

viction that, in weighing the proposition that the United States shall purchase and extinguish the rights of the Hudson's Bay Company within the territory assigned to the United States by the compromise of the conflicting claims of jurisdiction, sovereignty, and domain, in the treaty aforementioned, this question about the navigation of the Columbia river, whether taken as a general right to all British subjects indiscriminately, or as a particular right to the Hudson's Bay Company, and British subjects trading with that company, does not deserve consideration as weighing a feather in the balance, in comparison with the extinguishment of the possessory rights of the Hudson's Bay Company, stipulated for in the third article.

As to this question of the navigation of the Columbia, mentioned in the second article of the treaty, my opinion is that the guaranty in that article does not extend to British subjects generally, but is confined to British subjects specially who are of the Hudson's Bay Company—their agents, factors, and servants, and those who are trading with the company by their special permission and license.

The letter of this second article reserves the right of navigating the Columbia river only to the Hudson's Bay Company, and to such British subjects as are "trading with the same;" not to all British subjects generally, and without qualification. The true intent and reason, soul and spirit of that reservation in favor of the Hudson's Bay Company, and British traders with them, may be found in their charter granting to them the sole and exclusive right of trade and traffic to and from their possessions, and the sole and exclusive right of granting license to others "to visit, haunt, or trade, or traffic, or adventure by way of merchandise into or from" any of their territories or places, and the whole and sole power of regulating the trade with them. This article was introduced into the treaty for the sole benefit of the Hudson's Bay Company, and in pursuance of that guardian care and good faith which the British government has ever most scrupulously observed towards the rights and interests of corporations created by charters emanating from the crown.

The position that this second article was not intended to give a right of navigating the Columbia river to British in general, irrespective of their trading with the Hudson's Bay Company by their permission and license, according to the terms of their charter, is further illustrated by contrasting the stipulations in this second article, relative to the navigation of the Columbia river, with the stipulations in the first article respecting the navigation of the channel which separates the continent from Vancouver's island, and of the Straits of Fuca, south of the forty-ninth parallel of north latitude. In article I., the words employed to reserve the right of all British subjects, without any qualification or restriction, to navigate that channel and the straits, are so comprehensive, clear, and unconditional, as not to admit of doubt or misconception. In the second article, there is a clear, regular, continuous, train of thought and expression confining the right reserved to navigate the Columbia river to the Hudson's Bay Company, and British subjects trading with the company, by words and terms definite and precise, to the exclusion of British subjects not "trading with the same." The first article comprises all British subjects as a genus; the second article includes only particular British subjects as a species; therefore the Hudson's Bay Company may elect to release and assign to the United States, and abandon all right of themselves to navigate, and all right to license others to trade with them by navigating the Columbia river, in so far as it depends upon that second article, and by such release the right of navigating the Columbia river will be withdrawn from the guaranty of the treaty, and to that extent extinguished.