

no difficulty in tracing the boundary line through the Gulf of Georgia and the Straits of Fuca, (the northern and southern extremities of the line between the forty-ninth parallel and the Pacific Ocean;) but as there are several navigable channels connecting their waters, a question arose as to which of these was "the channel" intended by the treaty. These channels are caused by a cluster of islands, and are of various dimensions. Among them, however, one is found pre-eminent as to width, depth, and volume of water, and in every respect satisfying the requirements of the treaty. This channel has been known since its first discovery as the "*Canal de Haro*," and was the only one usually designated by name on the maps in use at the time the treaty was under consideration. While the other channels only separate the islands in the group from each other, the Canal de Haro, for a considerable distance north of the Straits of Fuca, and where their waters unite, washes the shore of *Vancouver's Island*, and is therefore the only one which, according to the language of the treaty, "separates the continent from *Vancouver's Island*."

The objection raised that for a short distance it would not carry the boundary line in a southerly direction, and thus fails to meet one of the requirements of the treaty, I think, will apply with equal force to the Gulf of Georgia, if the term "southerly" is to be construed in a strictly nautical or technical sense, and with still greater force to the Straits of Fuca, which, for the greater part of its course, runs northwesterly; for the language of the treaty being thence "*southerly through the middle of the said channel, and of Fuca's Straits to the Pacific Ocean*," the direction applies throughout the whole extent of the line. If objection is made on this ground, the treaty will be nullified and cannot be carried into effect. It is quite evident, however, that the term "southerly" is to be understood only in its common and general sense. It is undoubtedly used here in opposition to "northerly," and simply to show that *Vancouver's Island* is to be left on the British instead of the American side of the line, for it can hardly be supposed that the framers of the treaty would have ventured, with the general maps before them, to decide upon the whole course of the line except in the most general terms. The impracticability of applying the same test to the Straits of Fuca clearly shows in what sense the term is to be understood.

Besides the Canal de Haro, there is a prominent channel nearer to the main land, known at present upon the Coast Survey and British Admiralty charts as "*Rosario Strait*." The early Spanish navigators called it the "*Canal de Fidalgo*." Captain Wilkes named it "*Ringgold's Channel*." It is sometimes called "*Vancouver's Straits*" or "*channel*," but, except on the Spanish Admiralty maps, I cannot learn that it was ever designated by name on any of the general maps of the northwest coast likely to be used at the time the treaty was made. "*Rosario Straits*" is a navigable channel, but it does not "separate the continent from *Vancouver's Island*." In no part of its course does it touch upon the shore of either. It separates the islands of Lummi, Sinclair's, Cypress, Guemes and Fidalgo on the east, from Orcas, Blakely, Decatur and Lopez islands on the west, but in no respect does it "separate the continent from *Vancouver's Island*," and cannot, therefore, in my opinion, be claimed, in accordance with the language of the treaty, as the channel therein referred to.

There is also another navigable channel connecting the Gulf of Georgia with the Straits of Fuca. It passes between the islands of San Juan, Spieden and Stewart on the west, and Waldron, Orcas, Shaw and Lopez on the east; but, like Rosario Straits, fails to touch the continent or *Vancouver's Island*. There are besides other channels no doubt navigable, but none except the "*Canal de Haro*" answers the requirements of the treaty in all respects.

Although I do not regard the relative merits of the navigability for sailing vessels of the Canal de Haro and Rosario Straits as having any bearing on the determination of the question before us, both being acknowledged navigable in the sense of the treaty, yet, as you have expressed an opinion thereon unfavor-