OREGON:

THE CLAIM OF THE UNITED STATES TO OREGON,

AS STATED IN THE LETTERS OF

The Hon. J. C. CALHOUN and the Hon. J. BUCHANAN,
(American Secretaries of State.)

TO

THE RIGHT HON. R. PAKENHAM,
Her Britannic Majesty's Plenipotentiary.

WITH

AN APPENDIX,

CONTAINING

THE COUNTER STATEMENT OF MR. PAKENHAM TO THE AMERICAN SECRETARIES OF STATE.

AND A MAP,

SHOWING THE BOUNDARY LINE PROPOSED BY EACH PARTY.

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APPENDIX.

MR. PAKENHAM'S COUNTER STATEMENTS

IN LETTERS TO

MR. CALHOUN AND MR. BUCHANAN.

APPENDIX.

Mr. Pakenham to Mr. Calhoun.

Washington, September 12, 1844.

THE undersigned, British Plenipotentiary, has studied with much interest and attention the statement (marked A), presented by the American Plenipotentiary, setting forth the grounds on which he declines the proposal offered by the British Plenipotentiary as a compromise of the difficulties of the Oregon question. The arrangement contemplated by that proposal would, in the estimation of the American Plenipotentiary, have the effect of restricting the possessions of the United States to limits far more circumscribed than their claims clearly entitle them to.

The claims of the United States to the portion of territory drained by the Columbia river, are divided into those adduced by the United States in their own proper right, and those which they have derived from France and Spain.

The former, as against Great Britain, they ground on priority of discovery and priority of exploration and settlement.

The claim derived from France originates in the treaty of 1803, by which Louisiana was ceded to the United States, with all its rights and appurtenances, as fully and in the same manner as they had been acquired by the French Republic; and the claim derived from Spain is founded on the treaty concluded with that power in the year 1819, whereby his Catholic Majesty ceded to the United States all his rights, claims, and pretensions to the territories lying east and north of a certain line terminating on the Pacific, in the 42nd degree of north latitude.

Departing from the order in which these three separate claims are presented by the American Plenipotentiary, the British Plenipotentiary will first beg leave to observe, with regard to the claim derived from France, that he has not been able to discover any evidence tending to establish the belief that Louisiana, as originally possessed by France, afterwards transferred to Spain, then retroceded by Spain to France, and ultimately ceded by the latter Power to the United States, extended in a westerly direction beyond the Rocky Mountains. There is, on the other hand, strong reason to suppose that, at the time when Louisiana was ceded to the United States, its acknowledged western boundary was the Rocky Mountains. Such appears to have been the opinion of Pre-

sident Jefferson, under whose auspices the acquisition of Louisiana was accomplished.

In a letter written by him in August, 1803, are to be found the following words:—

"The boundaries (of Louisiana), which I deem not admitting question, are the high lands on the western side of the Mississippi, enclosing all its waters (the Missouri, of course), and terminating in the line drawn from the north-west point of the Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States."

In another and more formal document, dated in July, 1807—that is to say, nearly a year after the return of Lewis and Clarke from their expedition to the Pacific, and fifteen years after Gray had entered the Columbia River—is recorded Mr. Jefferson's opinion of the impolicy of giving offence to Spain by any intimation that the claims of the United States extended to the Pacific; and we have the authority of an American historian, distinguished for the attention and research which he has bestowed on the whole subject of the Oregon Territory, for concluding that the western boundaries of Louisiana, as it was ceded by France to the United States, were those indicated by nature—namely, the high lands separating the waters of the Mississippi from those falling into the Pacific.

From the acquisition, then, of Louisiana, as it was received from France, it seems clear that the United States can deduce no claim to territory west of the Rocky Mountains. But, even if it were otherwise, and if France had even possessed or asserted a claim to territory west of the Rocky Mountains, as appertaining to the territory of Louisiana, that claim, whatever it might be, was necessarily transferred to Spain when Louisiana was ceded to that power in 1762, and of course became subject to the provisions of the treaty between Spain and Great Britain of 1790, which effectually abrogated the claim of Spain to exclusive dominion over the unoccupied parts of the American continent.

To the observations of the American Plenipotentiary respecting the effect of continuity in furnishing a claim to territory, the undersigned has not failed to pay due attention; but he submits that what is said on this head may more properly be considered as demonstrating the greater degree of interest, which the United States possess by reason of contiguity in acquiring territory in that direction, than as affecting, in any way, the question of right.

The undersigned will endeavour to show hereafter that, in the proposal put in on the part of Great Britain, the natural expectations of the United States, on the ground of contiguity, have not been disregarded.

Next comes to be examined the claim derived from Spain.

It must, indeed, be acknowledged that by the treaty of 1819, Spain did convey to the United States all that she had the power to dispose of on the north-west coast of America, north of the 42nd parallel of latitude; but she could not by that transaction annul or invalidate the rights which she had, by a previous transaction, acknowledged to belong to another power.

By the treaty of 28th October, 1790, Spain acknowledged in Great Britain certain rights with respect to those parts of the western coast of America not already occupied.

This acknowledgement had reference especially to the territory which forms the subject of the present negotiation. If Spain could not make good her own right to exclusive dominion over those regions, still less could she confer such a right on another power; and hence Great Britain argues, that from nothing deduced from the treaty of 1819 can the United States assert a valid claim to exclusive dominion over any part of the Oregon territory.

There remains to be considered the claim advanced by the United States on the ground of prior discovery and prior exploration and settlement.

In that part of the memorandum of the American Plenipotentiary which speaks of the Spanish title, it is stated that the mouth of the river, afterwards called the Columbia River, was first discovered by the Spanish navigator Heceta. The admission of this act would appear to be altogether irreconcilable with a claim to priority of discovery from anything accomplished by Captain Gray. To one, and to one only, of those commanders, can be conceded the merit of first discovery. If Heceta's claim is acknowledged, then Captain Gray is no longer the discoverer of the Columbia River. If, on the other hand, preference is given to the achievement of Captain Gray, then Heceta's discovery ceases to be of any value. But it is argued that the United States now represent both titles—the title of Heceta and the title of Gray,—and therefore that under one or the other, it matters not which, enough can be shown to establish a case of prior discovery as against Great Britain. This may be true, as far as relates to the act of first seeing and first entering the mouth of the Columbia River; but, if the Spanish claim to prior discovery is to prevail, whatever rights may thereon be founded are necessarily restricted by the stipulations of the treaty of 1790, which forbid a claim to exclusive possession.

If the act of Captain Gray, in passing the bar and actually entering the river, is to supersede the discovery of the entrance—which is all that is attributed to Heceta—then, the principle of progressive or gradual discovery being admitted as conveying, in proportion to the extent of discovery or exploration, superior rights, the operations of Vancouver in entering, surveying, and exploring to a considerable distance inland, the river Columbia, would, as a necessary consequence, supersede the discovery of Captain Gray, to say nothing of the act of taking possession in the name of his sovereign, which ceremony was duly performed and authentically recorded by Captain Vancouver.

This brings us to an examination of the conflicting claims of Great Britain and the United States on the ground of discovery, which may be said to form the essential point in the discussion, for it has above been shown that the claim derived from France must be considered as of little or no weight, while that derived from Spain, in as far as relates to exclusive dominion, is neutralized by the stipulations of the Nootka convention.

It will be admitted that, when the United States became an indepen-

dent nation, they possessed no claim, direct or indirect, to the Columbia territory. Their western boundary in those days was defined by the treaty of 1783. Great Britain, on the contrary, had at that time already directed her attention to the north-west coast of America, as is sufficiently shown by the voyage and discoveries of Captain Cook, who, in 1778, visited and explored a great portion of it, from latitude 44° northwards.

That Great Britain was the first to acquire what may be called a beneficial interest in those regions by commercial intercourse will not either be denied. In proof of this fact we have the voyages of several British subjects, who visited the coast and adjacent islands previously to the dispute with Spain; and that her commerce, actual as well as prospective, in that part of the world was considered a matter of great national importance, is shown by the resolute measures which she took for its protection when Spain manifested a disposition to interfere with it.

The discoveries of Meares, in 1788, and the complete survey of the coast and its adjacent islands, from about latitude 40° northwards, which was effected by Captain Vancouver, in 1792, 1793, and 1794, would appear to give to Great Britain, as against the United States, as strong a claim, on the ground of discovery and exploration coastwise, as can well be imagined, limited only by what was accomplished by Captain Gray at the mouth of the Columbia—which, so far as discovery is concerned, forms the strong point on the American side of the question.

In point of accuracy and authenticity, it is believed that the performances of Cook and Vancouver stand pre-eminently superior to those of any other country whose vessels had in those days visited the north-west coast; while in point of value and importance, surely the discovery of a single harbour, although at the mouth of an important river, cannot, as giving a claim to territory, be placed in competition with the vast extent of discovery and survey accomplished by the British navigators.

As regards exploration inland, entire justice must be done to the memorable exploit of MM. Lewis and Clarke; but those distinguished travellers were not the first who effected a passage across the Oregon territory from the Rocky Mountains to the Pacific. As far back as 1733, that feat had been accomplished by Mackenzie, a British subject. In the course of this expedition, Mackenzie explored the upper waters of a river, since called Fraser's River, which in process of time was traced to its junction with the sea, near the 49th degree of latitude; thus forming, in point of exploration, a counterpoise to the exploration of that part of the Columbia which was first visited by Lewis and Clarke.

Priority of settlement is the third plea on which the American claim proper is made to rest.

In 1811, an establishment for the purposes of trade was formed at the south side of the Columbia River, near to its mouth, by certain American citizens. This establishment passed during the war into the hands of British subjects; but it was restored to the American Government in the year 1818, by an understanding between the two Governments. Since then it has not, however, been in reality occupied by Americans. This is the case of priority of settlement.

The American Plenipotentiary lays some stress on the admission

attributed to Lord Castlereagh, then Principal Secretary of State for Foreign Affairs, that "the American Government had the most ample right to be reinstated, and to be considered the party in possession while treating of the title." The undersigned is not inclined to dispute an assertion resting on such respectable authority; but he must observe, in the first place, that the reservation implied by the words "while treating of the title," excludes any inference which might otherwise be drawn from the preceding words prejudicial to the title of Great Britain; and further, that when the authority of the American Minister is thus admitted for an observation which is pleaded against England, it is but fair that, on the part of the United States, credit should be given to England for the authenticity of a despatch from Lord Castlereagh to the British Minister at Washington, which was communicated verbally to the Government of the United States, when the restoration of the establishment called Astoria, or Fort George, was in contemplation, containing a complete reservation of the rights of England to the territory at the mouth of the Columbia.—(Statement of the British Plenipotentiaries, Dec., 1826.)

In fine, the present state of the question between the two Governments appear to be this: Great Britain possesses and exercises in common with the United States a right of joint occupancy in the Oregon territory, of which right she can be divested with respect to any part of that territory, only by an equitable partition of the whole between the two powers.

It is, for obvious reasons, desirable that such a partition should take place as soon as possible; and the difficulty appears to be in devising a line of demarkation which shall leave to each party that precise portion of the territory best suited to its interests and convenience.

The British Government entertained the hope that by the proposal lately submitted for the consideration of the American Government, that object would have been accomplished.

According to the arrangement therein contemplated, the northern boundary of the United States, west of the Rocky Mountains, would, for a considerable distance, be carried along the same parallel of latitude which forms their northern boundary of the eastern side of these mountains—thus uniting the present eastern boundary of the Oregon territory with the western boundary of the United States, from the 49th parallel downwards.

From the point where the 49th degree of latitude intersects the north-eastern branch of the Columbia river, (called in that part of its course, McGillivray's river,) the proposed line of boundary would, be along the middle of that river till it joins the Columbia; then along the middle of the Columbia to the ocean—the navigation of the river remaining perpetually free to both parties.

In addition, Great Britain offers a separate territory on the Pacific, possessing an excellent harbour, with a further understanding that any port or ports, whether on Vancouver's Island, or on the continent south of the 49th parallel, to which the United States might desire to have access, shall be made free ports.

It is believed, that by this arrangement ample justice would be done

to the claims of the United States on whatever ground advanced, with relation to the Oregon territory. As regards extent of territory, they would obtain acre for acre, nearly half of the entire territory to be divided. As relates to the navigation of the principal river, they would enjoy a perfect equality of right with Great Britain; and with respect to harbours, it will be seen that Great Britain shows every disposition to consult their convenience in that particular. On the other hand, were Great Britain to abandon the line of the Columbia as a frontier, and to surrender her right to the navigation of that river, the prejudice occasioned to her by such an arrangement would, beyond all proportion, exceed the advantage accruing to the United States from the possession of a few more square miles of territory. It must be obvious to every impartial investigator of the subject, that, in adhering to the line of the Columbia, Great Britain is not influenced by motives of ambition, with reference to extent of territory, but by considerations of utility, not to say necessity, which cannot be lost sight of, and for which allowance ought to be made, in an arrangement professing to be based on considerations of mutual convenience and advantage.

The undersigned believes that he has now noticed all the arguments advanced by the American Plenipotentiary, in order to show that the United States are fairly entitled to the entire region drained by the Columbia River. He sincerely regrets that their views on this subject should differ in so many essential respects.

It remains for him to request that, as the American Plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is, on the part of the United States, prepared to propose for an equitable adjustment of the question, and more especially that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory, to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to a portion of the territory in dispute, while a claim is reserved to any portion of the remainder.

The undersigned British Plenipotentiary has the honour to renew to the American Plenipotentiary the assurance of his high consideration.

R. PAKENHAM.

Mr. Pakenham to Mr. Buchanan.

(R: P.)

Washington, July 29, 1845.

Notwithstanding the prolix discussion which the subject has already undergone, the undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, feels obliged to place on record a few observations in reply to the statement, marked J. B., which he had the honour to receive on the 16th of this month, from the hands of the Secretary of State of the United States, terminating with a proposition on the part of the United States for the settlement of the Oregon question.

In this paper it is stated that "the title of the United States to that portion of the Oregon territory between the valley of the Columbia, and the Russian line, in 54° 40′ north latitude, is recorded in the Florida treaty. Under this treaty, dated on 22nd February, 1819, Spain ceded to the United States all her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42nd parallel of latitude." "We contend," says the Secretary of State, "that at the date of this convention Spain had a good title, as against Great Britain, to the whole Oregon territory, and, if this be established, the question is then decided in favour of the United States," the convention between Great Britain and Spain, signed at the Escurial, on the 28th October, 1790, notwithstanding.

"If," says the American Plenipotentiary, "it should appear that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians, whilst the country should remain unsettled, and making the necessary establishments for this purpose; that it did not interfere with the ultimate sovereignty of Spain over the territory; and, above all, that it was annulled by the war between Spain and Great Britain in 1796, and has never since been renewed by the parties, then the British claim to any portion of the territory will prove to be destitute of foundation."

The undersigned will endeavour to show, not only that when Spain concluded with the United States the treaty of 1819, commonly called the Florida treaty, the convention concluded between the former Power and Great Britain, in 1790, was considered by the parties to it to be still in force; but even that, if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon territory, in a position at least as favourable as the United States.

The treaty of 1790 is not appealed to by the British Government, as the American plenipotentiary seems to suppose, as their "main reliance" in the present discussion; it is appealed to, to show that, by the treaty of 1819, by which "Spain ceded to the United States all her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42d parallel of latitude," the United States acquired no right to exclusive dominion over any part of the Oregon territory.

