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ARGUMENTS

IN BEHALF OF

THE UNITED STATES,

WITH

SUPPLEMENT AND APPENDIX,

PRESENTED TO THE

COMMISSIONERS UNDER THE TREATY

BETWEEN

GREAT BRITAIN AND THE UNITED STATES,

FOR THE

FINAL SETTLEMENT OF THE CLAIMS

OF THE

HUDSON'S BAY AND PUGET'S SOUND AGRICULTURAL COMPANIES.

C. CUSHING, *Counsel.*

WASHINGTON CITY:
M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS.
1868.

MEMORIAL OF THE HUDSON'S BAY COMPANY.

British and American Joint Commission on the Hudson's Bay and Puget's Sound Agricultural Companies' Claims.

To the Honorable the COMMISSIONERS:

The Governor and Company of Adventurers of England trading into Hudson's Bay, commonly called the Hudson's Bay Company, claimants, submit the following memorial and statement of their claims upon the United States; and for facts and considerations in support of such claims respectfully declare:

That, in the year 1846, and for a great number of years previous thereto, the Hudson's Bay Company were in the free and full enjoyment, for their own exclusive use and benefit, of certain rights, possessions, and property of great value, within and upon the territory of the northwest coast of America lying westward of the Rocky Mountains and south of the 49th parallel of north latitude; such rights consisting as well in extensive and valuable tracts of land, whereupon numerous costly buildings and enclosures had been erected and other improvements had been made, and then subsisted, as of a right of trade which was virtually exclusive, and the right of the free and open navigation of the river Columbia within the said territory.

That the rights, possessions, and property thus held and enjoyed by the Hudson's Bay Company, had been acquired while the said territory was in the ostensible possession and under the sovereignty and government of the Crown of Great Britain, and the Company held and enjoyed the same with the knowledge and consent, and under recognitions, both express and implied, of the Crown of Great Britain, and by persons acting under its authority.

That, by the treaty concluded between Great Britain and the

United States of America on the 15th day of June, 1846, while the Hudson's Bay Company were in the full and free possession and enjoyment of their said rights, it was in effect declared to be desirable, for the future welfare of both countries, that the state of doubt and uncertainty which had theretofore prevailed respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties, upon such terms of settlement as might be agreed upon; and thereupon, by article I, of the said treaty, the line of boundary to be thereafter observed between the territories of Great Britain and those of the United States of America, then in question, was established by mutual compromise and agreement.

That, by article III, of the said treaty, it was provided: That in the future appropriation of the territory south of the 49th parallel of north latitude, as provided in article I, of the said treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who might be already in the occupation of land or other property lawfully acquired within the said territory, should be respected; and by article II, of the same treaty, it was further provided, that from the point at which the 49th parallel of north latitude should be found to intersect the great northern branch of the Columbia river, the navigation of the said branch should be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described should in like manner be free and open.

That, under the settlement of the boundary line agreed upon by the said treaty, and defined by the first article thereof, the said territory, whereof the Hudson's Bay Company then had the actual and exclusive control, possession, use, and enjoyment as aforesaid, fell within and under the sovereignty and Government of the United States; and, under a just construction of the said treaty, and of the obligation therein assumed,

that the possessory rights of the Hudson's Bay Company should be respected according to the true intent and meaning of the same, the United States became and were bound to uphold and maintain the said Company in the free, undisturbed, and continual occupancy, use, and enjoyment of all the rights, possessions, and property then by them possessed and held, and to protect and indemnify them from aggression and injuries, by or through any person acting, or claiming to act, under the authority or the laws of the United States.

That the rights which the United States were so held to respect, and in the enjoyment of which they were bound to uphold and maintain the Company, consisted of:

First. The free and undisturbed possession, use, and enjoyment in perpetuity, as owners thereof, of all the posts, establishments, farms, and lands held and occupied by them for purposes of culture or pasturage, or for the convenience of trade, with all the buildings and other improvements thereupon.

Secondly. The right of trade in furs, peltries, and other articles, within and upon the whole of the said territory, and the right of cutting timber thereupon for sale and exportation.

Thirdly. The right to the free and open navigation of the Columbia river, from the point at which the 49th parallel of north latitude intersects the great northern branch of the said river down to the ocean, with a like free and open use of the portages along the said line.

That the said rights have not been respected according to the terms of the said treaty and the obligation of the United States resulting therefrom; but, on the contrary, by and through the aggressions and proceedings of persons acting, or claiming to act, under the authority of the Government, or of the laws of the United States, have been violated and restricted, and in great part extinguished and destroyed; and the Company, by reason of the said aggressions and proceedings, have been compelled in many cases to relinquish the same.

That, by the treaty concluded on the 1st day of July, 1863, it was agreed that all questions between the United States authorities on the one hand, and the Hudson's Bay Company

on the other, with respect to the possessory rights and claims of the latter, should be settled by the transfer of those rights and claims to the Government of the United States for an adequate money consideration.

And the claimants now submit a detailed statement and valuation of the said rights, severally, under their distinct heads or classes; and of the claim of the Hudson's Bay Company under and by virtue of the said treaty and of the premises herein set forth:

I. LANDS AND TRADING ESTABLISMENTS.

The forts, posts, establishments, farms, pastures, and other lands, with the buildings and improvements thereupon, held and possessed within the said territory by the Hudson's Bay Company, for their own sole use and benefit, at the time of the said treaty of the 15th June, 1846, and for a long time before, which had, in some instances, been acquired from prior occupants, and, in others, had been erected and made, and originally settled and occupied, by the Company, were as follows:

The post of Vancouver, so called, consisting of a stockaded fort, with dwelling-houses, store-houses, school-houses, houses for servants, shops, barns, and other outbuildings, with a stockade and bastions, erected at great cost, and of the value of fifty-five thousand pounds sterling, (£55,000;) other dwelling-houses and granaries, dairies barns, stables, and farm-buildings appurtenant to the said post for the purposes of farming and trade, built at various points near to the main post at Vancouver, and on Sauvé's island, together with saw-mills and flouring-mills, forges, workshops, and store-houses, all erected at a great cost at the time, and of the value of forty-five thousand pounds sterling, (£45,000;) the tract of land occupied, possessed, and used by the Company for its post at Vancouver, including its stations, enclosed and cultivated fields, and the pasturage for its cattle, horses, and sheep, extending in front along the bank of the Columbia river about twenty-five miles, and backward from the said river about ten miles; and Menzies' island,

so-called, occupied and used for pasturage; these tracts of land, with the agricultural improvements made thereupon, at a great cost, were at the time of the said treaty, of the value of seventy-five thousand pounds sterling, (£75,000.)

The said several sums, making together the entire sum of one hundred and seventy-five thousand pounds sterling, (£175,000,) equal to eight hundred and fifty-one thousand six hundred and sixty-six dollars and sixty-seven cents, ($851,-666 67,) the claimants aver to be the value of the fort, buildings, lands, and establishment, at and near Vancouver and on Sauvé's island, which they are entitled to claim and receive for the same.

A large portion of the land thus occupied, possessed, and used, has, since the 15th day of June, 1846, been taken from the possession of the Company by American settlers claiming under the land-laws of the United States, and the Company was dispossessed of the fort and establishment at Vancouver, and the land near thereto, by the orders of the military officers of the United States, in the year 1860.

The post at CHAMPOEG, consisting of one dwelling-house, one granary, and outbuildings, all of the value of three thousand pounds sterling, (£3,000;) and of the enclosed land of the value of two hundred pounds sterling, (£200;) and, in addition, certain town lots in the town of Champoeg, purchased of American settlers, of the value of two hundred pounds sterling, (£200;) making together the entire sum of three thousand four hundred pounds sterling, (£3,400,) equal to sixteen thousand five hundred and forty-six dollars and sixty-seven cents, ($16,546 67.)

The post at the mouth of the COWLITZ RIVER, consisting of dwelling-house, granaries, and outbuildings, erected by the Company, of the value of four hundred pounds sterling, (£400;) and the land occupied and used by them, of the value of one hundred pounds sterling, (£100;) making together the entire sum of five hundred pounds sterling, (£500,) equal to two thousand four hundred and thirty-three dollars and thirty-three cents, ($2,433 33.)

The post at FORT GEORGE, commonly called Astoria, con-

sisting of dwelling-houses, store-houses, and outbuildings, acquired by the Company from the prior occupants, of the cost and value of seven hundred and fifty pounds sterling, (£750;) and two acres of land whereupon the said post is built, and thereto appertaining, possessed and used by the Company, and being of the value of one hundred pounds sterling, (£100;) making together the entire sum of eight hundred and fifty pounds sterling, (£850,) equal to four thousand one hundred and thirty-six dollars and sixty-seven cents, ($4,136 67.)

This post was taken possession of in 1849–50 by the officers of the United States.

The post at CAPE DISAPPOINTMENT, consisting of a dwelling-house and store erected by the Company, of the value of one thousand pounds sterling, (£1,000;) and the land appertaining to the post occupied, used, and possessed by them, being one mile square, and of the value of two thousand pounds sterling, (£2,000;) making together the entire sum of three thousand pounds sterling, (£3,000,) equal to fourteen thousand six hundred dollars, ($14,600.)

The last-mentioned land, or a portion of it, since the date of the said treaty, was taken possession of by the officers of the United States for a light-house or other public purpose.

The post at CHINOOK, or Pillar Rock, a fishing station, consisting of a curing-house erected by the Company, of the cost and value of two hundred pounds sterling, ($200;) and the land used and occupied by them for said station, of the value of one hundred pounds sterling, (£100;) making together the entire sum of three hundred pounds sterling, (£300,) equal to one thousand four hundred and sixty dollars, ($1,460.)

The post at UMPQUA, consisting of dwelling-house, barn, stables, and outbuildings, erected by the Company, of the cost and value of three thousand pounds sterling, (£3,000;) and the land used and occupied by them for farms and pasturage, being a mile square in extent, a portion of which was fenced and cultivated, all of the value of two thousand pounds sterling, (£2,000;) making together the entire sum of five thousand pounds sterling, (£5,000;) equal to twenty-four thousand three

hundred and thirty-three dollars and thirty-three cents, ($24,333 33.)

The whole of this last-mentioned land is now occupied by an American settler, claiming to hold the same under the laws of the United States.

The post of NEZ-PERCÉS, commonly called Walla-Walla, consisting of two dwelling-houses and servants' houses, store-houses, and other buildings and outbuildings, walls and bastions, all built by the Company, of adobe brick, and of the cost and value of three thousand two hundred pounds sterling, (£3,200;) the land on the Columbia river occupied and used as belonging to the said post, and also the land along the bank of the said river used for the landing of the Company, of the value of ten thousand pounds sterling, (£10,000;) the lands surrounding the fort, used as pasturage, of the value of two thousand pounds sterling, (£2,000;) the farm near the post, being of some thirty acres, more or less, in extent, of the value of one thousand five hundred pounds sterling, (£1,500;) making together the entire sum of sixteen thousand seven hundred pounds sterling, (£16,700;) equal to eighty-one thousand two hundred and seventy-three dollars and thirty-three cents, ($81,278 33.)

This post and the lands were abandoned by the servants of the Company under the orders of the United States authorities in 1855.

The post at Fort Hall, consisting of houses, shops, stores, mills, and outbuildings, horse-parks and walls, all of adobe brick, and of the value of three thousand pounds sterling, (£3,000;) the lands enclosed and cultivated, of the value of one thousand pounds sterling, (£1,000;) and the lands occupied and used for the pasturage of horses and cattle, of great extent, and of the value of one thousand pounds sterling, (£1,000;) making together the entire sum of five thousand pounds sterling, (£5,000;) equal to twenty-four thousand three hundred and thirty-three dollars and thirty-three cents, $24,333 33.

This post was necessarily abandoned by the Company on

account of hostilities between the United States and the Indian tribes in 1856.

The post at BOISÉ, consisting of houses and outhouses, buildings, wall and bastions, and horse-parks, all built of adobe brick, and of the cost and value of one thousand five hundred pounds sterling, (£1,500;) about three miles square of land around the post, used and occupied by the Company for the purpose of agriculture and pasturage, all of the value of two thousand pounds sterling, (£2,000;) making together the entire sum of three thousand five hundred pounds sterling, (£3,600;) equal to seventeen thousand and thirty-three dollars and thirty-three cents, ($17,033 33.)

This post was necessarily abandoned by the Company in consequence of the hostilities between the United States and the Indian tribes of 1855.

The post at OKANAGAN, consisting of dwelling-houses, servants' houses, store-houses, outbuildings, all of adobe, stockade and bastions, erected by the Company, and of the value of two thousand five hundred pounds sterling, (£2,500;) thirty acres of land at the fort, used, occupied, and cultivated by the Company, of the value of one thousand pounds sterling, (£1,000;) and near and belonging thereto, other lands for the pasturage of herds of horses, of the value of five hundred pounds sterling, £500;) making together the entire sum of four thousand pounds sterling, (£4,000;) equal to nineteen thousand four hundred and sixty-six dollars and sixty-seven cents ($19,566 67.)

The post at COLVILE, consisting of dwelling-houses, servants' houses, shops, stores, outbuildings, stables, barns, yards, stockades and bastions, flouring-mills and appurtenances, all erected by the Company, and of the cost and value of ten thousand pounds sterling, (£10,000;) three hundred and fifty acres of land occupied and used and cultivated as farm-land, and about five miles square of land occupied and used for pasturage of their cattle and horses, of the value of five thousand pounds sterling, (£5,000;) the White Mud farm, (appurtenant to this post,) with a house, barn and stable, store and outbuildings, erected upon it by the Company, of the cost and value of one thou-

sand pounds sterling, (£1,000;) the land used and occupied as a farm, thirty acres of extent, and of the value of five hundred pounds sterling, (£500;) making together the entire sum of sixteen thousand five hundred pounds sterling, (£16,500;) equal to eighty thousand three hundred dollars, ($80,300.)

The post at KOOTANAIS, consisting of houses and stores erected by the Company, of the cost and value of five hundred pounds sterling, (£500;) the land occupied and used for the post, and near thereto, of small extent, of the value of five hundred pounds sterling, (£500;) making together the entire sum of one thousands pounds sterling, (£1,000;) equal to four thousand eight hundred and sixty-six dollars and sixty-seven cents, ($4,866 67.)

The post at FLAT-HEADS, consisting of dwelling-houses and stores, and of a small piece of land enclosed as a horse-yard, of the value of six hundred pounds sterling, (£600;) equal to two thousand nine hundred and twenty dollars, ($2,920.)

All these posts were established and maintained for the support of their servants, and of others in the employment of or trading with the Company, and were not only indispensable for carrying on their trade in the country south of the 49th parallel of north latitude, but were also of great value for the support of their posts and trade in the country north of that parallel. They were connected with and dependent upon each other, and were of greater value to the Company when used together. The farms and pasture-lands were also of great annual value.

It may be added, that the discoveries of gold and other minerals, which have been made within a few years past upon lands within the territory occupied by the Company, prove their value to be much higher than any estimate which could have been put upon them before their general mineral wealth was known; and although it is not intended to urge this fact as a distinct ground of claim, yet it is manifestly fair that it should not be without influence in the assessment to be made by the Commissioners.

The Company have been, as before stated, deprived of the

possession of some of their posts and farms and other lands by American settlers claiming under the land-laws of the United States; of some by the action of the officers of the United States; and of others by the hostilities between the United States and Indian tribes; which said tribes had, until the treaty of the 15th June, 1856, been under the control of and at peace with the said Company.

The privation of the annual profits and rents of these farms and lands, and the occupation of their posts, and the campelled abandonment of the said posts and farms and lands, have caused to the Company damage and loss to an amount exceeding fifty thousand pounds sterling, (£50,000.)

