

rary establishment there. The Northwest America was also seized, for reasons not directly connected with any question of sovereignty, and was employed for nearly two years in the Spanish service.

In the month of June, 1789, two vessels, the *Argonaut* and *Princess Royal*, sailing under British colors, arrived at Nootka, and were seized by Martinez. It is unnecessary to enter into the details of this transaction. It is sufficient to say that it led to an animated discussion between the Governments of Great Britain and Spain, in respect to their rights in the Pacific, and the western coast of America, which, for several months, threatened to produce a war between the two countries, but which was finally terminated in October, 1790, by the treaty of the Escorial, or the Nootka Sound convention, as it is more frequently denominated with us. Before the negotiations were concluded, both vessels were voluntarily released by the Spanish authorities in Mexico.

As the Nootka Sound convention constitutes an essential ingredient in the claim of Great Britain, it will be necessary to advert to such of its provisions as are made the foundation of her title to the qualified exercise of sovereignty which she asserts over the northwest coast of America, and to consider them in connexion with the circumstances under which they were framed. The articles which relate particularly to the question under discussion are the 1st, 3d, 5th, and 6th.

The 1st article provides that "the buildings and 'tracts of land situated on the northwest coast of the continent of North America, or on the islands adjacent to that continent, of which the subjects of his Britannic Majesty were dispossessed about the month of April, 1789, by a Spanish officer, shall be restored to the said British subjects."

The third article provides, that, "in order to 'strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific ocean, or in the South seas, or in landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there; the whole, subject, nevertheless, to the restrictions specified in the three following articles."

The 5th article provides that "as well in the places which are to be restored to the British subjects by virtue of the first article, as in all other parts of the northwestern coast of America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two Powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation."

The sixth article relates to the coast of South America; but it has an importance in containing a definition of the erections which may be made, confining them to such as may serve the purposes of fishing; and the provisions of the third article are expressly declared to be subject to the restric-

tions in "the three following articles," one of which is the sixth.\*

I now proceed to state certain facts in respect to this convention, and to draw from them conclusions at which I have arrived with some diffidence. The facts I shall endeavor to present with a rigid regard to accuracy. If my conclusions are erroneous, the better judgment of the Senate will correct them; and I shall have the consolation of reflecting that my errors—if they shall prove such—have led to the discovery of truth, which I am sure is the great object of every Senator on this floor.

The first article was practically inoperative, from a total misapprehension of the facts which it supposed. There is no evidence that subjects of his Britannic Majesty had been dispossessed of buildings or tracts of lands in April, 1789, or at any other time, by a Spanish officer. In the mes-

\* On the 1st of March, 1825, Colonel Benton made an able speech in the Senate of the United States in favor of the occupation of the Oregon (Columbia) river. In this speech he examined the treaty of the Escorial, (the Nootka Sound Convention,) and insisted that it was proved by its terms to be "a treaty of concession, and not of acquisition of rights on the part of Great Britain," and "that the permission to land and to make settlements, so far from contemplating an acquisition of territory, was limited by subsequent restrictions to the erection of temporary huts for the personal accommodation of fishermen and traders only." "These positions were enforced in his argument by a reference to the assertions of Mr. Fox, and the admissions of Mr. Pitt, when the Nootka Sound controversy was under discussion in the British Parliament. The following are some of the passages to which he referred:

"Mr. Fox said: What, then, was the extent of our rights before the convention, (whether admitted or denied by Spain) 'was of no consequence, and to what extent were they now secured to us? We possessed and exercised the free navigation of the Pacific ocean, without restraint or limitation. We possessed and exercised the right of carrying on fisheries in the South seas equally unlimited.' "This estate we had, and were daily improving; it was not to be disgraced by the name of an acquisition. The admission of part of these rights was all we had obtained. Our right before was to settle in any part of the south or northwest coast of America not fortified against us by previous occupancy; and we were now restricted to settle in certain places only, and under certain restrictions. This was an important concession on our part. Our rights of fishing extended to the whole ocean; and now it was limited and to be carried on within certain distances of the Spanish settlements. Our right of making settlements was not, as now, a right to build huts, but to plant colonies if we thought proper. Surely these were not acquisitions, or rather conquests, as they must be considered, if we were to judge by the triumphant language respecting them, but great and important concessions." "By the third article we are authorized to navigate the Pacific ocean and South seas, unmolested, for the purpose of carrying on our fisheries, and to land on the unsettled coasts for the purpose of trading with the natives; but after this pompous recognition of right to navigation, fishing, and commerce, comes another article, the sixth, which takes away the right of landing, and erecting even temporary huts, for any purpose but that of carrying on the fishery, and amounts to a complete dereliction of all right to settle in any way for the purpose of commerce with the natives."—*British Parliamentary History*, vol. 28, p. 990.

Mr. Pitt, in reply, did not deny the accuracy of this construction of the treaty as to settlements and erections. But he maintained "that though what this country (Great Britain) had gained, consisted not of new rights, it certainly did of new advantages. We had before a right to the southern whale fishing, and a right to navigate and carry on fisheries in the Pacific ocean, and to trade on the coast of any part of Northwest America; but that right had not only not been acknowledged, but disputed and resisted; whereas by the convention it was secured to us—a circumstance which, though no new right, was a new advantage."—*Ib.* page 1002.

This subject has recently been further illustrated in a close and well-reasoned argument by Mr. OWEN, of Indiana, in the House of Representatives.