

except as its surface is pierced by islands; and if the treaty is to be interpreted and applied according to the narrow rule of the common law, then the line of boundary must be "averaged;" that is, must be drawn from the middle of the water space on the forty-ninth parallel southwardly literally through the center of this whole sheet of water between the two main shores to the middle of Fuca straits, bisecting several islands, and among them, in all probability, San Juan itself, and giving parcels of each to the contesting parties.

Such a mangling of the islands and islets would indeed be ludicrous; so ludicrous that it has never been at all suggested by the greediest advocate of the British claim. Nobody has thought of applying the common law rule of private riparian proprietorship to these islands. Even Governor Douglas, of British Columbia, the originator of the claim to San Juan, has maintained a discreet silence in this regard.

Again, Great Britain is already by her own former acts estopped and concluded from asserting that this middle surface-line through the archipelago is the true line. By the treaty of 1783, fixing the first boundaries between the United States and Great Britain, the water-line on our northern frontier runs expressly to "the middle of the river St. Lawrence; thence along the middle of said river to Lake Ontario; thence along the middle of the said lake to the water communication between that lake and Lake Erie; thence through the middle of said lake to the water communication between it and Lake St. Clair; (i. e. through the middle of the Detroit river, which has numerous islands;) thence through the middle of Lake St. Clair to the water communication between it and Lake Huron; thence through the middle of said lake to the water communication between it and Lake Superior; thence through the middle of Lake Superior," &c.

Now, the commissioners appointed by the respective Governments to survey and mark this long line of water boundary, not less than fifteen hundred miles long, invariably and by a formal written agreement followed, as their triangulated maps now in the Department of State show, the center line of the surface of the water when that line did not strike islands; and where it did they followed the deepest channel, giving the whole island to the party holding on the opposite or shallower side. A striking instance of this is found in Belle Isle—once known as Hog Island—nearly opposite Detroit. The center surface-line would have cut the island in nearly equal parts, and yet the boundary line was laid down on the east side of it and along the deeper and more navigable channel, thus giving the whole island to the United States. And other similar instances might be cited. So that the commissioners acted no longer upon the common-law principle of the centre of the surface when an island

was met with, but abandoned it and followed the *thalweg* or deeper channel; that is, they followed the gutter or lowest part of the water-bed. The importance of this document will, I know, justify me in laying it before the Senate. It is still on file in the Department of State, under the hands of the commissioners of the respective Governments, Messrs. Porter and Ogilvy, and reads as follows:

"1. The boundary shall universally be a water-line, so as never to divide an island.

"2. Where there are several channels or passages, and but one of them navigable, the navigable channel shall indicate the line.

"3. Where there are two channels, and each affords a good navigation, the line shall follow the largest column of water.

"4. When there are more than two channels the line shall follow the one nearest the center, provided it leaves a good navigation to each party."

Both Governments adopted and acted upon this principle under that ancient treaty, conched in the same terms, meaning the same thing, and neither party has ever complained of this time-honored, practical interpretation and use of these terms, nor attempted to depart from it until in 1859 Governor Douglas and the Hudson Bay Company discovered that it would lose them San Juan Island; and then they began to wriggle about the interpretation of the treaty. The doughty Governor actually brought out a British fleet with two hundred and fifty guns on board to drive Captain Pickett, who fortunately was sent there in the nick of time by General Harney, from this island. But he did not quite dare open his broadsides upon Pickett's handful of men. The presence of the spirit's Harney seems to have been a discouragement.

But again to the point. The boundary here is not declared to be at or on or along the channel, or by the channel, or by or on the margin, shore, or coast of the channel, but from a given point in the middle of the channel, and thence southerly through the middle of said channel and through the middle of the straits of Fuca, the line of boundary being thus expressly defined instead of being left to conjecture and to be made out or guessed out by "averaging" the width of the surface of the whole channel, a thing which, from the very nature of the case, owing to the fact that the surface is half land and half water, an intermixture of islands and channels and shoals, it was and is utterly impossible to do.

And this was well and perfectly known to Lord Aberdeen, who proposed not only the boundary but the whole treaty. Such a thing as a boundary line cutting into two equal portions the whole space between the continent proper and Vancouver, land and water, island, and all, never occurred to him, because upon Vancouver's map, which Lord John Russell says was then before Lord Aberdeen, the Harney channel by name, as well as others not named, was distinctly laid down.

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