The value of the several forts, posts, establishments, farms, pasturages and lands, with the buildings and improvements thereon, amounts in all to the sum of two hundred and thirty-five thousand three hundred and fifty pounds sterling, (£235,350;) making, together with the sum of fifty thousand pounds sterling (£50,000) for loss suffered as stated, the entire sum of two hundred and eighty-five thousand three hundred and fifty pounds sterling, (285,350;) equal to one million three hundred and eighty-eight thousand seven hundred and three dollars and thirty-three cents, (1,388,703 33.)

Which the Hudson's Bay Company claim and are entitled to receive from the United States.

II. RIGHT OF TRADE.

The chief business of the Hudson's Bay Company in the year 1846, and for a great number of years before, was, and now is, the trade with Indian tribes in furs, peltries, and other articles. It was a trade of great magnitude, carried on in Oregon over a wide range of country, and involved an extensive foreign commerce. Large sums of money were annually expended in it, and the returns were highly profitable and important to the general prosperity of the Company.

For the proper and beneficial carrying on of that trade, the Company required, not only to hold and possess the posts, establishments, farms, and other lands already described, but

also to have the control, possession, and use of extensive tracts of country; and they had in fact, at and before the date of the treaty of the 15th June, 1846, in their control, possession, and use, for such purposes, a large portion of the country lying, as hereinbefore mentioned, on the northwest coast of America, to the westward of the Rocky Mountains, south of the 49th parallel of north latitude, and known as Oregon. And they had therein and thereupon a right of trade which was virtually exclusive.

The profits derived from their said trade, before and in the year 1846, exceeded in each year the sum of seven thousand pounds sterling.

And such right of trade, and the control, possession, and use of the said territory for the purposes thereof, independently of their foreign commerce and the sale of timber, exceeded in total value the sum of two hundred thousand pounds sterling.

Under the settlement of the boundary line by the treaty of the 15th June, 1846, the said territory fell under the sovereignty and government of the United States; and by reason thereof, and of the acts and proceedings had and taken under and by color of the authority and of the laws of the United States, the control, possession, and use of the said territory by the Hudson's Bay Company, for the purposes of their trade, and their rights in the exercise and carrying on of their trade in furs, peltries, and other articles, as well as their trade in the shipment and sale of timber and their foreign commerce, were restricted and denied, and in effect wholly taken away and lost; and for their said rights, and the forced relinquishment and loss thereof, they claim the said sum of two hundred thousand pounds sterling, (£200,000;) equal to nine hundred and seventy-three thousand three hundred and thirty-three dollars and thirty-three cents, ($973,333 33.)

III. NAVIGATION OF THE COLUMBIA RIVER.

The Hudson's Bay Company aver that, under the treaty of the 15th June, 1846, by article IV of that treaty, they have

a right to the free and open navigation of the north branch of the Columbia river, from the point at which the same is intersected by the 49th parallel of north latitude to the main stream, and thence to the ocean, with free access and passage into and through the said river or rivers; and that British subjects trading with them have an equal right of navigation; and that, to the Company, and to those thus trading with them, the portages of the said river or rivers along the lines thus described ought to be, and of right are, free and open.

The right thus to navigate the said river or rivers, and to pass unobstructed over their portages, was and is of great value to the Company, and is also of great and increasing political and national value to the United States; and for its relinquishment and transfer the Company claim and are entitled to receive the sum of three hundred thousand pounds sterling, (£300,000,) equal to one million four hundred and sixty thousand dollars, ($1,460,000.)

In addition to the special statements hereinbefore contained, the Hudson's Bay Company submit that, throughout a long series of years, they expended large sums of money and devoted much labor and time in efforts to bring the native population into such a condition that safe and profitable relations, in regard to trade and general intercourse, could be established with them. The exploration of the country, the expenditure for labor, and of the parties engaged, the opening of roads, the strong force required as a protection against the Indians, their conciliation brought about, sometimes by a resort to forcible measures, but chiefly by liberal dealing, effected a great change in the condition of the country, rendering it fit for immediate settlement. These were substantial benefits to the Government and people of the United States, under whose sovereignty this territory fell, and could not have been secured without a very large outlay. It is, of course, impossible to give any minute details of expenditures of this class, and of the advantages which the United States have derived from them; but the justice of extending to the Hudson's Bay Company liberal compensation, founded on these considerations, is

too apparent to allow of any reasonable hesitation in admitting it.

It is obvious that, of the three classes of claims set forth in the foregoing memorial, the first only consists of particulars which, in their nature, admit of direct proof of value; but with respect even to these, the honorable the Commissioners are earnestly requested to notice, that circumstances which the claimants could in no degree prevent or control, have greatly impaired the means of producing such proof in the positive and complete form which, otherwise, they would have been enabled to do. Among these circumstances may be specified the aggressive acts and the general conduct of American citizens, and of persons acting under the authority of the United States, commencing shortly after the 15th June, 1846, and continuing from year to year, by which the rights of the claimants under that treaty were violated and denied, and their property and possessions were, in some instances, usurped and taken from them, and, in others, were necessarily abandoned. This course of conduct was, perhaps, to be expected, from the anomalous position in which the Company were placed—a foreign corporation exercising a *quasi* sovereignty and exclusive rights over territory transferred to a Power whose policy in dealing with such territory was diametrically opposed to that which the Company pursued, and from which they derived their profits. But however this may be, it is an undoubted consequence to the Company that their rights and possessions have been thereby made of comparatively little value, and the difficulty of obtaining evidence upon them has been rendered very great. This difficulty has been essentially increased by the lapse of time since the claims first arose. A delay of seventeen years intervened, during which the United States, while failing to cause the rights of the Hudson's Bay Company to be respected, continued to refuse any satisfactory settlement of their demands. The inevitable effect of this delay, now extended to nearly twenty years, has been to remove by death, or otherwise, the greater number of important witnesses, and to weaken the evidence which is still available, both by the remoteness, in point of time, of

the facts to be established, and by reason of the natural decay or of the disappearance of much which constituted the value of the rights and possessions for which the present claims are made.

With respect to the second and third classes of claims set forth, the claimants solicit the attention of the honorable the Commissioners to the fact before alluded to, that they are of a nature which does not admit of a formal and precise valuation by testimony. Consisting as they do of important rights of trade, and of other rights of a public and national character, they are manifestly of great value. But the estimation to be put upon them, and the amount of the money consideration to be paid for their relinquishment and transfer, must be settled by the judgment of the Commissioners, founded upon their own experience and knowledge, aided by public documents and the recorded opinions of statesmen and writers of authority, and by such general estimates under oath as it may be possible to obtain.

The claimants have made the foregoing statement and observations with respect to evidence for the purpose of urging for the serious consideration of the honorable the Commissioners, that in their examination and decision of the present claims, they ought not to be restrained by the rules which are observed in the trial of ordinary issues in courts of law. Those rules, under the circumstances and for the reasons above declared, the claimants contend, should be liberally modified and relaxed in the present case: and they respectfully, yet formally and solemnly, protest, that a strict application of them, in the consideration of their claim, would be unreasonable and unjust.

In conclusion, the Hudson's Bay Company submit that, upon the facts and circumstances, and for the reasons and considerations herein set forth, they are entitled to claim and receive from the United States the several sums here following:

First. For their forts, posts, establishments, farms, pasturage, and other lands, with the buildings and improvements thereon, as hereinbefore set forth, the sum of two hundred

and eighty-five thousand three hundred and fifty pounds sterling, (£285,350.)

Secondly. For the right of trade, as hereinbefore set forth, the sum of two hundred thousand pound sterling, (£200,000.)

Thirdly. For the right of the free navigation of the Columbia river, as hereinbefore set forth, the sum of three hundred thousand pounds sterling, (£300,000.)

The said several sums making together the entire sum of seven hundred and eighty-five thousand three hundred and fifty pounds sterling, (£785,350,) equal to three million eight hundred and twenty-two thousand and thirty-six dollars and sixty-seven cents, ($3,822,036 67.)

And the Hudson's Bay Company ask that the honorable the Commissioners will, after due examination, maintain the said claim as just and reasonable, and will decide that the United States ought to pay to the Company, in discharge of their said claims and rights, and for the transfer of them, the said sum of seven hundred and eighty-five thousand three hundred and fifty pounds, in sterling money of Great Britain, equal to three million eight hundred and twenty-two thousand and thirty-six dollars and sixty-seven cents in gold, to be paid at the time and in the manner provided by the said treaty of the 1st July, 1863.

And the claimants declare that, for the said sum of money, or for such other sum as the honorable the Commissioners may justly award, they are ready and willing to transfer to the United States all their rights and claims according to the terms of the said two treaties.

CHS. D. DAY,
Counsel for the Hudson's Bay Company.

Dated April 8, 1865.

MEMORIAL OF THE PUGET'S SOUND ARICULTURAL COMPANY.

British and American Joint Commission on the Hudson's Bay and Puget's Sound Agricultural Companies' Claims.

To the Honorable the COMMISSIONERS:

The Puget's Sound Agricultural Company submit the following memorial and statement of their claims upon the United States; and for facts and considerations in support of such claims, respectfully declare:

That in the year 1846, and for many years previous thereto, the Puget's Sound Agricultural Company were, and since have been, engaged in the business of agriculture and farming, and of breeding and raising live-stock; and for the purposes and in the course of carrying on their said business, they acquired and became possessed as owners thereof, before the said time, of certain farms and extensive tracts of land in the territory lying on the northwest coast of America to the south of the 49th parallel of north latitude and north of the Columbia river.

That, upon portions of their said lands, there were erected and made by them buildings, enclosures, and other improvements of great cost and value; and the Company also owned and possessed, and pastured and fed upon the said lands, their said live-stock, consisting of large and valuable herds of cattle and horses, and flocks of sheep; from the sale and disposal of which, and of the other productions of their said farms and land, they received great annual returns and profit.

That by article IV of the treaty concluded between the United States of America and Great Britain, under date of the 15th day of June, 1846, it was provided: that the farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia river, should be confirmed to the said Company; but that in case the situation of those farms and lands should

be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required should be transferred to the said Government, at a proper valuation, to be agreed upon between the parties.

That the Government of the United States has not, at any time, signified to the Company a desire that any of the said property should be transferred to the said Government, at a valuation as provided by the treaty, nor has any transfer thereof been made; but the Company have ever since continued to be the rightful owners of the said lands, farms, and other property, and entitled to the free and undisturbed possession and enjoyment thereof.

That, by a convention concluded between the two Governments on the 1st day of July, 1863, it was agreed that all questions between the United States authorities on the one hand, and the Puget's Sound Agricultural Company on the other, with respect to the rights and claims of the latter, should be settled by the transfer of such rights and claims to the Government of the United States for an adequate money consideration.

And the claimants aver that the rights and claims of the Puget's Sound Agricultural Company, referred to and intended in and by the said convention, are their rights and claims in and upon the said lands, farms, and other property of every description which they so held and possessed within the said territory, and which, by reason of the said treaty of the 15th June, 1846, and according to the terms of the fourth article thereof, the United States became and were bound to confirm. And of the said farms and other property, they now submit to the honorable the Commissioners a detailed statement and valuation, as follows:

First. The tract of land at Nisqually, extending along the shores of Puget's Sound, from the Nisqually river, on the one side, to the Pu-yal-lup river on the other, and back to the east-range of mountains, containing not less than two hundred and sixty-one square miles, or one hundred and sixty-seven

thousand and forty acres; of which said tract of land a portion is improved and under cultivation for farming and agriculture, and the remaining portion thereof was occupied and used by the Company for the grazing and pasturage of their cattle, horses, and sheep, and for cutting wood and timber thereon, and for other purposes connected with their business; the whole being of the value of one hundred and sixty thousand pounds sterling, (£160,000;) the fort, bastions, houses, stores, barns, shops, and outbuildings, with the fencing and enclosures at the main post and establishment, and the houses, barns, outbuildings, fencing, and enclosures at the other points on the said land, of the cost and value of four thousand pounds sterling, (4,000;) these two sums making together the entire sum of one hundred and sixty-four thousand pounds sterling, (£164,000,) equal to seven hundred and ninety-eight thousand one hundred and thirty-three dollars and thirty-three cents, ($798,133 33.)

Secondly. The land and farm at the Cowlitz river, known as the Cowlitz farm, consisting of three thousand five hundred and seventy-two acres, more or less, of which upwards of fifteen hundred acres are improved and under cultivation for farming and agricultural purposes, and the remaining portion is used for cattle and sheep-ranges and pasturage, and for other purposes connected with the business of the said Company; the said last-mentioned land being of the value of twenty thousand pounds sterling, (£20,000;) the establishment and buildings of the Cowlitz farm, consisting of dwelling-houses, saw-mills, stores, granaries, barns, stables, sheds, and piggeries, and of a great extent of fencing and enclosures, of the value of six thousand pounds sterling (£6,000;) the said two last-mentioned sums making together the entire sum of twenty-six thousand pounds sterling, (£26,000,) equal to one hundred and twenty-six thousand five hundred and thirty-three dollars and thirty-three cents ($126,533 33.)

Thirdly. The Company also owned and possessed live-stock consisting of three thousand one hundred head of neat cattle, three hundred and fifty horses, and five thousand three hundred sheep, of the value of twenty-five thousand pounds sterling, (£25,000;) which were pastured and fed on their said

lands before and at the time of the conclusion of the treaty of the 15th June, 1846, and afterwards, until the time of the commission of the acts and injuries hereinafter mentioned, by which the greater part of the said live-stock was either killed or driven away, and entirely lost to the Company, within a few years after the time of the said treaty.

And the claimants aver, that although at the time of the conclusion of the treaty of the 15th June, 1846, and for a long time before, they held and possessed the said lands, farms, and other property as owners thereof, and the United States, by the terms and according to the conventions contained in the last treaty, undertook and were bound to confirm them in the same; yet the United States failed to execute or grant to the said Company any formal title of confirmation of their said lands, farms, and other property; and by reason thereof, and of the acts and proceedings of officers of the United States, and of American citizens, and others assuming to act under the authority of the laws or of the Government of the United States, the Company were deprived of the use and enjoyment of a large portion of their lands, farms, and other property, and of the rents, fruits, and profits thereof; their pasturage was destroyed or taken from them; their live-stock killed or driven off and wholly lost to them; and their entire business broken up or rendered unprofitable.

And the claimants have, in consequence, suffered loss to the amount of fifty thousand pounds sterling, (£50,000,) equal to two hundred and forty-three thousand three hundred and thirty-three dollars and thirty-four cents, ($243,333 34.)

It may be added, as indicative of the value of their property, and in some degree of the nature and extent of the injuries to which the company were exposed, that while they were thus suffering from aggressions, and were disturbed in their possession, as above stated, a portion of their lands was assessed, for the purpose of taxation, at a value of $817,000; and they were compelled to pay taxes thereupon from year to year, and have actually paid for such taxes the sum of $14,596.

In conclusion, the claimants submit to the honorable the Commissioners, that they are entitled to claim and receive the

fair value of their said farms and extensive tracts of land, and a just compensation for the capital expended in the acquisition and improvement of their said property, and in the buildings, forts, mills, trading establishments, and enclosures thereon; and, further, compensation for the loss of their live-stock, and for other loss suffered by them in consequence of the acts and proceedings hereinbefore complained of. And they ask that, upon the facts and circumstances, and for the reasons and considerations hereinbefore set forth, the honorable the Commissioners will, after due examination, maintain their claim as just and reasonable, and will decide that the United States ought to pay to the said Company, in satisfaction and discharge of their said rights and claims, and as a proper valuation and adequate money consideration for the transfer and relinquishment of them, the several sums hereinbefore specified and now following, that is to say:

For the farms and land, with the buildings, forts, trading establishments, and improvements thereon, one hundred and ninety thousand pounds sterling, (£190,000;) for the loss of the live-stock, and other loss suffered by them by reason of the acts and proceedings hereinbefore complained of, fifty thousand pounds sterling, (£50,000;) making together the entire sum of two hundred and forty thousand pounds sterling, money of Great Britain, (£240,000,) equal to the sum of one million one hundred and sixty-eight thousand dollars, ($1,168,000,) to be paid in gold, at the time and in the manner provided by the treaty of 1st July, 1863.

