

Georgia: (2) If, in this phrase, the name is not so understood, then the use of this expression (the 49th parallel and Fuca's Straits) is of no weight in favour of Mr. Bancroft's argument; for the whole question is where the line is to run, which is required to form a connecting link between the 49th parallel and Fuca's Straits (that name being used in the modern sense).

(ii.) Mr. Bancroft says (page 10):—

"When the Treaty speaks of 'the channel,' for that part south and west of Birch's Bay, it must mean the Channel of Haro, for no other 'channel' was known to the negotiators."

And he proceeds to instance maps on which the Canal de Haro and no other channel is named. This argument assumes that the reference in the Treaty is necessarily to some named channel. Her Majesty's Government, on the contrary, have submitted that the absence of any name in the Treaty is strong evidence in favour of their contention. The fact that the Rosario Straits had no name specially fits that passage to be the nameless channel of the Treaty. The Canal de Haro was conspicuously named on Vancouver's chart and Wilkes's map. If it had been intended to be the channel of the Treaty, it would have been obvious and easy to name it. Mr. Bancroft can scarcely mean to contend that the Rosario Straits are not a channel, because they do not bear a name of which the word channel is part.

(iii.) Mr. Bancroft proceeds (page 10):—

"Again, the word 'channel,' when employed in Treaties, means a deep and navigable channel, and when there are two navigable channels, by the rule of international law, preference is to be given to the largest column of water."

That the word channel means a navigable channel in Treaties generally, and in the Treaty under consideration in particular, is maintained also by Her Majesty's Government. But they do not admit the existence of such a rule as is here alleged. If navigability is of the essence of a channel, then as between two channels preference should be given to the one which is the better fitted for navigation. Now, at the time when the Treaty was made, at which time it must be read as speaking, the Canal de Haro was almost unknown to and unused by practical navigators. It can scarcely, in the true sense of language, regarded as used at that day, be called a navigable channel. Even at the present day when thoroughly explored and surveyed, it is found to be of difficult and dangerous navigation, especially for sailing-vessels, and only one steamer had penetrated into those waters at the date of the Treaty.*

(iv.) Then Mr. Bancroft says (page 26):—

"Now, compared with any other channel through which a ship could pass from the sea at the 49th parallel, to the Straits of Fuca, the Channel of Haro is the broadest and the deepest, the shortest and the best. . . . With regard to depth, the contrast is still more striking."

But, although depth of channel may be an advantage in river navigation, and may therefore well weigh in the choice of one channel as a boundary in preference to one or another less deep, yet depth beyond a certain limit—a limit perhaps never reached in river navigation—becomes a disadvantage in navigation of every kind, as it lessens the facilities for anchoring, and thus increases the dangers of navigation. The Canal de Haro is an instance. Its depth is so great, that there are but few anchorages in it, and there are none in the main channel; and with this defect, and its rapid and variable currents, it becomes an unsafe passage for sailing-vessels. The Rosario Straits, on the other hand, while they are deep enough for vessels of the very largest class, have many anchorages, conveniently and securely situated; and at the same time the regularity of the currents in them makes them comparatively easy of navigation.

(v.) Mr. Bancroft further says (page 26) that the Canal de Haro is "the shortest and most direct way between the parallel of 49° and Fuca Straits." But there is nothing in the Treaty to show that the line between the 49th parallel and the Straits of Fuca is to be run by what may now be held to be the shortest and most direct way. The line is to be drawn by the channel of the day, the ordinary and frequented navigable channel.

(vi.) Mr. Bancroft, in favour of the Canal de Haro, says (page 10) "Duflot de Mofras describes it as notoriously the best." From this and other references in the Memorial to this writer, it might be supposed that he was entitled to high respect as an authority on the hydrography and navigation of the region. The fact is, he was attached to a European Legation in Mexico in 1840-42, and was sent thence to report on the Oregon

* On these points Her Majesty's Government refer to the evidence in the Appendix to their Case, presented to the Arbitrator in December 1871.