Statement

The passage produced by Mr. Bancroft from Vattel's work appears to Her Majesty's Government to be as capable of an application favourable to them as of one unfavourable to them.

30. In another place (page 12) Mr. Bancroft says:—

"A party offering the draft of a Treaty is bound by the interpretation which it knew at the time that the other party gave it. Lord Aberdeen cannot have doubted how the Treaty was understood by Mr. MacLane, by Mr. Buchanan, and by the Senate of the United States. 'Where the terms of promise,' writes Paley, whose work was long a text-book at Oxford, 'admit of more senses than one, the promise is to be performed in the sense in which the promiser apprehended at the time that the promisee received it. This will not differ from the actual intention of the promiser, where the promise is given without collusion or reserve; but we put the rule in the above form to exclude evasion, wherever the promiser attempts to make his escape through some ambiguity in the expressions which he used.'"

Her Majesty's Government are not here concerned to dispute the general proposition that a party offering to another the draft of a Treaty is bound by the interpretation which it (the party offering) knew at the time the other party gave to the draft. But they do dispute, and submit they have disproved, Mr. Bancroft's particular proposition. Lord Aberdeen (he says) cannot have doubted how the Treaty was understood by Mr. MacLane, by Mr. Buchanan, and by the Senate of the United States. Her Majesty's Government have proved that Lord Aberdeen did not know until after the exchange of ratifications (if personally he ever knew) of Mr. MacLane's letter to Mr. Buchanan, of Mr. Buchanan's letter to Mr. MacLane,* or of Mr. Benton's speech (the views expressed in which Mr. Bancroft seems to ascribe to the Senate, as a body).

31. The doctrine contained in the passage cited by Mr. Bancroft from Dr. Paley's treatise on Moral and Political Philosophy appears to Her Majesty's Government generally true,† but here irrelevant. That doctrine applies to a promise in the ordinary sense, a unilateral promise, or an engagement taken by one party, wholly or mainly. It is not appropriate to the case of a contract, which the same treatise defines as a mutual promise. A few pages further in that treatise, the following is stated as "a rule which governs the construction of all contracts":—

"Whatever is expected by one side, and known to be so expected by the other, is to be deemed a part or condition of the contract."

This rule Her Majesty's Government submit to be judged by. Even if it were admitted (as it is not) that Mr. Bancroft has shewn what amounts (in the phraseology of Dr. Paley) to an expectation on the side of the United States, he has entirely failed to shew on the other side (that of Her Majesty's Government) a knowledge of the existence of that expectation. On the contrary, Her Majesty's Government have demonstrated their necessary ignorance on the point.

32. Sir Richard Pakenham (in his Memorandum before cited) says (he is writing some twelve years after the Treaty, and he speaks therefore in guarded phrase, but his testimony is clear):—

"I think I can safely assert that the Treaty of 15th June, 1846, was signed and ratified without any intimation to us whatever on the part of the United States' Government as to the particular direction to be given to the line of boundary contemplated by Article I of that Treaty."

V.

33. It remains to examine the arguments by which Mr. Bancroft endeavours to shew that the language of the Treaty points to the Canal de Haro and to that channel alone.

(i.) Mr. Bancroft refers (page 9) to the concise form of expression by which, he says, in both countries the line was described as the line of the "49th parallel and Fuca's Straits." Two observations occur: (1) Many persons, including Mr. Greenhow, used the name Fuca's Straits to embrace the waters, or at least the southern waters, of the Gulf of

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* Above, paragraph 23.

† It is, however, not altogether unimpeachable, as will appear from the criticisms of another English author, Austin, Lectures on Jurisprudence, vol. ii, p. 122.