The treaty of 1790 embraced, in fact, a variety of objects. It partook in some of its stipulations of the nature of a commercial convention; in other respects it must be considered as an acknowledgment of existing

rights, an admission of certain principles of international law, not to be revoked at the pleasure of either party, or to be set aside by a cessation of friendly relations between them.

Viewed in the former light, its stipulations might have been considered as cancelled in consequence of the war which subsequently took place between the contracting parties, were it not that by the treaty concluded at Madrid, on the 28th of August, 1814, it was declared that all the treaties of commerce which subsisted between the two nations (Great Britain and Spain) in 1796 were thereby ratified and confirmed.

In the latter point of view, the restoration of a state of peace was of itself sufficient to restore the admissions contained in the convention of 1790 to their full original force and vigour.

There are, besides, very positive reasons for concluding that Spain did not consider the stipulations of the Nootka convention to have been revoked by the war of 1796, so as to require, in order to be binding on her, that they should have been expressly revived or renewed on the restoration of peace between the two countries. Had Spain considered that convention to have been annulled by the war; in other words, had she considered herself restored to her former position and pretensions with respect to the exclusive dominion over the unoccupied parts of the North American continent, it is not to be imagined that she would have passively submitted to see the contending claims of Great Britain and the United States to a portion of that territory, the subject of negotiation and formal diplomatic transactions between those two nations.

It is, on the contrary, from her silence with respect to the continued occupation by the British of their settlements in the Columbia territory, subsequently to the convention of 1814, and when, as yet, there had been no transfer of her rights, claims, or pretensions to the United States; and from her silence also, while important negotiations respecting the Columbia territory, incompatible altogether with her ancient claim to exclusive dominion, were in progress between Great Britain and the United States, fairly to be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force.

But the American Plenipotentiary goes so far as to say that the British Government itself had no idea, in 1818, that the Nootka Sound convention was then in force, because no reference was made to it on the part of England during the negotiation of that year on the Oregon question.

In reply to this argument it will sufficient for the undersigned to remind the American Plenipotentiary that in the year 1818 no claim, as derived from Spain, was or could be put forth by the United States, seeing that it was not until the following year (the year 1819), that the treaty was concluded by which Spain transferred to the United States her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42nd parallel of latitude.

Hence, it is obvious that in the year 1818 no occasion had arisen for appealing to the qualified nature of the rights, claims, and pretensions so transferred—a qualification imposed, or at least recognized, by the convention of Nootka.

The title of the United States to the valley of the Columbia, the

American Plenipotentiary observes, is older than the Florida treaty of February, 1819, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound convention was correct, it could not apply to this portion of the territory in dispute.

The undersigned must be permitted respectfully to inquire upon what principle, unless it be upon the principle which forms the foundation of the Nootka convention, could the United States have acquired a title to any part of the Oregon territory, previously to the treaty of 1819, and independently of its provisions? By discovery, exploration, settlement, will be the answer.

But, says the American Plenipotentiary, in another part of his statement, the rights of Spain to the west coast of America, as far north as the 61° latitude, were so complete as never to have been seriously questioned by any European nation.

They had been maintained by Spain with the most vigilant jealousy, ever since the discovery of the American continent, and had been acquiesced in by all European Powers. They had been admitted even by Russia, and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire, who, when complaints had been made to the court of Russia against Russian subjects, for violating the Spanish territory on the north-west coast of America, did not hesitate to assure the King of Spain that she was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another power should have been disobeyed.

In what did this alleged violation of territory consist: assuredly in some attempted acts of discovery, exploration, or settlement.

At that time Russia stood in exactly the same position with reference to the exclusive rights of Spain as the United States; and any acts in contravention of those rights, whether emanating from Russia or from the United States, would necessarily be judged by one and the same rule.

How then can it be pretended that acts which, in the case of Russia, were considered as criminal violations of the Spanish territory, should, in the case of citizens of the United States, be appealed to as constituting a valid title to the territory affected by them; and yet from this inconsistency the American Plenipotentiary cannot escape, if he persist in considering the American title to have been perfected by discovery, exploration, and settlement, when as yet Spain had made no transfer of her rights, if, to use his own words, "that title is older than the Florida treaty, and exists independently of its provisions."

According to the doctrine of exclusive dominion, the exploration of Lewis and Clarke, and the establishment founded at the mouth of the Columbia, must be condemned as encroachments on the territorial rights of Spain.

According to the opposite principle, by which discovery, exploration, and settlement are considered as giving a valid claim to territory, those very acts are referred to in the course of the same paper as constituting a complete title in favour of the United States.

Besides, how shall we reconcile this high estimation of the territorial

rights of Spain, considered independently of the Nootka Sound convention, with the course observed by the United States in their diplomatic transactions with Great Britain, previously to the conclusion of the Florida treaty? The claim advanced for the restitution of Fort George, under the first article of the treaty of Ghent; the arrangement concluded for the joint occupation of the Oregon territory by Great Britain and the United States; and, above all, the proposal actually made on the part of the United States for a partition of the Oregon territory; all which transactions took place in the year 1818, when as yet Spain had made no transfer or cession of her rights,—appear to be as little reconcilable with any regard for those rights, while still vested in Spain, as the claim founded on discovery, exploration, and settlement, accomplished previously to the transfer of those rights to the United States.

Supposing the arrangement proposed in the year 1818, or any other arrangement for the partition of the Oregon territory, to have been concluded in those days, between Great Britain and this country, what would, in that case, have become of the exclusive rights of Spain?

There would have been no refuge for the United States but in an appeal to the principles of the Nootka convention.

To deny, then, the validity of the Nootka convention, is to proclaim the illegality of any title founded on discovery, exploration, or settlement, previous to the conclusion of the Florida treaty.

To appeal to the Florida treaty as conveying to the United States any exclusive rights, is to attach a character of encroachment and of violation of the rights of Spain to every act to which the United States appealed in the negotiation of 1818, as giving them a claim to territory on the north-west coast.

These conclusions appear to the undersigned to be irresistible.

The United States can found no claim on discovery, exploration, and settlement, effected previously to the Florida treaty, without admitting the principles of the Nootka convention, and the consequent validity of the parallel claims of Great Britain founded on like acts; nor can they appeal to any exclusive right as acquired by the Florida treaty, without upsetting all claims adduced in their own proper right, by reason of discovery, exploration, and settlement, antecedent to that arrangement.

The undersigned trusts that he has now shown that the convention of 1790 (the Nootka Sound convention), has continued in full and complete force up to the present moment.

By reason, in the first place, of the commercial character of some of its provisions, as such expressly renewed by the convention of August, 1814, between Great Britain and Spain.

By reason, in the next place, of the acquiescence of Spain in various transactions, to which it is not to be supposed that that power would have assented, had she not felt bound by the provisions of the convention in question.

And, thirdly, by reason of repeated acts of the Government of the United States, previous to the conclusion of the Florida treaty, manifesting adherence to the principles of the Nootka convention, or at least dissent from the exclusive pretensions of Spain.

Having thus replied, and he hopes satisfactorily, to the observations

of the American Plenipotentiary, with respect to the effect of the Nootka Sound convention and the Florida treaty, as bearing upon the subject of the present discussion, the undersigned must endeavour to show that even if the Nootka Sound convention had never existed, the position of Great Britain in regard to her claim, whether to the whole or to any particular portion of the Oregon territory, is at least as good as that of the United States.

This branch of the subject must be considered, first, with reference to principle, to the right of their party, Great Britain, or the United States, to explore, or make settlements in the Oregon territory, without violation of the rights of Spain; and next, supposing the first to be decided affirmatively, with reference to the relative value and importance of the acts of discovery, exploration, and settlements effected by each.

As relates to the question of principle, the undersigned thinks he can furnish no better argument than that contained in the following words, which he has already once quoted from the statement of the American Plenipotentiary.

"The title of the United States to the valley of the Columbia is older than the Florida treaty of February, 1819, under which the United States acquired all the rights of Spain to the north-west coast of America, and exists independently of its provisions." And, again, "the title of the United States to the entire region drained by the Columbia river and its branches, was perfect and complete before the date of the treaties of joint occupancy of October, 1818, and August, 1827."

The title thus referred to must be that resting on discovery, exploration, and settlement.

If this title then is good, or rather was good, as against the exclusive pretensions of Spain, previously to the conclusion of the Florida treaty, so must the claims of Great Britain, resting on the same grounds, be good also.

Thus then it seems manifest that, with or without the aid of the Nootka Sound convention, the claims of Great Britain, resting on discovery, exploration, and settlement, are, in point of principle, equally valid with those of the United States.

Let us now see how the comparison will stand, when tried by the relative value, importance, and authenticity of each.

Rejecting previous discoveries north of the 42nd parallel of latitude as not sufficiently authenticated, it will be seen, on the side of Great Britain, that, in 1776, Captain Cook discovered Cape Flattery, the southern entrance of the Straits of Fuca. Cook must also be considered the discoverer of Nootka Sound, in consequence of the want of authenticity in the alleged previous discovery of that port by Perez.

In 1787, Captain Berkeley, a British subject, in a vessel under Austrian colours, discovered the Straits of Fuca.

In the same year, Captain Duncan, in the ship Princess Royal, entered the Straits, and traded at the village of Classet.

In 1788, Meares, a British subject, formed the establishment at Nootka, which gave rise to the memorable discussion with the Spanish Government, ending in the recognition, by that power, of the right of Great Britain to form settlements in the unoccupied parts of the north-west portion

of the American continent, and in an engagement, on the part of Spain, to reinstate Meares in the possession from which he had been ejected by the Spanish commanders.

In 1792, Vancouver, who had been sent from England to witness the fulfilment of the above-mentioned engagement, and to effect a survey of the north-west coast, departing from Nootka Sound, entered the Straits of Fuca; and, after an accurate survey of the coasts and inlets on both sides, discovered a passage northwards into the Pacific by which he returned to Nootka, having thus circumnavigated the island which now bears his name. And here we have, as far as relates to Vancouver's Island, as complete a case of discovery, exploration, and settlement as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of that island.

While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander Mackenzie, a partner in the North-west Company, crossed the Rocky Mountains, discovered the head waters of the river since called Fraser's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in those latitudes. On the return of Mackenzie to Canada, the North-west Company established trading posts in the country to the westward of the Rocky Mountains.

In 1806 and 1811, respectively, the same company established posts on the Tacoutché, Tessé, and the Columbia.

In the year 1811, Thompson, the astronomer of the North-west Company, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clarke, he continued his journey to the Pacific.

From that time till the year 1818, when the arrangement for the joint occupancy of the territory was concluded, the North-west Company continued to extend their operations throughout the Oregon territory, and to "occupy," it may be said, as far as occupation can be effected in regions so inaccessible and destitute of resources.

While all this was passing, the following events occurred which constitute the American claim in their own proper right.

In 1792, Gray entered the mouth of the Columbia River.

In 1805, Lewis and Clarke effected a passage across the Rocky Mountains, and discovering a branch of the Columbia River, followed it until they reached the ocean.

In 1811, the trading port or settlement of Astoria was established at the mouth of the Columbia, on the northern side of that river.

This post or settlement passed during the last war into British hands by the voluntary act of the persons in charge of it—a fact most clearly established. It was restored to the United States in 1818, with certain well-authenticated reservations; but it was never actually re-occupied by American citizens, having, from the moment of the original transfer or sale, continued to be occupied by British subjects.

These are the acts of discovery, exploration, and settlement, referred to by the United States as giving them a claim to the valley of the Columbia in their own proper right.

The British Government are disposed to view them in the most liberal sense, and to give to them the utmost value to which they can in fairness be entitled; but there are circumstances attending each and all of them which must, in the opinion of any impartial investigator of the subject, take from them a great deal of the effect which the American negotiators assign to them, as giving to this country a claim to the entire region drained by the Columbia and its branches.

In the first place, as relates to the discovery of Gray, it must be remarked that he was a private navigator, sailing principally for the purposes of trade, which fact establishes a wide difference, in a national point of view, between the discoveries accomplished by him and those effected by Cook and Vancouver, who sailed in ships of the royal navy of Great Britain, and who were sent to the north-west coast for the express purpose of exploration and discovery.

In the next place, it is a circumstance not to be lost sight of, that it was not for several years followed up by any act which could give it value in a national point of view; it was not, in truth, made known to the world either by the discoverer himself or by his Government. So recently as the year 1826, the American Plenipotentiaries in London remarked, with great correctness, in one of their reports, that "respecting the mouth of the Columbia River, we know nothing of Gray's discoveries but through British accounts."

In the next place, the connexion of Gray's discovery with that of Lewis and Clarke is interrupted by the intervening exploration of Lieutenant Broughton, of the British surveying-ship, Chatham.

With respect to the expedition of Lewis and Clarke, it must, on a close examination of the route pursued by them, be confessed that, neither on their outward journey to the Pacific, nor on their homeward journey to the United States, did they touch upon the head waters of the principal branch of the Columbia River, which lie far to the north of the parts of the country traversed and explored by them.

Thompson, of the British North-west Company, was the first civilized person who navigated the northern, in reality the main, branch of the Columbia, or traversed any part of the country drained by it.

It was by a tributary of the Columbia that Lewis and Clarke made their way to the main stream of that river, which they reached at a point distant, it is believed, not more than 200 miles from the point to which the river had already been explored by Broughton.

These facts, the undersigned conceives, will be found sufficient to reduce the value of Lewis and Clarke's exploration on the Columbia to limits which would by no means justify a claim to the whole valley drained by that river and its branches.

As to settlement, the qualified nature of the rights devolved to the United States, by virtue of the restitution of Fort Astoria, has already been pointed out.

It will thus be seen, the undersigned confidently believes, that on the grounds of discovery, exploration, and settlement, Great Britain has nothing to fear from a comparison of her claims to the Oregon territory, taken as a whole, with those of the United States.

That reduced to the valley drained by the Columbia, the facts on

which the United States rest their case are far from being of that complete and exclusive character which would justify a claim to the whole valley of the Columbia; and

That, especially as relates to Vancouver's Island, taken by itself, the preferable claim of Great Britain, in every point of view, seems to have been clearly demonstrated.

After this exposition of the views entertained by the British Government respecting the relative value and importance of the British and American claims, the American Plenipotentiary will not be surprised to hear that the undersigned does not feel at liberty to accept the proposal offered by the American Plenipotentiary for the settlement of the question.

This proposal, in fact, offers less than that tendered by the American plenipotentiaries in the negotiation of 1826, and declined by the British Government.

On that occasion it was proposed that the navigation of the Columbia should be made free to both parties.

On this nothing is said in the proposal to which the undersigned has now the honour to reply; while, with respect to the proposed freedom of the ports on Vancouver's Island south of latitude 49°, the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole island, would seem to deprive such a proposal of any value.

The undersigned, therefore, trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government, as defined in the statement (marked D.), which the undersigned had the honour to present to the American Plenipotentiary at the early part of the present negotiation.

The undersigned British Plenipotentiary has the honour to renew to the Hon. James Buchanan, Secretary of State and Plenipotentiary of the United States, the assurance of his high consideration.

R. PAKENHAM.

Hon. James Buchanan,
&c. &c.

London: Printed by WILLIAM CLOWES and SONS, Stamford Street,

INTRODUCTION.

From the MESSAGE of the PRESIDENT of the UNITED STATES to *Congress*. December, 1845.

MY attention was early directed to the negotiation, which, on the 4th of March last, I found pending at Washington between the United States and Great Britain, on the subject of the Oregon territory.—Three several attempts have been previously made to settle the questions in dispute between the two countries, by negotiation, upon the principle of compromise: but each had proved unsuccessful.

