

conditions.* In that case his statement would amount to no more than a declaration of his opinion that, on the true construction of the words of the Treaty, the line described would run down the Canal de Haro. But Mr. Benton's opinion on this question of construction is not alleged to be of any special value, and its authority in the present discussion is not admitted. The question whether or not the line runs down the Canal de Haro, according to the construction of the Treaty, is the question before the Arbitrator.

(iii.) But whatever was the foundation of Mr. Benton's observations, and whatever title they have to consideration, Her Majesty's Government cannot be affected either through Mr. Pakenham or through Lord Aberdeen by anything that was said on this occasion in the Senate. The debates in the Senate were in Secret Session. No publication of them was permitted or made until after the time when the ratifications had been exchanged in London.†

23. Mr. Bancroft adduces no further evidence whatever on this point, yet he goes so far as to say (page 8):—

"The language of the Treaty seemed perfectly clear to the Senate, to the President, to his Secretary of State, and to every one of his constitutional advisers, as departing from the line of the parallel of 49° only so far as to yield the southern extremity of Vancouver's Island, and no more."

With respect to the view of the language of the Treaty formed at the time by the Senate (as a body), or by the President, or by any one of the President's constitutional advisers other than his Secretary of State, Mr. Buchanan, Her Majesty's Government have no information, either from Mr. Bancroft's Memorial or otherwise. The exception of Mr. Buchanan is here made, not on account of anything in Mr. Bancroft's Memorial, but because in the course of the controversy between the two Governments, a statement respecting Mr. Buchanan's opinion has been made on behalf of the United States. It has been said‡ that, in a letter to Mr. MacLane, dated 6th June, 1846, the day on which the draft Treaty was presented to Mr. Buchanan by Mr. Pakenham, Mr. Buchanan mentions the Canal de Haro as the channel intended by the Treaty. This letter has not been seen by Her Majesty's Government. It may be supposed that it is simply (so to speak) an echo of Mr. MacLane's conjectures as to what would be found to be the substantial effect of Lord Aberdeen's proposal, when it came to be worked out. But whether that is so or not, statements passing between Mr. Buchanan and Mr. MacLane, not communicated to Mr. Pakenham or to Lord Aberdeen, are not admissible as against Her Majesty's Government. Sir Richard Pakenham, in his Memorandum before cited, says:—

"It is certain that Mr. Buchanan signed the Treaty with Mr. MacLane's despatch before him, and yet that he made no mention whatever of the Canal de Haro as that through which the line of boundary should run, as understood by the United States' Government."

And this, after Mr. Buchanan had had read to him by Mr. Pakenham such an extract from Lord Aberdeen's instructions as comprised the paragraph containing the description of the line of demarcation to be proposed, and had himself read over the extract again in Mr. Pakenham's presence;§ which two readings must have shown Mr. Buchanan the erroneousness of any expectation that the Canal de Haro would be specified.

25. The examination has now been completed of everything that can reasonably be regarded as contemporaneous evidence in favour of the United States of the intention of their Government in concluding the Treaty. Her Majesty's Government submit to the Arbitrator that it is of little, if any, weight. All that it amounts to is this, that some of the persons concerned on the part of the United States on the occasion of the Treaty anticipated that the Treaty, couched in the words proposed on one side and adopted on the other, would have a certain effect. These anticipations were not communicated at the time to Her Majesty's Government, or to any representative of that Government, and are, therefore, in no degree binding on them to their detriment.

25. But, before parting from this branch of the subject, Her Majesty's Government

* Mr. Cass describes Mr. Benton as being "better acquainted, perhaps, than any other member [of the Senate] with the geography of the region in dispute."—To Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

† Page 4, above, and note * there.

‡ Mr. Cass to Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

§ Historical Note, p. xiii.