And the claimants declare that, for the said sum of money, or for such other sum as the honorable the Commissioners may justly award, they are ready and willing to transfer to the United States all their rights and claims, according to the terms of the said two treaties.

CHS. D. DAY,
Counsel for Puget's Sound Agr'l Company.

Dated April 10, 1865.

MOTION TO AMEND MEMORIAL.

British and American Joint Commission on the Hudson's Bay and Puget's Sound Agricultural Companies' Claim.

Inasmuch as it appears by the evidence of record that the lands claimed by the Hudson's Bay Company, of each of the posts of Vancouver and Colvile, greatly exceed in value the respective amounts stated and claimed for them in the memorial in this cause filed, it is moved by the counsel for the claimants that, in order to equalize their claim with the proof, they be permitted to amend the statement of the value of the said lands contained in their memorial to the effect and in the manner following, that is to say:

1. That an addition of £85,000 sterling, equal to $413,666 66, be made to their claim for the land at Vancouver, and that such claim be taken and held to be for the sum of one hundred and sixty thousand pounds sterling, equal to $778,666 66, instead of seventy-five thousand pounds sterling, equal to $365,000.

2. That an addition of £9,500 sterling, equal to $46,233 34, be made to their claim for the land at Colvile and White Mud farm, and that such claim be taken and held to be for fifteen thousand pounds sterling, equal to $73,000, instead of five thousand five hundred pounds sterling, equal to $26,776 66.

And that, in conformity with such amendment, the statement in the memorial of the aggregate value of the rights of the claimants, and the conclusions by them therein taken, be reformed and increased by adding thereto the said sum of £85,000 sterling, and the said sum of £9,500 sterling, making together the sum of ninety-four thousand five hundred pounds sterling, equal to four hundred and fifty-nine thousand nine

hundred dollars, and that the entire amount of their claim be taken and held to be the sum specified in the said statement and conclusions, together with the further sum of four hundred and fifty thousand nine hundred dollars thereunto added.

CHS. D. DAY,
Counsel for H. B. Co.

June 10, 1868.

CLAIMS

OF THE

HUDSON'S BAY COMPANY.

To the Honorable the Commissioners:—

The claims of the Hudson's Bay Company against the United States are founded on the third article of the treaty between Great Britain and the United States, of June 15th, A. D. 1846, as follows:

ART. III. In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land, or other property, lawfully acquired, within the said territory, shall be respected.

And on the following clause of the Treaty of July 1st, 1863, namely:

ART. I. And whereas it is desirable that all questions between the United States authorities on the one hand, and the Hudson's Bay and Puget's Sound Agricultural Companies on the other, with respect to the possessory rights and claims of those companies, and of any other British subjects in Oregon and Washington territory, should be settled by the transfer of those rights and claims to the Government of the United States, for an adequate money consideration.

In the exhibition of its pretended rights, the Hudson's Bay Company, by its memorial, claims compensation on account of various trading posts or stations which it professes to have occupied and improved in the territory of the United States, now politically organized as the State of Oregon, and the Territory of Washington.

It also claims compensation on account of pretended rights of trade and of navigation independent of, or distinct from, the occupation of land.

And on account of these various branches of pretended right, the Company, in its original memorial, claims compensation to the amount of three million eight hundred and twenty-two thousand and thirty-six dollars ($3,822,-036); and in a motion to amend, claims the further sum of four hundred and fifty-nine thousand nine hundred dollars ($459,900): making in all, the total claim of four million two hundred and eighty-one thousand nine hundred and thirty-six dollars ($4,281,936.)

The duty to be performed by the Commissioners in the premises is defined in the second article of the treaty under which they act, requiring that they shall "make and subscribe (as they have in fact done) a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, all the matters referred to them for their decision."

We propose and expect to show, to the satisfaction of the Commissioners, that these claims of the Hudson's Bay Company are for the most part utterly destitute of any truth or justice in fact or in law: that, in so far as there may be right in any part whatsoever of such claims, the same are extravagantly and monstrously exaggerated by the claimants, to such exorbitant degree as to sound in fraud, and to dishonor and discredit the entire cause of the Company.

The discussion of the subject involves, in the first place, sundry general considerations; and in the second place, examination, in detail, of the various heads or branches of claim, as subdivided in the memorial of the Company.

(A.)—General Considerations.

The Treaty of June 15th, 1846, between the United States and Great Britain, provides,—

"That in the future appropriation of the territory south of the 49th parallel of north latitude, * * the possessory rights of the Hudson's Bay Company, and of all British subjects who might be already in the occupation of land or other property lawfully acquired within the said territory, should be respected."

I. The first observation which suggests itself is, that the obligation assumed by the United States, in the clause of the treaty quoted, is to commence in future, upon the "appropriation of the Territory." That is to say, the United States undertook to respect the possessory rights of the Hudson's Bay Company upon their "future appropriation" of the territory.

Appropriation of the territory would consist in the United States doing one or both of two things; (1) Taking for its own use such portions of land as it would need for public purposes as military reservations, light houses, &c; (2) Establishing its land system over the territory.

Whenever, in thus making appropriation of the territory, the portion of land, sought to be appropriated, in any degree infringed upon the possessory rights of the Company, the United States were bound to respect those rights. If the United States had never made appropriation of the territory, the special obligation assumed by them in the treaty would never have occurred, and the Company would have been left for the protection of its rights, whatever they might be, to the general principles of public or municipal law, as the same might be applicable to the subject.

In taking possession of land, to which the Company had possessory rights, for public uses, the United States would only be bound to respect the possessory rights of the Company to the same extent, as in case of similar rights of American citizens. And this point is expressly regulated

by the Constitution, which provides that private property shall not be taken for public uses except on just compensation. Whenever, therefore, the United States took possession of land in which the Company claimed possessory rights, the Company would have no other claim against the United States than for just compensation. Such just compensation is very properly defined by the Court of Claims of the United States as the value of the property taken.

See Johnson vs. the United States, 2 Nott & Hun-
Huntington, p. 391.

II. The next question is, What is the meaning of the term "possessory rights," as used in the treaty?

The distinction between possessory and proprietary rights has been the subject of discussion in several recent decisions of the Supreme Court of the United States.

See DeHaro vs. U. S., 5 Wallace, p. 599.
Higuera vs. U. S., Ibid., p. 829.
Grisar vs. McDowell, 6 Wallace, 663.

The distinction requires examination in the present case, and admits of being regarded under divers aspects.

1. The term "possessory rights" means such rights as grow out of the possession of property, real or personal. "Possessory rights" are precisely the same thing as "rights of posession." "Possessory rights" and the "right of possession" are convertible terms: they are such rights as grow out of the possession of property.

To possess property it must actually exist: possession necessarily implies something capable of being possessed.

Nothing can be possessed but that which has actual physical substance. One is in possession of a house or a field, or a book, because such things are capable of possession. But one is not in possession of rights in action, as money due on bond, or other contract, which are choses in action.

Thus, in the case of a bond or note, the owner has possessory rights in the paper or note, with the writing on it,

and may maintain trover for the same; but he has no possessory right to the sum due on the bond or note. In reference to that, he only has a right of action. A familiar illustration of the distinction between possession and a right of action is furnished by the case of a husband, who acquires title to his wife's choses in action, when he reduces them to possession. As husband, he has a right to collect his wife's choses in action: if he does so collect them, they become his property. Here, first, he has only a right to collect; second, a perfect title by actual possession.

Possessory rights can arise only from possession. Possession can exist but in reference to that which has physical being. The possessory rights of the Company are, therefore, such rights as arise from their possession of land or personal property in the ceded territory.

As we understand the memorial, there is no allegation that the "possessory rights" of the Company in any personal property have been violated by the United States. Such being the case, we think it unnecessary to say any thing further in reference to the possessory rights of the Company in personal property.

We propose to confine ourselves entirely to the question of the "possessory rights" of the Company to land in the territory.

III. What are the "possessory rights" of the Company to land?

1. It is clear that the Company have no fee simple title to land, because no such title can be acquired to lands, under the laws of England or the United States, except by grant from the sovereign authority. This principle of law is so fundamental in the jurisprudence of Great Britain and the United States, that it is thought unnecessary to make an extended argument on the point. It is deemed sufficient to refer to the following authority:

"It is a fundamental principle in the English law, that the king is the law paramount of all the land in the kingdom, and the true and only source of title. In this country we have adopted the same principal and applied it to our republican governments, and it is a settled and fundamental doctrine with us, that all individual title to land within the United States is derived from the grant of our own local governments, or from that of the United States, or from the Crown or royal chartered governments established here prior to the revolution."

(3 Kent's Commentaries, sec. 37, pp. 457, 458.)

There is no pretence, therefore, whatever, for claiming that the Company is entitled to a fee simple title to land.

Indeed the treaty effectually disposes of this question: for it speaks only of "possessory rights" in the Company, necessarily implying that the fee simple title was not in the Company.

2. Assuming then, that the company have no fee simple title to land in the territory, an estate in law, analogous to that of the company in 1846, is what the common law denominates an "estate at will."

An estate at will is defined to be, "where one man lets land to another to hold at the will of the lessor."—(3 Kent's Com., sec. iii., p. 114.) A simple permission to occupy creates a tenancy at will.—(Doe vs. Wood, 14 Meeson & Welsby, 682.)

The possessory rights of the tenant may be defined as follows:

(3 Kent's Com., sec. iii., p. 114.)

a. Tenant has a right to the possession of the land until the crop is gathered.

b. He is entitled to the use and fruit of the land.

c. He is entitled to reasonable estovers.

d. He can maintain trespass against wrong doers, who invade his possession.

By the English statute of frauds, generally adopted in the United States, "all estates or uncertain interests in land, made by parol, and not in writing, have the force and effect of estates at will only."

Under the English and American law, all possession of land, with the consent of the owner, without a written agreement, is an estate at will.

A tenant at will is not entitled to be paid for improvements.

3. We might also consider the question of "possessory rights" as illustrated by the relation of the Indians in America to the European sovereignties established here, the law being the same in that respect both in Great Britain and the United States.

See Wilkes vs. U. S., 9 Peters, 711.
Worcester vs. Georgia, 6 Peters, 615.
Lattimer's Lessee vs. Potet, 14 Peters, 4.
U. S. vs. Fernandez, 10 Peters, 303.

This point will be more particularly discussed hereafter, in examining the value of the claims of the Company.

4. Another pertinent analogy is that of the pre-emption laws of the United States.

This also will be further considered in discussing the value of the Company's claim.

5. But we have no occasion to rest on mere analogy in the present case.

It is the ordinary case of occupation of land by a licensee at will.

The Company were rightfully in this territory only by virtue of the license of trade.

This is obvious by reference to the terms of their original charter, which restricts their operations to the country around Baffin's Bay.

Further, it appears by their acceptance of the license of trade, which is an admission on their part that without such license they would have had no authority to operate in this territory.

And it appears, further still, by their yielding to the authority of the British Crown, in revoking their license in British Columbia, thus giving a practical construction to the powers conferred upon them under their original charter.

And here we may remark, that we do not think it necessary to raise the questions, which have been raised in Great Britain, as to whether the Company, under their original charter, have any other than proprietary rights as owners of the land. As appears from Mr. Dodd's address, hereinafter referred to, p. 30, it appears that grave doubts exist in the best legal minds of Great Britain, whether the original charter of the Company legitimately conveys to the Company anything more than the ownership of the land embraced in it. But we think it unnecessary to pursue that inquiry in this relation and place.

It is enough for our purpose to show that the Company were acting in this territory only by virtue of the license.

Assuming that this is a question of law established in the case, then we propose to see what consequences follow from it.

(*a*) The license is an authority to the Company to carry on exclusive trade with the Indians.—Company's Evidence, p. 317. It is this, simply this, and no more.

The first question which arises in this connection is, what, if any, right, interest, privilege, or title to land, this license conveys. No mention is made of land. The territory was in such a condition, being claimed both by the United States and Great Britain, that it would have been improper in Great Britain to make any alienation of land in it. And it is on general principle, resulting from the fact of the United States claiming the territory, and specially because, by the treaty of joint occupancy between Great Britain and the United States, neither party was to do any thing to the prejudice of the other party in reference to the territory.

And in this connection it is proper to note that the treaty of 1846, by establishing the 49th parallel as the boundary line, admitted, as matter of law, that the claim of the United States was well founded up to this line.

The United States, it must be remembered, did not derive title to this territory from the treaty of 1846. The legal effect of the treaty was only that it contained the acknowledgment by Great Britain of the pre-existing title of the United States. In legal contemplation the territory was the territory of the United States, thence hitherto, at and previous to the issuing of the license of trade to the Company.

As a question of law, then, at the time of the concession of the license, a grant of land in the territory from the British Crown would have been without legal authority, as attempting to grant land belonging to the United States and not to Great Britain.

In point of fact, then, and in point of law, the license of trade did not grant any permanent estate in the lands of the territory.

The question now comes up, what interest in the land did the license grant?

In determining this question, the status of the territory must be kept in mind. It was claimed by both Great Britain and the United States, the title of the United States being subsequently admitted by Great Britain. By the terms of the treaty of joint occupancy the territory was open to the occupancy of the subjects of both countries for the time being.

The utmost which could properly be claimed on behalf of the Company in this regard is, that the license authorized the provisional occupancy of so much of the territory used, in such manner as was necessary and proper to effectuate the power of exclusive trade with the Indians, conceded by the license. The Company were authorize by the license to carry on exclusive trade with the Indians, and as incident to this power, to use land in the territory in such manner, and to such extent, as might be necessary to carry on the business of exclusive trade with the Indians.

This would, for instance, necessarily imply a right on the part of the Company to use certain points in the territory for posts; also to open roads, &c. The privilege of using such pasturage as might be necessary for the purposes of the Company would also seem to follow. To this might be added the use of so much agricultural land as would be necessary for the purposes of the Company as an Indian trading association. And also the use of the necessary timber. In short, it might be possible to claim for the Company all such use of the land and water and timber of the territory as might be necessary for the purposes of the Company, keeping in view that the only legitimate business of the Company was trading with the Indians.

The Company could use land in the territory, so far as was necessary for them in conducting their operations as an Indian trading company. The authority of the Company to use the land in the territory was limited and restricted within such a circle as was necessary for them to act as an Indian trading association. Within this circle their use of the land might be rightful and proper: outside of this circle it was without authority.

For instance, they had no authority to engage in agriculture, or pasturage, or milling, for the purposes of carrying on general trade in the territory or with the view of conducting a foreign trade.

All use of the land beyond what was necessary to enable them to carry on the business of fur traders was outside of their powers. The quantum of their rights in the land of the territory is to be determined by reference to the Indian trade.

We consider these general principles to be the proper measure of the rights of the Company to use land in the territory.

To make a practical application of them, we submit that the Company only had a right to occupancy of lands of the territory. There was no necessity for them

to have any other title than occupancy in the then uncivilized condition of the country. Occupancy was all that was requisite as the territory was then situated. This occupancy was an incident of their license to trade with the Indians. This license to trade was merely provisional, subject to revocation at any moment by the British Crown.

