

not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other states, leaving the right of exclusive dominion in abeyance." And again: "By that convention (of Nootka) it was agreed that all parts of the northwestern coast of America, not already occupied at that time by either of the contracting parties, should thenceforward be equally open to the subjects of both for all purposes of commerce and settlement—the sovereignty remaining in abeyance." But on this subject we are not left to mere inferences, however clear. The British commissioners, in their statement, from which the undersigned has just quoted, have virtually abandoned any other title which Great Britain may have previously asserted to the territory in dispute, and expressly declare "that whatever that title may have been, however, either on the part of Great Britain or on the part of Spain, prior to the convention of 1790, it was thenceforward no longer to be traced in vague narratives of discoveries, several of them admitted to be apocryphal, but in the text and stipulations of that convention itself."

And again, in summing up their whole case, they say:

"Admitting that the United States have acquired all the rights which Spain possessed up to the treaty of Florida, either in virtue of discovery, or, as is pretended, in right of Louisiana, Great Britain maintains that the nature and extent of these rights, as well as the rights of Great Britain, are fixed and defined by the Convention of Nootka," &c. &c.

The undersigned, after a careful examination, can discover nothing in the note of the present British plenipotentiary to Mr. Calhoun, of the 12th September last, to impair the force of these declarations and admissions of his predecessors. On the contrary, its general tone is in perfect accordance with them.

Whatever may be the consequences, then, whether for good or for ever—whether to strengthen or to destroy the British claim—it is now too late for the British Government to vary their position. If the Nootka Convention confers upon them no such rights as they claim, they cannot at this late hour go behind its provisions, and set up claims which, in 1826, they admitted had been merged "in the text and stipulations of that convention itself."

The undersigned regrets that the British plenipotentiary has not noticed his exposition of the true construction of the Nootka Convention. He had endeavored, and he believes successfully, to prove 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; and that it did not interfere with the ultimate sovereignty of Spain over the territory. The British plenipotentiary has not attempted to resist these conclusions. If they be fair and legitimate, then it would not avail Great Britain, even if she should prove the Nootka Convention to be still in force. On the contrary, this convention, if the construction placed upon it by the undersigned be correct, contains a clear virtual admission on the part of Great Britain that Spain hold the eventual right of sovereignty over the whole disputed territory; and consequently that it now belongs to the United States.

The value of this admission, made in 1790, is the same whether or not the convention has continued to exist until the present day. But he is willing to leave this point on the uncontroverted argument contained in his former statement.

But is the Nootka Sound convention still in force? The British plenipotentiary does not contest the clear general principle of public law, "that war terminates all subsisting treaties between the belligerent powers." He contends, however, in the first place, that this convention is partly commercial; and that, so far as it partakes of this character, it was revived by the treaty concluded at Madrid on the 28th August, 1814, which declares "that all the treaties of commerce which subsisted between the two parties (Great Britain and Spain) in 1796, were thereby ratified and confirmed;" and, 2d, "that in other respects it must be considered as an acknowledgment of subsisting rights—an admission of certain principles of international law," not to be revoked by war.

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