienne ses côtes hérissées de batteries fixes et permanentes, de tours, de forteresses, que son canon soit incessament prêt à battre toutes les parties de cette mer. L'absence de ces moyens de coercition, le désarmement, soit temporaire, soit même perpetuel d'une partie des rivages de la mer, car il existe dans tous les pays certains points des côtes qui n'ont jamais été armés, ne nuit en rien au droit lui-même."
D'où il résulte que, quand même le Portugal n'aurait pas

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4. Parce que la possession se conserve également au moyen de vestiges, car ils prouvent sa continuité surtout lorsque la volonté du non abandon est manifeste; et ces vestiges sont encore bien visible dans le Tembe, dans les ruines de notre premier fort dont l'existence n'est pas contestée, et dans le monument que nous avons élevé sur ce territoire en 1796.

En effet, suivant Troplong, la possession et sa continuité sont prouvées par des vestiges et des restes de constructions qui auraient jadis servi à la défendre, parce que les vestiges sont en quelque sorte des actes permanents et continus qui attestent l'existence du droit que l'on possède et sont autant de preuves que l'on n'abandonne pas ce droit.

C'est la même doctrine qui, longtemps auparavant, fut soutenue en France par D'Argentre: "Per signa enim talia ... retinetur juris possessio: per signum enim retinetur signatum. Sunt enim isto actus permanentes et ideo continui .... Quare consulunt auctores scolastici ut dirutis oedificiis, quam maxime pali, ridicoe et vestigia conservantur; quia in talibus consistit et conservatur possession. . . . Quare manente signo, nemo libertatem contra habentem proescribit, propter retentionem possessionis in signo permanente."

5. Parce que la possession, à l'égard du territoire de iMapouto, dont fait partie l'Ile de l'Unhaca, est prouvée par le fait de notre sortie de l'île, effectuée uniquement pour montrer notre respect envers l'arbitrage, fait qui démontre l'existence de la possession et de l'occupation antérieure.

Mais la discussion doit être principalement envisagée sous le point de vue de la souveraineté, qui est un droit, et, par conséquent, comme possession de droits, et dans ce cas nous répondrons : 1. Que le Portugal a exercé sa souveraineté sur toute la baie, y compris les territoires de Tembe et de Mapouto, chaque fois qu'il a eu besoin de la manifester, ainsi que cela a été démontré dans le chapitre 3 de la troisième partie du premier Mémoire.

2. Que selon les principes de droit consacrés par le Président Fabre et plus récemment, par Troplong, la continuité de la possession des droits s'affirme par des actes réitérés de temps en temps, suivant la nécessité que nous avons de faire usage de ces droits.

"Jurium incorporalium quasi possessio (dit le premier) in actibus discontinuis et inductur et probatur per duos actus uniformes et unus actus potest sufficere, si toto tempore quod hominum memoriam complectitur, non nisi semel casus evenerit, in quo uti jure suo actor potuerit, sive a quibus causam habet."

"Des actes réitérés de temps en temps (écrit le second) à certains intervalles inégaux, conformément aux besoins de l'usager, suffiraient pour établir juridiquement la continuité."

3. Que ces mêmes principes sont reconnus par la Cour de Cassation de France, dans un Arrêt du 5 Juin, 1839: "La possession (y est-il dit) s'exerce suivant la nature de l'objet auquel elle s'applique, et celle qui ne peut se manifester qu'à de certaines intervalles par des faits distincts et plus ou moins séparés, n'en est pas moins continue par cela seul qu'elle a été exercée dans toutes les occasions et à tous les moments où elle devait l'être, et quelle n'a pas été interrompue, soit par la cessation absolue d'actes, soit par des actes contraires."

TITRE III.

Arguments contre la Reconnaissance des Régules.

Laissant sans réponse tout ce que nous avons écrit au Chapitre VI, de la quatrième partie de notre premier Mémoire, l'Angleterre oppose à la reconnaissance de nos droits par les régules du Tembe et du Mapouto les arguments qui suivent:

Section 1.- Quant au Règule du Tembe.

1. Que le règule du Tembe se considérait si peu dépendant et était de même considéré par nous, qu'il nous fit, en 1794, la donation, que nous acceptâmes, d'une partie de son territoire, donation à laquelle nous faisons appel à la page 74 de notre premier Mémoire.

La réponse est facile. La souveraineté d'un territoire et la propriété de ce territoire sont deux choses bien distinctes. Le Portugal (ainsi que cela a été démontré dans la deuxième partie, 224 Records of South-Eastern Africa.

Chapitre II de ce Mémoire) tout en acquérant la souveraineté du territoire colonial, en a toujours laissé la propriété aux indigènes qui pouvaient en disposer selon leur bon plaisir.
Il devient donc fort naturel que le Portugal, tout en ayant depuis plusieurs siècles la souveraineté du Tembe, eût accepté en 1794 une donation de la propriété d'une partie de ce territoire; de la même manière qu'il ne serait nullement étrange que la Reine Victoria, souveraine de l'Angleterre, acceptât de la main d'un de ses sujets la donation d'une propriété située sur le territoire Britannique.

L'Angleterre ajoute encore:

2. Qu'à la reconnaissance de la souveraineté Portugaise le 20 Octobre, 1823, par le régule du Tembe, à l'occasion de son installation au pouvoir, s'oppose le manque d'authenticité de cet acte :
   (a) Parce que, si en Mars de cette année le régule figurait déjà, dans le Traité d'Owen, comme étant dans l'exercice du pouvoir par la mort de son grand-père, comment se fait-il que six mois après, le 20 Octobre, il allât demander au fort Portugais la confirmation de son titre et y rendre hommage afin d'être reconnu?
   (b) Parce que, tandis que le Traité de Mars est signé par lui la déclaration et la reconnaissance du 20 Octobre ne sont signées que par des témoins.
   (c) Que le prétendu vasselage avoué dans ces deux documents se trouve en contradiction avec la donation partielle du 10 Novembre, 1794, qui suppose l'indépendance des tribus du Tembe.

Le premier doute n'a aucune valeur puisque déjà, dans le deuxième chapitre de la troisième partie de notre premier Mémoire, il a été dit et confirmé par le témoignage même du Capitaine Owen, que le vieux Capella était mort en Septembre 1822, et qu'il était d'usage dans le Tembe que le nouveau régule fût proclamé une année après la mort de son prédécesseur, ce qui explique pourquoi son petit-fils alla, suivant la coutume, prendre son investiture et prêter serment d'obéissance dans le fort Portugais, en Octobre 1823, c'est-à-dire justement une année plus tard.

Ce qui est évidemment frappé au coin de la fausseté, c'est que, par complaisance envers Owen et uniquement pour que cette
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demandé que son ennemi lui fût livré, se soumit sans murmurer au refus de notre Gouverneur.

5. Enfin, le 1 er Avril, 1870, le régule de Mfapouto céda à la Couronne de Portugal la propriété de l'Unhaca, tout en reconnaissant d'ailleurs que la souveraineté en appartenait depuis des siècles à la même Couronne.

TITRE IV.

Arguments contre la Reconnaissance par les Nations de l'Europe.

L'Angleterre garde le silence sur les arguments déduits, au Chapitre VII, partie 4 de notre Mémoire, de la reconnaissance de notre droit sur toute la Baie de Lourenço Marques par les écrivains Français, Suisses, Allemands, Italiens, et Anglais, et par les Gouvernements de l'Europe, et elle se borne à vouloir détruire l'argument également déduit, dans le même chapitre, des cartes géographiques.

Chapitre I.-Deux Objections de l'Angleterre contre l'Argument déduit des Cartes Géographiques; Réponse à ces Objections.

L'Angleterre oppose ce qui suit à l'argument tiré des cartes géographiques en faveur du Portugal.

1. Que ce nom de Lourenço Marques qui, sur les cartes géographiques, est donné à la baie, vient, ou du premier navigateur qui en fit la découverte ou du fort de ce nom que nous y possédons, et ne prouve nullement notre souveraineté sur toute cette baie.

2. Que le fait de ce que la baie se trouve indiquée sur les cartes comme entièrement comprise dans le territoire Portugais ne prouve rien, attendu que l'état réel de ces contrées était encore récemment peu connu, et d'un intérêt fort insignifiant pour les nations de l'Europe.

Le Portugal n'a jamais présenté ce nom de la baie consacré sur les cartes géographiques comme une preuve de la propriété de cette même baie; un tel argument eût été absurde.

Mais ce que le Portugal présente comme une reconnaissance de son droit, c'est le fait (avoué par l'Angleterre) de ce que sur d'innombrables cartes et ouvrages géographiques, son droit,

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depuis le dernier siècle, "se trouve positivement reconnu jusqu'à l'extrémité sud de la baie, en y comprenant l'île et la presqu'île de l'Unhaca, et de ce qu'il y est expressément déclaré que, à partir de ce point extrême vers le nord, commence la province ou Gouvernement Portugais de Mozambique."
C'est un bien déplorable expédient que celui auquel l'Angleterre a recours, lorsqu'elle allégue que cette contrée a été jusqu'à présent peu connue ou peu explorée, ou qu'elle n'avait qu'une faible importance. La baie n'était pas, comme le prétend le mémoire Anglais, peu connue, puisque depuis le seizième siècle, elle fut connue et explorée par les Portugais, puisque, à partir du dix-septième siècle, elle fut également connue et visitée par les Hollandais et que, depuis la fin du dix-septième siècle et pendant tout le dix-huitième siècle, elle fut fréquemment visitée par les Français, les Anglais et enfin par les Américains. Ceci est un fait incontestable qui ressort de l'examen des cartes et que n'a échappé ni ne pouvait échapper au Professeur Kiepert dans sa carte comparée de la cartographie critique de l'Afrique à partir des travaux d'Anville en 1749, et publiée en Avril, 1873, à Berlin, par la Société Géographique, sous le titre: " Zur Entdeckungsgeschichte des Inneren von Africa."
C'est pourquoi, non-seulement la baie est indiquée exactement sur les cartes géographiques, mais encore y est montrée comme faisant partie des possessions Portugaises dans l'Afrique Australe, ainsi que cela a été péremptoirement démontré à la page 78 de notre mémoire et ainsi que cela sera encore confirmé au chapitre suivant de la présente réplique.
Le mémoire Anglais prétend que les cartes méritent peu de crédit attendu que la "baie n'avait qu'une faible importance pour les nations de l'Europe:" la réponse à une semblable assertion se trouve dans les tentatives que firent pour s'y établir les Hollandais, les Autrichiens, et les Anglais eux-mêmes, depuis les dernières années du dix-septième siècle et pendant le dix-huitième, ainsi que nous le ferons voir dans le chapitre 1 de la quatrième partie.

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Au témoignage des auteurs étrangers qui reconnaissent notre droit à toute la baie et qui la considèrent, en y comprenant la presqu'île de l'Unhaca, comme le commencement de notre province de Mozambique, auteurs que nous avons indiqués aux pages 78 et suivantes de notre premier Mémoire, nous allons joindre l'opinion des suivants géographes:
Section I.-Cartes et Auteurs Hollandais.
Parmi les Hollandais:
1. Le célèbre Gérard Mercator, dans son - Atlas, sive geographic3 meditationes," publié à Duisbourg en 1595 et réimprimé avec additions de J. HEondius à Amsterdam en 1607, 1611, 1623, 1630, &c., regarde toute la côte de Lourenço Marques comme territoire Portugais, compris sous la désignation Lusitanis.
2. Josse Hondt (Hontius) en agit de même dans son "O rbis terrarum descriptio geographica," Amsterdam, 1597, et dans ses éditions corrigées et augmentées de Gérard Mercator, car il indique toute cette côte (Lusitanis) comme Portugaise.
3. Guillaume Blaeuw, savant remarquable par ses travaux géographiques, ami intime et élève de Tycho-Brahé, désigne toute cette côte sous le nom Portugais de Costa dos Cafres et déclare qu'elle est Portugaise (Lusitanis) dans son "Theatrum mundi," publié à Amsterdam, après sa mort, de 1663 à 1667.
5. Jean Luyts dans son "Introductio ad geographiam novam et veterem" (Utrecht, 1692) en agit de même. Section 2.-Cartes et écrivains Allemands.
Parmi les Allemands nous indiquerons encore:
Johann Mathias Liaas (Hasius), célèbre mathématicien et géographe qui, sur la carte annexée à son "Historia Universalis politice Idea," publiée à Nuremberg en 1743, met sur l'emplacement de l'Unhaca la suivante indication où il déclare que là commence notre province de Mozambique: "Inhacqua, initium Proefecturoe Portugallensis Mozambique."
Section 3.-Cartes et écrivains Italiens.
Parmi les Italiens nous signalerons aussi:
La "Carta geografica del Congo o Bassia Guinea della Cafaria e del Monomotapa" jointe au tome 26 de l'ouvrage "Lo stato presente di tutti paesi e popoli del mondo," publié à Venise en 1766 par Giambatista
Albrizzi, et sur laquelle on trouve la note suivante placée à côté de la presqu'île et de l'île de l'Unhaca: "Inhaqua dove comincia il Governo di Mozzambico," note par laquelle il est ainsi reconnu que le Gouvernement de Mozambique commence au sud, sur ce point de l'Unhaca qui constitue la côte méridionale de la baie.

Section 4. - Cartes et écrivains Espagnols.
Parmi les Espagnols nous indiquerons:
1. Les auteurs du "Diccionario Geografico Universal," publié à Barcelone en 1832, qui affirment le même fait quand ils disent, au tome v, p. 571 : "La baie de Lorenzo Marques ou Lagoa peut être considérée comme le point de départ de la province Portugaise de Mozambique."
2. Don Pablo Alabern, dans son "Mapa de Africa," publié également à Barcelone en 1834, déclare encore que la baie de Lourenço Marques ainsi que la presqu'île de l'Unhaca forment l'extrémité sud de la Province Portugaise de Mozambique.

Section 5. - Cartes et écrivains Français et Belges.
Aux écrivains Français et Belges déjà cités nous ajouterons les suivants:
2. Gueudeville dans "l'Atlas historique ou nouvelle introduction à l'histoire" (Amsterdam, 1769) : "Inhaca où commence le Gouvernement de Mozambique."
3. Les auteurs du " Dictionnaire Géographique Universel par une Société de Géographes," publié à Bruxelles (3 édition, 1839), lesquels regardent également la baie de Lourenço Marques

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comme la limite qui sépare la Cafrerie du Gouvernement de la Province de Mozambique alors que, en parlant du fleuve du Saint-Esprit, ils disent qu'il vient se jeter "dans la baie de Lourenço Marques, sur la limite de la Cafrerie propre et de la Capitainerie Générale de Mozambique."