As the license to trade was the principal thing, and occupancy of the land a mere incident arising from such license, it is manifest the right of occupancy could have no more permanent existence than the license itself. The license to trade being the principal right, and occupancy a mere consequence flowing from such principal right, the right of occupancy must perish with the license.

This we consider so plain as not to require further argument.

The license might expire in three ways:

1. By the cessation of the interest of the licensee, or,
2. By revocation.
3. By expiration of the title of the licensor.

It is laid down as a familiar principle of law that "the death of either party will of itself revoke it," (a license.) —(Washburn on Real Property, vol. 1, p. 414.) There is no doubt of this, as a question of law in the case of an individual.

So, by parity of reason, where a government, as in this case, grants a license, the license expires with the power of this government over the subject-matter. Where the individual licensee dies, the license expires; so where the power of the government expires, the license ends.

The British Crown had authority to grant the license at the time it did, but after the treaty of 1846 its power in the matter was gone, and the license ended.

If we are correct in this view of the case, the Company had no right, after the treaty, to act under the license, the license being thereby made void and of no effect, and further occupancy of land by them, except for the purpose of winding up their business, was unauthorized.

But at any rate, the license by its express terms was revocable, and in point of fact it was revoked.

And here it is worthy of observation that the license itself expressly provided that it should not be operative within the territory of the United States.—(Company's Evidence, p. 318.) This is important as showing that it never was the intention of the British Government to authorize the Company to operate within the territory of the United States.

Such having been the original purpose of the Crown in the very act of granting the license, there was peculiar propriety in the revocation thereof after the treaty of 1846.

This furnishes us with additional inducement to conclude that the revocation of the license ended the authority of the Company in the territory. It was only the carrying out by the British Government of its primary policy. The same considerations of public policy which induced the British Government to provide expressly, in the first intance, that the Company should not operate within the territory of the United States, would induce the Government to revoke the license after the territory was ascertained to be within the United States.

Great regard to the policy manifested by the British Government in granting the license compels us to give the fullest possible effect to its revocation of the license.

After the revocation of the license, certainly if not at the date of the treaty of 1846, the Company was *functa officio* in the territory as fur trader, and with its extinction as fur trader ended all right to occupancy of land in the territory.

A few observations in addition on the subject of the law of licenses, and we will pass from this branch of the case.

A license is defined as follows:

"A license is an authority to do a particular act, or series of acts, upon another's land, without possessing any estate therein."

Washburn on Real Property, vol. 1, p. 412.

See further on same point:

Cook v. Stearns, 11 Mass., 533.

Tayler v. Waters, 7 Taunt., 374.

Mumford v. Whitney, 15 Wend., 380.

Wolfe v. Frost, 4 Sandf. Ch., 72.

Prince v. Case, 2 Amer. Leading Cases, 728.

The essential and descriptive characteristic of a license, considered in reference to land, is that the licensee acquires no estate therein. He receives authority to do some act, or acts, in connection with the land of another, but acquires no estate. Under the operation of this principle, the Company, as licensee, acquired no estate in land.

Hence, therefore, it is further laid down that "a license may be created by parol, as it passes no interest in the land."

Washburn on Real Property, vol. 1, p. 412.

It is also laid down that a license may be revoked.—(*Ib.*, p. 413.)

Further, that a license is strictly construed.—(*Ib.*, p. 414.)

Again:

"A license is so much a matter of personal trust and confidence that it does not extend to any one but the licensee."—(*Ib.*, p. 414.)

The Company could not have aliened the privilege of trade they enjoyed under the license. Neither, it would seem, therefore, could they alien the occupancy of land they enjoyed as an incident to the license.

In one class of cases the license has been to build a house on licensee's land, and in some cases the revocation has been before the building was completed, in others afterwards, and in both the licensee was obliged to remove it without any right to claim compensation.

Washburn on Real Property, vol. 1, p. 415.

Jamieson v. Milleman, 3 Dner, 255.

Prince v. Case, 10 Conn., 378.

Jackson v. Babcock, 4 Johns., 418.
Batchelder v. Wakefield, 8 Cush., 252.
Harris v. Gillingham, 6 N. H., 9.
Benedict v. Benedict, 5 Day, 464.

From these several principles of law the slight and precarious interest of the licensee appears.

If the license in this case had given the Company express authority to use and occupy land in the territory, it is submitted, that upon the termination of the interest of the licensor, or upon the revocation of the license, the privilege to use and occupy land would, according to the principles of law applicable to the case, hereinbefore cited, be at an end.

If this be true where the license expressly conferred the authority to use and occupy land, much more would this be the case, where the right to use and occupy the land was not expressly conferred, but was a mere incident, as in this case, flowing from the principle right granted in the license, that of the Indian trade.

IV. We infer that the "possessory rights" of the Company in lands, pushed to the utmost extent of possible legal right, are only as follows:

a. Right to the possession of land occupied by them at time of the treaty.

b. Right to the use and fruit of the land occupied by them at time of the treaty, in the same manner they had been accustomed to use it.

c. To maintain possessory action against trespassers.

d. The duration of these rights to be commensurate with the license of trade under which they were functioning as a corporation in the territory.

In short, we consider that the full measure of justice is awarded to the Company, in considering them as tenants, under the United States, of the lands in their possession at the time of the treaty, until the expiration of their license to trade.

According to this view, the Company would not be entitled to payment for the improvements left upon the land at the expiration of their possession.

V. But it may be thought that this is too technical a consideration of the case, and we will therefore consider it in a more popular light.

We maintain then, that, by the treaty, the Company were, at most, entitled to possess only the land occupied by them at the time of the treaty as they were then doing. In other words, they had the right, by the treaty, to occupy and use their posts, and farms, and pasturage, and use necessary timber therefor, as they had been accustomed to do; and that this right was to continue until their license to trade expired, and no longer.

Here two questions occur—

1. Have we rightly defined the extent or quality of the Company's "possessory rights?"

2. Have we properly limited the duration of these rights, to the continuation of their license to trade?

In reference to the first question, we do not well see how any larger definition can be given to the term "possessory rights," in reference to land, than we have given. We conceive that we have conceded every right appertaining to the possession of land, where that possession is not under a fee simple title.

In reference to the period we have assigned for the duration of the Company's rights of possession, we consider that there can be no substantial ground for difference of opinion on this point.

The Company were operating in the territory, south of the 49th parallel, not under their general charter, but under a special license from the British Crown.

This license was limited to twenty-one years, and subject to repeal at the pleasure of the Crown. In point of fact, this license was actually rescinded by the Crown in 1859.—(Miscellaneous Evidence for U. States, p. 388.)

The Company had no right whatever to be in the territory, south of the 49th parallel, except by virtue of its license to trade.

The Company was a corporation and it is a familiar principle of law, that a corporation can act only within the limits of the authority granted to it. A banking corporation can exercise no business but that of banking; an insurance corporation that of insurance, and so on. The same principle applies as to the territory within which a corporation may exercise its functions.

The original charter of the Company only authorized its operations in the country around Baffin's Bay, and it was only by virtue of the license of trade, above referred to, that the Company carried on its business in this territory. But for this license of trade, its operations in this territory would have been *ultra vires*, and illegal. Without this license of trade, its operations in this territory would have been as illegal as operations of the same nature by it would have been in India. As its right to be in this territory entirely depended on its license of trade, when that license expired, it was without authority to continue.

The British Crown did revoke, in 1858, this license to trade, so far as it extended to British Columbia, and it is a historical fact that the Company immediately yielded to this action of the British Government.

If, therefore, the expiration of the license to trade in British Columbia operated to extinguish the Company in that locality, it is difficult to see how a different effect can be attributed to this action of the British Government, so far as the rights of the Company are concerned, in the United States. To suppose otherwise, would be to imagine the extraordinary spectacle of a corporation being held to be entitled to greater privileges in a foreign country than in the country of its origin. Ordinarily, a corporation is a thing of local existence, limited to the country of its origin, and when it is recognized beyond the country of its origin, it is because of the comity of nations.

But this comity has never been construed, so far as we are aware, to authorize a corporation to be entitled to greater rights in a foreign country than in the country of its origin.

We submit, therefore, that if anything can be clear, as a legal proposition, it is, that a corporation, extinguished by the action of its own government, must be treated as so extinguished in foreign countries.

A contrary doctrine, in this case, would be followed by the most strange result. The spectacle would be presented of a foreign corporation, dead at home, but alive abroad.

Again, if the Company was not extinguished by the repeal of its license of trade within the United States, what limits can be set to its existence? It must be dead or perpetual. Surely no one will be found so hardy as to insist that it has a right to perpetual existence in the United States. If it is not perpetual, then, the only limit to it, is the cessation of its existence under the English law. According to that law, it expired in British Columbia in 1859, by the withdrawal of the license under which it had its being within the United States. It must therefore be considered as ending within the United States at the same time.

As confirmatory of this view of the case, we call attention to the elaborate address of Mr. Jas. Dodds, a stockholder in the Company.

"This (1849) was the palmy time of the Hudson's Bay Company. Its possessions and powers were then at their zenith. They held Rupert's Land by the royal charter, which was perpetual. They held the whole Indian territory to the Pacific by an exclusive license, which was terminable in 1859. They held Vancouver's island by a similar license, also terminable in 1859. Three different possessions by three different titles."—(Mr. Jas. Dodds' Address, p. 23.)

VI. If we are correct in our definition of the possessory rights of the Company, and the duration of those rights, the question may now properly be considered, whether the United States, in pursuance of the obligations of the treaty, have "respected" those rights.

We are willing to give to this clause of the treaty the most liberal admissible interpretation. As comprehended by us, it imports that the United States shall recognize the possessory rights of the Company; that they shall not, by any act of their own or their officers, invade those rights; and that they shall extend proper judicial remedy for their protection.

The liability assumed by the United States in the treaty in regard to the possessory rights of the Company is precisely the same in principle as the obligation assumed in former treaties in regard to the titles to property, to wit, the treaties with Great Britain, with France, with Spain, and with Mexico. The chief difference is, that, in the case of this particular treaty under consideration, the recognition is only of possessory rights, being the sole rights the Company could have. The obligation of the United States to respect those rights is precisely the same in principle as its obligation under other treaties to respect land titles, and its general obligation to respect the titles of its own citizens to property generally. The United States, by undertaking to respect the possessory rights of the Company, only assumed in relation to that company its universal obligation to respect the rights of all persons within its jurisdiction in possession of property. All that the United States, therefore, were required to do by the treaty in this case, was to refrain from violation, by itself or its officers, of the possessory rights of the Company, and to permit the Company to enjoy the judicial remedies for individual trespasses customary in the country.

We make these observations, because an idea seems to prevail, in certain quarters, that the United States were

bound to some special measure of protection of the Company's rights, by some novel legislation, or by becoming, in some sense, the peculiar guardians of the Company. We insist, on the contrary, that the United States were not called to any active or special legislation in the premises, but discharged their whole duty when they refrained from themselves infringing on the rights of the Company and permitted the Company to enjoy the benefit of their judicial system.

To illustrate our idea: Mr. Astor at one time was in possession of the trading post known as Astoria or Fort George. If this possession of his had continued at the time of the treaty, the United States would, on general principles, have been bound to respect his possessory rights. This obligation would only imply that the United States were not to violate those rights themselves, but would not infer any liability on the part of the United States for the action of trespassers. These would be left to be dealt with in the ordinary course of legal proceedings.

So far, therefore, as the Company complain of unauthorized trespassers upon their posessions, the United States are in no sense responsible therefor, any more than for trespasses to any other complainants.

VII. We ask now what evidence would prove that the United States invaded the possessory rights of the Company? We imagine that this evidence would consist of two distinct states of alleged fact:

First, where the United States took possession of some portion of land claimed by the Company; or, secondly, permitted donation or pre-emption claims to be located on land claimed by the Company.

1. As regards the first point, we conceive that the infringement by the United States in taking possession of land for their own use is as little as could well be imagined under the special circumstances of the case.

The United States established a military post at Vancouver. But this was done with the consent and approbation of the Company, and was eminently advantageous to them, as protection against settlers, and as furnishing a mart for the sale of their goods at that point. The great valuation the Company now put upon Vancouver is almost entirely because of the establishment of the United States post there, which tended more than anything else to make it a commercial point. So far as the establishment of the United States post at Vancouver is concerned, then, it was not an injury, but a benefit to the Company.

2. Secondly, as to the next form of alleged infringement of the possessory rights of the Company, consisting in the United States permitting persons, under the donation or other laws, to locate on the lands claimed by the Company, we submit several considerations.

It is to be noted that the donation law expressly excepted from location lands claimed by the Company. This is an important fact and shows the great anxiety of the United States to have the "possessory rights" of the Company respected. It was special legislation for the peculiar benefit of the Company. The United States were not content to be passive in the matter of protecting the rights of the Company, but they took the most efficient and active step by positive legislation to protect the Company in its rights. Under this law, locations made on land claimed by the Company were null and void and of no effect.

The United States should not be held responsible for the lawless acts of its officers. The United States having excepted from the donation laws lands claimed by the Company, all such locations were void, and the Company, by taking proper steps, had a legal remedy within their reach to prevent these unlawful locations. It was the duty of the Company to avail itself of the legal remedies provided, and if it failed to do so it was in default and has no right to look to the United States for indemnity for losses incurred by its own laches.

When we consider the indefinite character of the Company's land claims, so uncertain that its chief agents, as in the case of Mr. McTavish, were unable to define the boundaries, we should be prepared to look with great leniency on the acts of subordinate officers of the United States who permitted locations to which the Company take exceptions.

If the United States are held responsible for the actions of its officers in permitting locations on lands claimed by the Company, then we submit, that an important inquiry is, whether those lands thus made subject to location were in the actual occupation of the Company. The Company's rights arose from possession. If they relinquished possession, this operated as an abandonment of their right, and the land so abandoned became properly subject to location. We maintain then, to establish any claim in this regard against the Government, they must show that they were in actual occupany of the land at the time of the location complained of.

Take the case of Vancouver. The Company claimed possessory rights in nearly 200,000 acres of land. They never had over about 2,000 acres in cultivation, the residue they profess to have used as pasture. After the treaty they gradually reduced their farming operations at Vancouver, and finally cultivated but a fragment of the land originally in cultivation, and pastured to a small extent. This operated as an abandonment and relinquishment of their possessory rights, and the lands thus abandoned and relinquished by them became subject to location.

The same state of things existed at other points than Vancouver, where the Company claimed possessory rights, and the same deduction of law should be made in reference to those other points.

It may be appropriate to notice, in this connection, that the Company seems to assert that the United States were bound to enact some special legislation, or to do some especial acts to cause the possessory rights of the

Company to be respected, other than what was done. But it is submitted that the United States fully performed their duty in this regard.

In the first place, the provision in the treaty, that the "possessory rights" of the Company should be respected, was the authoritative declaration of a treaty, the "supreme law" upon the subject. Whenever a treaty disposes of the subject-matter in such a manner as that the courts can take notice thereof, it executes itself, without further legislation. In this case, the treaty says, the "possessory rights" of the Company "shall be respected." This, it is submitted, is the law of the case. If the treaty had said, "Congress shall legislate so as to cause the 'possessory rights' of the Company to be respected," then the courts could not enforce the treaty in this regard, without legislation. But, we contend, the treaty is so framed as to execute itself.

To illustrate: suppose that Congress had passed a law, in the terms of the treaty, ordaining that the "possessory rights" of the Company should be respected. Would not the courts have felt bound, judicially, to enforce this respect by appropriate legal remedies? So, in this case, the treaty is legislation on the subject, and is law for the courts, and the Company is entitled to all legal remedies for the protection of its rights against trespassers.

When, in addition to the provisions of the treaty, we remember that the United States, by special legislation, excepted from the donation law lands claimed by the Company, it is submitted that the United States fully performed the obligation they had assumed to respect the "possessory rights" of the Company.

