

under the first proposition. They were to be free from disturbance, interruption or aggression, by any persons claiming to act under the authority or the laws of the United States; and it is, I apprehend, not to be denied, that during the legitimate existence of the possessory rights, whether for a longer or a shorter period, they were to be so held and enjoyed, with the same protection which the law afforded to the property of American citizens.

The principal controversy is as to the duration and extent of the possessory rights. On the one hand, the claimants contend that they were perpetual, and amounted virtually and in affect to an absolute right of ownership. On the other hand, it is asserted that the Company was a mere trespasser on the public domain, or at best a tenant for a limited period which has now expired; having no right whatever in the soil, and only an equitable claim to be indemnified for improvements at the lowest valuation.

The precise question therefore which is now to be considered, is what was the nature of the possession and title relied upon.

In entering upon the examination of the nature of the possession and title of the Company, I have to present, according to the classification already announced, in the first place, certain facts and legal inferences based upon documents anterior in date to the Treaty, which seem to me to place the rights contended for beyond doubt.

The possession of the whole of the Oregon Territory by the Hudson's Bay Company, and the commanding position it held there at the date of the Treaty of 1846, have already been stated in general terms. It is now only necessary to particularize in order the facts and documents upon which that statement is based. These are as follows :

1. The North West Company, in and before the year 1821, carried on an extensive trade with the Indian tribes on the west of the Rocky Mountains, and were in possession of several important trading posts there; among which were the posts known as the Kootanais and Flatheads, established by that Company some time about the year 1808, long before there was anybody in the country to dispute its right, and the posts of Astoria or Fort George, Okanagan and Spokane, acquired from the Pacific Fur Company in 1813; also the important post of Walla Walla, established in 1818.*

* See statement annexed to Protocol of 16th Dec., 1826, quoted in Greenhow, p. 451 App. H. See Twiss, p. 21.