

Statement.

4. The Note shews the relative positions of the principal actors in the matter of the Treaty: in London, the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, and Mr. MacLane, the United States' Minister Plenipotentiary; at Washington, Mr. Pakenham, Her Majesty's Minister Plenipotentiary, and Mr. Buchanan, the United States' Secretary of State.* It is designed to bring out the facts which will be seen in the course of this Statement to be of cardinal importance, namely,—that the Treaty was formally negotiated at Washington between Mr. Pakenham and Mr. Buchanan; that it was on two distinct occasions discussed and approved by the Senate of the United States, in their capacity, under the Constitution, of a co-ordinate branch of the treaty-making power; that the project or draft of the Treaty was prepared in London by Lord Aberdeen, and sent to Mr. Pakenham, as embodying the proposal which Mr. Pakenham was instructed to make to the Government of the United States; that this project was, as regards the words now in discussion, identical with the Treaty as signed and ratified; and that, although Mr. MacLane was not formally empowered to conduct negotiations in the matter on behalf of his Government, yet Lord Aberdeen discussed with him the nature of the proposal which Her Majesty's Government contemplated making to the United States, and even shewed him the project of the Treaty before it was sent to Mr. Pakenham.†

I.

5. Mr. Bancroft's assumption that the United States were clearly entitled to the whole Oregon district up to the 49th parallel is not warranted by the facts of the case. Territorial rights in the whole district were claimed by both parties with equal persistency, and their respective contentions were supported by arguments drawn from like sources, such as the history of discovery and the terms of international engagements. In the official documents on both sides the alternative of war was shadowed forth. In the end there was a compromise; each party yielded a portion of what it had contended in argument was its right.

6. When, on one occasion in the course of this long controversy between the two Governments, Mr. Cass, the United States' Secretary of State, had put forward an assumption like this of Mr. Bancroft, Lord John Russell, then Her Majesty's Principal Secretary of State for Foreign Affairs, said:—‡

"Undoubtedly, the title by which Great Britain now holds British Columbia and Vancouver's Island is the same as that by which the United States possess the Oregon State and Washington Territory, namely, the Treaty of 1846; but when General Cass asserts, that previously to that Treaty the title of the United States to the whole of the territory between the parallels 42° and 54° 40' had been clear and unquestionable, Her Majesty's Government can only reply that, in their opinion, it was the title of Great Britain to that territory which was clear and indisputable."

It is plain that when this was written Her Majesty's Government had not adopted the notion that in 1846 the concession had been all on the side of the United States; nor have they ever changed their position.

7. Mr. Bancroft further assumes that the United States had, before the Treaty, the 49th parallel as an admitted boundary line on the Continent. Such an admission had never been made by Her Majesty's Government. That boundary would not (it is plain) have been conceded on the Continent without a concurrent arrangement satisfactory to Her Majesty's Government respecting Vancouver's Island and the navigation of the adjacent waters.

8. The passage in Mr. Bancroft's Memorial in which his assumptions under this head are most strongly put is the following (page 12):—

"Again, 'where a right admits of different degrees, it is only the smallest degree which may be taken for granted' ('Ist ein Recht verschiedener Abstufungen fähig, so darf zunächst nur die geringste

* For the convenience of the Arbitrator, there are appended to the Historical Note (1) a Chronological List, shewing the names and dates of appointment of the various Principal Secretaries of State for Foreign Affairs in Great Britain and British Ministers at Washington, and of the various Presidents and Secretaries of State of the United States and United States' Ministers at London, from 1818 to 1872; and (2) a Memorandum relative to the origin and privileges of the Hudson's Bay Company, a Corporation frequently named in this discussion.

† Historical Note, p. xv.

‡ Lord John Russell to Lord Lyons, December 16, 1859; read, and copy given, to United States' Secretary of State.