

...als zugestanden angenommen werden"). This rule of Heffter fits the present case so aptly, that it is made for it. There being degrees in the departure from the parallel of 49°, it must be taken that the smallest degree was conceded."

The rule cited from Dr. Heffter's work does not touch the present case. This is not a case of a party making a concession in derogation of a clear and admitted right. It is the case of one concession set off against another; of a give-and-take arrangement.\*

9. The preamble of the Treaty is express on this point. The two Powers (it says)—

...being it desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the North-west of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by a genuine compromise of the rights mutually asserted by the two parties over the said territory, respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement."

## II.

10. Closely connected in character with the arguments of Mr. Baneroff under the first head, and equally inconclusive, as Her Majesty's Government submit, are his arguments under the second.

11. Mr. Baneroff alleges in effect that the intention of the Contracting Parties was to avoid cutting off the end of Vancouver's Island, and he infers that the line is to be strictly so drawn as to effect this object, and no more. Her Majesty's Government dispute both the allegation and the inference.

12. There is no evidence that the prevention of the severance of Vancouver's Island is the sole object of the arrangement. There is nothing to support the allegation, either in the preamble of the Treaty, or in the Article describing the boundary; nor can it be sustained on the ground of anything contained in any of the contemporaneous documents exchanged between the Contracting Parties. It is true that the severance of Vancouver's Island by a boundary line drawn continuously on the 49th parallel was the salient objection raised on the part of Her Majesty's Government to the United States' proposal for continuing the boundary on that parallel from the Rocky Mountains to the Pacific. That proposal disregarded the physical conditions of the tract through which the line would run. It is true also that a deflection of the line so as not to sever Vancouver's Island was made in effect a condition, *sine quâ non*, on the part of Her Majesty. It may even be admitted that the prevention of this severance was the motive for Article I of the Treaty. The nature of the motive is not necessarily a measure of the scope of the stipulation.

13. It is plain on the face of the Article that the Contracting Parties had further objects in view. If the sole object of the stipulation had been to keep Vancouver's Island whole, a very simple provision would have sufficed. It would have been enough to say that the whole of Vancouver's Island shall belong to Her Britannic Majesty. The Article in effect says this. But it says more, in two respects. First, it in effect vests in Her Majesty, as against the United States, the whole territorial sovereignty and property in and in all land and sea adjacent to the island, on its eastern and southern sides, within the mid-channel line (wherever drawn), although lying beyond the ordinary three-mile limit. Secondly, it secures to Her Majesty's subjects freedom of navigation throughout the whole extent of the boundary channel and of the Straits of Juan de Fuca. These two provisions in combination effect what was plainly one of Lord Aberdeen's objects in the arrangement, namely, the preservation to Her Majesty's subjects of unquestionable and abundant facilities of access to the British coasts and harbours north of the 49th parallel. Had the boundary line been continued on the 49th parallel to the Strait of Georgia, the navigation of the Gulf of Georgia from the southward would have been sealed off from British subjects.

14. The Article speaks for itself. The preservation of the unity of Vancouver's Island was of the essence of the arrangement, but there were collateral arrangements. The difference now referred to arbitration presupposes the existence of such arrangements; the controversy is as to their extent.

\* Historical Note, p. vi.