Section 6. - Auteurs Anglais.
Enfin, après le témoignage de tant d'auteurs Anglais déjà cités dans notre premier mémoire, nous invoquerons encore celui du Capitaine Owen lui-même. Dans sa lettre du 10 Mai 1825 à Sébastien Xavier Botelho, Gouverneur de Mozambique, Owen avoue que notre droit sur toute la baie à l'époque de son arrivée (1823) était généralement reconnu, quoiqu'il semble trouver cette opinion fausse, uniquement dans un but de convenance personnelle: "Under the impression (a false but very common one, founded in ignorance) that all the surrounding country and coast was under Portuguese jurisdiction and authority, I showed Senhor Casimir my papers and asked his permission to survey the rivers."

Chapitre III. - Nouveaux Arguments déduits de la Reconnaissance par les Hollandais, en 1731.
Aux arguments déduits de la reconnaissance par les nations et les gouvernements étrangers de notre droit sur la Baie de Lourenço Marques inclusivement vers le nord jusqu'au Cap Delgado, et exposés à la page 82 de notre premier mémoire, nous joindrons encore le suivant.

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En 1731, alors que Jean da Fonseca Noniz était Gouverneur d'Inhambane, les deux navires de la compagnie Hollandaise le "Snuffelaar" et le "Zeepost" s'étant rendus dans ce port pour y faire le commerce, le Gouvernement leur fit notifier que tous les ports du Gouvernement Général de Mozambique, auquel appartenait celui d'Inhambane et aussi la baie de Lourenço Marques, étaient compris dans les domaines et possessions du Roi de Portugal dont il était, lui Gouverneur, chargé de surveiller les intérêts.
En vertu de cette notification, les Hollandais signèrent un acte par lequel ils reconnaissent notre droit sur ces ports et s'engagent à le respecter, acte qui fut envoyé au Vice-Roi de l'Inde par Dionysio Emmanuel Viegas, Capitaine alors Gouverneur par interim de Mozambique.

Ce fait rapporté dans le règlement donné par le Comte de Sandomil, Vice-Roi de l'Inde, au Gouverneur de Mozambique, Don Antoine Casco e Mello, le 27 Janvier, 1733, est confirmé par le journal de bord du premier de ces deux navires, le "Snuffelaar," à la date du 14 Octobre 1731; ce curieux document existe dans les archives du Gouvernement des Pays-Bas; nous en possédons une copie, que nous devons à la gracieuse obligeance de l'archiviste, M. Van den Bergh.

TITRE V.

Arguments opposés à la Reconnaissance de notre droit par l'Angleterre.

Nous allons revenir sur ce sujet dont nous nous sommes déjà occupés dans le chapitre 7 de la quatrième partie de notre mémoire, afin d'anéantir complètement les objections faites par l'Angleterre à l'argument foudroyant déduit de la Convention de 1817, et aussi pour démontrer que notre droit était déjà reconnu par elle depuis 1721.

Chapitre I.

Racontage de notre droit par la Convention du 28 Juillet, 1817.

L'Angleterre a reconnu positivement nos droits sur la Baie de Lourenço Marques par la Convention du 28 Juillet, 1817, addition-

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nelle au Traité du 22 Janvier, 1815, dans laquelle, par l'Article I, la souveraineté Portugaise sur tous les territoires compris entre le Cap Delgado et la Baie de Lourenço Marques est expressément reconnue:

"Les territoires (dit le texte Portugais) que la Couronne de Portugal possède sur les côtes d'Afrique au sud de l'équateur, savoir: sur la côte orientale d'Afrique, le territoire compris entre le Cap Delgado et la Baie de Lourenço Marques," &c.

"The territories (dit le texte Anglais) possessed by the Crown of Portugal upon the coast of Africa to the south of the Equator, that is to say: upon the eastern coast of Africa the territory laying between Cape Delgado and the Bay of Lorenço Marques," &c.

Section 1.-Deux Arguments de l'Angleterre contre la Convention de 1817, produits dans des Documents Officiels antérieurs à son Mémoire de 1873.

A cet argument irréfutable tiré de l'Article I de la Convention de 1817, l'Angleterre a opposé:

1. En réponse aux notes diplomatiques du Duc de Palmella (1827-1828), que la Baie de Lourenço Marques, en tant que limite sud des possessions Portugaises, devait s'entendre exclusivement.

Dans une note de son Chargé d'Affaires à Lisbonne du 28 Mars, 1862; que les mots Baie de Lourenço Marques ne désignaient pas positivement la baie de ce nom (Delagoa Bay), mais bien la petite baie située devant l'établissement Portugais du fleuve du SaintEsprit (English River).

Section 2.-Réponse au Premier Argument de l'Angleterre.

La première objection n'a pas de valeur:

1. Parce que l'Angleterre ne pouvait pas, en 1823, décider seule de l'interprétation du Traité qui était un contrat bilatéral, cette interprétation, si le sens en était douteux, ne pouvait être faite qu'au moyen d'une déclaration des deux parties ou par l'arbitrage d'un tiers. La question même de savoir si le sens en est douteux est une question préalable qui ne peut être résolue que de la même manière. C'est là un point incontestable en droit des gens, d'après Moser et Kluber.

2. Parce que l'interprétation du Traité devant être d'accord avec les règles de l'interprétation logique et grammaticale, dont

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Vattel, Haus et Schmalz nous offrent d'excellentes règles, l'interprétation donnée par l'Angleterre à l'Article II de la Convention de 1817 serait inadmissible comme absurde et contradictoire:

(a) Parce que la désignation de la Baie de Lourenço Marques, comme limite sud des possessions Portugaises dans l'Afrique Orientale, ne peut s'entendre autrement que inclusivement, de même que la désignation du Cap Delgado, comme limite nord, a toujours été comprise inclusivement par toutes les nations et par l'Angleterre elle-même;
(b) Parce qu'il eût été impossible de sous-entendre ce mot exclusivement, car le Portugal n'aurait pas signé un traité qui l'eût ainsi dépossédé de toute cette baie où, depuis plus de trois siècles, il avait établi sa souveraineté;

(c) Parce que l'Angleterre, réclamant seulement la partie sud et ne contestant pas au Portugal la souveraineté de son établissement et de sa forteresse au nord, reconnaît contradictoirement son droit sur une moitié de la baie, alors que, en présence de la lettre du Traité, ou il a droit à toute la baie (si l'on accepte, comme cela doit être, le mot inclusivement), ou bien il n'a droit à aucune partie de cette baie si l'on sous-entend, ainsi que l'exige l'Angleterre, le mot exclusivement;

(d) Parce que toutes les nations, reconnaissant aujourd'hui notre droit et notre souveraineté sur la Baie de Lourenço Marques, confirment ainsi la seule interprétation possible du Traité. L'on peut indiquer, comme la preuve la plus récente de cette reconnaissance, le Traité de Commerce et de Limites fait avec la République des Boers, le 29 Juillet, 1869, Traité dans lequel les limites sud de notre territoire sont fixées par une ligne droite tirée du 260 30' de latitude sud.

(e) Parce que, la disposition du Traité étant claire et précise, on ne peut admettre aucune interprétation restrictive de sa lettre, suivant la règle enseignée par Wolf: "Standum omnino est iis quae verbis expressis; quorum manifestus est significatus, indicata fuerunt, nisi omnem a negotiis humanis certitudinem removere volueris," et répétée par Vattel: "Quand un acte est conçu en termes clairs et précis, quand le sens en est manifeste et ne conduit à rien d'absurde, on n'a aucune raison de se refuser au sens que cet acte présente."

Lorsque dans le Traité de Paix d'Utrecht célébré entre Louis XV et Don Jean V, en 1713, la France reconnaît au Portugal, par l'Article VIII, la propriété des terres du Cap du Nord entre le fleuve des Amazones et celui de Japoi ou Vincent Pison, il n'a jamais été mis en doute que le Portugal ne restât maître de la rive septentrionale et de la méridionale du fleuve des Amazones, extrême point sud du territoire Portugais, et la France elle-même le reconnut par l'Article X du Traité: "Sa Majesté Très-Chrétienne reconnaît que les deux bords de la Rivière des Amazones, tant le méridional que le septentrional, appartiennent en toute propriété, domaine et souveraineté à Sa Majesté Portugaise."

Section 3.-Réponse au Deuxième Argument de l'Angleterre. La seconde objection n'a pas une plus grande valeur: 1. Parce que cette seconde objection est en contradiction avec la première, attendu que, tandis que d'après le système de la première objection les mots Baie de Lourenço Marques sont pris comme équivalents de Delagoa Bay pour être entendus exclusivement, d'après celui de la seconde ces mots ne sont déjà plus les équivalents de Delagoa Bay et désignent à peine l'insignifiante baie ou anse qui se trouve en face de l'établissement Portugais sur le fleuve du Saint Esprit !

2. Parce que les mots Baie de Lourenço Marques ayant toujours désigné la baie à laquelle les Anglais ne commencèrent à donner le nom de Delagoa Bay qu'en 1823 (ainsi que nous l'avons démontré dans le premier mémoire, Chapitre II de la première partie) ces mots doivent être forcément compris, dans la Convention de 1817, dans le sens qui leur était alors et qui leur fut toujours appliqué, ce qui constitue encore une règle d'interprétation des traités, formulée par Vattel: "Le nom des pays doit s'entendre suivant l'usage reçu alors car on ne présume point que des ignorants ou des sots soient chargés d'une chose aussi importante."

Et cette règle est d'accord avec les principes d'interprétation déjà reçus en droit Romain: "Non enim ex opinionibus singulorum, sed ex communi usu nomina exaudiri debere" (L. 7. § 2 Dig. de supellectile legata), et consacrés par Troplong: "Quand une locution a un sens convenu (dit-il dans son traité - Du louage '), on n'est pas recevable à venir s'élever contre elle; eût-on cent fois raison grammaticalement parlant, on aurait cent fois tort auprès les juges du droit."

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Il faut ajouter que, d'après la doctrine de la Cour de Cassation de Paris, les traités diplomatiques doivent être interprétés en harmonie avec le droit public et civil admis par les nations contractantes, et surtout par celle où ces traités doivent recevoir leur exécution ; or, comme l'Article II de la Convention de 1817 ne pouvait recevoir son exécution que sur territoire Portugais, les expressions Baie de Lourenço Marques ne
pouvaient être prises dans un sens différent de celui qu'elles ont toujours eu en Portugal, et qui d'ailleurs est celui qui leur a toujours été donné par les Anglais eux-mêmes, ainsi que nous l'avons démontré (première partie, Chapitre II du premier mémoire).

3. Parce que le Gouvernement Anglais lui-même avoue dans son mémoire que la baie était désignée sur les cartes géographiques par le nom de Loureno Marques, et le Capitaine Owen l'a ainsi indiquée sur la carte qu'il en a dressée en 1823, sous le titre: "A Survey of Delagoa Bay or Lourengo Marques."

4. Parce que l'Angleterre, si elle ne voulait pas se servir de ces mots dans l'unique acceptation qu'ils avaient à cette époque, aurait dû s'en expliquer, et comme elle ne l'a pas fait, elle devra en subir les conséquences, ainsi que l'enseigne Vattel: "Si celui qui pouvait et devait s'expliquer nettement et pleinement ne l'a pas fait, tant pis pour lui; il ne peut être reçu à apporter subséquemment des restrictions qu'il n'a pas exprimées; " ce qui n'est que l'application de la maxime du droit Romain: "Pactionem obscuram is nocere, in quorum fuit potestate legem apertius conscribere;" et de la règle: "Expessa nocent, non expressa non nocent." (LL. 195 "De Regul. Jur." et 52 Dig. "De Condit. et Demonstrat.")

Ces principes sont de droit universel et voilà pourquoi Larom. bière, écrivant sur l'interprétation des Conventions, dit: "Que l'un d'eux (contractants) même d'habitude attache à une expression un sens tout différent de celui que l'usage lui a donné, sera-t-il admis à parler de son erreur et à refaire la convention, en prétendant une intention autre que celle qui se trouve clairement exprimée par le terme dont il s'est servi ? Evidemment non. S'il a mal expliqué sa pensée, tant pis pour lui. L'expression du contrat ne lui appartient plus: elle est acquise à l'autre contractant avec le sens et la portée qu'elle donne à la convention."

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Section 4. - Trois nouvelles Objections présentées dans le Mémoire Anglais de 1873 contre le Traité de 1817.

L'Angleterre objecte encore dans son mémoire:
1. Que la Convention de 1817 n'était pas un Traité de Limites, mais un Traité ayant pour objet la répression de la traite des noirs, d'où elle veut conclure qu'un pareil Traité n'oblige pas.

2. Que les mots de l'Article II ne reconnaissent pas la possession du Portugal à tout le territoire compris entre le Cap Delgado et la Baie de Lourenço Marques, mais se rapportent uniquement à quelques terres possédées par le Portugal entre ces deux points; que, s'il en était autrement, on aurait mis dans l'Article les mots tous les territoires; et que, conséquemment, on ne doit point comprendre par Baie de Lourenço Marques toute la baie de ce nom.

3. Que les termes Baie de Lourenço Marques étant pris dans le sens voulu par le Gouvernement Anglais, c'est-à-dire comme synonymes de la petite baie située à l'embouchure du Saint Esprit, le Traité doit être entendu dans le sens de Baie de Lourenço Marques que les Portugais possèdent, pour la distinguer de la Baie de Lagoa qu'ils ne possèdent pas.

Section 5. - Réponse au Premier Argument.
Le premier argument n'a aucune valeur:
1. Parce que, quoique la Convention de 1817 eût pour objet -à répression de la traite, l'article déclaratoire des limites des possessions Portugaises dans l'Afrique orientale et occidentale était nécessaire, et a été rédigé parce qu'il exprimait en partie le véritable objet de la Convention; il n'a donc point été simplement énonciatif mais bien dispositif, et dispositif avec des effets importants, d'où il résulte qu'il est aussi obligatoire que le reste du Traité. Les dispositions ou propositions énonciatives sont, comme le dit Marcadé, "les simples indications qui se trouvent être accessoires et surabondantes, en sorte qu'on pourrait les retrancher sans modifier l'arrangement que les parties s'étaient proposé."

2. Parce que, alors même que l'Article II fût énonciatif, il l'était en rapport direct avec le dispositif, et dans ce cas on pourrait, par analogie, faire l'application de l'article 1320 du Code Civil Français, d'après lequel l'acte, soit authentique, soit sous seing-privé, fait foi entre les parties, même de ce qui n'y est exprimé qu'en termes énonciatifs pourvu que l'énonciation ait un rapport direct à la disposition.
3. Parce que l'objection prouve le contraire de ce qu'elle veut prouver puisque assurer que la Convention de 1817 n'oblige pas, dans la partie relative, à la désignation des possessions Portugaises dans l'afrique Orientale, c'est reconnaître que cette désignation, dans le cas présent, est nuisible à l'Angleterre et avantageuse pour le Portugal.

Section 6.-Réponse au Second et au Troisième Arguments.

