

A right in British subjects generally, without regard to the trade with the Hudson's Bay Company by their license, cannot (in my opinion) be deduced from the second article of this treaty. It must be sought for in the principles of the law of nations, applicable to the state and condition of two potentates; the one owning and occupying the country on both sides of the lower part of a great navigable river, with the entrance thereof into the sea, the other owning and occupying the country on the upper waters of the same river. In such like cases the law of nations allows to the people owning and inhabiting the upper country the right of passage by the river to and from the sea, for the purposes of lawful trade and commerce, they conducting themselves peaceably and with due respect to the rights of others; coupled, however, with the condition that the nation through whose territory such foreigners are to have passage, may make all regulations, and take all precautions, necessary and proper for the preservation of its neutral relations, safety, and defence.

In time of peace the navigation of the Columbia river by British subjects, for the lawful purposes of trade and intercourse, will be of small concern. In time of war, former treaties relating to matters not executed, but executory between the belligerents, cease to have any further obligation or effect than the one or the other parties shall voluntarily allow; unless some special matter shall have been agreed otherwise in reference to the breaking out of hostilities. In times of peace and war, the law of nations will justify the United States in using all precautions, and making all regulations, necessary and proper for self defence and security, and the preservation of their own just rights, and of their neutral relations.

When to these principles of international law we add the known policy and usages of the United States to cultivate trade and intercourse with all foreign nations, denying to none the navigation of our waters for the purposes of lawful commerce to and from their own dominions, conducted with due respect to the law of nations and to our domestic relations, the navigation of the Columbia river by British subjects sinks into insignificance, into a mere abstraction, in comparison with the value and importance of the possessory rights of the Hudson's Bay Company, under their charter and the guaranty contained in the third article of the treaty.

The possessory rights of the Hudson's Bay Company, alluded to in the third article of the treaty, have grown out of their royal charter of 1670, granting in express terms the powers of government and dominion, and rights of tenure in free and common soccage, with other rights, powers, and privileges of an exclusive character, including the rights of exclusive trade and commerce in perpetuity. The powers, authorities, rights, and privileges expressly granted, carry with them incidental powers necessary and proper to the rightful and just enjoyment of the privileges, and the attainment of the objects and ends for which the company was incorporated. The possessory rights springing out of this perpetual charter, to be respected under this third article, are so wide, so long, so deep, so multiplied, and so indefinite, as to affect seriously the question of public domain which will remain (if any) to the United States after fulfilling in good faith this article of the treaty.

The nature and extent of the rights coming within the compass of this third article of the treaty, whether they extend to the whole territory possessed south of the line of compromise, or only to parts thereof; to what parts; the local extent of the parts; whether they must have been defined by visible boundaries, natural or artificial; or shall have constructive extension incident on actual seating and improving; whether all the grounds commonly used for pasturing herds and flocks, ranging at pleasure, and often changing; whether places commonly used by the company for getting supplies of fuel, timber, and lumber, for pur-