If it be said, on the other hand, that the land officers of the United States did grant titles, under the donation laws, to settlers, in any land belonging to the Company, (which we deny),—then it is submitted that, if the grants of title thus made covered lands to which the Company had "possessory rights," such action of the officers of

the land office was void, as being in violation of the treaty and the donation laws, and the persons claiming under such titles, as against the Company, were mere trespassers, and the United States are not responsible for such illegal acts of its officers.

The question of the liability of the United States for the acts of its officers, has been very fully considered recently in the Court of Claims of the United States, in the case of the Floyd Acceptances.—(T. W. Peiree vs. The United States, 1 Nott & Huntington, p. 270.) And it was held by the court, that the United States are not liable for the acts of its officers, where those acts are in violation of law.

So far, therefore, as the Company claim that their "possessory rights" have been violated by the United States, through the action of the officers of the land office, in granting titles under the donation laws, it is submitted that the assumption, that such acts have been done by the officers of the land office, necessarily admits that such acts were illegal, as being in violation of the supreme law of the treaty, and the donation law of Congress.

If the land officers granted titles to lands to which the Company had "possessory rights," it was an illegal act on their part, for which the United States were not responsible. Against such illegal action the Company had the same remedy as any holder of property in the United States had against illegal trespassers. The United States are bound, by the law of the land, to respect the property rights of all persons within the United States, but it has never been imagined the obligation rendered the United States responsible, in damages, for the illegal action of its officers. We conclude, therefore, that the United States are not responsible for the action of its land officers, affecting the "possessory rights" of the Company, such action being in violation of the "supreme law" of the treaty, and the donation laws of Congress.

If we are correct in the propositions submitted, the question of damages is reduced within very small proportions.

VIII. As to the question of damages, we propose now to submit certain considerations as determining the principles upon which they should be estimated, if it is considered that any case is made for damages.

1. Damages are for injury to the "possessory rights" of the Company, in land. No allegation is made of the violation of the possessory rights to personal property. The case is therefore confined to the "possessory rights" of the Company, "in the occupation of land." "Possessory rights," in reference to land, are the same things as "rights of possession" to land. They are, it is believed, convertible terms, and mean precisely the same thing.

2. Where these possessory rights have been invaded by the direct action of the United States, in taking possession of land in the occupancy of the Company, as the instance of the military reservation, established at Vancouver, we submit, that this is not to be regarded in the light of a trespass, but as a legitimate exercise of the right of eminent domain, and the Company occupies no other different or better position than a citizen of the United States, whose property is taken for public uses, which the Constitution authorizes to be done, on the allowance of "just compensation."

This "just compensation" is carefully defined in the cases of Johnson vs. The United States, 2 Nott & Huntington, p. 391.

Especially is this principle of compensation to be regarded, where, as in the instance of the military reservation at Vancouver, the occupation is made by the United States with the assent and at the request of the Company.

Furthermore, where, as in the case of the reservation at Vancouver, the Company is largely benefited thereby, in

the great addition made to its general trade, this benefit to the Company should be considered as an element to be taken into consideration for reduction of damages.

3. As damages are claimed for violation of "possessory rights," the existence of such rights depends upon actual occupancy, and where there is no such occupancy there is no violation of such rights.

4. In estimating such damages, reference must be had to the precise period at which violation of the possessory rights took place. The treaty was in 1846, and for some years after the treaty, the alleged violations of possessory rights did not take place, or if they did so take place, were of very limited extent. Reference should be had to the commencement, progress, and extent of such alleged violations.

5. In estimating damages for such violations of possessory rights, it is essential to determine the duration of the possessory rights of the Company. And here it is confidently submitted, that such "possessory rights" could not have a longer duration than the existence of the Company's license of trade. The moment that terminated, the Company's possessory rights to land were at an end.

It is perfectly clear, as a legal proposition, that the only legal authority the Company had for exercising functions as a corporation in the territory south of the 49th parallel was the British license of trade, its original charter limiting its operations to the country around Baffin's Bay. When that license ended, the Company, so far as this territory was concerned, ceased to have any rights.

That the revocation of that license of trade in 1859, made by the British Crown, was lawful, is to be taken for granted in these proceedings. To suppose that the Company could continue to function as such after the revocation of its license, would, as already shown, involve this singular condition of things,—that it could be vital in the United States when it was dead in British Columbia.

Further, if its duration was not limited by the revocation of its license of trade, then no limit could be assigned to its existence in the United States, and it would be perpetual. A consequence so unreasonable shows that the existence of the Company in the United States as a functioning corporation, needing the possession of land, and hence having possessory rights, must be limited to its license of trade.

6. It is submitted further, that the Company cannot claim damages for buildings left by it in the territory. The Company were entitled to have their possessory rights respected. This would imply a right to compensation, where those rights were violated during their existence; but when the possession of the Company ceased in law, in 1859, they no longer had any possessory rights, and having no such rights, they are of course not entitled to compensation for them. The Company cannot, in any point of view, be regarded in a more favorable light, so far as payment for improvements made by them is concerned, than licensee tenant for term of years. Such licensee tenant, on the termination of his license or lease, is not entitled to be paid for improvements.

The improvements were of no use to the United States, and the Company had been free to sell the buildings, at least, for their own benefit.

(B.)—Value of Posts.

With these preliminary observations, we now propose to consider the evidence of value of the posts mentioned in the memorial, in reference to which the Company claims damages.

We would remark in the threshold, that the evidence of the Company, in reference to these posts, is taken as to their fee simple value. This theory of estimation we consider entirely erroneous, because, as we conceive the case, there is no pretence of right on the part of the Company to claim a fee simple title in these posts. All that it

is entitled to is "possessory rights" in these posts, and these "possessory rights," we conceive, are limited in point of duration to the continuance of the license to trade, or in other words, from 1846 to 1859. And any valuation of damages must, we insist, in any event, be restricted to this period or some part of it.

Before treating the evidence in detail, we invite attention to the unusual high standard of the witnesses introduced on the part of the United States, on this general question of the value of the various posts. It is rarely that in any case there can be found such an array of witnesses, whether we consider their high character or their intelligence. A list of witnesses, among which appear such names as Ulysses S. Grant and P. H. Sheridan, is rare; men whose names have become historical: the first, called by a great Republic to be its Chief Executive.

Then, the witnesses for the United States are free from the bias of interest. On the part of the witnesses for the Company, it is to be remarked, a very large portion are indentified in interest with the Company. The principal and more intelligent witnesses, as Sir James Douglass, Messrs. McTavish, Anderson, Charles, McDonald, McKenlay, Tugo, and Wark were officers of the Company, and had a direct interest in swelling the recovery. We do not need to say that they knowingly made false statements; it suffices to say that they are the very parties in interest, speaking under a bias, which almost unconsciously would disturb their judgment.

Others of the witnesses had been in the Company's service, and look at things through a more or less prejudiced medium.

It is worthy of remark, that the principal portion of the Company's witnesses have had more or less close affiliation with the Company, and are more or less therefore prejudiced in favor of the Company.

We shall refer to this point more particularly hereafter.

The valuation placed on the various posts by the Company's witnesses startles by its preposterous extravagance. Effectual refutation of this valuation is furnished by the evidence for the United States, to which we invite attention, and to which we propose to add a few brief commentaries.

VANCOUVER.

Ankeny regards $20 an acre as suffcient for 640 acres at Vancouver now, (1866,) since other places developed.—(U. S. Ev., pt. 1, p. 56.) All the bottom lands overflowed, more or less. The land is heavily timbered.—(p. 58.) Farmers on Columbia bottoms have not prospered, being drowned out by floods.—(p. 59.)

Deady thinks Company's claim at Vancouver, without reference to improvements or town-site, would be worth from $1 to $3 per acre.—(U. S. Ev., pt. 1, p. 109.)

Lloyd Brooke values 640 acres, including town-site at Vancouver, at $20 an acre.—(U. S. Ev., pt. 1, p. 131.) Values the mile square, including military reserve at H. B. Company's post, part at $10 an acre, part less than government price.—(p. 132.) The Harney place, near the reserve, with a building on it, costing $2,000, containing 110 acres, offered for $2,000, and no purchaser.—(p. 132.) Mill plain, not worth more than government price. It is very poor and gravelly.—(p. 132.) Two-thirds of fourth plain would bring $5 per acre. The whole of lower plain worth $20 an acre. Saw no gang saw in the mill, though he measured lumber there in 1849.—(p. 132.)

Only use Company's buildings could be put to was for storing hay.—(p. 133.) Leased the mill, in 1849, for a trifling amount.—(p. 136.) Cost of buildings to Company trifling, as walls were of refuse lumber, and the wages paid were a pittance.—(p. 139.) No other stock than sheep could be kept for any length of time on the plains near Vancouver, which were above overflow.—(p. 141.)

An acre of land, in forest, back of Vancouver, could not be thoroughly cleared and grubbed for less than

$150.—(p. 151.) Doubted about Vancouver as a town-site, because of the limited extent of farming land near, and the shifting of the bars in the Columbia. Buildings destroyed by military, were utterly worthless.—(p. 153.) The Company allowed free use of the government wharf, and no comparison between it and Company's old jetty. —(p. 156.)

Buck. In 1846, no buildings on Sauvé's island, except two small log cabins, costing about $100. No farming on island. Only a small garden.—(p. 210.)

Love. Values the land on Columbia, below the reserve, and including lower plain, at $5 an acre.—(p. 236.) Values the 640 acres of reserve at $8 an acre.—(p. 237.) Values town-site, running a mile back from the river, at $50 an acre.—(*ib.*) Values land, along river, above reserve, including mill-site, a mile in width, at $2 per acre.—(*ib.*)

Douthet. Mill built by Company, in 1852, was worthless, but for the iron.—(p. 244.) It cost more to keep the mill running than the profits amounted to.—(p. 245.) Company, in 1852, quit running mill because it was unprofitable.—(p. 245.) In 1852, saw remains of old gang saw-mill. It looked as if it had fallen down. The grist-mill was in decay.—(p. 245.) The whole value of grist-mill consisted in burrs and irons. Company carried off small set of burrs to Vancouver island.—(p. 245.) There was another old saw-mill, which had been abandoned in 1852, and machinery taken out.—(*ib.*) Company's buildings would only be useful as barns or stables. They had no value. Since Company abandoned them, they have not been occupied, except Government used them to put hay and straw in.—(p. 246.) Thinks Company took doors and windows away. Taking the first as a central point, 1,920 acres, exclusive of buildings, would be worth $10 to $15 per acre.—(p. 247.) Values 3,200 acres, on lower plain, having frontage on the river for five miles, at $5 to $7 per acre, exclusive of

improvements.—(*ib.*) The greater portion of this last-mentioned land is subject to annual overflow.—(p. 247.) Values tract below the last-mentioned land, ten miles long and two broad, at same rate, from $5 to $7 per acre.—(*ib.*) Values land above, including town-site, running 6 or 7 miles along Columbia, and 3 miles wide, embracing mill-plain and mill-sites, at $2 an acre.—(*ib.*) Values country, back of the first, including six miles in width, at $2 an acre.—(p. 248.) Expense of clearing and ditching land is $50 an acre.—(p. 249.) Values water privilege at grist-mill at from $1,000 to $2,000.—(p. 250.) Values water-power, at saw-mill, at same price.—(*ib.*) Overflow spoils the grass.—(p. 251.) Good grazing land can be got, from 15 to 20 miles from Vancouver, at government price.—(p. 255.)

Applegate. Found, in 1866, only a few ruins, of no appreciable value.—(p. 279.)

Applegates values 640 acres, embracing the town and fort, at $50 per acre. The 640 acres next surrounding the first named 640 acres at $4 or $5 an acre, and the remainder of country at $1.25 currency, 90 cts in gold.—(p. 279.) The entire tract of land on which Company's post stood has been increased in value 50 or $60,000 by the establishment of a military post and a town, and not from Company's improvement.—(p. 279.)

Rinearson adopts report made by himself.—(Applegate and Carson, p. 317.)

Carson adopts report made by himself.—(Applegate and Rinearson, p. 356.)

Belden. Engaged in surveying railroads in Oregon.—(p. 389.) Never regarded Vancouver as a railroad point, because considered the south side of Columbia the better side for railroads from Snake river down Columbia valley.—(p. 390.)

Gen'l Ingalls. Went to Vancouver in 1849.—(U.S. Ev., pt. 2, p. 1.) Very small part of claim enclosed.—(p. 2.) The proportion of the whole claim really occupied was

small.—(p. 3.) Buildings very dilapidated in 1861.—(*ib.*) Vancouver, while witness was there, was a mercantile establishment; Company did some farming and bought some furs, but was really engaged in general trade.—(p. 4.) In 1860 the buildings were of no value to the United States.—(p. 5.) The military authorities would rather have had the ground cleared of the buildings.—(*ib.*)

Settlement of country brought into being many competing trading establishments, in competition with which Hudson's Bay Company could hardly succeed.—(U. S. Ev., Part. 2, p. 6.) The fur trade gradually fell to nothing.—(*ib.*) In 1860 land in town of Vancouver was worth from $100 to $1000 an acre.—(p. 7.) In 1860 bought ten acres in town of Vancouver for $1,000, and lately sold it for the same.—(*ib.*) No increased value in lands at Vancouver from 1860 to 1863.—(*ib.*) Thinks it improbable a large town can be built at Vancouver.—(p. 8.) Thinks land would at one time have sold higher than now.—(*ib.*) Inundations render lands near Vancouver on the river precarious for agriculture.—(10.) Overflow does not improve pasturage.—(p. 14.)

Gen'l Grant. The majority of the bottom land subject to overflow in June and July, and for that reason not susceptible of cultivation.—(U. S. Ev., pt. 2, p. 19.) The land not subject to overflow was principally densely wooded, and my impresion was, it was very poor. The plains were comparatively small prairies in this densely wooded country. The woodland could not be worth any thing to the Hudson's Bay Company as a trading post.—(*ib.*) The buildings were such that soldiers could put up rapidly, the materials being near at hand.—(p. 21.)

Senator Nesmith. The style in whichb uildings at Vancouver built, the Canadian style, is not durable. The buildings in 1843 were becoming dilapidated on account of the insufficiency of foundations.—(p. 23.) Buildings might have been built by the commonest kind of labor. In the last ten or twelve years the buildings have gone to

decay very rapidly, and when witness was last there in 1865, they had nearly all rotted down.—(p. 24.) Very slight improvement in town of Vancouver in last five years.—(p. 25.) Does not believe there will be any great improvement for many years.—(*ib.*) Portland is the emporium of Oregon and East Washington; its great wealth and importance will prevent a town of consequence growing up at Vancouver.—(p. 26.)

Steinberger. Owned one-half of ten acres in town of Vancouver at most valuable point thinks in town; bought at time of greatest expectation as to future of town, cost $100 an acre.—(p. 53.) Thinks this property of less value now than when bought.—(*ib.*) Vancouver not likely to be an important point.—(p. 53.)

Wagner. In 1857 buildings old and some very much dilapidated.—(p. 59.) In 1861 buildings not worth over 6 or $8,000.—(p. 60.) Wharves in front of Vancouver would not accommodate sea-going vessels except in high state of water.—(p. 62.) Portland has destroyed prospects of Vancouver.—(*ib.*) Shoal in front of Vancouver renders it ineligible for town-site.—(p. 67.)

Howard. Shoalwater at a growing shoal, sufficient to destroy the place as a town-site for shipping.—(U. S. Ev., 2 pt., p. 69.)

Barnes. Buildings utterly valueless in 1860, except for Company's purposes.—(p. 70.) As one of a board estimated buildings when abandoned by Company at $900.—(p. 75.)