La seconde objection est également sans valeur:
1. Parce que, en admettant par hypothèse que l'absence du mot tout joint au mot territoire pût être un argument sérieux, il n'aurait d'effet que si le différend entre le Portugal et l'Angleterre avait pour objet quelque partie du territoire entre les deux limites nord (Cap Delgado) et sud (Baie de Lourenço Marques), car alors seulement l'Angleterre pourrait disputer ce territoire au Portugal, sous prétexte de la non-possession par ce dernier du tout contenu dans ces limites; toutefois le différend n'a point pour objet le territoire compris entre ces limites, mais justement celui que constitue la limite sud et qui est formé par la Baie de Lourenço Marques qui est un tout que l'on ne peut en aucune sorte diviser.

2. Parce que, quoique le mot tout qui, comme omnis en Latin, désigne une universalité, eût été employé dans la seconde partie de l'Article Il par rapport aux possessions Portugaises dans l'Afrique Occidentale pour désigner tout le territoire compris entre le 8 et le 18° degré de latitude, il ne s'ensuit pas que, parce qu'il n'aurait pas été employé dans la première partie qui a trait à l'Afrique Orientale, on voulût par là signifier que tout le territoire compris entre le Cap Delgado et la Baie de Lourenço Marques n'était pas Portugais. Il faudrait pour arriver à une pareille conclusion se servir de l'argument à contrario, argument très forcé et déduit de l'omission du mot tout dans la première partie de l'Article; or, l'argument à contrario, comme le dit Dalloz, "est en général d'une grande faiblesse. Le silence ne parle pas, et prêter une voix à celui du législateur, c'est toujours s'exposer à lui attribuer une intention qu'il n'a pas eue. En particulier la jurisprudence, dès l'origine, admit que cette déduction devait être repoussée, lorsqu'elle avait pour résultat de mettre en opposition, l'un avec l'autre, deux Articles de Loi."

3. Parce que l'argument pourrait avoir un semblant de force si dans l'Article du Traité on trouvait les territoires (au pluriel) compris entre le Cap Delgado et la Baie de Lourenço Marques. car dans ce cas, on pourrait supposer que nous ne possédions pas tout le territoire compris entre ces deux points, mais seulement quelques-unes de ses parties; mais dans l'Article il est dit bien clairement: "le territoire (au singulier) compris entre le Cap Delgado et la Baie de Lourenço Marques," ce qui ne permet pas, à ce sujet, le moindre doute.

4. Parce qu'une expression indéterminée employée dans un Article d'un Traité peut recevoir un sens précis si elle est déterminée dans ce même Article. Ainsi, d'après le premier chapitre de la loi Aquilia, celui qui, à Rome, tuait un esclave ou un animal appartenant à autrui, devait payer une somme égale à la plus grande valeur qu'aurait pu avoir cet esclave ou cet animal, dans l'année qui avait suivi les blessures d'où était résulté la mort: "Quanti id in eo anno plurimi fuit" (LL. 2 pr., et 51 § 2. Dig. ad leg. Aquil.); et le troisième chapitre, prévoyant le cas de blessures non suivies de mort, obligeait l'auteur du fait à payer l'équivalent du préjudice occasionné, eu égard à la valeur vénale pendant les trente jours qui suivent la date du fait: "Quanti ea res in diebus triginta proximis." (L. 27 § 5. Dig. ad leg. Aquil.)

Ce troisième chapitre se servait du mot multi sans y ajouter plurimi; et quand il fut débattu si on devait l'entendre comme si les deux mots multi plurimi eussent été employés, la question fut résolue affirmativement: "At nec plurimi quidem verbum adiectur. Sed Sabino recte placuit perinde habendam oestimationem, ac si etiam hac parte plurimi verbum adjectum fuisset" (§ 15 Inst. de leg. Aquil. iv, 3).

Enfin, la troisième objection n'a aucune valeur, attendu que les mots Baie de Lourenço Marques correspondent, comme plusieurs fois déjà nous l'avons fait remarquer, au Delagoa Bay des Anglais.

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Chapitre II.-Reconnaissance de notre droit par l'Angleterre en 1721.

A tous les faits de reconnaissance expresse et tacite de notre droit, déjà mentionnés dans le premier mémoire et dans cette réplique, il faut en ajouter un autre qui prouve que, dès le commencement du siècle dernier, l'Angleterre avait reconnu notre droit à la Baie de Lourenço Marques.
Suivant un projet nourri peut-être par l'Angleterre dès la fin du dix-septième siècle, comme nous le verrons dans la quatrième partie, la Compagnie des Indes Orientales Anglaises tenta, dans le premier quart du dix-huitième siècle, de s'emparer de cette baie, et prépara dans ce but une expédition qui devait partir de Bombay.

Le Gouvernement Portugais, ayant eu connaissance de cet attentat, protesta immédiatement, réclama avec énergie dans une note adressée au Ministre Anglais à Lisbonne, Mr. Worsley, et par l'intermédiaire de Diogo de Mendonça Córte Real, notre Ministre à Londres près le Gouvernement Anglais, et fit préparer une expédition qui devait se rendre sans retard dans la dite baie, afin d'en renforcer l'occupation. Ce fait fut communiqué à François Joseph de Sampaio, Vice-Roi et Capitaine-Général de l'Inde Portugaise par Lettres Royales du 16 Avril, 1721.

Devant l'énergie et le bon droit du Gouvernement Portugais l'Angleterre abandonna son dessein, alors que le Colonel Lumby (plus tard Lord Sanderson) était déjà son Ministre à Lisbonne en remplacement de Mr. Worsley. Le départ de l'expédition devint donc inutile, ce qui fut communiqué au Vice-Roi par Lettre Royale du 12 Avril, 1723.

Troisième partie.

Les titres produits par l'Angleterre n'ont aucune valeur.

Pendant la discussion diplomatique qui eut lieu au sujet de l'affaire qui nous occupe, l'Angleterre crut devoir présenter deux bases sur lesquelles elle a essayé d'appuyer son prétendu droit à la partie méridionale de la baie de Lourenço Marques, c'est-à-dire aux territoires du Tembe et de Mapouto en y comprenant les îles de l'Unhaca et des Eléphants:

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1. La cession de ces territoires qu'elle prétend lui avoir été faite en 1823 par les respectifs régules.

2. Le désir de mettre obstacle à la traite des noirs et d'encourager tout commerce licite dans la baie.

Dans son mémoire, cependant, l'Angleterre a laissé de côté cette base de ses prétentions, qui, d'ailleurs, n'avait qu'un caractère subsidiaire.
Il ne reste donc plus que l'insistance de l'Angleterre sur la première base, c'est-à-dire sur les prétendues cessions du 8 Mars (celle du Tembe) et du 3 et 23 Août, 1823 (celles du Mapouto). Dans notre premier mémoire (Nos. 89 et suivants) nous avons devancé tous les arguments que l'Angleterre pourrait presenter et nous avons opposé à ces prétendues cessions:
1. Qu'elles étaient fictices et dans le fond et dans la forme.
2. Que, fussent-elles véritables, elles n'en étaient pas moins nulles dans le fond et dans la forme.
3. Qu'elles ne pouvaient avoir aucun résultat favorable à l'Angleterre.
Aucun des arguments à l'aide desquels nous avons soutenu ces propositions n'a été détruit; nous nous y rapportons donc sans reproduire afin de ne pas tomber dans d'inutile répétitions.
Dans son mémoire, l'Angleterre ne fait que vouloir détruire les raisons que nous avons présentées pour prouver que les deux régules du Tembe et de .Mapouto avaient "désavoué les prétendues cessions et s'étaient déclarés tous deux vassaux du Portugal," le premier le 20 et le second le 22 Octobre, 1823. A la déclaration du second, qui fait l'objet du document No. 32, l'Angleterre a opposé ce qui suit: "Si le régule de Mapouto, dit le Gouvernement Anglais, avait, le 20 Octobre, 1823, la faculté de se dé_larer sujet du Portugal, il devait avoir la même faculté à l'égard de l'Angleterre en Août 1823, donc sa déclaration d'Octobre ne peut invalider le Traité d'Août !" Ceci ne peut être sérieux. La déclaration d'Octobre, 1823, reconnaît le vasselage antérieur du régule au Portugal et déclare faux le prétendu Traité fait avec l'Angleterre, qui d'ailleurs n'était pas même un Traité de Cession mais bien un simple Traité de Commerce.
Si depuis de longues années un individu eût donné une chose à Pierre et si, sur la présentation en Août, 1870, d'une donation

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de la même chose à Paul le donateur déclarait en Octobre cette seconde donation fausse et affirmait n'avoir fait que la première à Pierre, d'après la logique du mémoire Anglais Paul pourrait dire que si cet individu avait en Octobre la faculté de faire une donaition à Pierre, il avait en Août la même faculté pour lui en faire une, à lui Paul, et que par conséquent la déclaration faite en Octobre ne pouvait détruire celle d'Août.
L'auteur du mémoire a oublié que nous n'avons pas, comme dans le cas d'une vente ou d'une cession faite à deux personnes, à rechercher laquelle de ces deux cessions est valable, nous nous trouvons dans l'hypothèse suivante: le donateur déclare avoir fait cession à l'un (le Portugal) et il nie celle que l'autre (l'Angleterre) prétend lui avoir été faite.
Aux déclarations du régule de l'Angleterre oppose le manque d'authenticité de l'acte, qu'elle déduit des raisons déjà mentionnées à la page trente-sept, et que nous avons complètement détruites à l'aide d'arguments, que nous tenons comme reproduits ici et auxquels nous ajoutons ce qui suit:
En Octobre 1823, quand les régules vinrent spontanément protester contre les prétendues cessions qui leur étaient attribuées, le Gouverneur de Lourenço Marques pensa, non sans raison, que l'on pourrait croire que cet acte n'avait lieu que par l'effet de notre influence sur les régules.
Il crut donc devoir, dans le but de détruire d'avance toute objection, inviter les Anglais, alors présents dans la baie, et parmi lesquels se trouvait M. Macuard, neveu de l'Amiral Anglais, à assister à cette déclaration des régules.
Les Anglais vinrent effectivement assister à cet acte, mais ils refusèrent de signer le procès-verbal, ainsi que cela est prouvé par les documents 34 en fine et 47 joints au premier mémoire, et ainsi que cela est avoué par le mémoire Anglais même (Case), à la page 36! Chapitre I.-Nouvelles considérations pour soutenir la fausseté des prétendues cessions.
Malgré que l'Angleterre, comme nous l'avons fait remarquer, n'ait détruit aucun des arguments présentés par nous contre les prétendus Traités, nous insisterons encore sur les points suivants pour ce qui regarde la fausseté des Conventions.
1. A rès la déclaration des régules, cette fausseté n'est plus R2 242

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douteuse; et si, alors que ces Conventions eussent été vraies elles ne pouvaient être opposées au Portugal, vu qu'elles sont res inter alios acta, aux termes de l'Article 1365 du Code Civil Français, bien moins le peuvent-elles être depuis la déclaration des régules: "Certum est," dit Boiceau, "et communi Gallioa usu receptum, nullam privatem scripturam, nullumque chirographum fidem habere, nisi prius agnoscatur."
2. La preuve évidente de la fausseté de la prétendue cession du Tembe, du 9 Mars, 1823, se trouve dans le texte même de la cession, texte reproduit à la page 42 du Mémoire Anglais (Case). On sait que les deux régules du Tembe et du Mapouto sont et ont toujours été séparés, et que chacun d'eux gouverne dans son district.

L'Angleterre reconnaît ce fait, et elle les croit si bien indépendants l'un de l'autre que, à la page 37, elle exhibe les prétendus Traité qu'elle a faits avec le seul régule de Tapouto.

Et toutefois, dans la prétendue cession du régule du Tembe, on remarque cette curieuse circonstance, c'est que dans le texte Anglais ce régule est censé avoir cédé à George IV non-seulement ses territoires du Tembe mais encore ceux de l'autre régule, celui du Mapouto:

"i, Mayott (autrement Maietta), King Kappel, &c., freely cede the full sovereignty of all the said lands of Tembe and Mapouto."

De manière que le régule du Tembe cédait à l'Angleterre le territoire d'un autre régule, celui du Mapouta, qu'elle considérait indépendant au point de se prévaloir des Traités de Commerce qu'elle prétendait avoir passés avec lui!

De pareils faits tombent forcément devant le ridicule.

3. La cession se présente comme un acte spontané fait par le régule du Tembe le 8 Mars, 1823, écrit en Anglais, signé par ce régule et portant son sceau, ainsi qu'on le voit à la fin de la cession, page 43 du Mémoire Anglais (I have put my hand and seal); elle est encore censée avoir seulement été acceptée par le Capitaine Owen le 19 du même mois, comme il est dit à la page 44 de ce même Mémoire.

A la même date du 19, un botaniste et un lieutenant, deux créatures d'Owen, affirment, à la suite de l'acte de cession et à la même page 44, la spontanéité de cette cession et l'intervention, comme interprète, d'un nommé Shamaguva, individu tout-à-fait inconnu.

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Ces faits étant admis comme les présente le texte du Mémoire Anglais, nous ferons les remarques suivantes:

(a.) Le régule ne savait pas écrire; nous affirmons qu'il ne le sut jamais.
(b.) Il ne savait pas l'Anglais, et ce qui le prouve c'est qu'il fallait avoir recours à un interprète pour la rédaction de l'Acte de Cession.
(c.) Qui pourra croire que le régule d'une tribu à moitié sauvage eût l'habitude de se servir d'un cachet pour sceller ses actes, à la manière Anglaise ? (" I have put my seal in the British manner! ") Il est à regretter que l'Angleterre ne nous ait pas donné un fac-simile de ce sceau!
(d.) Comment se fait-il que ce régule qui avait tant d'amitié pour l'Angleterre, comme l'assurent les dernières pages de l'Acte de Cession, et qui affirmait qu'une grande partie de ses sujets parlaient l'Anglais, comment se fait-il que ni lui ni ses deux prétendus Ministres, signataires de la cession, neussent l'Anglais et eussent besoin de cet interprète nommé Shamaguva?


On fait dire au régule qu'il a choisi le Roi de la Grande Bretagne comme protecteur, pour deux motifs:

1. Parce que le peuple du Tembe avait pour lui une si grande amitié qu'il parlait même l'Anglais. (" I have chosen the King of Great Britain as my protector, because my people are so strongly attached to his that very many of them speak the English language.")

2. Parce que le pouvoir de l'Angleterre était le seul qui fût basé sur les principes de la justice universelle. (" and because I believe his power to be the only one established on principles of universal justice.")