These negotiations took place at London, in the years 1818, 1824, and 1829; the two first under the administration of Mr. Monroe, and the last under that of Mr. Adams. The negotiation of 1818 having failed to accomplish its object, resulted in the convention of the 20th of October of that year. By the third article of that convention, it was "agreed that any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays and creeks, and the navigation of all rivers within the same, be free and open for the term of 10 years from the date of the signature of the present convention to the vessels, citizens and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the

high contracting parties in that respect being, to prevent disputes and differences among themselves."

The negotiation of 1824 was productive of no result, and the convention of 1818 was left unchanged.

The negotiation of 1826, having also failed to effect an adjustment by compromise, resulted in the convention of August the 6th, 1827, by which it was agreed to continue in force, for an indefinite period, the provisions of the third article of the convention of the 20th of October, 1818; and it was further provided, that "it shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the 20th of October, 1828, on giving due notice of 12 months to the other contracting party, to annul and abrogate this convention; and it shall, in such case, be accordingly entirely annulled and abrogated after the expiration of the said term of notice." In these attempts to adjust the controversy, the parallel of the 49th degree of north latitude had been offered by the United States to Great Britain, and in those of 1818 and 1826, with a further concession of the free navigation of the Columbia River south of that latitude. The parallel of the 49th degree, from the Rocky Mountains to its intersection with the north-easternmost branch of the Columbia, and thence down the channel of that river to the sea, had been offered by Great Britain, with an addition of a small detached territory north of the Columbia. Each of these propositions had been rejected by the parties respectively.

In October, 1843, the Envoy Extraordinary and Minister Plenipotentiary of the United States in London, was authorised to make a similar offer to those made in 1818 and 1826. Thus stood the question, when the negotiation was shortly afterwards transferred to Washington: and, on the 23rd of August, 1844, was formally opened, under the direction of my immediate predecessor. Like all the previous negotiations, it was based upon principles of "compromise;" and the avowed purpose of the parties was, "to treat of the respective claims of the two countries to the Oregon territory, with the view to establish a permanent boundary between them Westward of the Rocky Mountains to the Pacific Ocean." Accordingly on the 26th of

August, 1844, the British Plenipotentiary offered to divide the Oregon territory by the 49th parallel of north latitude from the Rocky Mountains to the point of its intersection with the north-easternmost branch of the Columbia River, and thence down that river to the sea; leaving the free navigation of the river to be enjoyed in common by both parties—the country South of this line to belong to the United States, and that North of it to Great Britain. At the same time, he proposed, in addition, to yield to the United States a detached territory, North of the Columbia, extending along the Pacific and the Straits of Fuca, from Bulfinch's Harbour inclusive, to Hood's Canal, and to make free to the United States any port or ports south of latitude 49 degrees, which they might desire, either on the main land, or on Quadra and Vancouver's Island. With the exception of the free ports, this was the same offer which had been made by the British, and rejected by the American Government in the negotiation of 1826. This proposition was properly rejected by the American Plenipotentiary on the day it was submitted. This was the only proposition of compromise offered by the British Plenipotentiary. The proposition on the part of Great Britain having been rejected, the British Plenipotentiary requested that a proposal should be made by the United States for "an equitable adjustment of the question."

When I came into office, I found this to be the state of the negotiation. Though entertaining the settled conviction, that the British pretensions of title could not be maintained to any portion of the Oregon territory upon any principle of public law recognised by nations, yet, in deference to what had been done by my predecessors, and especially in consideration that propositions of compromise had been thrice made by two preceding administrations, to adjust the question on the parallel of 49 degrees, and in two of them yielding to Great Britain the free navigation of the Columbia, and that the pending negotiation had been commenced on the basis of compromise, I deemed it to be my duty not abruptly to break it off. In consideration, too, that under the conventions of 1818 and 1827, the citizens and subjects of the two Powers held a joint occu-

pancy of the country, I was induced to make another effort to settle this long-pending controversy in the spirit of moderation which had given birth to the renewed discussion. A proposition was accordingly made, which was rejected by the British Plenipotentiary, who, without submitting any other proposition, suffered the negotiation on his part to drop, expressing his trust that the United States would offer what he saw fit to call "some further proposal for the settlement of the Oregon question, more consistent with fairness and equity, and with the reasonable expectations of the British Government." The proposition thus offered and rejected, repeated the offer of the parallel of 49 degrees of north latitude, which had been made by two preceding administrations, but without proposing to surrender to Great Britain, as they had done, the free navigation of the Columbia River. The right of any foreign Power to the free navigation of any of our rivers, through the heart of our country, was one which I was unwilling to concede. It also embraced a provision to make free to Great Britain any port or ports on the Cape of Quadra and Vancouver's Island, south of this parallel. Had this been a new question, coming under discussion for the first time, this proposition would not have been made. The extraordinary and wholly inadmissible demands of the British Government, and the rejection of the proposition made in deference alone to what had been done by my predecessors, and the implied obligation which their acts seemed to impose, afford satisfactory evidence that no compromise which the United States ought to accept, can be effected. With this conviction, the proposition of compromise which had been made and rejected, was, by my direction, subsequently withdrawn, and our title to the whole Oregon territory asserted, and, as is believed, maintained by irrefragable facts and arguments.

The civilized world will see in these proceedings a spirit of liberal concession on the part of the United States; and this Government will be relieved from all responsibility which may follow the failure to settle the controversy.

MAP OF THE

WESTERN & MIDDLE PORTIONS OF

NORTH AMERICA,

to illustrate

THE HISTORY OF CALIFORNIA, OREGON & the other COUNTRIES

on the

NORTH WEST COAST OF AMERICA

By

ROBERT GREENHOW.

Compiled from the best Authorities by Robert Greenhow

Note. The places of which the names appear in the border of the Map, are in the Latitudes indicated by their positions.

Blue ——— American Claim. 54° 40′

Red ——— American Offer. 49°

British Offer ... including the District coloured blue.

LONDON, WILEY & PUTNAM.

Day & Haghe Lith^rs to the Queen

OREGON CORRESPONDENCE.

(A.)

Mr. Calhoun to Mr. Pakenham.

Washington, Sept. 3, 1844.

THE undersigned, American Plenipotentiary, declines the proposal of the British Plenipotentiary, on the ground that it would have the effect of restricting the possessions of the United States to limits far more circumscribed than their claims clearly entitle them to. It proposes to limit their northern boundary by a line drawn from the Rocky Mountains along the 49th parallel of latitude to the north-easternmost branch of the Columbia river, and thence down the middle of that river to the sea—giving to Great Britain all the country north, and to the United States all south, of that line, except a detached territory extending on the Pacific and the Straits of Fuca, from Bulfinch's Harbour to Hood's Canal. To which it is proposed, in addition, to make free to the United States any port which the United States Government might desire, either on the main land or on Vancouver's Island, south of latitude 49th degree.

By turning to the map hereto annexed, and on which the proposed boundary is marked in pencil, it will be seen that it assigns to Great Britain almost the entire region (on its north side) drained by the Columbia river, lying on its northern bank. It is not deemed necessary to state at large the claims of the United States to this territory, and the grounds on which they rest, in order to make good the assertion that it restricts the possessions of the United States within narrower bounds than they are clearly entitled to. It will be sufficient for this purpose to show that they

areclearly entitled to the entire region drained by the river; and to the establishment of this point the undersigned proposes accordingly to limit his remarks at present.

Our claims to the portion of the territory drained by the Columbia river may be divided into those we have in our own proper right, and those we have derived from France and Spain. We ground the former, as against Great Britain, on priority of discovery and priority of exploration and settlement. We rest our claim to discovery, as against her, on that of Captain Gray, a citizen of the United States, who, in the ship *Columbia*, of Boston, passed its bar and anchored in the river, 10 miles above its mouth, on the 11th of May, 1792, and who afterwards sailed up the river 12 or 15 miles, and left it on the 20th of the same month, calling it Columbia, after his ship, which name it still retains.

On these facts, our claim to the discovery and entrance into the river rests. They are too well attested to be controverted; but they have been opposed by the alleged discoveries of Meares and Vancouver. It is true that the former explored a portion of the coast through which the Columbia flows into the ocean, in 1788 (five years before Captain Gray crossed the bar and anchored in the river), in order to ascertain whether the river, as laid down in the Spanish charts, and called the St. Roc, existed or not; but it is equally true that he did not even discover it. On the contrary, he expressly declares, in his account of the voyage, as the result of his observations, that "we can now safely assert that there is no such river as that of the St. Roc, as laid down in the Spanish charts;" and, as if to perpetuate his disappointment, he called the promontory lying north of the inlet where he expected to discover it, Cape Disappointment, and the inlet itself Deception Bay. It is also true that Vancouver, in April, 1792, explored the same coast; but it is no less so that he failed to discover the river, of which his own journal furnishes the most conclusive evidence, as well as his strong conviction that no such river existed. So strong was it, indeed, that when he fell in with Captain Gray, shortly afterwards, and was informed by him that he had been off the mouth of a river in latitude 46° 10′, whose outlet was so strong as to prevent his entering, he remained still incredulous, and strongly expressed himself to that effect in his journal. It

was shortly after this interview that Captain Gray again visited its mouth, crossed its bar, and sailed up the river, as has been stated. After he left it he visited Nootka Sound, where he communicated his discoveries to Quadra, the Spanish commandant at that place, and gave him a chart and description of the mouth of the river. After his departure, Vancouver arrived there in September, when he was informed of the discoveries of Captain Gray, and obtained from Quadra copies of the chart he had left with him. In consequence of the information thus obtained he was induced to visit again that part of the coast. It was during this visit that he entered the river on the 20th of October, and made his survey.

From these facts it is manifest, that the alleged discoveries of Meares and Vancouver cannot, in the slightest degree, shake the claim of Captain Gray to priority of discovery. Indeed, so conclusive is the evidence in his favour, that it has been attempted to evade our claim on the novel and wholly untenable ground that his discovery was made, not in a national, but a private vessel. Such, and so incontestable is the evidence of our claim as against Great Britain—from priority of discovery, as to the mouth of the river, crossing its bar, entering it, and sailing up its stream—on the voyage of Captain Gray alone, without taking into consideration the prior discovery of the Spanish navigator, Heceta, which will be more particularly referred to hereafter.

Nor is the evidence of the priority of our discovery of the head-branches of the river and its exploration less conclusive. Before the treaty was ratified by which we acquired Louisiana, in 1803, an expedition was planned—at the head of which were placed Meriwether Lewis and William Clarke—to explore the river Missouri and its principal branches to their sources, and then to seek and trace to its termination in the Pacific some stream, "whether the Columbia, the Oregon, the Colorado, or any other which might offer the most direct and practicable water communication across the continent, for the purpose of commerce." The party began to ascend the Missouri in May, 1804, and, in the summer of 1805, reached the head-waters of the Columbia river. After crossing many of the streams falling into it, they reached the Kooskooskee, in latitude 43° 34′—descended that to the principal northern branch, which they called Lewis's—followed that

to its junction with the great northern branch, which they called Clarke—and thence descended to the mouth of the river, where they landed, and encamped on the north side, on Cape Disappointment, and wintered. The next spring they commenced their return, and continued their exploration up the river, noting its various branches, and tracing some of the principal; and finally arrived at St. Louis, in September, 1806, after an absence of two years and four months.

It was this important expedition which brought to the knowledge of the world this great river—the greatest by far on the western side of this continent—with its numerous branches, and the vast regions through which it flows, above the points to which Gray and Vancouver had ascended. It took place many years before it was visited and explored by any subject of Great Britain, or of any other civilized nation, so far as we are informed. It as clearly entitles us to the claim of priority of discovery as to its head-branches, and the exploration of the river and region through which it passes, as the voyages of Captain Gray and the Spanish navigator, Heceta, entitles us to priority, in reference to its mouth, and the entrance into its channel.

Nor is our priority of settlement less certain. Establishments were formed by American citizens on the Columbia as early as 1809 and 1810. In the latter year a company was formed in New York, at the head of which was John Jacob Astor, a wealthy merchant of that city, the object of which was to form a regular chain of establishments on the Columbia river and the contiguous coasts of the Pacific, for commercial purposes. Early in the spring of 1811, they made their first establishment on the south side of the river, a few miles above Point George, where they were visited, in July following, by Mr. Thompson, a surveyor and astronomer of the North-west Company, and his party. They had been sent out by that company to forestall the American Company in occupying the mouth of the river, but found themselves defeated in their object. The American Company formed two other connected establishments higher up the river: one at the confluence of Okanegan with the north branch of the Columbia, about 600 miles above its mouth; and the other on the Spokan, a stream falling into the north branch, some 50 miles above.

These posts passed into the possession of Great Britain during the war which was declared the next year, but it was provided by the first article of the treaty of Ghent, which terminated it, that "all territories, places, and possessions whatever, taken by either party from the other during the war, or which may be taken after signing of the treaty, excepting the islands hereafter mentioned (in the Bay of Fundy), shall be restored without delay." Under this provision, which embraces all the establishments of the American Company on the Columbia, Astoria was formally restored, on the 6th of October, 1818, by agents duly authorised on the part of the British Government to restore the possession, and to an agent duly authorised on the part of the Government of the United States to receive it—which placed our possession where it was before it passed into the hands of British subjects.

Such are the facts on which we rest our claims to priority of discovery and priority of exploration and settlement, as against Great Britain, to the region drained by the Columbia river. So much for the claims we have, in our own proper right, to that region.

To these we have added the claims of France and Spain. The former we obtained by the treaty of Louisiana, ratified in 1803; and the latter by the treaty of Florida, ratified in 1819. By the former we acquired all the rights which France had to Louisiana "to the extent it now has (1803) in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into by Spain and other States." By the latter, his Catholic Majesty "ceded to the United States all his rights, claims, and pretensions" to the country lying west of the Rocky Mountains, and north of a line drawn on the 42nd parallel of latitude, from a point on the south bank of the Arkansas, in that parallel, to the South Sea—that is, to the whole region claimed by Spain west of those mountains, and north of that line.

The cession of Louisiana gave us undisputed title west of the Mississippi, extending to the summit of the Rocky Mountains, and stretching south between that river and those mountains to the possessions of Spain, the line between which and ours was afterwards determined by the treaty of Florida. It also added much

to the strength of our title to the region beyond the Rocky Mountains, by restoring to us the important link of continuity westward to the Pacific, which had been surrendered by the treaty of 1763 —as will be hereafter shown.

That continuity furnishes a just foundation for a claim of territory, in connexion with those of discovery and occupation, would seem unquestionable. It is admitted by all, that neither of them is limited by the precise spot discovered or occupied. It is evident, that in order to make either available, it must extend at least some distance beyond that actually discovered or occupied, but how far, as an abstract question, is a matter of uncertainty. It is subject, in each case, to be influenced by a variety of considerations. In the case of an island, it has been usually maintained in practice, to extend the claim of discovery or occupancy to the whole. So, likewise, in the case of a river, it has been usual to extend them to the entire region drained by it, more especially in cases of a discovery and settlement at the mouth; and emphatically so, when accompanied by exploration of the river and region through which it flows. Such, it is believed, may be affirmed to be the opinion and practice in such cases, since the discovery of this continent. How far the claim of continuity may extend in other cases is less perfectly defined, and can be settled only by reference to the circumstances attending each. When this continent was first discovered, Spain claimed the whole, in virtue of the grant of the Pope; but a claim so extravagant and unreasonable was not acquiesced in by other countries, and could not be long maintained. Other nations, especially England and France, at an early period contested her claim. They fitted out voyages of discovery, and made settlements on the eastern coasts of North America. They claimed for their settlements, usually, specific limits along the coasts or bays on which they were formed, and, generally, a region of corresponding width, extending across the entire continent to the Pacific Ocean. Such was the character of the limits assigned by England, in the charters which she granted to her former colonies, now the United States, when there were no special reasons for varying from it.

