

Territory, namely, the Treaty of 1846; but when General Cass asserts, that previously to that Treaty the title of the United States to the whole of the territory between the parallels 42° and 54° 40' had been clear and unquestionable, Her Majesty's Government can only reply that, in their opinion, it was the title of Great Britain to that territory which was clear and indisputable."

Statement
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It is plain that when this was written Her Majesty's Government had not adopted the notion that in 1846 the concession had been all on the side of the United States; nor have they ever changed their position.

7. Mr. Bancroft further assumes that the United States had, before the Treaty, the 49th parallel as an admitted boundary line on the Continent. Such an admission had never been made by Her Majesty's Government. That boundary would not (it is plain) have been conceded on the Continent without a concurrent arrangement satisfactory to Her Majesty's Government respecting Vancouver's Island and the navigation of the adjacent waters.

8. The passage in Mr. Bancroft's Memorial in which his assumptions under this head are most strongly put is the following (page 30):—

"Again, 'where a right admits of different degrees, it is only the smallest degree which may be taken for granted' ('Ist ein Recht verschiedener Abstufungen fähig, so darf zunächst nur die geringste Stufe als zugestanden angenommen werden'). This rule of Heffter fits the present case so aptly, that it seems made for it. There being degrees in the departure from the parallel of 49°, it must be taken that only the smallest degree was conceded."

The rule cited from Dr. Heffter's work does not touch the present case. This is not the case of a party making a concession in derogation of a clear and admitted right. It is the case of one concession set off against another; of a give-and-take arrangement.*

9. The preamble of the Treaty is express on this point. The two Powers (it says)—

"Deeming it desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the North-west coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties over the said territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement."

II.

10. Closely connected in character with the arguments of Mr. Bancroft under the first head, and equally inconclusive, as Her Majesty's Government submit, are his arguments under the second.

11. Mr. Bancroft alleges in effect that the intention of the Contracting Parties was only to avoid cutting off the end of Vancouver's Island, and he infers that the line is to be strictly so drawn as to effect this object, and no more. Her Majesty's Government dispute both the allegation and the inference.

12. There is no evidence that the prevention of the severance of Vancouver's Island was the sole object of the arrangement. There is nothing to support the allegation,

* Historical Note, p. viii.