

**The Sixth Rule of Interpretation.**

The presumption is in favour of the possessor of a thing.

Chart No. 2.

*The Sixth Rule of Interpretation.*

The sixth Rule of Interpretation, which is a corollary to the next preceding Rule and which is also submitted to the attention of His Imperial Majesty, is that, *in case of doubt, the presumption is in favour of the possessor of a thing*; in other words, the party who endeavours to avoid a loss has a better cause to support, than he who aims at obtaining an advantage.

It has been already said that the Channel in use in 1846, and the only Channel in use by British vessels navigating from the Straits of Fuca to the stations of the Hudson's Bay Company on Frazer's River and elsewhere north of the 49th parallel of north latitude, was the channel surveyed by Vancouver, and of which soundings are given in his Chart.

The Government of the United States contends for an interpretation of the Treaty which will dispossess British vessels of the use of this channel. There is no evidence on the other hand that the Canal de Haro was used by vessels of the United States prior to the Treaty of 1846.

Her Britannic Majesty's Government, on the other hand, is not contending for an interpretation of the Treaty, which will deprive the citizens of the United States any right habitually exercised by them prior to the Treaty. If, indeed, the United States' Government had knowledge from unpublished surveys or otherwise, prior to the Treaty of 1846, that the Canal de Haro was a navigable and safe channel, cannot be denied that citizens of the United States, if they used any channel at a prior to 1846, made use of the channel now called the Rosario Strait. It is submitted accordingly to His Imperial Majesty, that an interpretation of the Treaty, which declares the Rosario Strait to be the channel, through the middle of which the boundary line is to be drawn, will continue to American citizens the full enjoyment of such rights of navigation as were exercised by them prior to the Treaty, whilst a declaration in favour of the claim of the United States will strip British subjects corresponding rights. *Wherever there is doubtful right, it is less repugnant to equity to withhold from a claimant the enjoyment of a thing, which he has never possessed, than to strip the possessor of a thing, of which he has habitually had the enjoyment.*

The question whether any third channel, other than the Rosario Strait or the Canal de Haro, would satisfy the requirements of the Treaty of 1846 has not been touched upon by Her Britannic Majesty's Government for these reasons—among others, that the existence of any intermediate navigable channel was unknown to both the Contracting Parties at the time when the Treaty of 1846 was signed, and that the Government of the United States has never contended for any such channel. Besides, Her Britannic Majesty's Government presumes that the true interpretation of the Treaty of 1846 is to be sought *rebus sic stantibus*, that is, upon the state of facts known to both parties at the time when the Treaty of 1846 was concluded.

On the above considerations of fact and of public law, Her Britannic Majesty's Government submits to His Imperial Majesty that the claim of Her Britannic Majesty's Government that the portion of the boundary line which, under the terms of the Treaty of 15th June, 1846, runs southerly through the middle of the Channel which separates the Continent from Vancouver Island, should be run through the Rosario Strait, is valid, and ought to be preferred to the claim of the Government of the United States, that it should be run through the Canal de Haro.

**Recapitulation of Facts.**

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The considerations of fact may be briefly recapitulated:—

1. That the Channel, now designated as the Rosario Strait in British charts, which designation embraced the Channel to the north as well as the south of the 49th parallel of north latitude in Spanish charts, was the only Channel between the Continent and Vancouver 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.

2. That the context of the first and second paragraphs of Article I of the Treaty of 15th June, 1846, requires that the boundary line should be continued through the middle of a Channel *so as to enter the head-waters of Fuca's Straits*, which is practicable if the line should be run through the Rosario Strait, but is impracticable, if it should be run through the Canal de Haro.

Appendix No. 2.