How strong she regarded her claim to the region conveyed by these charters, and extending westward of her settlements, the war

between her and France, which was terminated by the treaty of Paris, 1763, furnishes a striking illustration. That great contest, which ended so gloriously for England, and effected so great and durable a change on this continent, commenced in a conflict between her claims and those of France, resting on her side on this very right of continuity, extending westward from her settlements to the Pacific Ocean, and on the part of France, on the same right, but extending to the region drained by the Mississippi and its waters, on the ground of settlement and exploration. Their respective claims, which led to the war, first clashed on the Ohio river, the waters of which the colonial charters, in their western extension, covered, but which France had been unquestionably the first to settle and explore. If the relative strength of these different claims may be tested by the result of that remarkable contest, that of continuity westward must be pronounced to be the stronger of the two. England has had at least the advantage of the result, and would seem to be foreclosed against contesting the principle—particularly as against us, who contributed so much to that result, and on whom that contest, and her example, and her pretensions, from the first settlement of our country, have contributed to impress it so deeply and indelibly.

But the treaty of 1763, which terminated that memorable and eventful struggle, yielded, as has been stated, the claims and all the chartered rights of the colonies beyond the Mississippi. The seventh article establishes that river as the permanent boundary between the possessions of Great Britain and France on this continent. So much as relates to the subject is in the following words:—"The confines between the dominions of His Britannic Majesty in that part of the world (the continent of America) shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville; and from thence by a line drawn along the middle of this river, and the lakes Maurpas and Pontchartrain, to the sea," &c.

This important stipulation, which thus establishes the Mississippi as the line "fixed irrevocably" between the dominions of the two countries on this continent, in effect extinguishes in favour of France whatever claim Great Britain may have had to the region lying west of the Mississippi. It of course could not affect the rights of Spain—the only other nation which had any pretence

of claim west of that river; but it prevented the right of continuity previously claimed by Great Britain from extending beyond it, and transferred it to France. The treaty of Louisiana restored and vested in the United States all the claims acquired by France and surrendered by Great Britain, under the provisions of that treaty, to the country west of the Mississippi, and, among others, the one in question. Certain it is that France had the same right of continuity, in virtue of her possession of Louisiana, and the extinguishment of the right of England, by the treaty of 1763, to the whole country west of the Rocky Mountains, and lying west of Louisiana, as against Spain, which England had to the country westward of the Alleghany Mountains, as against France —with this difference, that Spain had nothing to oppose to the claim of France at the time but the right of discovery, and even that England has since denied; while France had opposed to the right of England, in her case, that of discovery, exploration, and settlement. It is therefore not at all surprising that France should claim the country west of the Rocky Mountains (as may be inferred from her maps), on the same principle that Great Britain had claimed and dispossessed her of the regions west of the Alleghany; or that the United States, as soon as they had acquired the rights of France, should assert the same claim, and take measures immediately after to explore it, with a view to occupation and settlement. But since then, we have strengthened our title, by adding to our own proper claims, and those of France, the claims also of Spain by the treaty of Florida, as has been stated.

The claims which we have acquired from her between the Rocky Mountains and the Pacific rest on her priority of discovery. Numerous voyages of discovery, commencing with that of Maldonado, in 1528, and ending with that under Galiano and Valdes, in 1792, were undertaken by her authority along the north-western coast of North America. That they discovered and explored not only the entire coast of what is now called the Oregon territory, but still further north, is a fact too well established to be controverted at this day. The voyages which they performed will accordingly be passed over at present without being particularly alluded to, with the exception of that of Heceta. His discovery of the mouth of the Columbia river has been already referred to. It was made on the 15th of August,

1775, many years anterior to the voyages of Meares and Vancouver, and was prior to Cook's, who did not reach the north-western coast until 1778. The claims it gave to Spain of priority of discovery were transferred to us, with all others belonging to her, by the treaty of Florida; which, added to the discoveries of Captain Gray, places our right to the discovery of the mouth and entrance into the inlet and river beyond all controversy.

It has been objected that we claim under various and conflicting titles, which mutually destroy each other. Such might indeed be the fact while they were held by different parties, but since we have rightfully acquired both those of Spain and France, and concentrated the whole in our hands, they mutually blend with each other, and form one strong and connected chain of title against the opposing claims of all others, including Great Britain.

In order to present more fully and perfectly the grounds on which our claims to the region in question rest, it will now be necessary to turn back to the time when Astoria was restored to us, under the provisions of the treaty of Ghent, and to trace what has since occurred between the two countries in reference to the territory, and inquire whether their respective claims have been affected by the settlements since made in the territory by Great Britain, or the occurrences which have since taken place.

The restoration of Astoria took place, under the provisions of the treaty of Ghent, on the 6th day of October, 1818, the effect of which was to put Mr. Prevost, the agent authorised by our Government to receive it, in possession of the establishment, with the right at all times to be reinstated and considered the party in possession, as was explicitly admitted by Lord Castlereagh in the first negotiation between the two Governments in reference to the treaty. The words of Mr. Rush, our Plenipotentiary on that occasion, in his letter to Mr. Adams, then Secretary of State, of the 14th of February, 1818, reporting what passed between him and his Lordship, are, "that Lord Castlereagh admitted in the most ample extent our right to be reinstated, and to be the party in possession, while treating of the title."

That negotiation terminated in the convention of the 20th of October, 1818, the third article of which is in the following words:—

"It is agreed that any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country; nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties in that respect being to prevent disputes and differences amongst themselves."

The two acts, the restoration of our possession and the signature of the convention, were nearly contemporaneous—the latter taking place but 14 days subsequently to the former. We were then, as admitted by Lord Castlereagh, entitled to be considered as the party in possession; and the convention, which stipulated that the territory should be free and open for the term of ten years from the date of its signature, to the vessels, citizens, and subjects of the two countries, without prejudice to any claim which either party may have to any part of the same, preserved and perpetuated all our claims to the territory, including the acknowledged right to be considered the party in possession, as perfectly during the period of its continuance as they were the day the convention was signed. Of this there can be no doubt.

After an abortive attempt to adjust the claims of the two parties to the territory, in 1824, another negotiation was commenced in 1826, which terminated in renewing, on the 6th of August, 1827, the third article of the convention of 1818, prior to its expiration. It provided for the indefinite extension of all the provisions of the third article of that convention, and also that either party might terminate it at any time it might think fit, by giving one year's notice after the 20th of October, 1828. It took, however, the precaution of providing expressly that "nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either

of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains." That convention is now in force, and has continued to be so since the expiration of that of 1818. By the joint operation of the two, our right to be considered the party in possession, and all the claims we had to the territory while in possession, are preserved in as full vigour as they were at the date of its restoration in 1818, without being affected or impaired by the settlements since made by the subjects of Great Britain.

Time, indeed, so far from impairing our claims, has greatly strengthened them since that period; for since then the treaty of Florida transferred to us all the rights, claims, and pretensions of Spain to the whole territory, as has been stated. In consequence of this, our claims to the portion drained by the Columbia river—the point now the subject of consideration—have been much strengthened by giving us the incontestable claim to the discovery of the mouth of the river by Heceta, above stated. But it is not in this particular only that it has operated in our favour. Our well-founded claim, grounded on continuity, has greatly strengthened, during the same period, by the rapid advance of our population towards the territory,—its great increase, especially in the valley of the Mississippi,—as well as the greatly increased facility of passing to the territory by more accessible routes, and the far stronger and rapidly-swelling tide of population that has recently commenced flowing into it.

When the first convention was concluded, in 1818, our whole population did not exceed 9,000,000 of people. The portion of it inhabiting the states in the great valley of the Mississippi was probably under 1,700,000, of which not more than 200,000 were on the west side of the river. Now our population may be safely estimated at not less than 19,000,000—of which at least 8,000,000 inhabit the states and territories in the valley of the Mississippi, and of which upwards of 1,000,000 are in the states and territories west of that river. This portion of our population is now increasing far more rapidly than ever, and will, in a short time, fill the whole tier of states on its western bank.

To this great increase of population, especially in the valley of the Mississippi, may be added the increased facility of reaching

the Oregon territory, in consequence of the discovery of the remarkable pass in the Rocky Mountains at the head of the La Platte. The depression is so great, and the pass so smooth, that loaded waggons now travel with facility from Missouri to the navigable waters of the Columbia river. These joint causes have had the effect of turning the current of our population towards the territory, and an emigration estimated at not less than 1,000 during the last, and 1,500 during the present year, has flowed into it. The current thus commenced will no doubt continue to flow with increased volume hereafter. There can, then, be no doubt now that the operation of the same causes which impelled our population westward from the shores of the Atlantic, across the Alleghany to the valley of the Mississippi, will impel them onward with accumulating force across the Rocky Mountains into the valley of the Columbia, and that the whole region drained by it is destined to be peopled by us.

Such are our claims to that portion of the territory, and the grounds on which they rest. The undersigned believes them to be well founded, and trusts that the British Plenipotentiary will see in them sufficient reasons why he should decline his proposal.

The undersigned Plenipotentiary abstains for the present from presenting the claims which the United States may have to other portions of the territory.

The undersigned avails himself of this occasion to renew to the British Plenipotentiary the assurance of his high consideration.

R. Pakenham, Esq., J. C. CALHOUN.
&c. &c.

(B.) Department of State,
Washington, 20th September, 1844.

The undersigned, American Plenipotentiary, has read with attention the counter-statement of the British Plenipotentiary, but without weakening his confidence in the validity of the title of the United States to the territory, as set forth in his statement (marked A.) As therein set forth, it rests, in the first place, on priority of discovery, sustained by their own proper claims, and those derived from Spain through the treaty of Florida.

The undersigned does not understand the counter-statement as denying that the Spanish navigators were the first to discover and explore the entire coast of the Oregon territory; nor that Heceta was the first who discovered the mouth of the Columbia river; nor that Captain Gray was the first to pass its bar, enter its mouth, and sail up its stream; nor that these, if jointly held by the United States, would give them the priority of discovery which they claim. On the contrary, it would seem that the counter-statement, from the ground it takes, admits such would be the case on that supposition; for it assumes that Spain, by the Nootka Sound convention in 1790, divested herself of all claims to the territory, founded on the prior discovery and explorations of her navigators, and that she could consequently transfer none to the United States by the treaty of Florida. Having put aside the claims of Spain by this assumption, the counter-statement next attempts to oppose the claims of the United States by those founded on the voyages of Captains Cook and Meares, and to supersede the discovery of Captain Gray, on the ground that Vancouver sailed farther up the Columbia river than he did, although he effected it by the aid of his discoveries and charts.

It will not be expected of the undersigned that he should seriously undertake to repel what he is constrained to regard as a mere assumption, unsustained by any reason. It is sufficient, on his part, to say that in his opinion, there is nothing in the Nootka Sound convention, or in the transactions which led to it, or in the circumstances attending it, to warrant the assumption. The convention relates wholly to other subjects, and contains not a word in reference to the claims of Spain. It is on this assumption that the counter-statement rests its objection to the well-founded American claims to priority of discovery. Without it, there would not be a plausible objection left to them.

The two next claims on which the United States rest their title to the territory, as set forth in statement (A.), are founded on their own proper right, and cannot possibly be affected by the assumed claims of Great Britain, derived from the Nootka convention.

The first of these is priority of discovery and exploration of the head-waters and upper portions of the Columbia river by Lewis and Clarke; by which that great stream was first brought to the

knowledge of the world, with the exception of a small portion near the ocean, including its mouth. This the counter-statement admits; but attempts to set off against it the prior discovery of Mackenzie of the head-waters of Frazer's river—quite an inferior stream, which drains the northern portion of the territory. It is clear that, whatever right Great Britain may derive from his discovery, it can, in no degree, affect the right of the United States to the region drained by the Columbia, which may be emphatically called the river of the territory.

The next of these, founded on their own proper right, is priority of settlement. It is not denied by the counter-statement, that we formed the first settlements in the portion of the territory drained by the Columbia river; nor does it deny that Astoria, the most considerable of them, was restored, under the third article of the treaty of Ghent, by agents on the part of Great Britain, duly authorised to make the restoration, to an agent on the part of the United States duly authorised to receive it. Nor does it deny that, in virtue thereof, they have the right to be reinstated, and considered the party in possession while treating of the title, as was admitted by Lord Castlereagh in the negotiation of 1818; nor that the convention of 1818, signed a few days after the restoration, and that of 1827, which is still in force, have preserved and perpetuated until now all the rights they possessed to the territory at the time, including that of being reinstated and considered the party in possession while the question of title is depending, as is now the case.

It is true, it attempts to weaken the effect of these implied admissions—in the first place, by designating positive treaty stipulations as "an understanding between the two governments;" but a change of phraseology cannot possibly transform treaty obligations into a mere understanding; and, in the next place, by stating that we have not, since the restoration of Astoria, actually occupied it; but that cannot possibly affect our right to be reinstated, and to be considered in possession, secured to us by the treaty of Ghent, implied in the act of restoration, and since preserved by positive treaty stipulations. Nor can the remarks of the counter-statement in reference to Lord Castlereagh's admission weaken our right of possession, secured by the treaty, and its formal and unconditional

restoration by duly authorized agents. It is on these, and not on the denial of the authenticity of Lord Castlereagh's despatch, that the United States rest their right of possession, whatever verbal communication the British minister may have made at the time to our Secretary of State; and it is on these that they may safely rest it, setting aside altogether the admission of Lord Castlereagh.

The next claims on which our title to the territory rests are those derived from Spain by the treaty ceding Louisiana to the United States, including those she derived from Great Britain by the treaty of 1763. It established the Mississippi as "the irrevocable boundary between the territories of France and Great Britain;" and thereby the latter surrendered to France all her claims on this continent west of that river, including, of course, all within the chartered limits of her then colonies, which extended to the Pacific Ocean. On these, united with those of France as the possessor of Louisiana, we rest our claim of continuity, as extending to that Ocean, without an opposing claim, except that of Spain, which we have since acquired, and consequently removed, by the treaty of Florida.

The existence of these claims the counter-statement denies, on the authority of Mr. Jefferson; but, as it appears to the undersigned, without adequate reasons. He does not understand Mr. Jefferson as denying that the United States acquired any claim to the Oregon territory by the acquisition of Louisiana, either in his letter of 1803, referred to by the counter-statement, and from which it gives an extract, or in the document of 1807, to which it also refers. It is manifest, from the extract itself, that the object of Mr. Jefferson was not to state the extent of the claims acquired with Louisiana, but simply to state how far its unquestioned boundaries extended; and these he limits westwardly by the Rocky Mountains. It is, in like manner, manifest from the document, as cited by the counter-statement, that his object was not to deny that our claims extended to the territory, but simply to express his opinion of the impolicy, in the then state of our relations with Spain, of bringing them forward. This, so far from denying that we had claims, admits them by the clearest implication. If, indeed, in either case, his opinion had been equivocally expressed, the prompt measures adopted by him to explore the territory, after the

treaty was negotiated, but before it was ratified, clearly show that it was his opinion not only that we had acquired claims to it, but highly important claims, which deserved prompt attention.