Gen'l McKeever. As member of board valued buildings at Vancouver in 1860 at about $1,000.—(p. 78.) Never valued Vancouver as a commercial point, because no back country; the forests are dense, don't think it would pay to clear them.—(p. 79.) In 1860 the buildings at Vancouver not in a habitable condition; don't think any one wanted them except for the lumber.—(p. 81.) First board valued certain buildings at $250.—(p. 82.)

Gen'l A. J. Smith. Valued buildings in 1861 of Com-

pany inside their stockade at Vancouver for government purposes at $250.—(U. S. Ev., 2 pt., p. 84.)

Judge Nelson. The buildings in 1852, had outlived their day.—(p. 89.) Thinks Portland is to be the great place of Oregon.—(*ib.*) Dr. McLaughlin said original cost of buildings was $100,000.—(*ib.*) McLoughlin said before 1846, 1,000 to 1,500 acres under cultivation. Saw-mill and grist-mill five miles up river. Cattle permitted to stray where they could find pasture. Cultivated land near Vancouver, the rest pasture.—(U. S. Ev., Part 2d, p. 99.)

Gen'l Augur. As one of a military board in 1854, valued Company's buildings at Vancouver, within military reservation, at $47,503. The board valued buildings on basis of what they rented for.—(p. 105.) Col. Bonneville, officer in command military at Vancouver, endorsed on valuation of buildings in 1854, "they can stand a short period only when they cease to receive the great care bestowed upon them."—(p. 106.)

General Hardie. The buildings at Vancouver in 1860 were in state of great dilapidation; not worth repair, having no value except as hewn timber where sound pieces could be found; very much of the timber was decayed.—(p. 107.)

McFeely. In 1853 the buildings at Vancouver were old, almost uninhabitable, the material being rotten from time and exposure.—(U. S. Ev., Pt. 2, p. 119.) The buildings were of no value to the United States in 1860; if sold at public sale, doubts whether they would have brought more than the value of the land, or a trifle more at least.—(*ib.*) Buildings independent of the land would not have sold for over 4 or $5,000.—(p. 128.)

Gen. Vinton. Estimates cost of buildings estimated at rate of wages before gold excitement, at $70.—(p. 133.) Including land enough for buildings.—(p. 132.)

Gen. Pleasanton. Knew Vancouver 1858-9-60. Buildings out of repair and dilapidated; buildings were rude.

(p. 135.) Would not have given $10,000 for whole establishment.—(*ib.*) Buildings of no value.—(p. 136.) Soil around was gravelly and poor.—(*ib.*) The great objection to having a town above the mouth of Willamette river was the bar near Vancouver.—(p. 137.) Apart from the increase to the town of Vancouver from trade of the soldiers, the town made no progress.—(*ib.*)

General Sheridan. In 1855 buildings had decay of old age.—(p. 267.) They were three-fourths of a mile from river and of no value as store-houses, because of their location.—(p. 268.) Actual worth of buildings but little; no market for materials.—(*ib.*) The two store-houses near the river the only buildings witness considered of any value; they were old and out of repair.—(p. 269.)

Admiral Wilkes. In 1841 estimated cost of buildings at $50,000.—(p. 280.) Mills badly located; incapable from backwater of use for most of the season.—(p. 281.) Valued buildings on farms and Sauvies' island and mills at $6,000.—(*ib.*) In 1841 officers of Company claimed nine miles square at Vancouver.—(*ib.*) Estimates present value of the tract of land claimed by Company, except a mile square around post, at from $1.25 to $1.50 an acre. For fifteen miles the land is submerged for five miles wide, unfit for crops. Above post some three miles likewise submerged; the high prairie is gravelly and thin.—(p. 282.) About eighty square miles subject to overflow.—(p. 283.)

So far as the opinions of witnesses are of importance in estimating value, it is obvious that the opinions of the witnesses for the United States are of more value than the opinions of witnesses for the Company; for they are, to say the least, witnesses of as high character, of equal intelligence, of greater number, and free from any bias of interest; in which latter respect they have a great advantage over the principal witnesses for the Company.

But, fortunately, there are material facts in the evidence, which enable us to form our own estimate of value more satisfactorily than to depend on the opinions of others.

The three elements of value in regard to Vancouver are, 1st, the town site; 2d, the buildings; 3d, the lands.

1. As regards the town-site. There is nothing, about which persons of sanguine temperament, or persons interested in particular localities, are so prone to build castles in the air as the speculation of town-sites. And this remark is peculiarly applicable to persons in the United States. The progress of the country has been so wonderful, and certain commercial points have grown with such startling rapidity, that men's imaginations run wild upon the subject. Establishing new towns is a regular business in the new territories. The imposing title of city is frequently bestowed on a hamlet and blacksmith's shop at a cross-road. Here and there a point well located meets with great success, and what was but yesterday the lodge of the savage is to-morrow the mart of busy commerce. The comparatively few locations which succeed are remembered and commented upon, and the numerous failures are forgotten. The new tertories are covered with the skeletons of intended cities, which perished in the hour of their birth, mementoes of the fallibility of human judgment and the impossibility of reading the future with certainty.

We have in sight of the Capitol an illustration of this folly and delusive hope. Under the administration of President Jackson the foundations of a new city were laid with imposing ceremonies at the termination of the long bridge, on the Virginia side of the Potomac, to which the imposing title of Jackson City was given; but the city has obstinately refused to grow, and still exists only upon paper.

It is not surprising, therefore, that, in opening a new region to civilization, as the valley of the Columbia, the imaginations of men should have become excited, and bewildered with the idea of embryo cities. We are, therefore, prepared to find that what we may properly designate as the city mania,—the usual lunacy of new coun-

tries,—took strong hold of people in the valley of the Columbia, and sites for future cities were liberally discovered along the river. The Company's agents, at Vancouver, were not slow to catch the infection, and Sir James Douglas and Mr. McTavish, and other officers of the Company, began to imagine they heard the chimes of a hundred steeples at Vancouver, and the roar of a vast current of humanity pouring into it, to make it the New York or London of the great Pacific. It is only in such a condition of mind that we can discover any palliation for the extravagance of estimation of Sir James Douglas, Mr. McTavish, and other of the Company's officers, which it would otherwise be necessary to impute to deliberate misrepresentation and false practice.

But the facts of the case very soon pricked this bubble.

In the first place, the temporary show of progress at Vancouver, was owing to the military reservation being established there. This, in a large degree, made Vancouver what it was. But this was only a temporary matter, and could produce but a certain limited result, liable to end at any moment by the removal of the forces stationed there, and should not be taken into consideration as an element of permanent growth.

Nature was against Vancouver as a town-site.

a. There was no back country to support a town. The country on which it would depend for support, was either subject to inundation, or overshadowed by a continuous forest, whose vast growth defied the labor of civilization to reduce it to cultivation, except at an expense so enormous as did not justify the undertaking.

b. The bar in the Columbia impeded navigation to such an extent as to render Vancouver unfit for a commercial site.

c. Then, Portland, nearer the sea, and at the mouth of the Willamette river, possessed such superior advantages that it entirely eclipsed Vancouver.

d. Then, the south side of the Columbia is better for railroads.

Weighed down by inherent disadvantages, and supplanted by a rival more favored by fortune, Vancouver, then, has been a failure as a town-site. This, of course, implies a corresponding fall in the prices of land at the place, which we are informed, in the evidence, has been the case.

2. As regards the Company's buildings at Vancouver, in valuing them we are met with several stubborn facts.

a. As far back as 1843, according to the evidence of the Hon. Mr. Nesmith, the buildings were dilapidated. This condition of decay of course increased with age and the neglect of the Company, until, upon the eventual abandonment of the buildings by the Company, they were, as the evidence states, but little more than a mass of ruins.

b. Again, it is in evidence, that the buildings were unsuited to any business except the Company's. They possessed, therefore, no exchangeable value. The Company had no further occasion to use them for the original purposes for which they were constructed, and no one else had any use for them. They were, therefore, of no value, other than the trifling value of the materials.

And, in this point of view, it is immaterial what these buildings cost. The question is, what were they worth when the Company ceased to occupy them?

3. As regards the lands around Vancouver.

The nature of these lands is precisely explained to us, in a few words, by Gen. Grant. He says "the great majority of the bottom land was subject to overflow. * * * That not subject to overflow was densely wooded, and very poor. The woodland was, I think, not worth anything, except the value given to it by settlement." In these few, and pointed words, General Grant has daguerreotyped the country, so that we may see it with our own eyes.

a. The country is in this most unfortunate condition:—the uplands are almost universally covered with heavy and dense forests, worth nothing as mere timber, owing to the cost of transportation, and so expensive to clear, especially as the land when cleared was very poor, that it is ruinous to clear it. In short, in these vast forests around Vancouver, as in the forests of the Amazon, nature seems to raise insurmountable obstacles to the progress of human settlement. Forests seem to frown austerely on civilized man, and appear to repell cultivation.

b. The lowlands are subject to overflow during the summer months. The water at the time of overflow is cold, between 40 and 60 degrees, a temperature unfavorable to vegetable matter, and the deposit is not fertilizing, being sand produced by attrition of rocks. Half the country is permanently occupied by sloughs and ponds. The overflow is necessarily ruinous to agriculture, as it often continues from May until August. It also injures the grass, which, there, has less time to grow in, and is destroyed during the best growing months of the year. It is difficult to estimate the injury caused by the annual inundations.

In view of these facts, we are not surprised to learn that the settlers in the bottoms have not prospered. It would be very strange if they did.

c. The mill was built in 1849 for a trifling amount. Running of the mill did not pay expenses. The mills were badly located, subject to the influence of the overflow of the river, and thus liable to long stoppages.

From a consideration of these various controlling facts, which are indisputably established by the proofs, it is evident that a very low valuation must be placed on the Company's claim at Vancouver.

Cowlitz.

It is difficult to see why the Company should claim anything for this post.

1. The Company were not disturbed in their occupation.

2. It became of no use to the Company.

3. Part of the buildings were washed away, the remainder sold by Company.

Tolmie. Warehouses at Cowlitz no longer of use when nothing raised at Cowlitz farm; one was destroyed by caving in of the bank, the other was sold by Company's agent.—(U. S. Ev., pt. 1, p. 104.)

Huntington. Buildings pulled down and used by witness. Bought them from an agent of Company for $75.—(p. 395.)

Howard. Post was being washed away.—(U. S. Ev., pt. 2, p. 68.)

Wilkes. No station of Company at Cowlitz in 1841.—(p. 277.) The place is low, and subject to overflow from both rivers.—(*ib.*)

C. T. Gardner. Company had a store there; it was a log house about 30 by 15. No wharf.—(p. 325.)

McTavish. Company not disturbed in its occupation at Cowlitz post.—(Miscellaneous Ev., p. 155.)

Fort George.

It appears, from the evidence, that the Company is entitled to nothing here.

1. The Company's buildings, at Fort George, were worth but a trifle in 1846.

2. That the Company abandoned the post in 1846 or 1847, and that the buildings rotted down, and were removed.

3. Buildings dilapidated in 1841 and 1844.

Gray. Buildings worth nothing in 1846. Company left them in 1846 or 1847, and they rotted down, and were removed.—(U. S. Ev., pt. 1, p. 166.) Two acres, round old fort, worth $1,000. In 1846, worth half this sum.—(p. 167.)

Summers. Buildings in 1846, worth $500. Two acres of land, round the fort, worth $100 an acre.—(p. 193.) In 1850, buildings at worthless.—(p. 194.)

Taylor. Buildings, in 1846, worth from $500 to $700.—(p. 197.) Land occupied by Fort worth, in 1846, $100 to $150 an acre.—(p. 198.)

Welch. In 1846, buildings old, scarcely fit to live in, worth from $500 to $800. Land at fort, two acres cleared, cost about $300 an acre to clear it.—(p. 203.) Buildings rotted down partly, remainder occupied by Indians, who destroyed them.—(p. 204.)

Nesmith. At Fort George, in 1844. There were then two or three old buildings, and small patch of enclosed ground; buildings dilapidated, they might have been worth $100 or $200. A village has sprung up below old post.—(U. S. Ev., pt. 2, p. 29.)

Nelson. McLaughlin says Company had post at in 1846; no farm—a garden.—(p. 100.)

Admiral Wilkes. Post dilapidated in 1841.—(p. 275.) Two acres enclosed.—(*ib.*)

Buildings cost $500 or $600, and the two acres enclosed worth $20 or $25 an acre.—(*ib.*)

Gilpin. In 1844, only a single building. Only trade, salted salmon. Values buildings at $1,200 to $1,500.—(p. 339.)

Swan. In 1852, no vestige of any post here.—(p. 243.)

Peale. Buildings at in 1841, worth not over $500 or $600.—(p. 345.)

Gibbs. In 1849, buildings four in number, common log huts, very much out of repair. Company had abandoned it as trading post. In 1850, Maj. Hathaway put buildings in some repair.—(p. 400.) Company never occupied post after Maj. Hathaway left, in 1851, and buildings rotted down, or were torn down by claimants of the land.—(p. 401.) In 1853, buildings of no value.—(*ib.*) No Indian trade there in 1850.—(*ib.*)

Chinook or Pillar Rock.

It appears that nothing is claimable here.

1. The Company never occupied this station.

2. In 1849, the buildings were worth about $100, and the land so valueless as not yet to be taken up at government price.

Tolmie. Fishing station not occupied by Company.—(U. S. Ev., pt. 1, p. 100.)

Gray. Was at Chinook in 1844 and 1846. Saw nothing there but temporary sheds, and a few tanks for salting salmon. Company abandoned it in 1846 or '48.—(p. 165.)

Taylor. Building worth about $100 in 1849.—(p. 199.) Land at not worth over government price, as no one has taken it up.—(p. 199)

Welch. In 1846, buildings worth $300.—(p. 204.) It did not cost that much.—(*ib.*) Land worth nothing, except as fishing station.—(p. 205.)

Wilkes. Company, in 1841, had no station near Pillar Rock.—(U. S. Ev., 2 pt. p. 277.)

Gibbs. Never knew of Company occupying station there or claiming it. In 1850, it was occupied by Hensill, American citizen.—(p. 402.) Only building, a drying shed, such as Indians are in habit of constructing for their own use.—(p. 402.)

Cape Disappointment.

It appears from the evidence that—

1. The Company had no possessory rights of any kind at or near the Cape in 1846 or prior thereto. Such being the case the Company have no claim in regard to this locality.

2. The building occupied by Kipling, the only building the Company appear to have any claim to, was more than a mile from the Cape.

3. The only possessory rights the Company could possibly have to a location near the Cape, and that ac-

quired after 1846, is to the Kipling house and the spot of land on which it was built. The valuation of this house and spot of ground is insignificant.

4. In no event would land taken for government purposes be valued at speculation prices. A fair and reasonable valuation would be the correct rule.

Gray. Was at Cape Disappointment in 1844 and 1846. Buildings cost about $250.00.—(U. S. Ev., pt. 1, p. 167.) 640 acres round worth nothing for agricultural purposes. If worth anything witness would have occupied it.—(*ib.*) House built after 1846.—(p. 186.)

Summers. McDaniel, in 1845 or 46, took claim. Wanted witness to draw deed for it to Mr. Ogden.—(p. 193.)

Taylor. In 1851 saw building there, said to have been put up for Mr. Ogden. It was unfinished. Cost between $200 and $300.—(p. 199.) 640 acres of land would not be worth over $1.25 an acre.—(*ib.*)

Nesmith. Was at Cape in 1849. Saw nothing but some Indian huts.—(U. S. Ev., pt. 2, p. 30.) Knows of no value for this place but for light-house and fortifications.—(*ib.*)

Steinberger. In 1850 saw an old building of very little value. Very little cleared land around it.—(p. 53.)

