

OREGON TERRITORY.

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MR. PAKENHAM, THE BRITISH PLENIPOTENTIARY'S REPLY TO THE AMERICAN GOVERNMENT.

WASHINGTON, JULY 29th, 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 22d 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 42d 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 Escorial, 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

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