In addition to this denial of our claims to the territory on the authority of Mr. Jefferson, which the evidence relied on does not seem to sustain, the counter-statement intimates an objection to continuity as the foundation of a right, on the ground that it may more properly be considered (to use his own words) as demonstrating the greater degree of the interest which the United States possessed by reason of contiguity, in acquiring territory in a Westward direction. Contiguity may, indeed, be regarded as one of the elements constituting the right of continuity—which is more comprehensive—and is necessarily associated with the right of occupancy, as has been shown in statement A. It also shows that the laws which usage has established in the application of the right to this continent, give to the European settlements on its Eastern coasts an indefinite extension Westward. It is now too late for Great Britain to deny a right on which she has acted so long, and by which she has profited so much; or to regard it as a mere facility, not affecting in any way the question of right. On what other right has she extended her claims Westwardly to the Pacific Ocean from her settlements around Hudson's Bay? or expelled France from the East side of the Mississippi, in the war which terminated in 1763?

As to the assumption of the counter-statement, that Louisiana, while in the possession of Spain, became subject to the Nootka Sound convention—which, it is alleged, abrogated all the rights of Spain to the territory, including those acquired with Louisiana —it will be time enough to consider it, after it shall be attempted to be shown that such, in reality, was the effect. In the mean time the United States must continue to believe that they acquired from France, by the treaty of Louisiana, important and substantial claims to the territory.

The undersigned cannot assent to the conclusion to which, on a review of the whole ground, the counter-statement arrives, that the present state of the question is, that Great Britain possesses and exercises, in common with the United States, a right of joint occupancy in the Oregon territory, of which she can be divested only

by an equitable partition of the whole between the two powers. He claims, and he thinks he has shown, a clear title on the part of the United States to the whole region drained by the Columbia, with the right of being reinstated and considered the party in possession, while treating of the title—in which character he must insist on their being considered, in conformity with positive treaty stipulations.

He cannot, therefore, consent that they shall be regarded, during the negotiation, merely as occupants in common with Great Britain. Nor can he, while thus regarding their rights, present a counter-proposal, based on the supposition of a joint occupancy merely, until the question of title to the territory is fully discussed. It is, in his opinion, only after such a discussion, which shall fully present the titles of the parties respectively to the territory, that their claims to it can be fairly and satisfactorily adjusted. The United States desire only what they may deem themselves justly entitled to; and are unwilling to take less. With their present opinion of their title, the British plenipotentiary must see that the proposal which he made at the second conference, and which he more fully sets forth in his counter-statement, falls far short of what they believe themselves justly entitled to.

In reply to the request of the British plenipotentiary, that the undersigned should define the nature and extent of the claims which the United States have to the other portions of the territory, and to which allusion is made in the concluding part of document A., he has the honour to inform him, in general terms, that they are derived from Spain by the Florida treaty, and are founded on the discoveries and explorations of her navigators; and which they must regard as giving them a right to the extent to which they can be established, unless a better can be opposed.

J. C. CALHOUN.

The Right Hon. R. Pakenham,
&c. &c.

(J. B.) Department of State,
Washington, 12th July, 1845.

The undersigned, Secretary of State of the United States, now proceeds to resume the negotiation on the Oregon question, at the point where it was left by his predecessor.

The British plenipotentiary, in his note to Mr. Calhoun of the 12th September last, requests that "as the American plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is, on the part of the United States, prepared to propose for an equitable adjustment of the question; and more especially that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory, to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to a part of the territory in dispute, while a claim is reserved to any portion of the remainder."

The Secretary of State will now proceed (reversing the order in which these requests have been made), in the first place, to present the title of the United States to the territory north of the valley of the Columbia; and will then propose, on the part of the President, the terms upon which, in his opinion, this long pending controversy may be justly and equitably terminated between the parties.

The title of the United States to that portion of the Oregon territory between the valley of the Columbia and the Russian line, in 54° 40′ North Latitude, is recorded in the Florida treaty. Under this treaty, dated on the 22nd February, 1819, Spain ceded to the United States all her "rights, claims, and pretensions" to any territories west of the Rocky Mountains and north of the 32nd parallel of latitude. We contend that, at the date of this cession, Spain had a good title, as against Great Britain, to the whole Oregon territory; and, if this be established, the question is decided in favour of the United States.

But the American title is now encountered at every step by declarations that we hold it subject to all the conditions of the Nootka Sound convention between Great Britain and Spain, signed at the Escurial on the 28th of October, 1790. Great

Britain contends that, under this convention, the title of Spain was limited to a mere common right of joint occupancy with herself over the whole territory. To employ the language of the British plenipotentiary: "If Spain could not make good her own right of exclusive dominion over those regions, still less could she confer such a right on another power; and hence Great Britain argues that from nothing deduced from the treaty of 1819 can the United States assert a valid claim to exclusive dominion over any part of the Oregon territory." Hence it is that Great Britain, resting her pretensions on the Nootka Sound convention, has necessarily limited her claim to a mere right of joint occupancy over the whole territory, in common with the United States, as the successor of Spain, leaving the right of exclusive dominion in abeyance.

It is, then, of the first importance that we should ascertain the true construction and meaning of the Nootka Sound convention.

If it should appear that this treaty was transient in its very nature—that it conferred upon Great Britain no right but that of merely trading with the Indians while the country should remain unsettled, and making the necessary establishments for this purpose—that it did not interfere with the ultimate sovereignty of Spain over the territory; and, above all, that it was annulled by the war between Spain and Great Britain, in 1796, and has never since been renewed by the parties—then the British claim to any portion of this territory will prove to be destitute of any foundation.

It is unnecessary to detail the circumstances out of which this convention arose. It is sufficient to say that John Meares, a British subject, sailing under the Portuguese flag, landed at Nootka Sound, in 1788, and made a temporary establishment there for the purpose of building a vessel; and that Spaniards, in 1789, took possession of this establishment, under the orders of the Viceroy of Mexico, who claimed for Spain the exclusive sovereignty of the whole territory on the north-west coast of America up to the Russian line. Meares appealed to the British Government for redress against Spain, and the danger of war between the two nations became imminent. This was prevented by the conclusion of the Nootka Sound convention.

That convention provides, by its first and second articles, for the restoration of the lands and buildings of which the subjects of Great Britain had been dispossessed by the Spaniards, and the payment of an indemnity for the injuries sustained. This indemnity was paid by Spain; but no sufficient evidence has been adduced, that either Nootka Sound, or any other spot upon the coast, was ever actually surrendered by that power to Great Britain. All we know with certainty is, that Spain continued in possession of Nootka Sound until 1795, when she voluntarily abandoned the place. Since that period, no attempt has been made (unless very recently) by Great Britain, or her subjects, to occupy either this or any other part of Vancouver's island. It is thus manifest, that she did not formerly attach much importance to the exercise of the rights, whatever they may have been, which she had acquired under the Nootka Sound convention.

The only other portion of this convention important for the present discussion will be found in the 3rd and the 5th Articles. They are as follows:—"Art. 3. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coast of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there; the whole subject, nevertheless, to the restrictions specified in the three following articles." The material one of which is—"Art. 5. As well in the places which are to be restored to the British subjects, by virtue of the first article, as in all other parts of the north-western coasts of North America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation."

It may be observed as a striking fact which must have an im-

portant bearing against the claim of Great Britain, that this convention, which was dictated by her to Spain, contains no provision impairing the ultimate sovereignty which that power had asserted for nearly three centuries over the whole western side of North America as far north as the 61st degree of latitude, and which had never been seriously questioned by any European nation. This right has been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European Governments. It had been admitted even beyond the latitude of 54° 40′ north by Russia, then the only power having claims which could come in collision with Spain; and that too under a sovereign peculiarly tenacious of the territorial rights of her empire.

This will appear from the letter of Count de Fernan Nunez, the Spanish ambassador at Paris, to M. de Montmorin, the Secretary of the Foreign Department of France, dated Paris, June 16th, 1790. From this letter, it seems that complaints had been made by Spain to the court of Russia against Russian subjects for violating the Spanish territory on the north-west coast of America, south of the 61st degree of north latitude; in consequence of which, that court, without delay, assured the King of Spain "that it was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another power, should have been disobeyed."

This convention of 1790 recognizes no right in Great Britain, either present or prospective, to plant permanent colonies on the north-west coast of America, or to exercise such exclusive jurisdiction over any portion of it as is essential to sovereignty. Great Britain obtained from Spain all she then desired—a mere engagement that her subjects should "not be disturbed or molested" "in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there." What kind of settlements? This is not specified; but surely their character and duration are limited by the object which the contracting parties had in view.—They must have been such only as were necessary and proper "for the purpose of carrying on commerce with the natives of the country." Were these settlements intended to

expand into colonies, to expel the natives, to deprive Spain of her sovereign rights, and to confer the exclusive jurisdiction over the whole territory on Great Britain? Surely, Spain never designed any such results; and if Great Britain has obtained these concessions by the Nootka Sound convention, it has been by the most extraordinary construction ever imposed upon human language.

But this convention also stipulates that to these settlements which might be made by the one party "the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation." What trade? Certainly that "with the natives of the country," as prescribed in the third article; and this, from the very nature of things, could continue only while the country should remain in the possession of the Indians. On no other construction can this convention escape from the absurdities attributed to it by British statesmen, when under discussion before the House of Commons. "In every place in which we might settle (said Mr.—afterward Earl—Grey), access was left for the Spaniards. Where we might form a settlement on one hill, they might erect a fort on another; and a merchant must run all the risks of a discovery, and all the expenses of an establishment, for a property which was liable to be the subject of continual dispute, and could never be placed upon a permanent footing."

Most certainly, this treaty was, in its very nature, temporary; and the rights of Great Britain under it were never intended to "be placed upon a permanent footing." It was to endure no longer than the existence of those peculiar causes, which called it into being. Such a treaty creating British and Spanish settlements intermingled with each other, and dotted over the whole surface of the territory, wherever a British or Spanish merchant could find a spot favourable for trade with the Indians, never could have been intended for a permanent arrangement between civilized nations.

But whatever may be the true construction of the Nootka Sound convention, it has, in the opinion of the undersigned, long since ceased to exist.

The general rule of national law is, that war terminates all subsisting treaties between the belligerent powers. Great Britain has maintained this rule to its utmost extent. Lord Bathurst, in

negotiating with Mr. Adams, in 1815, says, "that Great Britain knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same parties." Perhaps the only exception to this rule—if such it may be styled—is that of a treaty recognizing certain sovereign rights as belonging to a nation, which had previously existed, independently of any treaty engagement. These rights, which the treaty did not create, but merely acknowledged, cannot be destroyed by war between the parties. Such was the acknowledgment of the fact, by Great Britain, under the definitive treaty of 1783, that the United States were "free, sovereign, and independent." It will scarcely be contended that the Nootka Sound convention belongs to this class of treaties. It is difficult to imagine any case in which a treaty containing mutual engagements, still remaining unexecuted, would not be abrogated by war.

The Nootka Sound convention is strictly of this character. The declaration of war, therefore, by Spain against Great Britain, in October, 1796, annulled its provisions, and freed the parties from its obligations. The whole treaty consisted of mutual express engagements to be performed by the contracting parties. Its most important article (the third), in reference to the present discussion, does not even grant, in affirmative terms, the right to the contracting parties to trade with the Indians, and to make settlements. It merely engages in negative terms, that the subjects of the contracting parties "shall not be disturbed or molested," in the exercise of these treaty privileges. Surely this is not such an engagement as will continue to exist in despite of war between the parties. It is gone for ever, unless it has been revived in express terms by the treaty of peace, or some other treaty between the parties. Such is the principle of public law, and the practice of civilized nations.

Has the Nootka Sound convention been thus revived? This depends entirely upon the true construction of the additional articles to the treaty of Madrid, which were signed on the 28th of August, 1814, and contain the only agreement between the parties since the war of 1796, for the renewal of engagements existing previous to the latter date. The first of the additional articles of this treaty provides as follows: "It is agreed that pend-

ing the negotiation of a new treaty of commerce, Great Britain shall be admitted to trade with Spain upon the same conditions as those which existed previous to 1796; all the treaties of commerce which at that period subsisted between the two nations being hereby ratified and confirmed."

The first observation to be made upon this article is, that it is confined in terms to the trade with Spain, and does not embrace her colonies or remote territories. These had always been closed against foreign powers. Spain had never conceded the privilege of trading with her colonies to any nation, except in the single instance of the Asiento, which was abrogated in 1740; nor did any of the treaties of commerce which were in force between the two nations previous to 1795 make such a concession to Great Britain. That this is the true construction of the first additional article of the treaty of Madrid, appears conclusively from another part of the instrument. Great Britain, by an irresistible inference, admitted that she had acquired no right under it to trade with the colonies, or remote territories of Spain when she obtained a stipulation in the same treaty, that, "in the event of the commerce of the Spanish American possessions being opened to foreign nations, his Catholic Majesty promises that Great Britain shall be admitted to trade with those possessions as the most favoured nation."

But even if the first additional article of the treaty of 1814 were not thus expressly limited to the revival of the trade of Great Britain with the kingdom of Spain in Europe, without reference to any other portion of her dominions, the Nootka Sound convention can never be embraced under the denomination of a treaty of commerce between the two powers. It contains no provision whatever to grant or to regulate trade between British and Spanish subjects. Its essential part, so far as concerns the present question, relates not to any trade or commerce between the subjects of the respective powers; it merely prohibits the subjects of either from disturbing or molesting those of the other in trading with third parties—the natives of the country.

The "grant of making settlements," whether understood in its broadest or most restricted sense, relates to territorial acquisition, and not to trade or commerce in any imaginable form. The Nootka Sound convention, then, cannot, in any sense, be consi-

dered a treaty of commerce, and was not, therefore, revived by the treaty of Madrid of 1814. When the war commenced between Great Britain and Spain in 1796, several treaties subsisted between them, which were, both in title and substance, treaties of commerce. These, and these alone, were revived by the treaty of 1814.

That the British government itself had no idea in 1818 that the Nootka Sound convention was then in force, may be fairly inferred from their silence upon the subject during the whole negotiation of that year on the Oregon question. This convention was not once referred to by the British plenipotentiaries. They then rested their claims upon other foundations. Surely that which is now their main reliance would not have escaped the observation of such statesmen had they then supposed it was in existence.

In view of all these considerations, the undersigned respectfully submits that if Great Britain has valid claims to any portion of the Oregon territory, they must rest upon a better foundation than that of the Nootka Sound convention.

It is far from the intention of the undersigned to repeat the argument by which his predecessor (Mr. Calhoun) has demonstrated the American title "to the centre region drained by the Columbia river and its branches." He has shown that to the United States belongs the discovery of the Columbia river, and that Captain Gray was the first civilized man who ever entered its mouth and sailed up its channel, baptizing the river itself with the name of his vessel; that Messrs. Lewis and Clarke, under a commission from their Government, first explored the waters of this river almost from its head springs to the Pacific, passing the winter of 1805 and 1806 on its northern shore near the ocean; that the first settlement upon this river was made by a citizen of the United States, at Astoria; and that the British Government solemnly recognised our right to the possession of this settlement, which had been captured during the war, by surrendering it to the United States on the 6th day of October, 1818, in obedience to the treaty of Ghent.