Howard. Saw nothing at Cape in 1853 but a fish-house.—(p. 68.)

Nelson. McLoughlin said Company established post there in 1847. Ogden took claim there.—(U. S. Ev., pt. 2d, p. 100.)

Wilkes. In 1841 no post or building or person at Cape. Five hundred dollars would be a high price for land for fort and light-house.—(p. 277.) Light-house only useful to indicate position of Cape at night, not for entering river.—(p. 290.)

Davidson. In 1851 would not have paid government price for land. Saw no indications of occupation by Company.—(p. 307.) Land for light-house not worth

over government price.—(p. 308.) Land enough for light-house not worth over $10.—(*ib.*) Entrance of Columbia most dangerous. Knew of vessel lying off 40 days before entering.—(p. 309.)

Harrison. Surveyed Cape in 1851. Saw no buildings or ruins or cultivated land. Land not worth government price.—(p. 313.) About 3 or 4 acres needed for light-house. Worth for public use government price.—(p. 314.) Kipling living in log house worth considerably less than $1,000. Light-house important only to hold on by at night. —(p. 315.) Doubts whether Cape proper place for light-house.—(p. 317.)

Swan. Visited Baker's Bay. Never heard of any claim at Cape by Company.—(p. 343.)

Peale. No tract at Cape containing 640 acres fit for cultivation.—(p. 344.) In 1841 no building or preparation for building.

McMurtrie. Visited a house in 1850 a mile or more from Cape or Baker's Bay, said by the man in charge to have belonged to Company. This house of hewn logs, 30 by 20, one story. Could not have cost over $300 or $400.—(p. 373.) Saw no cultivated ground about this house.—(*ib.*) No value could be attached to the land on Cape.—(*ib.*)

Gibson. Cape rocky, with thin soil in most places. Land valueless except for timber, of which country is full. Saw small house some distance from Cape. House not worth over $500.—(p. 376.) Light-house important to make and hold on by, but light-house at Point Adams more important.—(p. 376.)

Gibbs. Never saw or knew of trading post of Company.—(p. 402.)

McTavish. Unable to say whether Company had done anything at Cape before 1846. Found Kipling there in 1846, "in a kind of log cabin."—(Miscellaneous Ev., p. 157.)

CHAMPOEG.

It appears from the evidence—

1. That the buildings were washed away and rotted down. Under this state of facts the possessory rights of the Company in these buildings are of no value.

2. The land, after the flood, is only valued at $5 an acre.

3. The Company claim for certain lots purchased of American settlers. This item, it is submitted, does not come within the provisions of the treaty.

Buildings washed away or rotted down.—(U. S. Ev., pt. 1, p. 19. Lovejoy's ev'd.) Thinks $2,500 or $3,000 would build the buildings.—(*ib.*)

Buck. In 1850 buildings could be built for $2,000.—(p. 212.) Buildings washed away in 1861.—(*ib.*)

Apperton. In 1858 buildings not worth over $4,000.—(p. 219.) Buildings washed away.—(p. 219.) Land at landing not worth over $50 an acre, and after the flood not worth over $5 an acre.—(p. 219.) Buildings not worth over $1,500 or $2,000 when washed away.—(p. 220.)

Barlow. In 1846 cost of erecting the buildings would have been from 4 to $5,000.—(p. 223.) Buildings rotted down and washed away.—(*ib.*) The value of the buildings in 1861, before being washed away, from $1,000 to $1,500.—(p. 224.)

Nesmith. In 1844 there was a small dwelling house, granary, and small store; cheap rough buildings. Buildings might have been put up for $1,000 or $1,500. Land not valuable.—(U. S. Ev., 2d pt., p. 29.)

Nesmith. Champoeg of no future importance.—(U. S. Ev., pt. 2, p. 29.)

Wilkes. Company had no station in 1841.—(p. 278.)

Gilpin. In 1844 saw no buildings but sheds. Did not understand the Company had station there. It was used only as a landing place.—(p. 335.)

Umpqua.

It appears from the evidence—

1. That this post was abandoned by Company during Indian war, and never re-occupied. This failure to re-occupy the post shows it must have been of little or no value to the Company.

2. The barn and other buildings were burnt.

3. A house was built by Chapman at Umpqua, which should not, it is submitted, be taken into consideration in estimating value of the post, as it was built since 1846.

W. W. Chapman. Rented Umpqua post in 1853, at $100 or less.—(U. S. Ev., pt. 1, p. 11.) About 30 or 40 acres enclosed at this post.—(p. 12.) Some of the buildings destroyed by fires which raged in that region.—(p. 13.) Values buildings at U. at about $200.—(p. 13.) Thinks land claimed by Company never worth over $10 per acre.—(p. 14.) Thinks $10 would have been a high price.—(*ib.*) In 1861-2 a flood washed out lower Umpqua.—(p. 15.) Gov. Gibbs values buildings at $1,500.—(U. S. Ev., pt. 1, p. 22.) Values land claim at $5 an acre.—(*ib.*) Gov. Gibbs, in 1851, sold claim of 320 acres, about 80 acres of it as good as Umpqua claim, about 1¼ miles from Umpqua, for $250.—(p. 24.)

Tolmie. Umpqua abandoned after Indian war.—(p. 100.) And the post was not afterwards occupied because Indians put on it as reservation.—(p. 104.)

Deady. 640 acres around Umpqua would have sold, from 1853 to 1860, at from $1 to $4 per acre.—(p. 108.)

Applegate. Surveyed section of land at Umpqua, in 1850 or 51, for Company. Cattle not confined in their range to this section. This section, excluding improvements, worth now $2 an acre. No improvements of value remain. Barn and other improvements burnt.—(p. 266.) A house worth $400 or $500 was built there by Chapman, still standing.—(p. 267.) The section of

land at Umpqua and its improvements might have been sold in 1850 at from 3 to $5,000.—(p. 281.)

Nelson. McLoughlin said post established in 1834. Limited degree of agriculture there for use of post. Some cattle, pigs, and brood mares sent there.—(U. S. Ev., pt. 2, p. 100.)

Huntington. Umpqua has no connection with California trail.—(p. 146.) Between 100 and 150 acres cultivated land.—(p. 147.) Thinks buildings cost $1,000. In 1850 buildings much dilapidated, worth nothing to any one but Company.—(p. 148.) Buildings did not average more than 8 feet to eaves.—(p. 154.) Good land in Umpqua valley worth, unimproved, $2 to $4 an acre.—(p. 155.) Farms in valley sold, with dwellings and large part of land fenced, from $3 to $5 an acre.—(p. 155.) Stock ranged on public land; no one thought of paying for grass.—(p. 156.) The cost of Indian labor to Company a mere nothing; they were subsisted on potatoes and salmon, and paid in trinkets and clothing at most enormous prices.—(p. 162.)

Dr. Thompson. In 1852 buildings dilapidated; some had fallen down.—(p. 218.) One-half land around was good. A mile square around the post worth from $2,000 to $2,500.—(*ib.*) Road to California passed on opposite side of river.—(*ib.*) Farm is only valued now at $1,500.—(p. 219.)

Gov. Gilpin. Informed in 1844 that trade diminishing.—(p. 336.)

Dowell. In 1852 buildings not worth over $500.—(p. 358.) A mile square, in 1852, would have sold for $1,500 or $2,000. Present value not as great.—(p. 359.)

Destroyed by fire about 1851.—(Gov. Stevens' Rep., Miscellaneous Ev., p. 223.)

Nez-Percés or Walla-Walla.

It appears from the evidence—

1. That the Company sold the old fort in 1860 for $900.

2. That in 1862 the buildings were almost entirely destroyed.

3. Wallula has been superseded by Umatilla.

Aukeny. 640 acres of land there worth not over $1.25 per acre.—(U. S. Ev., pt. 1, p. 44.)

Meek. Soil sand and gravel, worth nothing for agricultural purposes.—(U. S. Ev., pt. 1, p 68.)

Tolmie. Abandoned on account of order of Olney, Indian agent, in 1855-6. Company afterwards made no effort to re-occupy it.—(p. 100.)

W. H. Gray. Buildings did not cost over $250.00.—(U. S. Ev., pt. 1, p. 161.) Value of buildings at $1,000.—(*ib.*)

Applegate. The old fort sold in 1860 for $900.—(p. 274.) Valued what remained of old post at $200.—(p. 273.) No land fit for cultivation.

Applegate. Town property in Wallula could not be sold for cost of improvements.—(p. 291.)

Rinearson adopts report made by Applegate, Carson, and witness as to this post.—(p. 317.)

Carson adopts report made by Applegate, Rinearson and witness.—(p. 356.)

Nesmith. Post in 1843 of adobe, may have cost $2,000; saw no enclosed lands near it. Country around sandy desert.—(U. S. Ev., 2d pt., p. 28.) Does not think Wallula will ever be important.—(p. 28.)

Nelson states, or McDougal says, Walla-Walla mere fort, poor soil, cost a good deal, no farms there, small garden, no trade in furs, built to subdue Indians.—(p. 99.)

McFeely. In 1853 fort consisted of two or three, probably four, small buildings, adobes. The country adjoining was barren and sandy, with the exception of narrow strips near the Touchet. Saw no land there under cultivation; does not think cost of buildings over $5,000.—(p. 121.)

Huntington. In 1862 buildings almost entirely destroyed. No land enclosed at post. Company had a farm

twenty miles back in Walla-Walla valley, some 20 or 30 acres, excellent land, worth $8 or $10 an acre. No buildings on farm.—(*ib.*) Umatilla has superseded Wallula. —(p. 150.) Never heard of any enclosure around post. Seen great numbers of Indians pasturing their horses in hills back of fort. Land sandy desert.—(p. 164.)

Col. Gibson. Nez-Percé was more a halting place for Company's ponies than anything else. Some little trading with Indians with ponies.—(*ib.*)

Cain. In 1859 buildings dilapidated; have been rebuilt by traders, believes at their own expense.—(p. 223.) Buildings worth in 1859, before being rebuilt, $2,500 to $3,000.—(p. 224.) No good farming or grazing lands under fourteen miles.—(*ib.*) In 1859 mile square of land had no particular value apart from buildings; since then it has become valuable as a landing for the mines, and to a limited extent for country around.—(*ib.*) The part that has become valuable is where the buildings are.—(p. 237.) About 80 acres.—(*ib.*) The rest of the mile-square has only a speculative value.—(p. 238.)

Shoemaker. In 1862 Van Syckle called landing at old Walla-Walla, Wallula.—(p. 252.) When Van Syckle went to it there was no apparent occupation by Company. —(*ib.*) After gold excitement over, Umatilla sprung up, and Wallula declined; the trade was diverted from Wallula and Van Syckle became ruined.—(*ib.*) Wallula went down with Van Syckle; nearly all the buildings ceased to be occupied, and a number of them were torn down.—(p. 253.) The old buildings of the Company, before 1860, were in a dilapidated condition; worth $500 to $1,000 provided any one wanted them.—(*ib.*) Witness is house builder and carpenter.—(*ib.*) Lewiston above has taken the upper trade from Wullula.—(p. 254.) Land around of no value for several miles, the bottom lands subject to overflow.—(*ib.*)

Gov. Gilpin. Country around extremely sandy, of no value for cultivation or pasturage.—(p. 332.) From five

to seven acres cultivated land worth $10 to $12 an acre. —(p. 338.)

Dowell. In 1835, post would not have sold for over $2,000.—(p. 361.) The agent in charge said the Company left the post from fear of Indians.—(*ib.*) The reason things not moved from post when it was abandoned, was from want of transportation.—(p. 362.) Land around a barren sandy plain.—(*ib.*)

Terry. In 1857 buildings not worth $10; of no value now.—(p. 391.) Original cost of buildings not over $2,500.—(p. 391.)

Gibbs. In 1853 post utterly valueless, except as a station where horses kept for the trains. Not trade enough to warrant its maintenance. Fort in very indifferent repair. Some eighteen or twenty miles up the Walla-Walla river is a so-called farm on which were two small buildings. Some twenty acres at farm cultivated in different spots. No vegetation on land round fort capable of sustaining animals.—(p. 403.)

Nez-Percés post in 1854 almost wholly valueless, except as a station where horses can be kept for the trains.—(Gov. Stevens' Report, Miscellaneous Ev., p. 221.) Eighteen miles up Walla-Walla river to so-called farm, on which are two small hovels. The dam formerly here for irrigation is broken down. Considers $5,000 a large estimate for post and farm.—(*ib.*)

Fort Boisé.

Fort and buildings being of unburnt brick, are melted down by rains. If buildings there in 1843 existed in 1863, would not have sold for over $1,000.—(Gov. Gibbs, U. S. Ev., pt. 1, p. 34.) Soil about post, barren and sandy, with no timber except scrubby cottonwood and willow, on the Boisé, and very little of the land tillable.—(p. 34.) The best unimproved land at post worth from $3 to $5 an acre, and it would be some time before it would be entered at $1.25 an acre.—(p. 34.) Roofs of buildings

made of split logs, covered with dirt.—(p. 26.) Land requires irrigation.—(p. 39.) No Indian trade there now (1866) of any value.—(p. 39.) McCarver saw post in 1843.—(p. 39.)

Aukeny. Saw post in 1850. Buildings a good deal dilapidated.—(p. 42.) Buildings worth nothing for agricultural purposes.—(p. 42.) Might, as a place of deposit, be worth $2,000.—(*ib.*) Soil around alkali, brush and sand the most of it.—(p. 42.) Would class it with government land, $1.25 per acre. Some 4 or 5 miles off, land better.

The Company's agent told Aukeny the Indians around had got lazy, and he thought they would have to abandon the post.—(U. S. Ev., pt. 1, p. 49.)

Meek. Says "the soil is very bad about Boisé." Sand, sage, and greasewood is about all.—(U. S. Ev., pt. 1, p. 67.) Don't think the land would be worth anything for agricultural purposes.—(p. 67.) Buildings cost about $1,000.—(p. 67.)

Tolmie. Fort Boisé abandoned in 1856, because Snake Indians became hostile.—(U. S. Ev., pt. 1, p. 99.)

Gray. Buildings cost less than $250.—(U. S. Ev., pt. 1, p. 163.) Lands near not worth over $1.25 an acre.—(*ib.*)

Nesmith. Buildings 1843, worth about $1,000. Two or three acres enclosed.—(U. S. Ev., pt. 2, p. 27.)

Nelson. Dr. McLoughlin said, no farms at Boisé. Post established to keep Indians in order.

McFeely. In 1854 the fort consisted of one or two adobe buildings, or one building with three or four small apartments, and a small corral. Thinks the cost of buildings not over $2,000.—(p. 122.) The land around barren and sandy.—(*ib.*) Saw no land enclosed or under cultivation.—(*ib.*)

Col. Gibson. Would not have given anything for buildings.

Col. Reno. In 1859, buildings pretty much in ruins.—(p. 209.) Buildings were worthless.—(p. 210.)

Colonel Reno saw no cultivated land.—(p. 211.) Soil of alkali nature, sage brush, very indifferent for cultivation. —(p. 211.) As to pasturage, I do not think a herd of a hundred animals could live within range of the post, and be at all serviceable.—(*ib.*) Found it useless to send animals there for pasturage.—(*ib.*)

Simpson. In 1853 buildings in dilapidated condition; the land nearly a desert, with exception of little strips along river. Values buildings and land in 1853 at $3,000. In 1855 very little difference in value; buildings may have depreciated some.—(p. 262.)

George Gilpin. Similar to Fort Hall; buildings somewhat better; of less value as trading post. Chief use, as a place of rest for Company's trains. Saw no enclosed land. Should not value buildings and post over $2,500 or $3,000.

