

the Rosario Strait; but Fuca's Straits gradually contract as they approach the entrance of the Rosario Strait, which is only five miles wide. A provision which thus secures to the vessels of either nation the right of free navigation on either side of the boundary line throughout the whole of the Channel and Fuca's Straits would be perfectly intelligible, and, in fact, would be a requisite precaution, if the line is to pass through Rosario Strait, dividing the head waters of Fuca's Straits; but it would not be in any such sense a necessary precaution, if the line of boundary is to be drawn through the Canal de Haro.

On the former supposition it would be reasonable to secure to either party the free navigation of the whole of Fuca's Straits equally as of the Rosario Channel, inasmuch as the *medium filum aquæ* in the uppermost part of Fuca's Straits would be within the "three miles limit" of either shore; on the other hand, the part of Fuca's Straits, where the Canal de Haro strikes them, are of so great a breadth that there would be an ample margin of common navigable water for vessels on either side of the *medium filum aquæ*, and no necessity for vessels passing to and from the Pacific Ocean to navigate within the jurisdictional waters of either of the High Contracting Parties.

If it should be said on behalf of the United States Government that the proviso in the third paragraph of the 1st Article of the Treaty of 1816 was not inserted by way of precaution, but rather by way of comity, to preserve to both the High Contracting Parties a liberty of navigation hitherto enjoyed by them in common, Her Majesty's Government submits that considerations of comity would equally have required the extension of the proviso to the waters of the Channel, which separates the continent from Vancouver's Island north of the forty-ninth parallel of north latitude, as both parties had heretofore enjoyed in common the free navigation of those waters; but no such precaution has been taken in the Treaty to limit the exercise of exclusive sovereignty north of the forty-ninth parallel.

Again, it would have been an unreasonable thing to have provided by the Treaty that both parties should retain the free enjoyment of the navigation of the whole of Fuca's Straits, unless the Treaty is to be interpreted as requiring the boundary line to be drawn through the middle of those Straits, and continued through the Rosario Channel, in which case the free navigation of the whole of Fuca's Straits to the eastward of the Canal de Haro would be at times a condition essentially necessary to enable British or American vessels, as the case may be, to enter or leave the channel connecting Fuca's Straits with the waters of the upper Gulf. To contend, indeed, that this provision of the Treaty would be consonant to an interpretation of the Treaty, which would continue the boundary line through the Canal de Haro, is to deprive the proviso of any rational meaning, as American vessels would possess the right of navigating the Straits to the eastward of the Canal de Haro without any such proviso, and British vessels would not require any such liberty to enable them to enter or leave the Channel through which the boundary line is to pass from Fuca's Straits into the waters of the upper Gulf.

The Fourth Rule of Interpretation.

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The fourth of the rules to which Her Britannic Majesty's Government has invited the attention of His Imperial Majesty is, that the interpretation should be suitable to the reason of the Treaty, that is to say, the motive which led to the making of it, and the object in contemplation at the time.

"We ought," says Vattel (section 287), "to be very certain that we know the true and only reason of the law, or the Treaty. In matters of this nature it is not allowable to indulge in vague and uncertain conjectures, and to suppose reasons and views where there are none certainly known. If the piece in question is in itself obscure; if, in order to discover its meaning we have no other resource than the investigation of the author's views or the motives of the deed, we may then have recourse to conjecture, and in default of absolute certainty adopt, as the true meaning, that which has the greatest degree of probability on its side. But it is a dangerous abuse to go without in search of motives and uncertain views in order to wrest, restrict, or extend the meaning of the deed, which is of itself sufficiently clear, and carries no absurdity on the face of it."

Now the motive of the Treaty, as recited in the Preamble of it, was to terminate a state of doubt and uncertainty, which had hitherto prevailed respecting the sovereignty and government of the territory on the north-west coast of America, lying westward of the Rocky Mountains, by an amicable compromise of the rights mutually asserted by the two parties over the said territory.

The motive of the Treaty.

Reasons of the third paragraph.