

“ appropriation of the territory south of the 49th parallel of north latitude, *as provided in article I* of the said treaty, the possessory rights of the Hudson’s Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.” On turning to article I. of the Treaty we find there, the definition of the boundary line which for the future was to separate the territories of the two Countries, and “ the future appropriation of the territory south of the 49th parallel of north latitude, *as provided in article I,*” is without doubt, the appropriation to the United States thenceforth, resulting from the Division then made. The Counsel for the United States felt this, and in quoting the article discreetly omitted the words, *as provided in the first article* of the Treaty : but with the restoration of the displaced words, the error of his interpretation becomes apparent. I am unwilling to reason upon the pretensions of the Respondents in any other view of the meaning of article 3, because it seems to me certain that it can mean nothing else ; and if this opinion needed confirmation it would be found in the language of the preamble of the Treaty, with which it perfectly harmonizes. (See preamble of Treaty of 1846, and also p. 22 of opening argument.) But even, if for the sake of argument, it were admitted that the words “ future appropriation ” have the improbable meaning contended for, it does not change the position of the Claimants. The obligation would still be that the United States in appropriating the territory of which it then first acquired the absolute sovereignty and ownership, should respect the possessory rights of the Hudson’s Bay Company in it. Anything more unreasonable and untenable in either interpretation of the article than the assumptions under numbers 1. 2. of this (A.) I. proposition, it would be difficult to present.

II. p. 4. 5. The question examined by the Respondents under this division is, “ What is the meaning of the term ‘ possessory rights ’ as used in the treaty,” and the propositions advanced upon it are :

1st. that there is a distinction between *possessory* and *proprietary* rights.

2nd. That “ possessory rights, are precisely the same thing as *rights of possession.*”