

Thomas
MR. FALCONER'S REPLY TO MR. GREENHOW'S ANSWER:

WITH

MR. GREENHOW'S REJOINDER.

POSTSCRIPT

TO THE SECOND EDITION OF A PAMPHLET,
ENTITLED "THE OREGON QUESTION," &c.,
BY THOMAS FALCONER, ESQ.

Mr. Greenhow, the author of the "History of Oregon and California," has published a pamphlet, dated Washington, April, 1845, entitled "An Answer to the Strictures of Mr. Thomas Falconer, of Lincoln's Inn, on the History of Oregon and California." In noticing this answer, it is convenient, for the sake of brevity, to take each of the complaints of Mr. Greenhow separately.

1st. Mr. Falconer preferring, in every instance in which it was practicable, to use American authorities, has, in his argument on the Oregon question, cited from the "History of the Federal Government," written by Alden Bradford, LL.D., editor of the Massachusetts State Papers, the following passage respecting the extent of the purchase of Louisiana from France by the government of the United States:

"The purchase included all lands 'on the east side of the Mississippi river (so as to include New Orleans) not then belonging to the United States, as far as the great chain of mountains which divide the waters running into the Pacific and those falling into the Atlantic ocean; and from the said chain of mountains to the Pacific ocean, between the territory claimed by Great Britain on the one side, and by Spain on the other.'"

The words in italics are placed between inverted commas, as a citation, by Dr. Bradford himself; they are not the words of Mr. Falconer. Mr. Falconer, adopting Dr. Bradford as his authority, cites the passage as expressing the terms of an agreement, to which the treaty of 1803, for the purchase of Louisiana, gave validity; and so far a conveyance of Louisiana, in these terms, under the treaty. Whether he is correct, or not, depends upon the value of Dr. Bradford's authority. Mr. Greenhow does not say that the quotation is incorrect, nor does he deny the statement of Dr. Bradford. There appears to be no reason to doubt that the passage was part of the official terms of the sale of Louisiana. Mr. Greenhow states, however, that "his surprise was great, on finding that Mr. Falconer had presented this passage as a stipulation in the treaty of October, 1803." The fact is, that Mr. Falconer, in his work "on the Discovery of the Mississippi," &c., referred to the passage as part of the terms of the treaty; but in his first edition, (p. 10,) and in the second edition, (p. 11,) thinking he might be misunderstood, he speaks of it as part of the terms "of the agreement" for the sale of Louisiana. The terms are not in the treaty itself—for the reason, perhaps, which induced Mr. Jefferson, in 1807, three years after the purchase of Louisiana, to fear that any allusion to any claim extending to the coast of the Pacific would be offensive to Spain, (Greenhow on the Oregon, p. 282.) But though the citation is not in the treaty itself, it does not follow that it is not part of the agreement on which the treaty is founded. It is thus represented by Dr. Bradford, and Mr. Greenhow does not say that the passage is in any respect inaccurate.

3dly. Mr. Falconer has shown, that prior to the exercise of authority in the Oregon territory, under the orders of the government of the United States, the government of Great Britain had "taken possession" of it, and "that the 'taking possession' of a new country by persons officially authorized—and no private person could assume the authority—was the exercise of a sovereign power, a distinct act of legislation, by which the territory became annexed to the dominions of the Crown." To this Mr. Greenhow replies,

"that Mr. Falconer forgot or concealed the fact, that Spanish officers had landed on all those coasts, and on each occasion had most formally taken possession in the name of their monarch, and had made a settlement by the special orders of their government, before any attempt for the same purpose had been made there by the people of any other nation." But Mr. Falconer has not acted thus; he has shown that two things are required to complete a title to vacant wastes—the one, the official assertion of sovereignty; and the other, occupation. The first, alone, is of no avail without occupation. But it is well known that the Spaniards never occupied the country. If they had done so, the government of the United States could have made no claim to any part of it in 1814. The country was open to any government to possess and occupy it, notwithstanding any mere formal act of possession unaccompanied by occupation, which any government might previously have made. Such possession of Oregon, accompanied by occupation, was first made under the authority of the British government; and its right to do this was recognised in the convention of the Escorial, in 1792. [1790?]

3dly. "No authority," says Mr. Greenhow, "on the part of the British government, was alleged by the claimants of Nootka Sound, whose cause was supported by the British government in 1790, at a risk of a war with Spain." This statement Mr. Falconer does not controvert. The Nootka dispute might not have arisen if the Spanish officers had not unjustifiably seized the vessels of British subjects. But whatever defect in a title to settle at Nootka might have existed through Mearns's proceedings, the British government had a perfect right to settle the Oregon territory, as a waste and abandoned territory; to instruct Vancouver to take possession of it; and to authorize the Hudson's Bay Company to form establishments in it, independently of the treaty of the Escorial, which also sanctions the establishment of British settlements in the country.

4thly. Mr. Greenhow complains that a passage in his

* The following passages are only to be reconciled by proving that Martinez made a permanent settlement in the Oregon Territory. This Mr. Greenhow would be unable to prove. The Spaniards did not visit the country after the Nootka affair was settled:

"It should be observed, with regard to the right of the Spanish government thus to take possession of Nootka, that, before the 6th of May, 1789, when Martinez entered the sound with that object, no settlement, factory, or other establishment whatever, had been founded or attempted, nor had any jurisdiction been exercised by the authorities or subjects of a civilized nation in any part of America bordering upon the Pacific, between Port San Francisco, near the 38th degree of north latitude, and Prince William's Sound, near the 60th."—"Greenhow's History of Oregon," &c., p. 187.

In the declaration of the government of Spain, dated Aranjuez, June 4, 1780, the Conde de Florida Blanca admitted that Spain had no establishments or colonies planted on the coasts or ports in dispute.

"—Forgetting or concealing the facts, that Spanish officers had landed on all those coasts, and, on each occasion, had most formally taken possession in the name of their monarch, and had made a settlement by direct and special orders of their government, before any attempt for the same purpose had been made there by the people of any other nation."—"Mr. Greenhow's Strictures," pp. 3 and 4.