If the discovery of the mouth of a river, followed up within a reasonable time by the first exploration, both of its main channel

and its branches, and appropriated by the first settlements on its banks, do not constitute a title to the territory drained by its waters in the nation performing these acts, then the principles consecrated by the practice of civilized nations ever since the discovery of the New World must have lost their force. These principles were necessary to preserve the peace of the world. Had they not been enforced in practice, clashing claims to newly-discovered territory, and perpetual strife among the nations, would have been the inevitable result.

The title of the United States to the entire region drained by the Columbia river and its branches, was perfect and complete before the date of the treaties of joint occupation of October, 1818, and August, 1827; and under the express provisions of these treaties, this title, while they endure, can never be impaired by any act of the British Government. In the strong language of the treaty of 1827, "nothing contained in this convention, or in the third article of the convention of 1818, hereby continued in force, shall be construed to impair, or in any manner affect, the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains." Had not the convention contained this plain provision, which has prevented the respective parties from looking with jealousy on the occupation of portions of the territory by the citizens and subjects of each other, its chief object—which was to preserve peace and prevent collisions in those distant regions—would have been entirely defeated.

It is then manifest that neither the grant of this territory for a term of years, made by Great Britain to the Hudson Bay Company in December, 1821, nor the extension of this grant in 1838, nor the settlements, trading posts, and forts, which have been established by that company under it, can, in the slightest degree, strengthen the British, or impair the American title to any portion of the Oregon territory. The British claim is neither better nor worse than it was on the 29th October, 1818, the date of the first convention.

The title of the United States to the valley of the Columbia is older than the Florida treaty of February, 1819, under which the United States acquired all the rights of Spain to the north-west

coast of America, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound convention were correct, it could not apply to this portion of the territory in dispute. A convention between Great Britain and Spain, originating from a dispute concerning a petty trading establishment at Nootka Sound, could not abridge the rights of other nations. Both in public and private law, an agreement between two parties can never bind a third, without his consent, express or implied.

The extraordinary proposition will scarcely be again urged, that our acquisition of the rights of Spain under the Florida treaty can in any manner weaken or impair our pre-existing title. It may often become expedient for nations, as it is for individuals, to purchase an outstanding title merely for the sake of peace; and it has never heretofore been imagined that the acquisition of such a new title rendered the old one less valid. Under this principle, a party having two titles would be confined to his worst, and forfeit his best. Our acquisition of the rights of Spain, then, under the Florida treaty, while it cannot affect the prior title of the United States to the valley of the Columbia, has rendered it more clear and unquestionable before the world. We have a perfect right to claim under both these titles; and the Spanish title alone, even if it were necessary to confine ourselves to it, would, in the opinion of the President, be good as against Great Britain, not merely to the valley of the Columbia, but the whole territory of Oregon.

Our own American title, to the extent of the valley of the Columbia, resting as it does on discovery, exploration, and possession—a possession acknowledged by a most solemn act of the British government itself—is sufficient assurance against all mankind; while our superadded title derived from Spain extends our exclusive right over the whole territory in dispute as against Great Britain.

Such being the opinion of the President in regard to the title of the United States, he would not have consented to yield any portion of the Oregon territory, had he not found himself embarrassed, if not committed, by the acts of his predecessors. They had uniformly proceeded upon the principle of compromise in all their negotiations. Indeed, the first question presented to him, after

entering upon the duties of his office, was, whether he should abruptly terminate the negotiation which had been commenced and conducted between Mr. Calhoun and Mr. Pakenham on the principle avowed in the first protocol, not of contending for the whole territory in dispute, but of treating of the respective claims of the parties, "with the view to establish a permanent boundary between the two countries westward of the Rocky Mountains."

In view of these facts, the President has determined to pursue the present negotiation to its conclusion upon the principle of compromise in which it commenced, and to make one more effort to adjust this long-pending controversy. In this determination he trusts that the British Government will recognise his sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that he is actuated by a spirit of moderation. He has, therefore, instructed the undersigned again to propose to the Goverment of Great Britain that the Oregon territory shall be divided between the two countries by the 49th parallel of north latitude from the Rocky Mountains to the Pacific Ocean; offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island south of this parallel, which the British Government may desire.

He trusts that Great Britain may receive this proposition in the friendly spirit by which it was dictated, and that it may prove the stable foundation of lasting peace and harmony between the two countries. The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific along the same parallel of latitude which divides them east of the Rocky Mountains; and it will secure to each a sufficient number of commodious harbours on the north-west coast of America.

The undersigned avails himself of this occasion to renew to Mr. Pakenham the assurance of his distinguished consideration.

JAMES BUCHANAN.

The Right Hon. R. Pakenham,
&c. &c.

(J. B. 2.) Department of State,
Washington, Aug. 30, 1845.

The undersigned Secretary of State of the United States deems it his duty to make some observations in reply to the statement of Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, marked "R. P.," and dated 29th July, 1845.

Preliminary to the discussion, it is necessary to fix our attention upon the precise question under consideration, in the present stage of the negotiation. This question simply is, were the titles of Spain and the United States, when united by the Florida treaty, on the 22nd of February, 1819, good as against Great Britain, to the Oregon territory as far north as the Russian line, in the latitude of 54° 40'? If they were, it will be admitted that this whole territory now belongs to the United States.

The undersigned again remarks that it is not his purpose to repeat the argument by which his predecessor, Mr. Calhoun, has demonstrated the American title "to the entire region drained by the Columbia River and its branches." He will not thus impair its force.

It is contended, on the part of Great Britain, that the United States acquired and hold the Spanish title subject to the terms and conditions of the Nootka Sound convention, concluded between Great Britain and Spain, at the Escurial, on the 28th of October, 1790.

In opposition to the argument of the undersigned, contained in his statement marked "J. B.," maintaining that this convention had been annulled by the war between Spain and Great Britain, in 1796, and has never since been revived by the parties, the British Plenipotentiary, in his statement marked "R. P.," has taken the following positions:—

1. "That when Spain concluded with the United States the treaty of 1819, commonly called the Florida Treaty, the convention concluded between the former Power and Great Britain, in 1790, was considered by the parties to it to be still in force."

And 2. "But that, even if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon territory, in a position at least as favourable as the United States."

The undersigned will follow, step by step, the argument of the British Plenipotentiary in support of these propositions.

The British Plenipotentiary states "that the treaty of 1790 is not appealed to by the British Government, as the American Plenipotentiary seems to suppose, as their 'main reliance' in the present discussion;" but to show that, by the Florida Treaty of 1819, the United States acquired no right to exclusive dominion over any part of the Oregon territory.

The undersigned had believed that ever since 1826 the Nootka convention has been regarded by the British Government as their main, if not their only reliance. The very nature and peculiarity of their claim identified it with the construction which they have imposed upon this convention, and necessarily excludes every other basis of title. What but to accord with this construction could have caused Messrs. Huskisson and Addington, the British Commissioners, in specifying their title, on the 16th of December, 1826, to declare "that Great Britain claims no exclusive sovereignty over any portion of that territory. Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other states, leaving the right of exclusive dominion in abeyance." And again: "By that convention (of Nootka) it was agreed that all parts of the northwestern coast of America not altogether occupied at that time by either of the contracting parties should thenceforward be equally open to the subjects of both, for all purposes of commerce and settlement—the sovereignty remaining in abeyance." But on this subject we are not left to mere inferences, however clear. The British Commissioners, in their statement from which the undersigned has just quoted, have virtually abandoned any other title which Great Britain may have previously asserted to the territory in dispute, and expressly declare "that whatever that title may have been, however, either on the part of Great Britain or on the part of Spain, prior to the convention of 1790, it was thenceforward no longer to be traced in vague narratives of discoveries, several of them admitted to be apocryphal, but in the text and stipulations of that convention itself."

And again, in summing up their whole case, they say:—

"Admitting that the United States have acquired all the

rights which Spain possessed up to the treaty of Florida, either in virtue of discovery, or, as is pretended, in right of Louisiana, Great Britain maintains that the nature and extent of these rights, as well as the rights of Great Britain, are fixed and defined by the convention of Nootka," &c.

The undersigned, after a careful examination, can discover nothing in the note of the present British Plenipotentiary to Mr. Calhoun, of the 12th of September last, to impair the force of these declarations and admissions of his predecessors. On the contrary, its general tone is in perfect accordance with them.

Whatever may be the consequences, then, whether for good or for evil—whether to strengthen or to destroy the British claim—it is now too late for the British Government to vary their position. If the Nootka convention confers upon them no such rights as they claim, they cannot at this late hour go behind its provisions, and set up claims which in 1826 they admitted had been merged "in the text and stipulations of that convention itself."

The undersigned regrets, that the British Plenipotentiary has not noticed his exposition of the true construction of the Nootka convention. He had endeavoured, and he believes successfully, to prove that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians whilst the country should remain unsettled, and making the necessary establishments for this purpose; and that it did not interfere with the ultimate sovereignty of Spain over the territory. The British Plenipotentiary has not attempted to resist these conclusions. If they be fair and legitimate, then it would not avail Great Britain even if she should prove the Nootka convention to be still in force. On the contrary, this convention, if the construction placed upon it by the undersigned be correct, contains a clear virtual admission, on the part of Great Britain, that Spain held the eventual right of sovereignty over the whole disputed territory; and consequently that it now belongs to the United States.

The value of this admission, made in 1790, is the same, whether or not the convention has continued to exist until the present day. But he is willing to leave this point on the uncontroverted argument contained in his former statement.

But is the Nootka Sound convention still in force? The British Plenipotentiary does not contest the clear general principle of public law, "that war terminates all subsisting treaties between the belligerent Powers." He contends, however, in the first place, that this convention is partly commercial; and that, so far as it partakes of this character, it was revived by the treaty concluded at Madrid on the 28th of August, 1814, which declares "that all the treaties of commerce which subsisted between the two parties (Great Britain and Spain) in 1796 were thereby ratified and confirmed;" and, 2nd, "that in other respects it must be considered as an acknowledgment of subsisting rights—an admission of certain principles of international law," not to be revoked by war.

In regard to the first proposition, the undersigned is satisfied to leave the question to rest upon his former argument, as the British Plenipotentiary has contented himself with merely asserting the fact, that the commercial portion of the Nootka Sound convention was revived by the treaty of 1814, without even specifying what he considers to be that portion of that convention. If the undersigned had desired to strengthen his former position, he might have repeated with great effect the argument contained in the note of Lord Aberdeen to the Duke of Sotomayor, dated 30th June, 1845, in which his Lordship clearly established that all the treaties of commerce subsisting between Great Britain and Spain previous to 1796 were confined to the trade with Spain alone, and did not embrace her colonies and remote possessions.

The second proposition of the British Plenipotentiary deserves greater attention. Does the Nootka Sound convention belong to that class of treaties containing "an acknowledgment of subsisting rights—an admission of certain principles of international law" not to be abrogated by war? Had Spain by this convention acknowledged the right of all nations to make discoveries, plant settlements, and establish colonies on the north-west coast of America, bringing with them their sovereign jurisdiction, there would have been much force in the argument. But such an admission never was made, and never was intended to be made, by Spain. The Nootka convention is arbitrary and artificial in the highest degree, and is anything rather than the

mere acknowledgment of simple and elementary principles consecrated by the law of nations. In all its provisions it is expressly confined to Great Britain and Spain, and acknowledges no right whatever in any third power to interfere with the north-west coast of America. Neither in its terms, nor in its essence, does it contain any acknowledgment of previously subsisting territorial rights in Great Britain, or any other nation. It is strictly confined to future engagements; and these are of a most peculiar character. Even under the construction of its provisions maintained by Great Britain, her claim does not extend to plant colonies—which she would have had a right to do under the law of nations, had the country been unappropriated; but it is limited to a mere right of joint occupancy, not in respect to any part, but to the whole, the sovereignty remaining in abeyance. And to what kind of occupancy? Not separate and distinct colonies, but scattered settlements, intermingled with each other, over the whole surface of the territory, for the single purpose of trading with the Indians, to all of which the subjects of each power should have free access, the right of exclusive dominion remaining suspended. Surely, it cannot be successfully contended that such a treaty is "an admission of certain principles of international law," so sacred and so perpetual in their nature as not to be annulled by war. On the contrary, from the character of its provisions, it cannot be supposed for a single moment that it was intended for any purpose but that of a mere temporary arrangement between Great Britain and Spain. The law of nations recognizes no such principles in regard to unappropriated territory as those embraced in this treaty; and the British Plenipotentiary must fail in the attempt to prove that it contains "an admission of certain principles of international law," which will survive the shock of war.

But the British Plenipotentiary contends that from the silence of Spain during the negotiations of 1818 between Great Britain and the United States respecting the Oregon territory, as well as "from her silence with respect to the continued occupation by the British of their settlements in the Columbia territory subsequently to the convention of 1814," it may fairly "be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force."

The undersigned cannot imagine a case where the obligations of a treaty, once extinguished by war, can be revived without a positive agreement to this effect between the parties. Even if both parties, after the conclusion of peace, should perform positive and unequivocal acts in accordance with its provisions, these must be construed as merely voluntary, to be discontinued by either at pleasure. But in the present case it is not even pretended that Spain performed any act in accordance with the convention of Nootka Sound after her treaty with Great Britain of 1814. Her mere silence is relied upon to revive that convention.

The undersigned asserts confidently, that neither by public nor private law will the mere silence of one party, whilst another is encroaching upon his rights, even if he had knowledge of this encroachment, deprive him of those rights. If this principle be correct as applied to individuals, it holds with much greater force in regard to nations. The feeble may not be in a condition to complain against the powerful; and thus the encroachment of the strong would convert itself into a perfect title against the weak.

In the present case it was scarcely possible for Spain even to have learned the pendency of negotiations between the United States and Great Britain, in relation to the north-west coast of America, before she had ceded all her rights on that coast to the former by the Florida treaty of the 22nd of February, 1819. The convention of joint occupation between the United States and Great Britain was not signed at London until the 20th of October, 1818, but four months previous to the date of the Florida treaty; and the ratifications were not exchanged, and the convention published, until the 30th of January, 1819.

Besides, the negotiations which terminated in the Florida treaty had been commenced as early as December, 1815, and were in full progress on the 20th October, 1818, when the convention was signed between Great Britain and the United States. It does not appear, therefore, that Spain had any knowledge of the existence of these negotiations; and even if this were otherwise she would have had no motive to complain, as she was in the very act of transferring all her rights to the United States.

"But," says the British Plenipotentiary, "Spain looked in silence on the continued occupation by the British of the settle-

ments in the Columbia territory subsequently to the convention of 1814, and therefore she considered the Nootka Sound convention to be still in force." The period of this silence, so far as it could affect Spain, commenced on the 28th day of August, 1814, the date of the additional articles to the treaty of Madrid, and terminated on the 22nd of February, 1819, the date of the Florida treaty. Is there the least reason from this silence to infer an admission by Spain of the continued existence of the Nootka Sound convention? In the first place, this convention was entirely confined "to landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there." It did not extend to the interior. At the date of this convention no person dreamed that British traders from Canada or Hudson's Bay would cross the Rocky Mountains and encroach on the rights of Spain from that quarter. Great Britain had never made any settlement on the north-western coast of America from the date of the Nootka Sound convention until the 22nd of February, 1819, nor, so far as the undersigned is informed, has she done so down to the present moment. Spain could not, therefore, have complained of any such settlement. In regard to the encroachments which had been made from the interior by the North-west Company, neither Spain nor the rest of the world had any specific knowledge of their existence. But even if the British Plenipotentiary had brought such knowledge home to her—which he has not attempted—she had been exhausted by one long and bloody war, and was then engaged in another with her colonies; and was, besides, negotiating for a transfer of all her rights on the north-western coast of America to the United States. Surely these were sufficient reasons for her silence, without inferring from it that she acquiesced in the continued existence of the Nootka convention. If Spain had entertained the least idea that the Nootka convention was still in force, her good faith and her national honour would have caused her to communicate this fact to the United States before she had ceded this territory to them for an ample consideration. Not the least intimation of this kind was ever communicated.