Quant à la première Raisonn.-n peuple peut parler la langue d'un autre peuple sans pour cela lui être attaché par les liens de l'amitié; mais quand même il en serait ainsi, présenter ce fait comme raison déterminative de la cession du territoire à ce peuple est une absurdité qui ne mérite même pas d'être mise en discussion. S'il en était ainsi, toute l'Europe où le Français est aujourd'hui langage courant s'empresserait de se placer sous la souveraineté de la France; les Etats Unis redeviendraient une Colonie Anglaise, et le Brésil, où l'on parle le Portugais, s'annexerait de lui-même au Portugal! 245
Quant à la seconde Raison.-Qui aura la simplicité de croire que le grossier règule du Tembe se soit lancé dans de profondes considérations philosophiques pour arriver à déclarer que l'Angleterre était la seule nation dont le Gouvernement s'appuyait sur les principes de la justice universelle? Qui ne voit la main d'un Anglais écrivant ces dispositions dans le texte de la soi-disant cession ?

5. Le prétendu Prince Slengelly (ou plutôt Slangella) qui a signé au bas de l'Acte de Cession en qualité de Chef du district de la rive gauche du Saint Esprit (English River) était (pourquoi cacheriez-nous ce fait d'un ridicule écrasant) un nègre mauvais plaisant, cuisinier du fort Portugais, qui, pour se procurer quelques bouteilles de rhum et quelques livres de tabac, s'est amusé aux dépens du Capitaine Owen !

Chapitre II.-Nouvelles considérations à l'appui de la nullité.
Quant à la nullité des prétendues cessions, nous ferons encore remarquer ce qui suit:

1. Le Capitaine Owen lui-même reconnaissait la nullité de la prétendue cession du Tembe du 9 Mars, 1823; on en trouve la preuve dans la déclaration faite par lui à la date du 19 de ce même mois, où il dit qu'il n'acceptait cette cession que parce qu'il y était contraint et après avoir hésité jusqu'à ce jour, déclaration qui se trouve à la page 44 du Mémoire Anglais: "I have constantly evaded it, when urged to take the country for King George ! "

Et afin que la bonne foi du Capitaine Owen au sujet de l'hésitation dans laquelle il prétend s'être trouvé jusqu'à ce jour 19 soit bien mise en lumière, nous appellerons l'attention de l'arbitre sur la lettre que, le 9, c'est-à-dire, dix jours auparavant, ce même Owen adressait au Gouverneur de Lourenço Marques, et qui se trouve à la page 36 du Mémoire Anglais, lettre dans laquelle il annonçait avoir accepté la cession du Tembe ; (" which cession I have accepted "). Ainsi, dans cette lettre il annonçait l'acceptation de la cession, le 9, et le 19 il prétendait avoir hésité jusqu'à ce jour!

2. Les Conventions ou Traité, alors même qu'ils seraient

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Les Conventions ne pouvaient être suivies d'effet.

Le manque de prise de possession effective et l'existence d'obstacles graves de nature internationale constituent des empêchements à la validité des cessions de territoire.
Or ces deux conditions, même en admettant par hypothèse la réalité et la validité des cessions, font absolument défaut à l'Angleterre.

Section 1. Le manque de possession effective est un empêchement à l'effet des cessions.

La première de ces conditions fait défaut à l'Angleterre, car il est reconnu qu'elle n'a jamais pris possession effective après les prétendues cessions de 1823; le Gouvernement Anglais l'avoue explicitement par la voix de Lord Clarendon dans la note du 27 Avril, 1869."

La Grande Bretagne ne peut contester la nécessité de la possession pour compléter et rendre effective la cession, car c'est un principe courant en droit Anglais et qui a été soutenu par Sir William Scott: "All writers concur, however, in holding it to be a necessary principle of jurisprudence, that to complete the right of property, 'the right to the thing and the possession of the thing itself should be united; ' or, according to the technical expression borrowed either from the civil law or as Barbeyrac explains it, from the commentators on the canon law, that there should both be the jus in rem and the jus in re. This is the general law of property, and applies, I conceive, no less to the right of territory than to other rights."

Dans la jurisprudence Anglaise, la cession peut tout au plus conférer le jus ad rem; le jus in re ou la propriété ne peut être transmise sans l'effectivité de la possession.

C'est que le droit Anglais, suivant la théorie Romaine de la tradition, a adopté le principe de la constitution de Dioclétien et de Maximien: "Traditionibus et usucaptionibus, dominia rerum, non nudis pactis transferuntur," et que, en acceptant les locutions barbares de jus in re et de jus ad rem, introduites au moyen-âge, il n'admet la consommation de l'acquisition du jus in re, c'est-à-dire la transmission du droit de propriété, qu'après vérification de la tradition et de la possession.

Nous savons qu'en droit civil Français aussi bien qu'en droit civil Portugais la propriété se transfère, solo consensu, sans nécessité de tradition ou de possession, mais l'affaire n'a point trait au droit civil mais bien au droit international et il faut savoir, non pas seulement si la propriété se peut transmettre solo consensu, mais encore si la cession peut se compléter sans la possession. En effet, si en droit international, on peut débattre sur la transmission de la propriété par le seul consentement; sur le second point tous sont d'accord que la cession ne peut se compléter ou ne peut avoir d'effet sans la possession effective.

Dans cette question, Grotius et Puffendorf se sont prononcés pour l'affirmative, suivie aussi actuellement par Eugène Ortolan ; mais l'opinion contraire, adoptée en Angleterre par Sir William Scott et défendue par Hoeffter et Bluntschli, est celle qui prévaut dans la théorie, sauf quand, dans les Traités, on déclare la propriété comme transférée, indépendamment de la possession que l'on confère ensuite et qui d'ailleurs est nécessaire, ce dont on peut fournir comme exemples l'échange du Holstein et de ses dépendances contre la Russie, le 30 mai, 1773, et la cession de la Louisiane faite par la France aux Etats-Unis, dans le Traité du 30 Avril, 1803, célébré entre le Premier Consul de la République Française et la Président de la Confédération Americaine.

L'échange ayant été signé par la Russie et le Danemark, l'Empereur Paul promulga un décret le même jour, publié à Kiel le 3 Novembre, 1777, dans lequel il déclarait que, par effet exprès de la cession, la souveraineté du Holstein ayant été transférée au Roi de Danemark, il ordonnait que la possession lui en fût donnée sans retard:

"Vu donc qu'en conséquence de ce Traité, et par acte de cession expédié sous la date d'aujourd'hui, nous avons déjà cédé et transporté en pleine propriété notre dite part au Duché de Holstein, avec ses dépendances, à Sa Majesté le Roi de Danemark et de Norwège, et à ses descendants mâles, ainsi qu'à toute la maison royale de Danemark dans la succession masculine; que la possession de ces pays sera incessament remise à Sa dite Majesté. A ces causes, nous vous mandons et ordonnons, etc."

Section 2. De graves embarras internationaux s'opposent à l'effet des cessions.

La seconde condition manque à l'Angleterre, attendu que la protestation immédiate des régules du Tembe et du Mapoutou, ainsi que celle du Gouvernement Portugais et son opposition constant et opiniâtre, ont toujours empêché la réalisation de cette cession chimérique.

Ont protesté en effet:
4. Le Gouverneur de Mozambique le 7 Août, 1860.
5. Le Commissaire Portugais du Cap de Bonne Espérance, le 5 Décembre, 1861.

Une pareille opposition n'est pas moins importante que celle de l'Angleterre et des Etats Unis à la cession que l'Espagne voulait faire de la Louisiane à la France, en 1800, et que celle de la Prusse à la cession du Luxembourg à la France, en 1867; or, il est évident que si ces nations purent élever par leur opposition des obstacles internationaux à la réalisation de ces cessions, comme le dit Bluntschi, l'opposition faite par le Portugal à l'Angleterre dans la présente affaire ne constitue pas un empêchement moins grave.

Section 3.-Considérations spéciales au sujet du Mapouto.
Les Conventions faites avec le Mapouto, spécialement, ne pourraient avoir aucun effet favorable à l'Angleterre, alors même qu'elles ne seraient ni controuvées ni désavouées par les régules :1. Parce que la Convention du 3 aussi bien que celle du 23 Août, 1823, toutes deux insérées dans le Mémoire Anglais, à la page 37, ne contenaient aucune cession de territoire, puisqu'elles ne représentent que des Traités de Commerce ;
2. Parce que ces deux Conventions auraient cessé de plein droit: la première parce qu'elle ne devait durer que quatre ans

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(this engagement to be enforced for four years); la seconde parce qu'elle ne devait durer que dix ans (for ten years from the date hereof).

En effet, on sait que tout Traité conclu pour un certain temps (comme l'étaient, par exemple, les Traités d'Asiento faits autrefois par l'Espagne avec le Portugal, la France et l'Angleterre) perdent de plein droit leur validité dès que, comme le dit Bluntschi, le terme auquel ils sont fixés est échu: "Lorsqu'il a été conclu pour une durée déterminée et que le temps fixé est écoulé."

C'est là un principe courant en droit des gens:
"L'alliance," dit Vatel, "prend fin aussitôt que son terme est arrive.
"Les Traicts publics," écrit Kluber, "cessent d'être obligatoires lors de la stipulation d'un terme, à l'époque de son échéance."
"Les Traicts," dit Hautefeuille, "qui ne contiennent aucune atteinte aux droits essentiels, et sont conclus pour un temps déterminé, sont obligatoires pour tout le temps fixé."

QUATRIÈME PARTIE.
Chapitre I.-L'Angleterre nourrit depuis de longues années le désir de s'emparer de la Baie de Loureño .Marques; ce désir a toujours été déçu et s'est bien souvent manifesté dans les travaux des écrivains de ce pays comme un moyen de nuire à la France.
Les prétentions de l'Angleterre ne datent pas des soi-disant cessions de 1823, elles n'ont fait que revêtir une forme nouvelle, car elles sont fort anciennes, se sont manifestées sous différents aspects et ont toujours été repoussées ainsi que nous le démontrerons à l'aide de faits dont l'Angleterre n'ose même pas parler et que nous allons mettre en pleine lumière.
1. Pendant les dernières années du dix-septième siècle, à l'époque où nous avions coutume d'envoyer tous les ans des navires de Mozambique dans cette baie que nous n'occupions encore qu'au moyen de factoreries, alors que déjà les Hollandais jetaient des regards de convoitise sur ce point, l'Angleterre ressentit le désir de s'emparer et elle commença en 1686 à y

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envoyer des navires de commerce pourvu d'artillerie, afin d'essayer d'entraver notre commerce et d'indisposer les Cafres contre nous. Un pareil fait effraya le Gouverneur de Mozambique, D. Miguel de Almeida, qui, cette même année, en écrivit au Vice-Roi de l'Inde, Don Rodrigo da Costa, lui demandant,
tant il craignait quelque attaque des Anglais, s'il devait comme c'était l'usage, envoyer un navire dans la Baie de Lourenço Marques.

Cependant, grâce à l'énergie déployée en cette circonstance par le Vice-Roi, notre navigation régulière put être continuée, ainsi qu'il le communiqua dans sa dépêche du 24 Janvier, 1687, au Gouvernement Portugais, qui approuva sa conduite. Les Anglais ne tentèrent alors rien de plus contre nous.

2. En 1720, le dessein des Anglais prit un caractère plus sérieux. Ils voulurent faire partir de Bombay une expédition qui devait s'emparer de la baie et ils n'abandonnèrent cette idée que sur les énergiques réclamations de notre Gouvernement, ainsi que nous l'avons fait voir dans la deuxième partie de ce Mémoire. Cette seconde tentative des Anglais jointe à une autre des Hollandais, fut le principal motif qui nous porta à établir des fortifications régulières dans toute la baie.

3. Quoique leurs tentatives fussent échoué jusqu'à ce jour, les Anglais ne renoncèrent pas à leurs projets auxquels Orry de Fleury, Directeur de la Compagnie Française de Pondichéry, faisait allusion dans sa lettre du 13 Mai, 1783, au Secrétaire d'Etat, Antoine Guedes Pereira, mais sachant que nous nous tenions sur nos gardes, ils commencèrent à envoyer dans la baie des navires de Bombay, en ayant soin toutefois de solliciter du Gouverneur de Damão, dans l'Inde Portugaise, des passeports Portugais pour la côte orientale d'Afrique; à l'abri de ces passeports ils tentèrent plus d'une fois de soulever les Cafres contre nous, comme cela eut lieu en 1763, année pendant laquelle leurs navires cherchèrent à éviter la frégate de guerre Portugaise S. José, dont ils ne s'approchèrent que sur l'ordre, appuyé de coups de canon, qui leur en fut donné. Plus tard, pendant les années 1782 et 1783, les Anglais tentèrent de s'introduire de nouveau à Lourenço Marques. Dans cette pensée ils firent partir de Bombay la corvette Sainte Anne, munie d'un passeport Portugais, et commandée par un soi-disant capitaine Portugais, qui n'était autre qu'un simple élève pilote.

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le véritable capitaine était un Anglais nommé Thomas Burton. Pour accomplir leur dessein et pouvoir porter pavillon Portugais et se munir d'un passeport également Portugais, les Anglais s'entendirent avec Antonio Pereira, négociant de Goa, qui consentit à passer pour le propriétaire du navire et avec un autre Portugais, Michel de Lima e Sousa, résident à Bombay, qui prit le rôle d'armateur. Toutefois cette supercherie fut démasquée par le Gouverneur de la baie, Joaquim de Araujo, et par le Gouverneur de Mozambique, Pedro de Saldanha de Albuquerque. Le navire fut chassé et cette tentative échoua encore une fois.

En 1790, des navires marchands Anglais se rendirent encore dans la baie de Lourenço Marques avec capitaines et équipages Anglais, mais portant cette fois pavillon Français. Ils firent, mais en vain, tous leurs efforts pour indisposer les Cafres contre nous et pour les déterminer à se révolter contre notre souveraineté. Ce fait fut communiqué par le Gouverneur de Mozambique au Vice-Roy de l'Inde, dans sa lettre officielle du 19 Août, 1790, et au Ministre de la Marine le 23 du même mois et de la même année, et le 31 Août, 1791.

Un pareil fait doit être sévèrement blâmé. L'Ordonnance Française de 1681 considère comme de bonne prise tout navire portant un pavillon qui n'est pas le sien et regarde comme pirates le capitaine et les officiers quand ce navire est armé en guerre. Valin, en commentant cette ordonnance, dit que ce procédé constitue un trait de lâcheté et de perfidie. Hereusement que l'Europe n'oublie pas facilement la sensation produite sur l'esprit publie par le guet-apens au moyen duquel, le 4 Septembre, 1800, deux frégates Espagnoles furent prises, à la hauteur de Barcelone, avec abus du pavillon Suédois du navire "Die Hoffnung."

6. En 1815 nous surprimes encore les Anglais faisant de nouvelles tentatives pour soulever les Cafres contre nous, ce qui donna lieu à ce que le trois-mâts Anglais "Persévérance," du port de Bombay et commandé par Thomas Ramsden, fût chassé de la baie par le canon de notre fort, en Mars de la même année, et ce qui amenra la réclamation présentée immédiatement par le Gouverneur de Mozambique au Gouverneur de Bombay le 15 Août suivant, ainsi que cela fut communiqué au Gouvernement dans une dépêche officielle du 30 Septembre.

