

Conventions, or that has a tendency to place the Contracting Parties on a footing of equality, is favourable. The voice of equity and the general rule of contracts require that the conditions between the parties should be equal. We are not to presume without very strong reasons, that one of the Contracting Parties intended to favour the other to his own prejudice; but there is no danger in extending what is for the common advantage. It, therefore, it happens that the Contracting Parties have not made known their will with sufficient clearness, and with all the necessary precision, it is certainly more conformable to equity to seek for that will in the sense most favourable to equality and the common advantage, than to suppose it in the contrary sense. For the same reason everything that is not for the common advantage, everything that tends to destroy the equality of a contract, everything that operates only one of the parties, or that operates the one more than the other, is odious. In the Treaty of strict friendship, union, and alliance, everything which, without being burdensome to any of the parties, tends to the common advantage of the Confederates and to draw the bonds of union closer, is favourable. In unequal Treaties, and especially in unequal alliances, all the clauses of inequality, and principally those that operate the inferior ally, are odious. Upon this principle that we ought, in cases of doubt, to extend what leads to equality and restrict what destroys it, is founded the well-known rule—*Incommoda vitantis melior, quam commoda potentis, est causa* (Quintilian, *Inst. Orat.*, l. vii, ch. iv.) The party who endeavours to avoid a loss has a better cause to support than he who aims at obtaining an advantage."

G. *Whatever interpretation tends to change the existing state of things at the time the Treaty was made is to be ranked in the class of odious things.*

Vattel, l. ii, chap. 18, sec. 305.

Vattel (*ibid.*, sec. 305), in illustration of this rule observes, that "the proprietor cannot be deprived of his right, except so far precisely as he relinquishes it on his part and in case of doubt the presumption is in favour of the possessor. It is less repugnant to equity to withhold from the owner a possession which he has lost through his neglect, than to strip the just possessor of what lawfully belongs to him. In the interpretation, therefore, we ought rather to hazard the former inconvenience than the latter. Here also may be applied, in many cases, the rule above-mentioned (sec. 305) that the party who endeavours to avoid a loss has a better cause to support than he who aims at obtaining an advantage."

HER BRITANNIC MAJESTY'S GOVERNMENT will now proceed to submit to the consideration of His Imperial Majesty, in the third place, their views as to the proper application of the above rules to the interpretation of the Treaty of 15th June, 1846.

The First Rule of Interpretation.

The First Rule of Interpretation in its application to the Treaty of 1846.

Chart No. 2.
The general use of the Rosario Strait before 1846.

In accordance with the first rule above mentioned, Her Majesty's Government submits to the consideration of His Imperial Majesty the following facts in support of the position that the narrow waters, now designated the Rosario Strait in British Charts, were the only channel between the Continent and Vancouver's Island generally known and commonly used by sea-going vessels at the time when the Treaty of 15th June, 1846, was made, and that the words "the Channel," in the signification which common usage affixed to them at that time, denoted those waters.

(1.) Vancouver's expedition, in 1792, after exploring the head-waters of Fuca Strait, passed on to the northward, along the narrow waters which separate Vancouver Island from what was then believed to be the Continent, and followed those waters between Blakely Island and Cypress Island into Birch Bay, and then passed onwards to Point Roberts and the upper waters of the ancient Gulf now called the Strait of Georgia. Soundings were made throughout the passage, which are set down in Vancouver's narrative, and are laid down in the chart annexed to it, sufficient to secure for future navigators a safe course from Fuca's Strait into the upper waters of the Strait of Georgia. Vancouver did not explore, nor does he give any soundings of the Canal de Haro, which is not mentioned in his narrative; the name of it, however, appears on the first British Chart, distinguishing waters without soundings from the Channel through which Vancouver passed.

Appendix No. 4.

(2.) The Spanish exploring vessels "Sutil" and "Mexicana," in the same year, appear, from the narrative of the expedition, to have pursued a course to the southward of the San Juan Island until they reached the head-waters of Fuca's Strait. They then entered the same channel which Vancouver entered, and followed it as far as the Island of Guemes, when they passed onwards, along the Canal de Guemes.

Chart No. 1.

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