

Statement.

28. Her Majesty's Government submit that the fact that the project of the Treaty emanated from them can be in no way used to their disadvantage. The Treaty, as it comes before the Arbitrator, must be regarded as the work of both parties. It was in the power of the President or of the Senate of the United States to insist on any alteration of the terms. They had abundant opportunity for considering the terms. The project was delivered by Mr. Pakenham to Mr. Buchanan, and considered by them in conference, on the 6th of June. It was sent by the President to the Senate on the 10th of June. It was considered by the Senate on the 10th, 11th, and 12th of June. The Treaty was signed on the 15th of June. It was sent to the Senate for ratification on the 16th of June. The Treaty, with various incidental motions, was before the Senate on the 16th, 17th, and 18th of June. Mr. Buchanan intimated to Mr. Pakenham that the President's message sending the project to the Senate might, and probably would, suggest some modifications in it. An entire counter-proposal was made and divided on in the Senate; in the preliminary deliberation a formal motion was divided on for adding a proviso to Article II; and Mr. Buchanan made representations to Mr. Pakenham respecting the effect of that Article.* Some of the reasons that prevailed with the Senate to induce them to adopt the project as it stood may be gathered from Mr. Benton's speech. He objected to any alteration (first) on the ground of the delay that would be caused, which would be injurious to the interests, particularly the commercial interests, of the United States; and (secondly) because of the importance to the United States of closing the question, as they were then engaged in war with the Republic of Mexico. In all these circumstances, the words of the Treaty must be taken to be, as they in fact are, the words not of Lord Aberdeen and Mr. Pakenham only, but the words also of Mr. Buchanan and of the President and Senate of the United States.

29. The words cited by Mr. Bancroft from Grotius' book are not applicable to the present case. The passage from which they are extracted relates to the case of dictation of conditions of peace. The whole chapter to which they belong is on that and cognate subjects. The sentence from which Mr. Bancroft's citation is taken reads in a more complete form thus:—

"In dubio autem sensu magis est ut contra eum fiat interpretatio, qui conditiones elocutus est, quod esse solet potentioris: est ejus qui dat non qui petit conditiones pacis dare [dicere], ait Annibal"

The passage produced by Mr. Bancroft from Vattel's work appears to Her Majesty's Government to be as capable of an application favourable to them as of one unfavourable to them.

30. In another place (page 30) Mr. Bancroft says:—

"A party offering the draft of a Treaty is bound by the interpretation which it knew at the time that the other party gave it. Lord Aberdeen cannot have doubted how the Treaty was understood by Mr. MacLane, by Mr. Buchanan, and by the Senate of the United States. 'Where the terms of promise,' writes Paley, whose work was long a text book at Oxford, 'admit of more senses than one, the promise is to be performed in the sense in which the promiser apprehended at the time that the promisee received it. This will not differ from the actual intention of the promiser, where the promise is given without collusion or reserve; but we put the rule in the above form to exclude evasion, wherever the promiser attempts to make his escape through some ambiguity in the expressions which he used.'"

* Appendix No. 5, and Historical Note p. xix.