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7. Les Anglais n'ont jamais perdu l'espoir de s'emparer de la baie; ils y étaient même poussés par le désir de nuire à la France, désir souvent manifesté par quelques écrivains et par les actes de plusieurs autorités Anglaises mais qui n'était pas assurément partagé par le Gouvernement Britannique.

En 1798, l'Anglais William White conseillait à son Gouvernement d'occuper la Baie de Lourenço Marques, comme point stratégique pour enlever l'île de la Réunion à la France: "Si le Gouvernement avait jamais en vue d'attaquer l'île de la Réunion, la rivière de Mafumo (ou du Saint-Esprit) serait un excellent rendez-vous pour la flotte, parce qu'on pourrait y débarquer et y faire camper les troupes, leur procurer de la viande fraîche, des légumes, etc."

Ce qui donnait lieu à la note suivante du traducteur Français, J. Castéra: "Ces plans de l'ennemi doivent nous apprendre à nous tenir sur nos gardes!"

White assurait que pour une barrique d'eau-de-vie il obtiendrait de Capella, Roi du Tembe, tout le terrain suffisant: "Capelleh accorderait un terrain suffisant moyennant une barrique ou deux de rhum ou d'eau-de-vie."

Le dessein des Anglais n'ayant pu réussir à cette époque, le Capitaine Owen chercha à le réaliser en 1823 au moyen des soidisant Traités avec les deux régules de la partie méridionale de la baie (Tembe et Mapouto).

On remarquera également que la tentative des autorités de Port Natal pour s'emparer de l'Unhaca en 1861 et l'arrivée dans la baie de la frégate Narcissus chargée d'essayer ce coup de main, coïncide avec les événements qui eurent lieu dans la même année à l'île de Madagascar, à l'occasion de la mort de la Reine des Hovas et du couronnement de son fils Racouta. On sait combien en Angleterre on craignait l'influence de la France dans cette île.

Chapitre II.-L'Angleterre ne peut alléguer son ignorance ni s'appuyer d'aucun prétexte pour excuser le Capitaine Owen.

On reconnaît, par les faits que nous venons d'exposer, que l'Angleterre dont les navires fréquentèrent la baie dès la fin du dix-septième siècle et qui, plus d'une fois, montra clairement son intention de s'en emparer, ne peut protester de l'ignorance du 254

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Capitaine Owen en 1823 au sujet ne notre droit, ainsi qu'elle prétend le faire dans son Mémoire. Déjà vers la fin du siècle dernier, White, dans son voyage cité au chapitre précédent, avouait que les navires Anglais connaissaient et fréquentaient la Baie de Lourenço Marques: "quoiqu'elle ait été souvent fréquentée (dit-il) par quelques-uns des Anglais et des Américains."

Ainsi que nous l'avons démontré dans notre premier Mémoire, il est hors de doute que le Capitaine Owen a agi avec la plus évidente mauvaise foi et la plus insigne perfidie.

C'est en vain qu'Owen cherche à s'appuyer d'un subterfuge en disant que l'autorité Portugaise dans la baie ne s'étendait pas au delà de la portée des canons de son fort, que les indigènes lui contestaient cette autorité et qu'ils étaient en guerre avec nous ; c'est vainement qu'il veut en conclure qu'il était dans son droit en faisant des Traités avec les régules, et en 'obtenant de ces mêmes régules des cessions de territoire.

A cette époque et plus tard encore l'Angleterre voyait, dans des certaines parties de ses Colonies, son autorité contestée d'une manière bien plus sérieuse que ne l'était celle du Portugal dans la Baie de Lourenço Marques.

Combien d'Anglais n'ont-ils pas été dévoré par les naturels de la Nouvelle Zélande après 1835, alors qu'ils s'établirent dans cette ile afin d'en déloger les Français? Combien d'entre eux ne furent-ils pas mis à la broche dans ce pays pendant l'insurrection de 1864-1865 ? S'ensuit-il que le Gouvernement Portugais aurait pu faire des Traités avec les indigènes, leur acheter un .Pah et arborer son drapeau sur ce territoire?

Actuellement encore, tout naufragé que les tempêtes du dangereux détroit de Torres jettent sur la côte septentrionale de la Nouvelle-Hollande est impitoyablement rôti et dévoré sans rémission par les sujets indigènes de Sa Majesté Britannique; tout voyageur qui s'aventurerait dans ces parages subirait le même sort; ce fait autorise-t-il la nation Portugaise à aller y fonder un établissement en prenant pour prétexte de cet empiétement l'intention de réformer les mœurs féroces de ces anthropophages ?

En outre, l'allégation est complètement fausse, car les prétendues cessions ont été immédiatement suivies des protestations des deux régules qui furent remises entre les mains du Gouverneur 255

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Portugais qui fit sans délai arborer le drapeau Portugais sur leurs territoires, où il flotta jusqu'au 29 Août, 1824, époque où il en fut arraché par le Capitaine Owen.

Mais alors même que des hostilités eussent existé entre les indigènes et la garnison, cela n'autorisait pas un tiers à en profiter et à violer les lois de la neutralité. Déjà un fait de cette nature a mis l'Angleterre dans la nécessité de payer 10,000,0001. aux Etats-Unis.

Et si le principe invoqué par l'Angleterre était admissible, elle pourrait à son moment réclamer de la France Toulon et la Corse que lui furent vendus à une époque calamiteuse pour cette noble et généreuse nation.

CINQUIÈME PARTIE.
Bésuémé et Conclusion.
En résumé et pour conclure à ce travail:
Il est à décider à qui, du Portugal ou de l'Angleterre, appartient la souveraineté de la partie méridionale de la Baie de Lourenço Marques, c'est-à-dire les territoires de Tembe et de Mapouto; et pour ce faire:
Attendu que, suivant le droit public Européen au seizième siècle, la découverte de territoires aux pays des infidèles était un titre légitime d'acquisition de la souveraineté de ces territoires; que la légitimité de ce titre doit être estimée d'après le droit en vigueur à l'époque de l'acquisition, et que le Portugal possède ce titre en ce qui concerne toute la baie de Lourenço Marques, déjà découverte par nous en 1506 et exploitée depuis 1544;
Attendu qu'à ce premier titre vient s'en joindre un autre, celui de l'occupation et de la possession effective de même baie pendant plus de trois siècles à compter de l'année 1544, titre qui, joint à celui de la découverte serait, même suivant les idées aujourd'hui en vigueur, plus que suffisant à légitimer notre droit ;
Attendu que la possession du territoire et de la souveraineté a été acquise et que l'occupation a été exercée non-seulement au moyen de factoreries depuis le seizième siècle sur les rives du fleuve du Saint-Esprit, dans l'île Chefine, dans le Manhiça au nord et dans l'Unhaca au sud, jusqu'aux premières années du 256

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dix-huitième siècle, mais encore au moyen d'un établissement Portugais formé vers la fin du seizième siècle dans l'intérieur du Mapouto, l'une de ces factoreries, celle de l'île Chefine se trouvant déjà fortifiée au dix-septième siècle;

Attendu que, depuis le commencement du dix-huitième siècle nous avons transformé notre système d'occupation en ajoutant aux factoreries des fortifications en règle sur le territoire du Tembe, et en construisant un fort sur la rive sud du fleuve du Saint-Esprit, et plus tard un second fort sur la rive nord, sur les terres de Matolla en 1781, ainsi que d'autres forts dont l'un sur le territoire de Mapouto, un autre dans l'Unhaca et un troisième dans l'île Chefine au centre de la baie;

Attendu que notre possession du Tembe n'a pas été abandonnée puisque, tout en bâtissant un autre fort sur la rive située en face de la rive nord du fleuve du Saint-Esprit nous y avons conservé des fortifications provisoires de 1799 à 1800 après la destruction du village de cette rive nord par les corsaires Français en 1796, et que, même après notre réinstallation sur l'ancien emplacement (1800), nous avons toujours conservé dans le Tembe un poste militaire et fiscal gardé par un détachement dont il est fait mention, en 1818, dans des documents irrécusables.

Attendu que, soit que l'on considère la possession comme de droit civil par rapport au territoire, soit comme de droit public par rapport à la souveraineté dans cette région, c'est-à-dire comme possession de territoire ou comme possession de droits, elle comprenait toute la baie du moment qu'elle en comprenait les principaux points ;

Attendu qu'au corpus possessionis dans toute la baie a toujours été joint l'animus, manifesté par les actes de souveraineté à l'aide desquels le Portugal a constamment affirmé son droit, soit par le titre pris par les Rois de Portugal de maîtres de ces contrées, soit par l'exclusivité de la navigation et du commerce, soit par le châtiment des tribus rebelles, soit par l'établissement de fortifications, soit par l'expulsion des étrangers toutes les fois qu'ils ont voulu s'établir dans la baie, comme cela eut lieu avec les Anglais en 1720, avec les Hollandais en 1730 et avec les Autrichiens en 1781 ;

Attendu que pour acquérir la possession d'un tout, le contact matériel avec toutes ses parties n'est point nécessaire, et qu'il n'est pas non plus besoin de couvrir entièrement ce tout d'étabIX.

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lissements ou de forts, et qu'il suffit de la possibilité physique d'agir sur tout ce territoire du moment que l'occupation des points principaux existe;

Attendu que le même principe milité en faveur de la conservation de la possession, laquelle se conserve pour ces motifs solo animo tant que subsiste l'animus domini et que ne se manifeste pas l'animus contrarius que constitue l'abandon;

Attendu que l'occupation par le Portugal et la possession qu'il a exercée soit qu'on les considère comme moyen de renforcer le titre de la découverte, soit comme titre également principal, c'est-à-dire, soit comme possession devant être maintenue, soit comme possession qualifiée et moyen d'acquérir, réunissent toutes les conditions juridiques de la possession, parce qu'elles sont fondées en titre, exercées à titre de propriété ou de souveraineté et non à titre précaire, et qu'elles ont été publiques, continues et non interrompues;

Attendu encore que la baie forme l'accès du territoire de la partie nord dont l'occupation et la possession ne sont point contestées, ce que suffirait, suivant le droit des gens, à la faire regarder comme comprise dans notre territoire; considération qui fait l'objet de la troisième base de notre droit;

Attendu que, dans le cas simplement hypothétique où les titres invoqués feraient défaut, la Baie de Lourenço Marques aurait constitué une propriété Portugaise depuis 1629 par l'effet de la donation faite de son territoire à la Couronne de Portugal le 24 Mai de cette année, par le régule ou Empereur du Monomotapa, dont les domaines s'étendaient alors jusqu'aux environs du Cap de; ; Bonne-Espérance, titre qui, pour cette cause, n'est invoqué que comme titre subsidiaire;

Attendu que, même en l'absence de ce titre et des titres précédents (ce que nous n'admettons que par hypothèse), nous pourrions encore nous appuyer subsidiairement sur un autre titre, celui de la conquête, que nous aurions acquis depuis 1781 par le fait de l'expulsion des Autrichiens dans cette année;

Attendu que le droit du Portugal à la partie contestée de la baie a été reconnu par les régules respectifs du Tembe et du Mapouto, qui se sont toujours regardés comme vassaux de la Couronne de Portugal et qui ont toujours témoigné de cette vassalité par une série de faits qui impliquent une reconnaissance tacite et expresse de nos droits, comme le paiement de tributs,

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l'exercice de fonctions administratives et fiscales, etc., reconnaissance d'ailleurs solennellement et authentiquement ratifiée par ces deux régules en Octobre, 1823, et plus tard encore par celui du Tembe 1857, et par celui du Mapouto en 1870 ;

Attendu que notre droit a été également reconnu du seizième siècle jusqu'à nos jours, par les diverses nations de l'Europe, expressément ou tacitement, soit par des actes de leurs Gouvernements respectifs, soit par les écrits de leurs auteurs et dans leurs travaux géographiques qui tous représentent la baie comme entièrement comprise jusqu'au 26° 30' dans les limites de la Province de Mozambique;

Attendu que notre droit, reconnu par l'Angleterre expressément et tacitement avant 1817, et spécialement en 1721, a été encore expressément avoué par elle dans l'Article 2 de la Convention du 28 Juillet, 1817, où il était déclaré que le territoire compris entre la Baie de Lourenço Marques et le Cap Delgado appartenait au Portugal;

Attendu le cas que cet article ne laisse ni ne peut laisser aucun doute au sujet des mots Baie de Lourenço Marques, qui indiquent l'extrémité sud du territoire Portugais, puisqu'ils sont toujours désignés et désignaient à l'époque de cette Convention la baie nommée aujourd'hui sur les cartes Anglaises Delagoa Bay; et attendu que ces mots ne peuvent être compris que comme renfermant le sens inclusivement ainsi que cela a lieu pour les mots Gabo Delgado;

Attendu aussi que le droit de la nation Portugaise est d'une telle évidence que les auteurs Anglais eux-mêmes, tant anciens que modernes, non-seulement n'osent pas le nier, mais encore l'avouent explicitement, même de nos jours;

Attendu que les prétentions de l'Angleterre à la partie méridionale de la baie (Tembe et Mapouto) sont inadmissibles, parce que ;

Attendu, quant au Mapouto, que des Traités que l'Angleterre prétend avoir faits avec le régule respectif en 1823 il ne résulte aucune cession, à cette nation, de ce territoire ni des îles de l'Unhaca et des Eléphants, qui y sont comprises, fait qui, étant avoué, comme effectivement cela a lieu, par l'Angleterre elle-même, lui enlève toute légitimité pour disputer au Portugal la propriété ou la souveraineté de ce territoire; s2

