

ishment within it, such an act of interference would be regarded as an unwarrantable intrusion, which she latter might justly resist. On the other hand, if the first discoverer neglects within a reasonable time to take actual possession of, to form settlements in, or make some actual use of, the regions he has discovered, the law of nations will not acknowledge in him any absolute right of property in or sovereignty over it, even though he may have set up monuments or memorials of his discovery at the time it was made. Such is the spirit of the rules in relation to the discovery and occupation of uninhabited territory, stated by writers on international law. It is certainly not easy to lay down any invariable rule in respect to the time within which, or the circumstances under which, a title by discovery must be perfected by occupation. The rules and maxims of international law are but a practical application of the principles of universal equity and justice, and in the settlement of questions of this nature, the real objects and intentions of the parties are to be sought for in a reasonable interpretation of their acts. I believe, however, the doctrine may be considered fairly inferable from the whole body of the law on this subject, that rights by discovery are good until superseded by rights of occupation. With regard to Great Britain, I believe I may safely say that her practical rule pushes this doctrine farther. She resists all attempts by others to acquire rights of occupation in territories which she has discovered, and thus renders her own rights by discovery perpetual. She discovered the Chatham islands in 1791 by Lieut. Broughton, in the armed tender Chatham, after parting company with Vancouver on their way to the northwest coast.* She has not occupied them until recently; and I am not sure that there is now anything more than a whaling establishment on them; but she insists that no other power shall occupy them, because it would be injurious to her settlements in New Zealand, which are nearly five hundred miles distant from them.

I propose now to see what acts have been performed in respect to Oregon by different nations; or, in other words, to examine the nature of the discoveries which have been made, and the establishments which have been formed in that region, applying to them as I proceed the principles I have concisely stated.

The first discoverer of any part of the northwest coast of America north of, or in immediate contiguity, with the boundary between us and Mexico, was Ferrello. He was the pilot of Cabrillo, the commander of an expedition fitted out in Mexico in 1543, fifty-one years after the discovery of San Domingo by Columbus. Cabrillo died on the voyage, and Ferrello succeeded to the command. He examined the coast from the Santa Barbara islands, in latitude 34° to the 43d parallel of latitude, but the latter part of his voyage was made, I believe, without landing, and by a mere inspection of the coast from his vessel. In 1535, eight years before this exploration was made, possession had been taken of California by Fernando Cortes; in the name of Spain, and an establishment had been formed in 24° of north latitude. This establishment was kept up for several years; and the gulf of California to its northern extremity, with the western coast as high as 38° north latitude, had been explored. These explorations, and the establishments formed in carrying them on, were all made in pursuance of a settled purpose on the part of Spain to extend her dominion over the uninhabited territory on the northwestern coast of America. The discoveries to which these explorations led were therefore not accidental. The expeditions

were fitted out for the single object referred to. In the prosecution of this design, it is true, the most arrogant and absurd pretensions were set up by Spain in respect to the exclusive navigation of the Pacific; but these must not be permitted to prejudice her just claims to portions of the continent washed by its waters on the ground of discovery and occupation, and the declared purposes she had in view.

The next navigator who appeared on the northwest coast was Sir Francis Drake. He left England in 1577, on a predatory expedition against the dominions of Spain in the Pacific. In 1579, after having accomplished his object, and carried devastation and terror into the unprotected Spanish settlements on the coast, he landed in 38° north latitude, in a bay supposed to be that of San Francisco, and passed five weeks in repairing his vessel. He took possession of the country and called it New Albion. It is pretended that Sir Francis Drake followed the coast as far north as 48°; but the best authorities fix the northerly limit of his examination, which was a mere inspection from his vessel, at 43°, the supposed boundary of Ferrello's inspection more than a quarter of a century before. As the British negotiators have abandoned Drake's expedition as a part of the basis of their claim, I will not dwell upon it excepting to add that his examinations were accidental; they were not made in pursuance of any purpose of exploration or settlement; they led to the discovery of no new territory; and they were not followed up by an actual occupation of the soil. For two centuries no claim that I am aware of was set up by Great Britain on the ground of Drake's pretended discoveries.

The next explorer was the Greek pilot, Juan de Fuca, who was sent to the northwest coast in 1592, thirteen years after Drake, by the viceroy of Mexico, for the purpose of discovering the imaginary strait of Anian, supposed, at that day, to connect the north Pacific with the north Atlantic ocean. In the prosecution of his voyage he entered an extensive inlet from the sea, as he supposed, between the 47th and 48th parallels of latitude, and sailed more than twenty days in it. Such is his own account as detailed by Michael Loock; and it accords, as well as his descriptions, so nearly with the actual nature of the localities, that it is now generally conceded that it is substantially true; and his name is conferred by universal consent on the strait between the 48th and 49th parallels of latitude. Spain had thus made discoveries on the northwest coast before the close of the 16th century as far north at least as the 48th degree of latitude, and the nature of her explorations, from their extent and the settled purpose in pursuance of which they were made, excludes all claim of discovery by others down to that period of time.

In 1603, Vizcaino, a distinguished naval commander, under an order from the king of Spain, made a careful survey of the coast of California to Monterey, in the 37th parallel of latitude; and he also explored the coast as far north as the 43d parallel, giving names to several bays and promontories as he advanced. During the seventeenth century, at least seven different attempts were made by the Spaniards to form establishments in California; but, from the hostility of the natives, and other causes, these attempts failed, so far as any permanent settlement is concerned, excepting the last, which was made in 1697. But, within sixty years from this time, sixteen principal establishments were formed by the Jesuits on the western coast of America, between the Gulf of California and cape Mendocino,

*See Vancouver's Journal, Book 1, chap. 2.