Like Great Britain in 1818, Spain in 1819 had no idea that the

Nootka Sound convention was in force. It had then passed away, and was forgotten.

The British Plenipotentiary alleges, that the reason why Great Britain did not assert the existence of the Nootka convention during the negotiations between the two Governments in 1818 was, that no occasion had arisen for its interposition, the American Government not having then acquired the title of Spain. It is very true that the United States had not then acquired the Spanish title; but is it possible to imagine that throughout the whole negotiations the British Commissioners, had they supposed this convention to have been in existence, would have remained entirely silent in regard to a treaty which, as Great Britain now alleges, gave her equal and co-ordinate rights with Spain to the whole north-west coast of America? At that period Great Britain confined her claims to those arising from discovery and purchase from the Indians. How vastly she could have strengthened these claims had she then supposed the Nootka convention to be in force, with her present construction of its provisions! Even in 1824 it was first introduced into the negotiation, not by her commissioners, but by Mr. Rush, the American Plenipotentiary.

But the British Plenipotentiary argues that "the United States can found no claim on discovery, exploration, and settlement effected previously to the Florida treaty, without admitting the principles of the Nootka convention;" "nor can they appeal to any exclusive right as acquired by the Florida treaty without upsetting all claims adduced in their own proper right by reason of discovery, exploration, and settlement antecedent to that arrangement."

This is a most ingenious method of making two distinct and independent titles held by the same nation worse than one—of arraying them against each other, and thus destroying the validity of both. Does he forget that the United States own both these titles, and can wield them either separately or conjointly against the claim of Great Britain at their pleasure? From the course of his remarks, it might be supposed that Great Britain, and not the United States, had acquired the Spanish title under the Florida treaty. But Great Britain is a third party—an entire stranger to both these titles—and has no right whatever to marshal the one against the other.

By what authority can Great Britain interpose in this manner? Was it ever imagined in any court of justice that the acquisition of a new title destroyed the old one; and, *vice versâ*, that the purchase of the old title destroyed the new one? In a question of mere private right it would be considered absurd if a stranger to both titles should say to the party who made a settlement, "You shall not avail yourself of your possession, because this was taken in violation of another outstanding title; and, although I must admit that you have also acquired this outstanding title, yet even this shall avail you nothing, because, having taken possession previously to your purchase, you thereby evinced that you did not regard such title as valid." And yet such is the mode by which the British Plenipotentiary has attempted to destroy both the American and Spanish titles. On the contrary, in the case mentioned, the possession and the outstanding title being united in the same individual, these conjoined would be as perfect, as if both had been vested in him from the beginning.

The undersigned, whilst strongly asserting both these titles, and believing each of them separately to be good as against Great Britain, has studiously avoided instituting any comparison between them. But admitting, for the sake of argument merely, that the discovery by Captain Gray of the mouth of the Columbia, its exploration by Lewis and Clarke, and the settlement upon its banks at Astoria, were encroachments on Spain, she, and she alone, had a right to complain. Great Britain was a third party, and, as such, had no right to interfere in the question between Spain and the United States. But Spain, instead of complaining of these acts as encroachments, on the 22nd of February, 1819, by the Florida treaty, transferred the whole title to the United States. From that moment all possible conflict between the two titles was ended, both being united in the same party. Two titles which might have conflicted, therefore, were thus blended together. The title now vested in the United States is just as strong as though every act of discovery, exploration, and settlement on the part of both Powers had been performed by Spain alone, before she had transferred all her rights to the United States. The two Powers are one in this respect; the two titles are one; and, as the undersigned will show hereafter, they serve to confirm and

strengthen each other. If Great Britain, instead of the United States, had acquired the title of Spain, she might have contended that those acts of the United States were encroachments; but, standing in the attitude of a stranger to both titles, she has no right to interfere in the matter.

The undersigned deems it unnecessary to pursue this branch of the subject further than to state that the United States, before they had acquired the title of Spain, always treated that title with respect. In the negotiation of 1818 the American Plenipotentiaries "did not assert that the United States had a perfect right to that country, but insisted that their claim was at least good against Great Britain;" and the convention of October 20, 1818, unlike that of Nootka Sound, reserved the claims of any other power or state to any part of the said country. This reservation could have been intended for Spain alone. But ever since the United States acquired the Spanish title, they have always asserted and maintained their rights in the strongest terms up to the Russian line, even whilst offering, for the sake of harmony and peace, to divide the territory in dispute by the 49th parallel of latitude.

The British Plenipotentiary, then, has entirely failed to sustain his position, that the United States can found no claim on discovery, exploration, and settlement, without admitting the principles of the Nootka Convention. That convention died on the commencement of the war between Spain and England in 1796, and has never since been revived.

The British Plenipotentiary next "endeavours to prove that even if the Nootka Sound convention had never existed, the position of Great Britain, in regard to her claim, whether to the whole, or to any particular portion of the Oregon territory, is at least as good as that of the United States." In order to establish this position, he must show that the British claim is equal in validity to the titles both of Spain and the United States. These can never now be separated. They are one and the same. Different and diverging as they may have been before the Florida treaty, they are now blended together and identified. The separate discoveries, explorations, and settlements of the two powers previous to that date must now be considered as if they had all been made by the United States alone. Under this palpable

view of the subject, the undersigned was surprised to find that in the comparison and contrast instituted by the British Plenipotentiary between the claim of Great Britain and that of the United States, he had entirely omitted to refer to the discoveries, explorations, and settlements made by Spain. The undersigned will endeavour to supply the omission.

But, before he proceeds to the main argument on this point, he feels himself constrained to express his surprise that the British Plenipotentiary should again have invoked, in support of the British title, the inconsistency between the Spanish and American branches of the title of the United States. The undersigned cannot forbear to congratulate himself upon the fact, that a gentleman of Mr. Pakenham's acknowledged ability has been reduced to the necessity of relying chiefly upon such a support for sustaining the British pretensions. Stated in brief, the argument is this:—The American title is not good against Great Britain, because inconsistent with that of Spain; and the Spanish title is not good against Great Britain, because inconsistent with that of the United States. The undersigned had expected something far different from such an argument in a circle. He had anticipated that the British Plenipotentiary would have attempted to prove that Spain had no right to the north-western coast of America; that it was vacant and unappropriated; and hence, under the law of nations, was open to discovery, exploration, and settlement by all nations. But no such thing. On this vital point of his case he rests his arguments solely on the declaration made by the undersigned, that the title of the United States to the valley of the Columbia was perfect and complete before the treaties of joint occupation of October, 1818, and August, 1827, and before the date of the Florida treaty in 1819. But the British Plenipotentiary ought to recollect, that this title was asserted to be complete, not against Spain, but against Great Britain; that the argument was conducted not against a Spanish, but a British Plenipotentiary; and that the United States, and not Great Britain, represent the Spanish title; and, further, that the statement from which he extracts these declarations was almost exclusively devoted to prove, in the language quoted by the British Plenipotentiary

himself, that "Spain had a good title, as against Great Britain, to the whole of the Oregon territory." The undersigned has never, as he before observed, instituted any comparison between the American and the Spanish titles. Holding both—having a perfect right to rely upon both, whether jointly or separately,—he has strongly asserted each of them in its turn, fully persuaded that either the one or the other is good against Great Britain, and that no human ingenuity can make the Spanish title, now vested in the United States, worse than it would have been, had it remained in the hands of Spain.

Briefly to illustrate and enforce this title shall be the remaining task of the undersigned.

And, in the first place, he cannot but commend the frankness and candour of the British Plenipotentiary in departing from the course of his predecessors, and rejecting all discoveries previous to those of Captain Cook, in the year 1778, as foundations of the British title. Commencing with discovery at a period so late, the Spanish title, on the score of antiquity, presents a strong contrast to that of Great Britain. The undersigned had stated, as an historical and "striking fact, which must have an important bearing against the claim of Great Britain, that this convention (the Nootka), which was dictated by her to Spain, contains no provision impairing the ultimate sovereignty which that power had asserted for nearly three centuries over the whole western side of North America, as far north as the 61st degree of latitude, and which had never been seriously questioned by any European nation. This had been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European Governments. It had been admitted even beyond the latitude of 54° 40′ north, by Russia, then the only power having claims which could come into collision with Spain; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire." These historical facts had not been, as they could not be, controverted by the British Plenipotentiary, although they were brought under his particular observation, and were even quoted by him with approbation, for the purpose of showing the inconsistency of the several titles held by the United States. In the language of Count

Fernan de Nunez, the Spanish Ambassador at Paris, to M. de Montmorin, the Secretary of the Foreign Department of France, under date of June 16th, 1790:—"By the treaties, demarcations, takings of possession, and the most decided acts of sovereignty exercised by the Spaniards in those stations from the reign of Charles II., and authorized by that monarch in 1692, the original vouchers for which shall be brought forward in the course of the negotiation, all the coast to the north of Western America, on the side of the South Sea, as far as beyond what is called Prince William's Sound, which is in the 61st degree, is acknowledged to belong exclusively to Spain."

Compared with this ancient claim of Spain, acquiesced in by all European nations for centuries, the claim of Great Britain, founded on discoveries commenced at so late a period as the year 1778, must make an unfavourable first impression.

Spain considered the north-west coast of America as exclusively her own. She did not send out expeditions to explore that coast for the purpose of rendering her title more valid. When it suited her own convenience, or promoted her own interest, she fitted out such expeditions of discovery to ascertain the character and extent of her own territory, and yet her discoveries along that coast are far earlier than those of the British.

That Juan de Fuca, a Greek, in the service of Spain, in 1592, discovered and sailed through the strait now bearing his name, from its southern to its northern extremity, and thence returned by the same passage, no longer admits of reasonable doubt. An account of this voyage was published in London in 1625, in a work called the *Pilgrims*, by Samuel Purchas. This account was received from the lips of Fuca himself at Venice, in April, 1596, by Michael Lock, a highly respectable English merchant.

During a long period this voyage was deemed fabulous because subsequent navigators had in vain attempted to find these straits. Finally, after they had been found, it was discovered that the descriptions of De Fuca corresponded so accurately with their geography and the facts presented by nature upon the ground, that it was no longer possible to consider his narration as fabulous. It is true that the opening of the straits from the south lies between the 48th and 49th parallels of latitude, and not between the 47th

and 48th parallels, as he had supposed; but this mistake may be easily explained by the inaccuracy so common throughout the 16th century in ascertaining the latitude of places in newly discovered countries.

It is also true that De Fuca, after passing through these straits, supposed he had reached the Atlantic, and had discovered the passage so long and so anxiously sought after between the two oceans; but from the total ignorance and misapprehension which had prevailed at that early day of the geography of this portion of North America, it was natural for him to believe that he had made this important discovery.

Justice has at length been done to his memory, and these straits which he discovered will, in all future time, bear his name. Thus, the merit of the discovery of the Straits of Fuca belongs to Spain; and this nearly two centuries before they had been entered by Captain Berkeley, under the Austrian flag.

It is unnecessary to detail the discoveries of the Spaniards, as they regularly advanced to the north from their settlements on the western coasts of North America, until we reach the voyage of Captain Juan Perez in 1774. That navigator was commissioned by the Viceroy of Mexico to proceed in the corvette Santiago to the 60th degree of north latitude, and from that point to examine the coast down to Mexico. He sailed from San Blas on the 25th of January, 1774. In the performance of this commission, he landed first on the north-west coast of Queen Charlotte's Island, near the 54th degree of north latitude, and thence proceeded south along the shore of that island, and of the great islands of Quadra and Vancouver, and then along the coast of the continent until he reached Monterey. He went on shore and held intercourse with the natives at several places, and especially at the entrance of a bay in latitude 49½ degrees, which he called Port San Lorenzo, the same now known by the name of Nootka Sound. In addition to the journals of this voyage, which render the fact incontestable, we have the high authority of Baron Humboldt in its favour. That distinguished traveller, who had access to the manuscript documents in the city of Mexico, states that "Perez, and his pilot Estevan Martinez, left the port of San Blas on the 24th of January, 1774. On the 9th of August they anchored (the first of all

European navigators) in Nootka Road, which they called the Port of San Lorenzo, and which the illustrious Cook, four years afterwards, called King George's Sound."

In the next year (1775) the Viceroy of Mexico again fitted out the Santiago, under the command of Bruno Heceta, with Perez, her former commander, as ensign, and also a schooner, called the Senora, commanded by Juan Francisco de la Bodegay Quadra. These vessels were commissioned to examine the north-western coast of America as far as the 65th degree of latitude, and sailed in company from San Blas on the 15th of March, 1775.

It is unnecessary to enumerate the different places on the coast examined by these navigators either in company or separately. Suffice it to say, that they landed at many places on the coast from the 41st to the 57th degree of latitude, on all of which occasions they took possession of the country in the name of their sovereign, according to a prescribed regulation; celebrating mass, reading declarations asserting the right of Spain to the territory, and erecting crosses with inscriptions to commemorate the event. Some of these crosses were afterwards found standing by British navigators. In reference to these voyages, Baron Humboldt says:—"In the following year (1775, after that of Perez), a second expedition set out from San Blas, under the command of Heceta, Ayala, and Quadra. Heceta discovered the mouth of the Rio Columbia, called the Entrada de Heceta, the peak of San Jacinto (Mount Edgecomb), near Norfolk Bay, and the fine port of Bucareli. I possessed two very curious small maps, engraved in 1788, in the city of Mexico, which gave the bearings of the coast from the 27th to the 58th degree of latitude, as they were discovered in the expedition of Quadra."

In the face of these incontestable facts, the British Plenipotentiary says:—"That Captain Cook must also be considered the discoverer of Nootka Sound, in consequence of the want of authenticity in the alleged previous discovery of that port by Perez." And yet Cook did not even sail from England until the 12th of July, 1776, nearly two years after Perez had made this discovery. The chief object of Cook's voyage was the discovery of a north-west passage; and he never landed at any point of the continent south of Nootka Sound. It is true, that in coasting

along the continent before he reached this place, he had observed Cape Flattery; but he was entirely ignorant that this was the southern entrance of the Straits of Fuca. In his journal he admits that he had heard some account of the Spanish voyages of 1774 and 1775, before he left England; and it is beyond question that, before his departure, accounts of the voyage of Quadra had been published both in Madrid and London. From Nootka Sound, Cook did not again see land until he reached the 57th degree of north latitude.

In 1787, it is alleged by the British Plenipotentiary, that Captain Berkeley, a British subject, discovered the Straits of Fuca; but these straits had been discovered by Juan de Fuca nearly two centuries before. Besides, if there had been any merit in this discovery of Captain Berkeley, it would have belonged to Austria, in whose service he was, and under whose colours he sailed, and cannot be appropriated by Great Britain.

And here it is worthy of remark, that these discoveries of Cook and Berkeley, in 1778 and 1787, are all those on which the British Plenipotentiary relies, previous to the date of the Nootka Sound convention, in October, 1790, to defeat the ancient Spanish title to the north-west coast of America.