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Attendu encore que, alors même que cette exception péremptoire n'existerait pas contre l'Angleterre, cette nation n'en aurait pas pour cela plus de droits aux territoires du Tembe et du Mapouto, et pour cela et outre ce qui est déjà exposé;
Attendu que les prétendus Traités faits avec les deux régules de ces territoires (seul titre produit par l'Angleterre), n'ont aucune authenticité et sont désavoués par ces règles ;
Attendu que, fussent-ils même véritables, ces Traités seraient nuls dans la forme, par le manque de qualité du Capitaine Owen, non validée par la ratification du Gouvernement Anglais, ratification devenue d'ailleurs impossible après les déclarations des mêmes règles; et qu'ils seraient nuls dans le fond puisqu'ils ont pour objet une chose qui appartenaît déjà au Portugal et dont, par conséquent, ils ne pouvaient disposer; Attendu que cette nullité du fond par rapport aux susdites Conventions devient encore plus évidente si l'on considère que l'Angleterre ne pouvait ignorer le droit du Portugal qu'elle-même avait plus d'une fois reconnu antérieurement d'une manière expresse et tacite, surtout en 1721 et dans la Convention du 28 Juillet, 1817, célébrée avec le Portugal, et dont l'article 2 reconnaît expressément la Baie de Lourenço Marques comme formant l'extrémité sud des possessions Portugaises dans l'Afrique Orientale;
Attendu, en outre, que les prétendus Traités ne peuvent avoir d'effet juridique, soit parce qu'ils n'ont jamais été suivis de possession par l'Angleterre, soit parce que, en outre, leur exécution a trouvé un obstacle international dans les protestations non interrompues des règles et du Gouvernement Portugais, ce qui est chose courante en droit des gens; 
Attendu que, spécialement pour ce qui concerne la prétendue cession du régule du Tembe, elle serait nulle, alors même qu'elle serait véritable, vu qu'elle contient la cession du territoire de Mapouto qui appartient à un autre réglue;
Attendu encore, pour ce qui a trait spécialement aux deux Conventions avec le Mapouto, du 3 et du 23 Août, 1823, que fussent-elles véritables, elles ne pouvaient avoir aucun effet favorable à l'Angleterre, d'abord parce qu'elle ne contiennent pas de cession de territoire, ensuite parce qu'elle étaient tombées en déchéance, 
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puisque, suivant la lettre de ces mêmes Conventions, la première ne devait avoir de valeur que pendant quatre ans et la seconde pendant dix ans, laps de temps qui sont déjà écoulés ;
Attendu, en ce qui concerne ces Traités et tous les attentats commis par le Capitaine Owen (et qui sont restés jusqu'à ce jour sans réparation!) que ce capitaine a agi avec la plus insigne perfidie, qu'il a abusé des recommandations dont il était porteur pour les autorités Portugaises d'Afrique et qui avaient été sollicitées du Gouvernement Portugais par l'Angleterre, et qu'il s'est servi de la force maritime placée sous ses ordres pour traiter en ennemis le Gouverneur et la garnison de Lourenço Marques et cela avec plus de violence encore que s'il avait eu affaire à des colons Anglais; 
Attendu que, deviendrait-il nécessaire d'avoir recours à des considérations d'équité ainsi que cela est autorisé par le Protocole, cette équité s'éleverait en faveur du Portugal pour ce qui concerne la décision relative à la Baie de Lourenço Marques, par l'effet d'une juste compensation des territoires indûment retenus par l'Angleterre, puisque;
Attendu que, dans l'Article XIV du Traité du 23 Juin, 1661, par lequel le Portugal a cédé à l'Angleterre Bombay dans l'Inde et Tanger en Afrique, il a été stipulé que si quelque jour l'île de Ceylon prise par les Hollandais aux Portugais venait à tomber au pouvoir de l'Angleterre, "le Gouvernement Anglais
s'engageait ' rendre au Portugal la souveraineté et la possession de la ville et du port de Colombo, et que cette clause attend depuis deux siècles son exécution, quoique les Anglais aient acquis Ceylon des Hollandais.

Attendu enfin qu'il est hors de doute que la Baie de Lourenço Marques embrasse jusqu'au 26° 30' de latitude sud, ce qui est suffisamment prouvé par la simple inspection des cartes géographiques: le droit ne doit sembler ' l'arbitre que le droit du Portugal i

CITBA, June 14, 1875.

In accordance with instructions received from Her Britannic Majesty's Principal Secretary of State for Foreign Affairs relative to those territories situated on the South-East Coast of Africa over which Her Britannic Majesty has hitherto exercised rights of sovereignty disputed by the Government of His Most Faithful Majesty, and with reference, more especially, to the decision not yet officially declared of the President of the French Republic, to whose arbitration the two Governments have agreed to refer their adverse claims to the possession of the above-mentioned territories, the Undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, has now the honour to submit to His Most Faithful Majesty's Minister for Foreign Affairs, for the friendly consideration of His Most Faithful Majesty's Government, a proposal on the part of Her Britannic Majesty's Government that Great Britain and Portugal should enter into a mutual agreement to the effect that, whichever way the Award of the Arbitrator may be given, as regards the right of sovereignty over the above-mentioned territories, the Power in whose favour the Award is made will not entertain any proposal for the acquisition of the said territory by any other Power, until the defeated claimant shall have had an opportunity of making to the successful claimant a reasonable offer for the acquisition of that territory, either by purchase or for some other consideration.

In inviting the assent of the Portuguese Government to the proposal thus made to it on behalf of the British Government, the Undersigned is anxious to assure His Most Faithful Majesty's Minister for Foreign Affairs, that when the Government of Her Britannic Majesty agreed to refer to the arbitration of the President of the French Republic the Portuguese claims to a territory of which Great Britain had long been in practical possession, the motive of Her Majesty's Government in so doing was a sincere desire to remove from the old and cordial relations between Great Britain and Portugal a long-standing ground of contention as to the sovereignty of a territory so closely neighbouring the Colonial possessions of the two Powers in Southern Africa. But the possession of that territory by any third Power, to whom the surrender of it was not contemplated by the British Government when the British Government agreed to submit to arbitration the disputed title on which it had hitherto claimed and held the territory in question, would scarcely be calculated to inspire on the part of His Majesty's Government those sentiments of confidence and security with which they are fully prepared to accept the Award of the Arbitrator, if that Award be favourable to the claims of Portugal.

The Undersigned therefore trusts that, in the same friendly spirit which in regard to this and all other questions affecting their several interests has so long and so happily animated the relations between Great Britain and Portugal, the Government of His Most Faithful Majesty will be readily disposed to entertain the proposal hereby submitted to them by the Undersigned, who avails himself of the present opportunity to renew, etc.

(Signed) LYTTON.

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[Translation!]

Letter from SENHOR CORVO to LORD LYTTON.
FOREIGN DEPARTMENT, LISBON, June 17, 1875. The Undersigned, His Most Faithful Majesty's Minister and Secretary of State for Foreign Affairs, had the honour to receive the note which was addressed to him on the 14th instant by Lord Lytton, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, relative to the territories situated on the East Coast of Africa, the possession of which was disputed by the two Governments of Portugal and of Great Britain, a dispute which was, by mutual assent, referred to the arbitration of the President of the French Republic.

While expressing the apprehensions of his Government as to the eventuality of the territories in question being ceded to a third Power, Lord Lytton remarks that, when the British Government agreed to refer to the arbitration of the President of the French Republic the question which had for so many years been pending between the said Government and that of Portugal, they were animated by the sincere desire of removing from the old and cordial relations between Portugal and England a ground of contention as to right of sovereignty over a territory which was in the immediate neighbourhood of the Colonial possessions of the two countries; and he adds that the possession of that territory by any third Power could hardly inspire to Her Britannic Majesty's Government those sentiments of confidence and security with which they are prepared to accept the Award of the Arbitrator in favour of Portugal.

In thanking Lord Lytton for the assurances which his Excellency gives him in his note as to the sentiments of cordiality and confidence entertained by Her Britannic Majesty's Government, which sentiments are sincerely reciprocated by His Most Faithful Majesty's Government, the Undersigned has the greatest pleasure in giving his Excellency the fullest assurance as to the determination of the Portuguese Government of not ceding to any third Power the territory, the possession of which may be secured for it in virtue of the arbitration of Marshal MacMahon, and of observing, both on this and on all other occasions, a perfect loyalty towards the British Government, in whose friend-

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The Undersigned, &c.

(Signed) Joao DE ANDRADE CORVO.

[Copy.]

Letter from LORD LYTTON to SENHOR CoRvo.

CINTRA, June 24, 1875.

In acknowledging the receipt of the obliging reply which the Undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary has had the honour to receive, under date of the 17th instant, from His Most Faithful Majesty's Minister for Foreign Affairs to the note addressed by the Undersigned, on the 14th instant, to his Excellency, inviting the Portuguese Government to enter into an agreement with the Government of Her Britannic Majesty not to cede or sell to any third Power the territories on the South-East Coast of Africa awarded to Portugal by the decision of the President of the French Republic, to whose arbitration the adverse claims of the two Governments to the territories in question were by mutual consent submitted, without having previously given to Her Britannic Majesty's Government the opportunity of making a reasonable offer for the purchase or acquisition by other arrangements satisfactory to Portugal of the territory thus awarded, the Undersigned has much pleasure in expressing to His Most Faithful Majesty's Minister for Foreign Affairs the great satisfaction with which the assurance contained in his Excellency's above-mentioned note of the 17th instant has been received by Her Britannic Majesty's Government.

Requesting His Most Faithful Majesty's Minister for Foreign Affairs to accept his own thanks and those of Her Britannic Majesty's Government for this prompt and satisfactory answer to his communication of the 14th instant, the Undersigned avails himself, &c.

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LYTTON.

(Signed)

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[Copy.]

Letter from LORD LYoNs to the E&RL OF DERBY.

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Measure, July 28, 1875.
My LORD.-I received last evening from the French Minister for Foreign Affairs the sentence of the President of the Republic in the Delagoa Bay arbitration case. I inclose a copy of it herewith, and I shall send the original document to your Lordship by the first through messenger.

I have also the honour to inclose herewith a copy of the note with which the sentence was forwarded to me by the French Minister.

Your Lordship has been for some time aware that the sentence is in favour of Portugal. The following are the terms of it: "Nous avons jugé et décidé que les prétentions du Gouvernement de Sa Majesté Très Fidèle sur les territoires de Tembe et de Maputo, sur la presqu'Ile d'Inyack, sur les Iles d'Inyack et des Eléphants, son dûment prouvées et établies."

I have, &c.

(Signed) LYoNs.

[Enclosure in the above.]

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deux Parties, le 15 Septembre, 1873, et les contre-mémoires également remis par eux, les 14 et 15 Septembre, 1874;

Vu les lettres de son Excellence M. l'Ambassadeur d'Angleterre et de M. le Ministre de Portugal à Paris, en date du 8 Février, 1875;

La Commission instituée, le 10 Mars, 1873, à l'effet d'étudier les pièces et documents respectivement produits, nous ayant fait part du résultat de son examen;

Attendu que le litige, tel que l'objet en a été déterminé par les mémoires présentés à l'arbitre et, en dernier lieu, par les lettres ci-dessus citées des Représentants à Paris des deux Parties, porte sur le droit aux territoires suivants, savoir:

1. Le territoire de Tembe, borné au nord par le Fleuve Espirito Santo ou English River et par la Rivière Lorenzo Marquez ou Dundas, à l'ouest par les Monts Lebombo, au sud et à l'est par le Fleuve Maputo et de l'embouchure de ce fleuve jusqu'à celle de l'Espirito Santo par le rivage de la Baie de Delagoa ou Lorenzo Marquez;

2. Le territoire de Maputo, dans lequel sont comprises la presqu'Ile et l'Ile d'Inyack, ainsi que l'Ile des Eléphants, et qui est borné au nord par le rivage de la baie, à l'ouest par le Fleuve Maputo, de son embouchure jusqu'au parallèle de 26° 30' de latitude australe, au sud par ce même parallèle et à l'est par la mer;

Attendu que la Baie de Delagoa ou Lorenzo Marquez a été découverte au seizième siècle par les navigateurs Portugais et qu'au dix-septième et dix-huitième, le Portugal a occupé divers points sur la côte nord de cette baie et à Ile d'Inyack dont l'Ilot des Eléphants est une dépendance;

Attendu que, depuis la découverte, le Portugal a, en tout temps, revendiqué des droits de souveraineté sur la totalité de la baie et des territoires riverains, ainsi que le droit exclusif d'y faire le commerce, que de plus, il a appuyé à main armée cette revendication contre les Hollandais, vers 1732, et contre les Autrichiens, en 1781;

Attendu que les actes, par lesquels le Portugal a appuyé ses prétentions n'ont soulevé aucune réclamation de la part du Gouvernement des Provinces Unies, qu'en 1782 ces prétentions ont été tacitement acceptées par l'Autriche, à la suite d'explications diplomatiques échangées entre cette Puissance et le Portugal;
Attendu qu'en 1817, l'Angleterre elle-même n'a pas contesté le droit du Portugal, lorsqu'elle a conclu avec le Gouvernement de Sa Majesté Très-Fidèle la Convention du 28 Juillet pour la répression de la traite; qu'en effet, l'Article deuxième de cette Convention doit être interprété en ce sens qu'il désigne comme faisant partie des possessions de la Couronne de Portugal la totalité de la baie, à laquelle s'applique indifféremment l'une ou l'autre des dénominations de Delagoa ou de Lorenzo Marquez;

Attendu qu'en 1822, le Gouvernement de Sa Majesté Britannique, lorsqu'il chargea le Capitaine Owen de la reconnaissance hydrographique de la Baie de Delagoa et des rivières qui y ont leur embouchure, l'avait recommandé aux bons offices du Gouvernement Portuaigis;

Attendu que si l'affaiblissement accidentel de l'autorité Portugaise dans ces parages a pu, en 1823, induire en erreur le Capitaine Owen et lui faire considérer de bonne foi comme réellement indépendants de la Couronne de Portugal les chefs indigènes des territoires aujourd'hui contestés, les actes par lui conclus avec ces chefs n'en étaient pas contraires aux droits du Portugal;

Attendu que presque aussitôt après le départ des bâtiments Anglais, les chefs indigènes de Tembe et de Maputo ont de nouveau reconnu leur dépendance vis-à-vis des autorités Portugaises, attestant ainsi eux-mêmes qu'ils n'avaient pas eu la capacité de contracter;

Attendu que les Conventions signées par le Capitaine Owen et les Chefs indigènes du Tembe et du Maputo, alors même qu'elles auraient été passées entre parties aptes à contracter, seraient aujourd'hui sans effet, l'acte relatif au Tembe stipulant des conditions essentielles qui n'ont pas reçu d'exécution, et les actes concernant le Maputo, conclus pour des périodes de temps déterminées, n'ayant point été renouvelés après l'expiration de ces délais;

Par ces motifs nous avons jugé et décidé que les prétentions du Gouvernement de Sa Majesté Très Fidèle sur les territoires de Tembe et de Maputo, sur la presqu'île d'Inyack, sur les îles d'Inyack et des Éléphants, sont dûment prouvées et établies.

Versailles, le 24 Juillet, 1875.

(Signé) Mal. DE MACMAiON, Duc de Magenta.

