

"Shall this letter be acknowledged and Mr. Bancroft be thanked for it?"

"And if so, shall the underlined assumption of Mr. Bancroft be passed over without observation?"

Statement.

The underlined words were:—"through the middle of which our boundary line passes." Lord Palmerston's minute in answer was as follows:—

"Thank him, and say that the information contained in these charts as to soundings will no doubt be of great service to the Commissioners to be appointed, by assisting them in determining where the line of boundary described by the Treaty ought to run."*

IV.

26. The next class of Mr. Bancroft's arguments is to be found in those passages in which he contends, in effect, that Her Majesty's Government are precluded from disputing the interpretation put on the Treaty by the United States, on the ground that the framing of the Treaty was (as he represents) the work of Her Majesty's Government.

27. He says (page 8):—

"The draft of the Treaty was made entirely, even to the minutest word, by the British Ministry, and was signed by both parties without change. The British Government cannot, therefore, take advantage of an ambiguity of their own, otherwise the draft of the Treaty would have been a snare. Such is the principle of natural right, such the established law of nations. Hugo Grotius lays down the rule that the interpretation must be made against the party which drafted the conditions: 'ut contra eum fiat interpretatio, qui conditiones elocutus est.' But no one has expressed this more clearly than Vattel, who writes"

28. Her Majesty's Government submit that the fact that the project of the Treaty emanated from them can be in no way used to their disadvantage. The Treaty, as it comes before the Arbitrator, must be regarded as the work of both parties. It was in the power of the President or of the Senate of the United States to insist on any alteration of the terms. They had abundant opportunity for considering the terms. The project was delivered by Mr. Pakenham to Mr. Buchanan, and considered by them in conference, on the 6th of June. It was sent by the President to the Senate on the 10th of June. It was considered by the Senate on the 10th, 11th, and 12th of June. The Treaty was signed on the 15th of June. It was sent to the Senate for ratification on the 16th of June. The Treaty, with various incidental motions, was before the Senate on the 16th, 17th, and 18th of June. Mr. Buchanan intimated to Mr. Pakenham that the President's Message sending the project to the Senate might, and probably would, suggest some modifications in it. An entire counter-proposal was made and divided on in the Senate; in the preliminary deliberation a formal motion was divided on for adding a proviso to Article II; and Mr. Buchanan made representations to Mr. Pakenham respecting the effect of that Article.† Some of the reasons that prevailed with the Senate to induce them to adopt the project as it stood may be gathered from Mr. Benton's speech. He objected to any alteration (first) on the ground of the delay that would be caused, which would be injurious to the interests, particularly the commercial interests, of the United States; and (secondly) because of the importance to the United States of closing the question, as they were then engaged in war with the Republic of Mexico. In all these circumstances, the words of the Treaty must be taken to be, as they in fact are, the words not of Lord Aberdeen and Mr. Pakenham only, but the words also of Mr. Buchanan and of the President and Senate of the United States.

29. The words cited by Mr. Bancroft from Grotius' book are not applicable to the present case. The passage from which they are extracted relates to the case of dictation of conditions of peace. The whole chapter to which they belong is on that and cognate subjects. The sentence from which Mr. Bancroft's citation is taken reads in a more complete form thus:—

"In dubio autem sensu magis est ut contra eum fiat interpretatio, qui conditiones elocutus est, quod esse solet potentioris: est ejus qui dat non qui petit conditiones pacis dare [dicere], ait Annibal"

* These observations may not be thought too minute when it is stated that Lord Palmerston's letter has been treated by Mr. Archibald Campbell as a virtual admission of the Canal de Haro as the Treaty channel.

† Appendix No. 5, and Historical Note, p. xv.