The undersigned will now take a position which cannot, in his opinion, be successfully assailed; and this is, that no discovery, exploration, or settlement made by Great Britain on the north-west coast of America, after the date of the Nootka Sound convention, and before it was terminated by the war of 1796, can be invoked by that power in favour of her own title, or against the title of Spain. Even according to the British construction of that convention, the sovereignty over the territory was to remain in abeyance during its continuance, as well in regard to Great Britain as to Spain. It would, therefore, have been an open violation of faith on the part of Great Britain, after having secured the privileges conferred upon her by the convention, to turn round against her partner and perform any acts calculated to divest Spain of her ultimate sovereignty over any portion of the country. The palpable meaning of the convention was, that during its continuance the rights of the respective parties, whatever they might have been, should remain just as they had existed at its commencement.

The Government of Great Britain is not justly chargeable with any such breach of faith. Captain Vancouver acted without instructions in attempting to take possession of the whole north-western coast of America in the name of his sovereign. This officer, sent out from England to execute the convention, did not carry with him any authority to violate it in this outrageous manner.

Without this treaty he would have been a mere intruder; under it, Great Britain had a right to make discoveries and surveys, not thereby to acquire title, but merely to enable her subjects to select spots the most advantageous, to use the language of the convention, "for the purpose of carrying on their commerce with the natives of the country, or of making settlements there."

If this construction of the Nootka Sound convention be correct —and the undersigned does not see how it can be questioned— then Vancouver's passage through the Straits of Fuca, in 1792, and Alexander Mackenzie's journey across the continent in 1793, can never be transformed into elements of title in favour of Great Britain.

But even if the undersigned could be mistaken in these positions, it would be easy to prove that Captain John Kendrick, in the American sloop Washington, passed through the Straits of Fuca, in 1789; three years before Captain Vancouver performed the same voyage. The very instructions to the latter, before he left England in January, 1791, refers to this fact, which had been communicated to the British Government by Lieutenant Meares, who has rendered his name so notorious by its connexion with the transactions preceding the Nootka Sound convention. It is, moreover, well known that the whole southern division of the straits had been explored by the Spanish navigators Elisa and Quimper—the first in 1790, and the latter in 1791.

After what has been said, it will be perceived how little reason the British Plenipotentiary has for stating that his Government has, "as far as relates to Vancouver's island, as complete a case of discovery, exploration, and settlement, as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of that island."

The discovery thus relied upon is that of Nootka Sound, by Cook, in 1778, when it has been demonstrated that this port was first discovered by Perez, in 1774. The exploration is that by Vancouver, in passing through the Straits of Fuca, in 1792, and examining the coasts of the territory in dispute, when De Fuca himself had passed through these straits in 1592, and Kendrick again in 1789; and a complete examination of the western coast had been made in 1774 and 1775, both by Perez and Quadra. As to possession, if Meares was ever actually restored to his possessions at Nootka Sound, whatever those may have been, the undersigned has never seen any evidence of the fact. It is not to be found in the journal of Vancouver, although this officer was sent from England for the avowed purpose of witnessing such a restoration. The undersigned knows not whether any new understanding took place between the British and Spanish Governments on this subject; but one fact is placed beyond all doubt, that the Spaniards continued in the undisturbed possession of Nootka Sound until the year 1795, when they voluntarily abandoned the place. Great Britain has never at any time since occupied this or any other position on Vancouver's Island. Thus on the score of either discovery, exploration, or possession, this island seems to be the very last portion of the territory in dispute to which she can assert a just claim.

In the mean time, the United States were proceeding with the discoveries which served to complete and confirm the Spanish American title to the whole of the disputed territory.

Captain Robert Gray, in June, 1789, in the sloop Washington, first explored the whole eastern coast of Queen Charlotte's Island.

In the autumn of the same year, Captain John Kendrick, having in the mean time surrendered the command of the Columbia to Captain Gray, sailed, as has been already stated, in the sloop Washington, entirely through the Straits of Fuca.

In 1791, Captain Gray returned to the North Pacific, in the Columbia; and in the summer of that year, examined many of the inlets and passages between the 54th and 56th degrees of latitude, which the undersigned considers it unnecessary to specify.

On the 7th May, 1792, he discovered and entered Bulfinch's harbour, where he remained at anchor three days, trading with the Indians.

On the 11th May, 1792, Captain Gray entered the mouth of the Columbia, and completed the discovery of that great river. This river had been long sought in vain by former navigators. Both Meares and Vancouver, after examination, had denied its existence. Thus is the world indebted to the enterprise, perseverance, and intelligence, of an American captain of a trading vessel, for their first knowledge of this the greatest river on the Western coast of America—a river, whose head-springs flow from the gorges of the Rocky Mountains, and whose branches extend from the 42nd to the 53rd parallels of latitude. This was the last and most important discovery on the coast, and has perpetuated the name of Robert Gray. In all future time, this great river will bear the name of his vessel.

It is true, that Bruno Heceta, in the year 1775, had been opposite the bay of the Columbia; and the currents and eddies of the waters, caused him, as he remarks, to believe that this was "the mouth of some great river, or of some passage to another sea;" and his opinion seems decidedly to have been, that this was the opening of the strait, discovered by Juan de Fuca, in 1592. To use his own language: "Notwithstanding the great difference between the position of this bay and the passage mentioned by De Fuca, I have little difficulty in conceiving that they may be the same, having observed equal or greater differences in the latitudes of other capes and ports on this coast, as I shall show at its proper time; and in all cases, the latitudes thus assigned are higher than the real ones."

Heceta, from his own declaration, had never entered the Columbia, and he was in doubt whether the opening was the mouth of a river or an arm of the sea; and subsequent examinations of the coast by other navigators, had rendered the opinion universal that no such river existed, when Gray first bore the American flag across its bar, sailed up its channel for 25 miles, and remained in the river nine days, trading with the Indians.

The British Plenipotentiary attempts to depreciate the value to the United States of Gray's discovery, because his ship (the

Columbia) was a trading, and not a national vessel. As he furnishes no reason for this distinction, the undersigned will confine himself to the remark, that a merchant vessel bears the flag of her country at her mast-head, and continues under its jurisdiction and protection, in the same manner as though she had been commissioned for the express purpose of making discoveries. Besides, beyond all doubt, this discovery was made by Gray; and to what nation could the benefit of it belong, unless it be to the United States? Certainly not to Great Britain. And if to Spain, the United States are now her representative.

Nor does the undersigned perceive in what manner the value of this great discovery can be lessened by the fact that it was first published to the world through the journal of Captain Vancouver, a British authority. On the contrary, its authenticity being thus acknowledged by the party having an adverse interest, is more firmly established than if it had been first published in the United States.

From a careful examination and review of the subject, the undersigned ventures the assertion, that to Spain and the United States belong all the merit of the discovery of the north-west coast of America south of the Russian line; not a spot of which, unless it may have been the shores of some of the interior bays and inlets, after the entrance to them had been known, was ever beheld by British subjects until after it had been seen or touched by a Spaniard or an American. Spain proceeded in this work of discovery, not as a means of acquiring title, but for the purpose of examining and surveying territory to which she believed she had an incontestable right. This title had been sanctioned for centuries by the acknowledgment or acquiescence of all the European Powers. The United States alone could have disputed this title, and that only to the extent of the region watered by the Columbia. The Spanish and American titles, now united by the Florida Treaty, cannot be justly resisted by Great Britain. Considered together, they constitute a perfect title to the whole territory in dispute, ever since the 11th May, 1792, when Captain Gray passed the bar at the mouth of the Columbia, which he had observed in August, 1788.

The undersigned will now proceed to show that this title of the

United States, at least to the possession of the territory at the mouth of the Columbia, has been acknowledged by the most solemn and unequivocal acts of the British Government.

After the purchase of Louisiana from France, the Government of the United States fitted out an expedition under Messrs. Lewis and Clark; who, in 1805, first explored the Columbia, from its source to its mouth, preparatory to the occupation of the territory by the United States.

In 1811, the settlement at Astoria was made by the Americans near the mouth of the river, and several other posts were established in the interior along its banks. The war of 1812 between Great Britain and the United States thus found the latter in peaceable possession of that region. Astoria was captured by Great Britain during this war. The treaty of peace concluded at Ghent in December, 1814, provided that "all territory, places, and possessions whatsoever, taken by either party from the other during the war," &c., "shall be restored without delay." In obedience to the provisions of this treaty, Great Britain restored Astoria to the United States, and thus admitted, in the most solemn manner, not only that it had been an American territory or possession at the commencement of the war, but that it had been captured by British arms during its continuance. It is now too late to gainsay or explain away these facts. Both the treaty of Ghent, and the acts of the British Government under it, disprove the allegations of the British Plenipotentiary, that Astoria passed "into British hands by the voluntary act of the persons in charge of it," and "that it was restored to the United States in 1818 with certain well-authenticated reservations."

In reply to the first of these allegations, it is true that the agents of the (American) Pacific Fur Company, before the capture of Astoria, on the 16th of October, 1813, had transferred all that they could transfer—the private property of the company—to the (British) North-west Company; but it will scarcely be contended that such an arrangement could impair the sovereign rights of the United States to the territory. Accordingly the American flag was still kept flying over the fort until the 1st of December, 1813, when it was captured by His Majesty's sloop of war Racoon, and the British flag was then substituted.

That it was not restored to the United States "with certain well-authenticated reservations" fully appears from the act of restoration itself, bearing date 6th of October, 1818. This is as absolute and unconditional as the English language can make it. That this was according to the intention of Lord Castlereagh clearly appears from his previous admission to Mr. Rush of the right of the Americans to be reinstated, and to be the party in possession while treating on the title. If British Ministers afterwards, in despatches to their own agents, the contents of which were not communicated to the Government of the United States, thought proper to protest against our title, these were, in effect, but mere mental reservations, which could not affect the validity of their own solemn and unconditional act of restoration.

But the British Plenipotentiary, notwithstanding the American discovery of the Columbia by Captain Gray, and the exploration by Lewis and Clarke of several of its branches, from their sources in the Rocky Mountains as well as its main channel to the ocean, contends that because Thompson, a British subject, in the employment of the North-west Company, was the first who navigated the northern branch of that river, the British Government thereby acquired certain rights against the United States, the extent of which he does not undertake to specify. In other words, that after one nation had discovered and explored a great river and several tributaries, and made settlements on its banks, another nation, if it could find a single branch on its head-waters, which had not been actually explored, might appropriate to itself this branch, together with the adjacent territory. If this could have been done, it would have produced perpetual strife and collision among the nations after the discovery of America. It would have violated the wise principle consecrated by the practice of nations, which gives the valley drained by a river and its branches to the nation which had first discovered and appropriated its mouth.

But, for another reason, this alleged discovery of Thompson has no merits whatever. His journey was undertaken on behalf of the North-west Company for the mere purpose of anticipating the United States in the occupation of the mouth of the Columbia —a territory to which no nation, unless it may have been Spain, could, with any show of justice, dispute their right. They had

acquired it by discovery and by exploration, and were now in the act of taking possession. It was in an enterprise undertaken for such a purpose that Mr. Thompson, in hastening from Canada to the mouth of the Columbia, descended the North, arbitrarily assumed by Great Britain to be the main, branch of this river. The period was far too late to impair the title of either Spain or the United States by any such proceeding.

Mr. Thompson, on his return, was accompanied by a party from Astoria, under Mr. David Stuart, who established a post at the confluence of the Okinagan with the North branch of the Columbia, about 600 miles above the mouth of the latter.

In the next year (1812), a second trading post was established by a party from Astoria on the Spokan, about 650 miles from the ocean.

It thus appears that previous to the capture of Astoria by the British, the Americans had extended their possessions up the Columbia 650 miles. The mere intrusion of the North-west Company into this territory, and the establishment of two or three trading posts in 1811 and 1812 on the head-waters of the river, can surely not interfere with or impair the Spanish-American title. What this company may have done in the intermediate period until the 20th of October, 1818, the date of the first treaty of joint occupation, is unknown to the undersigned, from the impenetrable mystery in which they have veiled their proceedings. After the date of this treaty, neither Great Britain nor the United States could have performed any act affecting their claims to the disputed territory.

To sum up the whole, then, Great Britain cannot rest her claims to the North-west coast of America upon discovery. As little will her single claim by settlement at Nootka Sound avail her. Even Belsham, her own historian, 40 years ago, declared it to be certain, from the most authentic information, "that the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain."

The agents of the North-west Company, penetrating the continent from Canada, in 1806, established their first trading post West of the Rocky Mountains at Frazer's Lake, in the 54th degree of latitude: and this, with the trading posts established by

Thompson—to which the undersigned has just adverted—and possibly some others afterwards, previous to October, 1818, constitutes the claim of Great Britain by actual settlement.

Upon the whole, from the most careful and ample examination which the undersigned has been able to bestow upon the subject, he is satisfied that the Spanish-American title, now held by the United States, embracing the whole territory between the parallels of 42 degrees and 54 degrees 40 minutes, is the best title in existence to this entire region; and that the claim of Great Britain to any portion of it has no sufficient foundation. Even British geographers have not doubted our title to the territory in dispute. There is a large and splendid globe now in the Department of the State recently received from London, and published by Maltby and Co., "Manufacturers and Publishers to the Society for the Diffusion of Useful Knowledge," which assigns this territory to the United States.

Notwithstanding such was, and still is, the opinion of the President, yet, in the spirit of compromise and concession, and in deference to the action of his predecessors, the undersigned, in obedience to his instructions, proposed to the British Plenipotentiary to settle the controversy by dividing the territory in dispute by the 49th parallel of latitude, offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island, south of this latitude, which the British Government might desire. The British Plenipotentiary has correctly suggested that the free navigation of the Columbia River was not embraced in this proposal to Great Britain; but, on the other hand, the use of free ports on the southern extremity of this island had not been included in former offers.

Such a proposition as that which has been made never would have been authorized by the President had this been a new question.

Upon his accession to office he found the present negotiation pending. It had been instituted in the spirit and upon the principle of compromise. Its object, as avowed by the negotiators, was not to demand the whole territory in dispute for either country; but, in the language of the first protocol, "to treat of the respective claims of the two countries to the Oregon territory with

the view to establish a permanent boundary between them westward of the Rocky Mountains to the Pacific Ocean."

Placed in this position, and considering that Presidents Munroe and Adams had on former occasions offered to divide the territory in dispute by the 49th parallel of latitude, he felt it to be his duty not abruptly to arrest the negotiation, but so far to yield his own opinion as once more to make a similar offer.

Not only respect for the conduct of his predecessors, but a sincere and anxious desire to promote peace and harmony between the two countries, influenced him to pursue this course. The Oregon question presents the only intervening cloud which intercepts the prospect of a long career of mutual friendship and beneficial commerce between the two nations, and this cloud he desired to remove.

These are the reasons which actuated the President to offer a proposition so liberal to Great Britain.

And how has this proposition been received by the British Plenipotentiary? It has been rejected without even a reference to his own Government. Nay, more, the British Plenipotentiary, to use his own language, "trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government."

Under such circumstances, the undersigned is instructed by the President to say that he owes it to his own country, and a just appreciation of her title to the Oregon territory, to withdraw the proposition to the British Government which had been made under his direction; and it is hereby accordingly withdrawn.

In taking this necessary step, the President still cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace or interrupt the harmony now so happily subsisting between the two nations.

The undersigned avails himself, &c.,

JAMES BUCHANAN.

The Right Hon. R. Pakenham,
&c. &c.

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