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D'AGUAR, PEDRO AFFONSO: is a captain under Dora Francisco d'Almeida, is pilot of the exploring ship commanded by Bartholomeu Dias, vi 149; also of the Sdo Gabriel, Vasco da Gama's ship, iii 70, vi 164; his experience in navigation, iii 70 D'ALB.1O, MISER BONADJUTO: a Venetian, is found at Cananor by Affonso d'Albuquerque and brought to Portugal, vi 226; is sent with Dora Francisco d'Ameida as interpreter, and by him to the emir of Kilwa with Joto da Nova, vi 226

D'ALBERGARIA, Lopo SOARES: is sent to India with a fleet of thirteen ships by King Manuel, and sails on 22nd April 1504, iii 104; arrives at Mozambique on 25th July and is well received; leaves on 1st August for Melinde, and thence sails for India, finding Antonio de Saldanha
and Ruy Lourengo Ravasco at Anjediva; on his return, leaves Cananor with merchant ships, arrives at Melinde on 1st February 1505, and calls at Kilwa for tribute, which is refused, iii 105; proceeds to Mozambique, where he remains twelve days to provision the fleet, and arrives at Lisbon on 22nd July 1505, i 11, iii 106; other references to, ii 48, v 379 and 383, vi 247

ALBERT OF AUSTRIA, Archduke: governs Portugal for the king; in 1585 receives letters from the bishop of Malacca asking for missionaries, vii 184 and 341

ALBERTO, Friar Caetano: Dominican religious, ministers to the church at Mano, v 215

D'ALBUQUERQUE, Affonso: according to Manuel de Faria e Sousa: in 1503 leaves Lisbon for India with three ships, i 10 according to Damido de Goes: the government of India is transferred to him, by Dom Francisco d'Almeida, iii 134; receives Matheus, ambassador from Queen Helena, and sends him to Portugal, iii 142 according to Jodo de Barros: leaves Portugal for India in 1503, vi 215; assists Tristao da Cunha in capturing Socotra, vi 290; is appointed commander in chief of India; disputes with the viceroy, vi 290 and 295; is met by the marshal Dom Fernando Coutinho at Cananor, and is talked by him to Cochin as governor of India in October 1509, vi 297

Letters written by, to King Manuel, iii 143, 144, 146, and 148; advises sending caravels to Mombasa to protect the coast, iii 146; advises protecting Mohamedans to prevent their damaging trade; also that half the gold obtained yearly from Sofala should be sent to India, iii 147; orders a brigantine to be built to protect trade, iii 148

D'ALBUQUERQUE, Fernao, viceroy of India: letters to, from King Philippe II, iv 170, 171, 172, and 173; from King Philippe III, iv 174, 175, 176, 177, and 183

D'ALBUQUERQUE, Francisco: in 1503 leaves Lisbon for India with three ships, i 10, vi 215; information concerning him is sought by Dom Francisco d'Almeida, v 379; letters from him are found at Mozambique by Gonçalo de Paiva and Fernao Bermudes, and brought to Dom Francisco, v 383

D'ALBUQUERQUE, General Franco de Paulo: in 1806 separates the government of the island of Chiloane from that of the territory of Mambone, vii 377

D'ALBUQUERQUE, Dom Joao: in March 1539 assumes duty at Goa as bishop of India, ii 53

D'ALBUQUERQUE, Dom Matthias, viceroy; settles a yearly allowance on the Dominican house at Mozambique, i 389; letters to, from King Philippe I, iv 41, v 274, 275, 276, 277, 279, and 280

D'ALBUQUERQUE, Pedro: finds two Portuguese trading ships at Cape Guardafui, iii 146

FALCAO, Dinelo: letter from, to King Manuel, i 62; arrives at Sofala with Pedro d'Anaya, ill with fever, i 62; helps to make a trench and palisade at Sofala, v 389; goes to Kilwa and thence to India, acting as factor at Batical6, i 63; sends a report on Sofala, Vealanga, and Kilwa, i 63 to 67; asks for the charge of the factory of Cananor as a reward for his services, i 67

ALEXANDER, emperor of Ethiopia and king of Abyssinia: receives Joao Pires de Covilhao hospitably, but dies soon after his arrival, iii 141, v 352, vi 156

ALEXANDER, a negro left behind in Kaffirland by the people travelling
northward from the wreck of the Sdo Jode; is met by the wrecked party from the Nossa Senhora da Atalaya, viii 338; deserts Father Francisco Pereira, viii 339.

ALEXANDRIA: trade of, with India, carried on by Venetians, v 349, vi 211.

ALFANJA, MANUEL DA SILVA, survivor from the wreck of the Sdo Jodo Baptista: dies on the journey northward, viii 121.

ALFAYA, MANUEL SERRAO, chief judge: is sent to the Rivers to establish commerce, and dies shortly afterwards, iv 367.

ALFUDAIL, ruler of Kilwa: is murdered by the emir Abraham, i 13, iii 114, vii 83; succession to the government is secured to the son of, by Mohamed Ankoni, i 13, iii 114, v 383.

ALI: son of Sultan Hocen of Shiraz in Persia and a slave woman, T2 275.

vi 240; comes to the coast of Eastern Africa in search of gold, vi 240; purchases a site from the natives, fortifies it, and builds the town of Kilwa, taking the title of king; sends his son to take Monfia and other islands, vi 241.

ALLIGATORS: in Cuama River, described by Father Monclaros, iii 221; contest of one with a lion, iii 222. See Crocodiles.

ALL SAINTS, BAY OF: detention of Francisco Barreto at, iii 207.

D'ALMADA, FRANCISCO VAZ: account of the wreck of the ship Sdo Jodo Baptista written by, in 1625, vii 69; refuses to leave his ship and treat with hostile Dutch for a surrender, vii 72; fights them from the steerage, vii 75; travels with the shipwrecked party to Inhambane, vii 77 to 130; is a skilful hunter, and obtains food by his gun, vii 77, 81, 91, 95, and 106; is attacked by natives and defends himself by shooting them, vii 85, 94, 96, 103, and 109; grieves at parting with Lopo de Sousa, vii 89; also at the death of Rodrigo Affonso de Mello, vii 120; is elected captain to succeed Pedro de Moraes; chooses six counsellors to assist him, vii 122; makes seven packets of the diamonds saved from the wreck, and entrusts them to seven persons, taking receipts, vii 123; makes an agreement with some Kaffirs to take the party across the river of Gold in canoes, and promises calico in payment; on further demands being made by the Kaffirs orders his men to stand to arms, vii 124; keeps guard all night, and crosses next day, frustrating the design of the Kaffirs to divide and destroy them, vii 125; hides by day and marches by night, until forbidden to do so by Mokaranga Mukulu, vii 126; is compelled to yield to his demands, vii 127; is attacked, stripped, and wounded by Bantu, and his treasures are taken, vii 128; is rejoined by others of his party and reaches the territory of the friendly chiefs Zavala and Aquero, vii 129; arrives at Inhambane on 19th June 1623, and arranges with the chief to lodge the Portuguese in various houses, vii 130; on 2nd June (July?) sets out for Sofala, vii 132; obtains clothing from the sons of Luis Pereira, and reaches Sofala on 28th July, vii 133; pledges his property for merchandise and purchases a boat from Luis Pereira, vii 134; returns to Inhambane and ransoms his people, vii 135; endeavours to procure restoration of stolen goods, vii 145; is forced to embark for Sofala, and travels thence to Mozambique, vii 136.

D'ALMADA, Joao VAZ: according to Gaspar Correa: is made captain of Joao Leite's ship, bound from Portugal to India in 1505, Joao Leite having fallen overboard, ii 33; 40.

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from Kilwa follows his course to India with Pedro Barreto, vii 40.

according to Damiao de Goes: commands the ship of Joao de Queiroz, after that captain's death, and is sent to Cape St. Sebastian to conduct Pedro Barreto to Sofala, iii 123; with Francisco d'Anaya cruises along the coast to Mozambique, and thence proceeds to Kilwa, iii 125.

according to Fernuo Lopes de Castanheda:
is made captain of the Sdo Paulo on the death of Joao de Queiroz, and brings her to Sofala, v 385; is sent with a pilot for Pedro Barreto de Magalhaes at Cape St. Sebastian, v 386; helps to make a trench and palisade at Sofala, v 389; goes with Francisco d'Anaya to Mozambique, v 390; leaves Kilwa with Pedro Barreto, and does not succour him when wrecked; has his ship taken from him at Melinde, and given to Payo de Sousa, v 391

according to Joo de Barros:

is made captain of Joao Leite's ship, and takes charge of that of Joao de Queiroz, vi 260; is left outside the bar at Sofala when Pedro d'Anaya enters the river, vi 261; is sent to India under the flag of Pedro Barreto for a cargo of pepper, vi 275

ALMADIAS, light long canoes: are used by traders to carry merchandise to Sena, ii 409, iii 353; are used by Bantu in hunting when the plains are flooded, vii 225 and 259; are made out of one piece of wood, vii 252

D'ALMEdA, ANTONIO DE BAIRROS: is sent by Dom Nuno Alvares Pereira in April 1609 to Chidima with thirty soldiers to defend the Monomotapa, iii 374

D'ALMEIDA, ANTONIO CARDOSO:

according to Manuel de Faria e Sousa:

is left in Chicova by Vasco Fernandes Homem to prosecute the search for silver mines; is deceived by Bantu, attacked, and killed with two hundred men, i 30

according to Jodo dos Santos:

is left at Chicova by Francisco Barreto, in charge of the fort, to search for mines; is obliged to take provisions by force; is led by Bantu into the interior and attacked from an ambush, vii 284; is besieged with the remainder of his force and in endeavouring to cut his way out is killed with all his men, vii 285

D'ALMEIDA, DIOGo GOMES, Portuguese ambassador: is lost in the wreck of the SdoJo o, i 18

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D'AL MeDA, Dom FRanCISCO, viceroy of India:

according to Manuel de Faria e Sousa:

on 25th March 1507 (a misprint should be 1505) leaves Lisbon 277 for India with twenty-two ships; arrives at Kilwa and resolves to erect a fort there, i 11; attacks and defeats the emir Abraham, and makes Mohamed Ankoni king in his place; constructs a fort at Kilwa, and on 8th August sails for Mombasa, i 13; on 15th August enters and takes Mombasa, burning it to the ground, and sets out for India with fourteen ships, i 14; on 19th November 1509 leaves Cochin for Portugal, and is killed by natives at the bay of Saldanha, i 17 according to Gaspar Correa:

is at Kilwa in 1505, ii 32; receives good news of Pedro d'Anaya's security at Sofala from Pedro Barreto de Magalhaes, ii 40; orders the Portuguese ships to be repaired and fits out the Judia and Gondona, ii 41; on 11th October 1509 sets out from India for Portugal, and puts in at the Watering Place of Saldanha for wood and water, ii 45; is pursued by Hottentots in a quarrel and killed with a sharp stick, which pierces his neck and throat, ii 47 according to Damido de Goes:

is summoned from Coimbra in 1505 by King Manuel, and sent as governor to India with sixteen ships and six caravels, iii 106; receives many favours from the king; is instructed to build fortresses at Sofala and Kilwa, and to leave men and ships to guard them, iii 107; to send friendly letters to the king of Melinde, to construct a fort at Anjediva, leaving Manuel Paganha as captain, and then to sail for Cochin; to wage war against the ruler of Calicut, but to treat the rulers of Cochin and Cananor as friends; to obtain cargoes in Cochin and despatch the ships home, then to proceed to Coulam for other cargoes and endeavour to build a fortress there, iii 108; to construct a fort at the entrance of the Arabian sea, place Manuel Paganha there as captain, and Louren-o de Brito at Coulam; to make peace with the king of Calicut if desired, on condition of the expulsion of the Moors; to cruise along the coasts, making peace where desired, imposing tributes and granting privileges, iii 109; sails from Belem on 25th March 1505, arrives and waters at Port Dale, iii 110; on 26th June doubles the Cape of Good Hope, and on 18th July reaches Primeiras Islands, sending Gongalo de Paiva in advance to Mozambique; on 22nd July arrives at Kilwa, and sends Joao da Nova to
visit the emir, iii 111; obtaining no answer, lands and enters Kilwa on 23rd July 1505 with three hundred men; marches to the palace, and finding the emir fled, takes possession and gives his men leave to sack the town, iii 112; makes knights of several men, and builds a fortress at Kilwa; sends for Mohamed Ankoni, proclaims, and crowns him

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king in vassalage to Portugal, and paying tribute, iii 113; draws up instruments delivering the kingdom to Mohamed Ankoni, and establishes him in the palace; orders captive Moors to be released; consents that the son of the late ruler Alfudail shall succeed Mohamed Ankoni on the throne and allows an oath of fidelity to be taken to him, iii 114; leaves Kilwa on 9th August 1505, and arrives at Mombasa; sends a message to the ruler offering peace on condition of his subjection, iii 115; receives a defiant answer, and sends Joao da Nova to capture an interpreter; learns from him of warlike preparations, and orders the city to be set on fire, iii 116; lands next day with other captains and men and commences an attack, iii 117; engages with the defenders in the street, drives them back, and reaches the deserted palace, iii 118; orders his men to sack the city, carry the spoil to the ships, and set the city on fire; sets most of the captives at liberty, and steers for Melinde, but is carried to Saint Helena Bay, where he finds two caravels, iii 119; sends Fernao Soares and Diogo Correa to the ruler of Melinde with a present; leaves the bay of Saint Helena on 27th August, and arrives at Anjediva on 13th September; receives letters from Gon alo Gil Barbosa, reporting that a quantity of spice is ready for the ships, and that three Moorish vessels are passing; sends Joao Homem to Cananor and Cochin, iii 120; builds a fortress at Anjediva, iii 121; sends Nuno Vaz Pereira to Sofala as captain in succession to Pedro d'Anaya, iii 126; transfers the government of India to Affonso d'Alboquerque, and on 19th November 1509 leaves Cochin for Cananor to take iu cargo, iii 134; sails for Portugal from Cananor on 1st December 1509, and reaches the Watership of Saldanha; sends Diogo Fernandes to a native village with twelve men to trade for cows, iii 135; resolves to avenge an attack by the Hottentots on the Portuguese, and has his boats prepared to land men for that purpose, iii 136; marches nearly to the village with the royal standard, then leads a retreat towards the boats, iii 137; entrusts the banner to Jorge de Mello Pereira, and falls, his throat pierced with an assagai, at the age of sixty years, on 1st March 1510, iii 138; his death causes great grief to King Manuel and Don Fernando; his early wars and exploits, iii 139; his prudent counsel; urges the policy of guarding India with powerful fleets rather than building fortresses, iii 140 according to Fernilo Lopes de Castanheda: is son of the first count of Abrantes, and is appointed governor of India with a large salary, a bodyguard, and extensive jurisdiction, v 375; receives instructions and presents for friendly kings, v 376; sails from Belem on 25th March 1505, passes in sight of the islands of Madeira and Palma, and waters below Port Dale, v 377; divides his fleet into two squadrons, giving the command of one to Manuel Pa~anha; crosses the equator on 20th April, and doubles the Cape of Good Hope on 26th June, v 378; sends Gongalo de Paiva and Fernao Bermudes to Mozambique for news of the return fleets from India, and reaches Kilwa on 22nd July, v 379; sends for the ruler, but seeing nothing of him resolves to attack the city; disembarks warily, seeing no enemy, and enters the streets, v 380; kills those who resist and reaches the palace, where he finds his son, Dom Louren(o; takes possession and gives orders to his men to sack the city; makes many cavaliers, v 381; next day hears mass, and begins to build Fort Santiago; agrees to make Mohamed Ankoni king, if he induces the people who have fled to return; gives him a scarlet robe and a horse, and has him proclaimed "king," in vassalage to Portugal, v 382; grants his petition and acknowledges the son of the former ruler as his heir; gives the command of the fortress to Pedro Ferreira Fogaga, with men and stores, and departs, v 384; leaves Cananor for Portugal on 1st December and puts into the Agoada de Saldanha for water; sends Diogo Fernandes into the interior with twelve men to trade for cattle, v 399; on hearing that the natives have assaulted some Portuguese, calls a council to decide as to the destruction of the village, v 400; disembarks from boats and awaits the coming of the Portuguese with captured cattle; finding the boats removed, marches towards the watering-place, but seeing the fierce attack of the natives, lets the cattle go and faces the enemy, v 402; grieves over the death of Pedro Barreto, and delivers the royal standard to Jorge de Mello; is pierced in the throat by a headless lance, and falls dead, v
403; his death causes great grief, he being little more than fifty years old; his appearance and noble character, v 404; his unremitting labours in India; he is buried on the shore by Jorge de Mello and Jorge Barreto, v 405 according to Jodo de Barros:

is a son of Dom Lopo d'Almeida, count of Abrantes; is appointed commander of the fleet sent to India in 1505 and sails on 25th March, vi 223; arrives at Port Dale on 6th April, and sends Joao da Nova to visit the ruler, vi 224; divides the fleet and gives command of the slower ships to Bastiao de Sousa; sends boats to the foundering ship Bella, and saves men and merchandise; sends Gongalo de Paiva and Bermum Dias to Mozambique

for letters and information, and anchors off Kilwa on 22nd July 1505, vi 225; expresses displeasure at the Portuguese flag not being hoisted, and receives a complaint that a captain had taken a ship with the flag; sends Joao da Nova with an interpreter to arrange a meeting with the ruler, vi 226; next day enters his boat with pomp and ceremony, and sets out with some noblemen, but after waiting receives excuses from the emir, vi 227; sends a message to the emir that he will return next morning and seek him at his palace; holds counsel with his captains on the conduct of the emir, vi 228; resolves to land with an armed force, and divides his men into two companies, giving command of one to his son Dom Lourenqo, vi 229; sounds a trumpet at daybreak and lands from boats; sees no Moors and arrows, sends men to the flat roofs of the houses to clear a route, and marches towards the palace to join his son, vi 237; orders the attack to cease when the flag of Portugal is displayed, vi 238; commands his captains to sack the town, but to spare Mohamed Ankonii; sends Dom Lourenqo to prevent abuses, and collects his men at the foot of a cross; makes knights of many cavaliers and forms camps, vi 239; keeps the feast of Santiago in Kilwa, vi 240; assembles the people to elect a king, and sends Joso da Nova to bring Mohamed Ankonii to him, vi 244; informs him of his election, proclaims and crowns him “king,” tributary to Portugal, vi 245; restores the prisoners to Mohamed, and begins to pull down houses in preparation for building a fortress, vi 246; completes the fortress in twenty days, and names it Santiago; leaves Pedro Ferreira Fogaga as captain, with officers and soldiers to defend it, and sets out on 8th August for Mombasa, where he arrives on 13th August, vi 247; divides the fleet into two squadrons, and posts them before and behind the town; sends a message to the ruler, and receiving a scornful reply, orders his ships to sweep the town with artillery, vi 249; calls a council and resolves to land, and attacks the town in several places at once, vi 250; sounds a trumpet on landing and marches towards the palace, driving the townsmen before him; commands his men to break down the doors, vi 252; after driving the people out, divides the houses among his captains, and orders rest and refreshment; receives a message from the king, offering to pay tribute, vi 254; dissuades his men from attacking the inhabitants who are hiding, but allows them to sack the town and then orders them to set fire to it, vi 255; sends Bermum Dias and Gongalo de Paiva ahead to make preparations for him, Index.

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instructs Gongalo Vaz de Goes to proceed to Kilwa, and sails for Melinde; is carried by currents to St. Helena Bay, where he finds Joao Homem, vi 256; sends some of the spoils of Mombasa, with other presents and a message to the ruler of Melinde, in return for congratulations; sails for India, and reaches the port of Anjediva in sixteen days, vi 257; sends ships and offer of help to Dom Fernando Coutinho at Cananor; embarks in the F-or de la Mar, but is compelled by the marshal to go in the Garga instead, vi 297; sails from Cochin on 19th November 1509, with two other ships, and reaches Mozambique; puts in at Agoada de Saldanha for water, and allows his men to go inland to trade, vi 298; consents to go to a village to avenge an attack by Hottenotts, but against his judgment, vi 299; when retreating begs Jorge de Mello to save the royal banner; is wounded by stones and pierced through the throat with a dart, causing his death, vi 302; his family, high character, and virtues, vi 304 and 305

D'ALMEIDA, FRANcisco FIGUEIRA, superintendent of the Rivers: experiments made by miners in presence of, iv 286

D'ALMEIDA, GASPAR: is killed at Agoada de Saldanha by the natives, in an attack on their village, iii 139, vi 302
D’ALMYEIDA, HIERONYMO: commands three trading vessels sailing from Lisbon for India on 27th March 1612, iii 343

D’ALMEIDA, GENERAL Dom Jojo FERNANDES: writes to the king on the condition of the rivers of Sena, and his unsuccessful war, v 16

D’ALMEIDA, Dom JORGE, bishop of Coimbra: is brother of Dom Francisco d’Almeida, iii 106

V’ALMEIDA, Dom Lopo, first count of Abrantes: is father of Dom Francisco and Dor Jorge d’Almeida, iii 106

D’ALMEIDA, Dom LOURENCO, son of Dom Francisco: accompanies his father to India, iii 107, v 376; has command of a force of 200 men given to him with orders to land and attack the palace at Kilwa, iii 112, v 380, vi 229; drives back three hundred townspeople with arrows and stones, and compels them to retreat within the fortress, vi 237; reaches and enters the palace, but finds the emir fled, iii 112, v 381; receives command of a squadron to attack Mombasa, vi 249 and 251; lands, enters the streets and drives the defenders before him, though met with darts and stones, iii 117; vi 253; enters the palace and finds the ruler fled; goes to the help of his father, then returns to the palace to guard treasures, iii 118

D’ALMEIDA, Dom MIGUEL: in 1686 succeeds Caetano de Mello de Castro as captain of Mozambique and the Rivers, iv 432; sends a report to the viceroy concerning the trade carried on by the English at Cape Correntes (Delagoa Bay), v 296; holds a council in which it is resolved not to send a vessel there until instructions are received from Goa, v 296; completes his term of office and takes Father Miguel Soares, of the Company of Jesus, with him to India, iv 441

D’ALMEIDA, Nicolau TOLENTINO, governor of Mozambique: welcomes French trading ships, v 194

D’ALMEIDA, Dom PEDRO, viceroy of India: letters to, from the prince Dom Pedro, iv 380, 392, 393, and 398; his salary, iv 382; is to proceed to Goa and take possession of the government; then to sail for Mozambique and the Rivers, to subjugate the kings and recover the territory that has been lost, iv 382; to remain there two years to settle matters, to appoint Joao de Sousa Freire governor, and then return to Goa, iv 383; provisions in case of the death of; is to leave Goa for Mozambique in January 1678, iv 384; is to be assisted by the governors of India, iv 385; is to grant a license to Joro Gongalves de Brito to go to Sena, iv 392; pays accounts brought by a ship from Kilimane, as far as his means allow, iv 393; receives letters from the Monomotapa, from Joao de Sousa Freire, and from the captain of Zimbazio, iv 393

D’ALMEIDA, Thomi COELHO, passenger on board the Sto Joao Baptista: aids in resistance to Dutch enemies, vii 74; takes charge of a company on the journey after the loss of the ship, vii 78; rescues two ships’ boys from natives, enters a kraal and captures some calves, viii 94; is sent by the captain to ascend a mountain and discover a ford of a river, but finds none, viii 95; attacks and captures a native for stealing, viii 108; is chosen a counsellor, viii 122; has a packet of diamonds entrusted to him, viii 123; objects to going on without the captain, viii 128; dies at Inhambane, viii 131

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ALVARES, ANTONIO, a sailor on the Nosa Senhora de Belem: is appointed
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ALVARES, BEATRIZ, wife of Luis da Fonseca: is a passenger on the
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viii 88 ; becomes a leper, viii 97

ALVARES, FRANCISCO, a priest: accompanies Dom Rodrigo de Lima to
Abyssinia and finds Pedro de Covilhao (Joao Pires) there; receives his confession and an account of his life
and journey;
writes a treatise on the embassy, vi 156

ALVARES, FRANCISCO, under-pilot of the Silo Jodo Ba tiota: reaches
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ALVARES, GON9ALO, pilot of Pedro d'Anaya's fleet:
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is made captain of the ship of Joao de Queiroz, and is afterwards chief pilot of India, ii 33; takes Pedro
Barreto de Magalhaes on
board after the loss of his own ship, and reaches Anjediva, ii 40
according to Damido de Goes:
is appointed captain of Pedro d'Anaya's ship, iii 124; sails with Pedro Barreto from Sofala for India, iii 124;
arries at Anjediva
on 18th May 1506, iii 125
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AmBuYa: is chief of Choe, iii 356; is chief major-domo of the Monomotapa, iii 357

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Dom Francisco d'Almeida, viceroy, sailed from Lisbon in March 1505, transferred the government in November 1509
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Diogo Lopes de Sequeira, governor and captain general, sailed from Lisbon in March 1518, reached India in September 1518, took over the government in December, and transferred it in January 1522
Dorm Duarte de Menezes, governor and captain general, sailed from Lisbon in April 1521, took over the government in January 1522, and transferred it in September 1524
Dom Vasco da Gama, Admiral of the Indian seas, count of Vidigueira, viceroy, sailed from Lisbon in April 1524, took over the government in September 1524, died on the 25th of December of the same year
join Henrique de Menezes, governor and captain general, from December 1524 to his death on 23rd February 1526
Lopo Vaz de Sampayo, governor and captain general, from February 1526 to October 1529
Nuno da Cunha, governor and captain general, sailed from Lisbon in April 1528, reached India in October 1529, retained the government until September 1538
Dom Garcia de Noronha, viceroy, sailed from Lisbon in March 1538, reached India in September 1538, died 3rd April 1540
Dom Estevao da Gama, governor and captain general, from April 1540 to May 1542
Martim Affonso de Sousa, governor and captain general, sailed from Lisbon in April 1541, reached India in May 1542, transferred the government in September 1545

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Dor Jo-o de Castro, governor and captain general-after 1547 entitled viceroy,-sailed from Lisbon in March 1545, reached India in September 1545, died 6th June 1548
Garcia de S&., governor and captain general, from June 1548 to his death on 13th June 1549
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Dor Affonso de Noronha, viceroy, sailed from Lisbon in May 1550, reached India in November 1550, transferred the government in September 1554
Dor Pedro Mascarenhas, viceroy, sailed from Lisbon in March 1554, reached India in September 1554, died on 16th June 1555
Francisco Barreto, governor and captain general, from June 1555 to September 1558
Dom Constantino de Bragan9a, viceroy, sailed from Lisbon in April 1558, reached India in September 1558, transferred the government in September 1561
Dom Francisco Coutinho, count of Redondo, viceroy, sailed from Lisbon in March 1561, reached India in September 1561, died on 19th February 1564
Joao de Mendonga, governor and captain general, from February to September 1564
Dor Antio de Noronha, viceroy, sailed from Lisbon in March 1564, reached India in September 1564, transferred the government in September 1568
Dor Luiz de Ataide, viceroy, sailed from Lisbon in April 1568, reached India in September 1568, transferred the government in September 1571
Dor Antonio de Noronha, viceroy, sailed from Lisbon in March 1571, reached India in September 1571, removed from the government in December 1573
Antonio Moniz Barreto, governor and captain general, from December 1573 to November 1577
Ruy Lourengo de Tavora, viceroy, sailed from Lisbon in March 1576, died on the passage when close to Mozambique, and was buried in the fortress on that island
Dor Diogo de Menezes was found on opening the first letter of succession to be named as governor general, and filled that office from November 1577 to August 1578
Dor Luiz de Ataide, count of Atonguia, appointed viceroy for the second time, sailed from Lisbon in October 1577, arrived in India in August 1578, died in Goa on 9th March 1581

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Fernao Telles de Menezes, named in the first letter of succession, governor general, from March to September 1581
Dom Francisco Mascarenhas, viceroy, sailed from Lisbon in April 1581, arrived in India in September 1581, transferred the government in November 1584
Dor Duarte de Menezes, viceroy, sailed from Lisbon in April 1584, arrived in India in November 1584, died in Goa on 4th May 1588
Manuel de Sousa Coutinho, named in the first letter of succession, governor general, from May 1588 to May 1591. The ship in which he embarked to return to Portugal was never heard of after sailing
Matthias d’Albuquerque, viceroy, sailed from Lisbon in May 1590, reached India in May 1591, transferred the government in May 1597
Dor Francisco da Gama, count of Vidigueira, Admiral of the Indian seas, viceroy, sailed from Lisbon in April 1596, reached India in May 1597, transferred the government in December 1600
Ayres de Saldanha, viceroy, sailed from Lisbon in April 1600, reached India in December 1600, transferred the government in May 1605, died on the passage home.

Dor Martim Affonso de Castro, viceroy, sailed from Lisbon in April 1604, reached India in May 1605, died in Malacca on 3rd June 1607.

The friar Dor Aleixo de Menezes, archbishop of Goa, was left as acting administrator by the viceroy when he proceeded from Goa to Malacca, and performed the duties of governor general from June 1607 to May 1609.

Dor João Froyas Pereira, count of Feira, was appointed viceroy, but died at sea on the passage out André Furtado de Mendonça, named in the first letter of succession, governor general, from May to August 1609.

Ruy Lourenço de Tavora, viceroy, sailed from Lisbon in October 1608, was detained at Mozambique, from which place he sent orders to Goa, reached India in September 1610, transferred the government in December 1612.

Dom Jerónimo d'Azevedo, captain general of Ceylon, was appointed viceroy, assumed the duty in December 1612, transferred the government in November 1617.

Dom João de Coutinho, count of Redondo, viceroy, sailed from Lisbon in April 1617, arrived in India in November 1617, died in Goa on 10th November 1619.

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Fernando d'Albuquerque, captain general of Ceylon, was appointed governor general in the first letter of succession. He assumed the duty in November 1619, and performed it until December 1622.

Dor Francisco da Gama, count of Vidigueira, Admiral of the Indian seas, appointed viceroy the second time, sailed from Lisbon in March 1622, reached India in December 1622, retained the office until March 1628.

Dom Francisco Mascarenhas, was appointed viceroy, but resigned the post before the fleet sailed.

The friar Dor Luiz de Brito, bishop of Cochin, acted as governor general from March 1628 to his death on 9th July 1629. As it was known that a viceroy was on his way out, no one took the vacant post.

Dom Miguel de Noronha, count of Linhares, viceroy, sailed from Lisbon in April 1629, assumed duty in India in December 1629, retained the post until December 1635.

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