Allen. In 1852 the value of buildings so slight it would be difficult to estimate it. Saw no trade there. The employee in charge said trade did not pay his compensation.—(p. 366.)

Dr. Suckley. Allowing for time adobe bricks are drying, the mere labor of building such fort ought to be performed by twenty-five men in five days.—(p. 248.)

Fort Boisé in 1854 merely a stopping place. Estimates Fort Boisé and Fort Hall at $15,000.—(Gov. Stevens' R., Miscellaneous Ev., p. 223.)

It is to be noted that Fort Boisé was abandoned in 1856 by the Company on account of the Indians becoming hostile, and no effort was made by Company afterwards to re-occupy it. This, it is submitted, shows the post was valueless.

It is further to be noted that McKinlay, one of the chief factors of the Company, could not define any particular lines of the Company's claim at this post. In the absence of such evidence, it is submitted the Company's limits must be restricted within the narrowest range, as the Company are bound to prove the extent of their claim definitely at each post.

Fort Hall.

1. It is to be noted that no effort was made by Company to re-occupy this post after its abandonment during the Indian war.

2. That there was no cultivated land there.

3. That the buildings were washed away by the river.

Aukeny. Saw Fort Hall in 1849. Adobe Buildings.—(U. S. Ev., pt. 1, p. 40.) Land worth government price.—(p. 41.)

Meek. Thinks buildings at Fort Hall cost $1,000.—(U. S. Ev., pt. 1, p. 66.) Land about Fort Hall worth $1.25 an acre.—(p. 67.) Employees supported by game killed or bought from Indians. Game was in great abundance there.—(p. 70.) Fort Hall was put up in two months by ten or twelve Kanakas; not sure whether the inside was completed in that time.—(p. 80.) Fort Hall built by men who got $19 a year. Provisions were cheap then. The Indians friendly.—(p. 82.) Beaver were scarce.—(p. 86.) Very little lumber about Fort Hall.—(p. 95.)

Tolmie. Fort Hall abandoned in 1856.—(p. 99.) The Indian war of 1855 caused its abandonment, as introduction of ammunition forbidden by Government, and people at post subsisted by hunting.—(p. 99.)

Gray. Buildings cost less than $250.—(U. S. Ev., pt. 1, p. 163.)

C. C. Hewitt. At Fort Hall in 1852. The officer in charge said it would not pay to keep up the post, and the Company was going to abandon it.—(p. 382.) In 1862 found no building of any kind standing, the river had washed away the post.—(*ib.*)

R. H. Hewitt. In 1862 the bare remnants of an old station. The post had been washed away.

Nesmith. In 1843 Fort Hall a rude structure of adobe, the buildings covered with poles and dirt, very cheaply built. Thinks, at the then prices of labor, Fort Hall could have been built for $1,000.—(p. 27.) Saw no cul-

tivated lands there; the agent in charge said they raised nothing there.—(*ib.*) Buildings without floors.—(p. 40.)

Nelson. Dr. McLoughlin said Fort Hall built by Wyeth, an American, in 1834, to supply the trappers; no farms there; 3 or 4 cows sent in 1836 by Company to give Indians. Land barren around.—(U. S. Ev., 2d pt., p. 99.)

Adams. Fort Hall built of adobe. Estimates cost of construction at $6,000.—(p. 113.) Saw no enclosed ground for cultivation outside of the fort.—(*ib.*)

Simpson. Saw no cattle at Fort Hall in 1855. Company had a few horses there.—(p. 261.) Land and buildings in 1852 worth about $5,000.—(p. 263.)

Gov. Gilpin. At Fort Hall in 1844. Post small quadrangular post, adobe log cabins; buildings of little value as structures; for mere temporary use. $2,000 would be a generous price for all structures at Fort Hall.—(p. 331.) No cultivated lands; no enclosures but temporary corrals with poles. About 300 or 350 head of stock grazing around. The amount of trade uncertain and transient on account of migratory character of Indians about.—(*ib.*)

Dowell. Country around in 1852 vacant. Immediately round the fort a sandy plain.—(p. 360.)

Genl. Granger. In 1849 buildings old and decayed. not worth more than quarter what it was when new.—(p. 379.) Land around utterly sterile, with exception of river bottom and small stream called Portneuf. A patch of acre and a half spaded up. Adobes cheaper than wooden buildings.

Okanagan.

Aukeny. Was at post in 1859.—(U. S. Ev., pt. 1, p. 43.) Buildings going to rack, general waste around the premises.—(p. 44.) Buildings worth $500.—(*ib.*) Land around sandy and poor.—(*ib.*) Not valuable now as a place of trade.—(*ib.*) Buildings pretty much gone to ruins.—(p. 53.)

Tolmie. Company has no white person at Okanagan. There may be an Indian chief in charge.—(p. 99.) Okanagan lost its importance after Cayuse war of 1847-8. The Company had to open a new route through British Columbia to Lower Fraser river, and Okanogan was superseded by new post at Simalkameen, situated a few miles north of the line.—(p. 103.)

Rinearson. Regards land as not valuable for agricultural purposes.—(p. 316.)

Nelson. States Dr. McLoughlin as saying, Okanogan a small post, receptacle for the boats; soil barren; small garden.—(U. S. Ev., pt. 2d, p. 98.)

G. C. Gardner. In 1861 buildings in a dilapidated condition.—(p. 195.) Remembers no enclosed land at fort.—(*ib.*)

Wilkes. Okanagan situated on sandy rock.—(p. 284.)

Wilkes. Soil too poor for farming. In 1841 Company had some goats there, and thirty-five cattle.—(p. 285.)

Mowry. In 1853 buildings had depreciated 75 per cent. Thinks ten men could have built the post in three months.—(p.385.)

Gibbs. In 1853 Okanagan consisted of three small houses, enclosed by stockade. No appearance of business there. It was in state of perfect squalor. Did not pay expenses.—(p. 407.)

Dr. Suckley. Twenty-five soldiers could build Fort Okanogan in two days.—(p. 242.)

In 1854 no appearances of trade here. Post does not probably pay expenses.—(Gov. Stevens' R., Miscellaneous Ev., p. 222.) Estimates value of Okanagan, Kootenais, Flatheads, and right of pasturage on Clark's Fork at $5,000.—(*ib.*, 223.)

COLVILE.

Aukeny was at Colvile in 1859–'60.—(U. S. Ev., pt. 1, p. 43.) Does not think it has any importance as a boat

landing, (p. 49,) or place of trade.—(*ib.*) It is an out-of-the-way place.—(*ib.*) 640 acres land round Colvile worth $2.50 to $5 per acre.—(p. 43.)

Applegate values improvements at $8,800.—(p. 276.) Values land, exclusive of improvements, at $2,500.—(p. 277.) Attaches no value to it as a town site.—(p. 278.) Values mill at $500.—(*ib.*) Values White Mud farm, 30 acres, at $1.25 an acre.—(*ib.*) Would not sell the water-power at mill for less than $5,000.—(p. 298.) Does not consider Kettle Falls valuable as a water-power.—(p. 302.)

Rinearson adopts the report made by Applegate, Carson, and himself.—(p. 317.)

Carson adopts the reports of Applegate, Rinearson, and himself.—(p. 356.)

G. C. Gardner identifies photograph of Fort Colvile.—(p. 195.)

Cain. Buildings in 1859 worth from 5 to $7,000 to any one needing them at that point.—(p. 224.) Identifies photograph of.—(p. 225.)

Mowry. Saw post in 1853. Buildings had depreciated in value 40 per cent.—(p. 384.)

Gibbs. Before 1853 goods were sent through this post to those north of the line, but that route was abandoned. Behind the fort, and elevated above it about a hundred feet, is a narrow valley, through which runs Mill or White Mud creek.

In this valley the discharged servants of Company settled to the number of 15. In this valley is a cattle post nine miles from fort, and a grist-mill of one pair of stones three miles from fort. Only small portion of farm cultivated in 1853.—(p. 405.)

The buildings occupied by North Western Boundary Survey at Fort Colvile were greatly superior to Company's buildings at Colvile.—(p. 406.)

Kettle Falls not valuable for manufacturing purposes.—(p. 417.)

Suckley. Twenty-five soldiers could build Fort Colvile in thirty days, or less.—(p. 541,)

Gov. Stevens, in 1854, estimates post and mill at $25,000.—(Gov. Stevens' R., Miscellaneous Ev., p. 222.)

KOOTENAIS.

Tolmie. Kootenais not now occupied, the Company have a post north of the line in Kootenay.—(U. S. Ev., pt. 1, p. 98.) New post at Kootenais established because a trail opened through British territory.—(p. 105.)

Nelson. States that Dr. McLoughlin said Kootenais a mere winter trading post, no farms, no cattle.—(U. S. Ev., pt. 2, p. 98.)

G. C. Gardner. In 1860, passed some log houses, which the Indians said was old Kootenais post.—(p. 192.) Buildings dilapidated.—(p. 193.)

A. Gardner. Identifies photograph of mission.—(p. 320.)

C. T. Gardner. In 1860, there was a log house and shed in dilapidated condition.—(p. 322.) About 40 acres seemed to have been in cultivation.—(p. 323.)

Hudson. Kootenais consisted, in 1859, of a church, a dwelling for man in charge, and three or four smaller buildings.—(p. 340.) Recognizes photograph of church, the dwelling was similarly built, but much smaller. The other buildings were inferior, and quite small.—(*ib.*) Saw no one in charge. Saw no signs of cultivated land, or stock.—(p. 340.)

Gibbs. In 1860, there were only two small worthless log cabins. Recognizes photograph of Catholic Mission.—(p. 407.)

Alden. Land around generally of a miserable quality. Four or five log huts. The largest one a church. It was empty, except some religious engravings.—(p. 552.) Recognizes photograph of Catholic Mission, in evidence, (p. 553.) Buildings looked very much dilapidated.—(p. 554.) Three axe-men could erect such a house as Lenk-

later's in three days.—(p. 554.) Saw no good land on tobacco plains, near Kootenais.—(p. 559.) Whole country graveled terrace.—(p. 560.) Lenklater's house was half the size of the church.—(p. 561.)

Flathead.

Nelson. States Dr. McLoughlin said Flatheads used only in winter to trade with Indians.—(U. S. Ev., 2d pt., p. 98.)

Adams. In 1854, buildings barely habitable. It would have cost $1,200 to rebuild them.—(p. 114.)

Conclusion as to the Posts.

We are now able, in confirmation of the views previously presented of the nature of the rights of the Hudson's Bay Company, of their value, and of the true measure of compensation, to refer intelligently, and with appreciation of facts, to further illustration of the true nature of the claim of the Company to compensation.

1. The value of the possessory rights of the Company is illustrated by the case of the Indians of North America.

Chancellor Kent, with his accustomed clearness, thus states the nature of their interest in the territory held by Europeans, and their descendants in America:

"The European nations which respectively established colonies in America, assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant a title to the soil, *subject only to the Indian right of occupancy*. The natives were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion, though not to dispose of the soil at their own will, except to the government claiming the right of pre-emption.

Kent's Comm., vol. 3, p. 461, sec. 379.

See also Opinions of Attorneys General, vol. 8, p. 255, 333.

The Government possesses the exclusive power of granting the soil to individuals, subject only to the Indian right of occupancy.

Johnson v. McIntosh, 8 Wheat., 543.
Mitchell v. The United States, 9 Pet., 712.
United States v. Fernandez, 10 Pet., 303.
United States v. Rellieux' Heirs, 14 H., 189.
Sparkman v. Porter, 1 Pa., 457.

The Indians have only a right of use, which, however, is divested by purchase or conquest.

Godfrey v. Beardsley, 2 McLean, 412.

From these authorities it appears that the Indians have only a right of occupancy in lands, the fee being in the Government.

The Indians have possessory rights of the largest possible extent, for their continuance is during the existence of the tribal organization, unless sooner terminated by treaty.

The right of occupancy may continue, therefore, during the existence of the tribe. Hence, the Indians hold possessory rights in land of extensive duration. But, though their possessory rights may thus continue so long in point of time, there is no pretence that they are owners of the fee.

The rights of the Company to land, in this case, are of the same legal character as those of the Indians. The Company were in permitted occupancy, and were entitled to the possessory rights arising therefrom; they had no claim of title to the fee of the land. They were, therefore, in the legal predicament of the Indians in regard to their lands. Both the Company and the Indians were in the mere occupation of land, the fee of the same being in the Government of the United States, the Company, just as the Indians, possessing only the possessory rights, at most, which arise from lawful occupancy.

The material difference between the legal status of the Company and the Indians was in the duration of the

occupancy. And in this regard the Indians have decidedly the advantage, inasmuch as their right of occupancy is of longer duration: it is during their national existence, unless voluntarily relinquished by them to the Government.

The duration of the Company's occupancy was limited to the lawful continuance of their license of trade. When that license terminated their right of occupancy ceased.

If effort be made to claim for the Company any other estate in land than the one we have assigned to it as analogous with the Indian title, then we submit this proposition: the Company must either have such right of occupancy limited, as we have stated it to be, or they possess the whole estate in fee simple.

That they have not the entire fee simple estate is too clear for argument. Assuming, as a question conceded in the case, that the Company have not a fee simple estate, then they can have only such interest, that of the right of occupancy, as we have assigned.

That this right of occupancy must be limited in point of duration, by the legal continuance of the license of trade, is clear, because unless so limited there is no limitation to it, and it would be perpetual.

Hence, we think, the Indian title to land is instructive as illustrating that occupancy of public land for the longest period consistent with the idea of the fee remaining in the state.

And we further perceive that the Company is not in as good a legal condition by virtue of their occupancy as the Indians are, as the occupancy of each of these parties confers during the occupancy similar possessory rights, and by consequence similar legal remedies for their violation, but the occupancy of the Indians may be longer in point of duration, for the reasons we have already given.

2. We present another pertinent example of possessory rights in the case of pre-emptor, under the land law of the United States.

By the pre-emption law of the United States any person, being a citizen of the United States, or having given notice of intention to become such, being an inhabitant upon the public land, and having made a settlement and erected a dwelling-house thereon, is entitled, upon giving notice within a certain time, and paying the government price, to receive a patent for 160 acres of land and thus become the owner in fee simple.

From the time of settlement on the land to the end of the twelve months, at which time the price of the land must be paid, the settler, called the pre-emptor, has all the possessory rights and remedies which arise from the lawful occupation of land, with the supperadded privilege of purchasing the land in preference to all other persons.—(See Lester's Land Laws, p. 355.)

Such is the legal status of a *pre-emptioner* in general under our law. Such is the manner in which the possessory rights of a citizen of the United States in the public land are respected, where he occupies such land without previous purchase.

In the State of Oregon and Territory of Washington, that is in the original Territory of Oregon, there was special legislation.

Congress, on establishing the territorial government of Oregon, passed an act which, in effect, gave legality to certain inchoate titles acquired by settlers under the previous provisional government of this Territory. It is the donation act, so called, of September 27th, 1850.—(U. S. Laws, vol. 9, p. 496.)

In virtue of this act a settler, subject to certain conditions of citizenship, was entitled to six hundred and forty-six acres of land if married, or three hundred and twenty if unmarried, on proof of four consecutive years of continued residence and occupation.—(See Stark v. Starrs, 6 Wallace, 403.)

This law does not either in terms or spirit apply to the Hudson's Bay Company.

If claiming any rights under it, the Company must of course be confined to the limits of the statute as respects the quantity of land. It could make no title under it directly, and if pretending to any, that could be reached only by perjury and fraud, as the pretended title of the Puget's Sound Agricultural Company, that is, by inducing individuals to enter donation claims in their own names, but with secret engagement for the benefit of the Company.

But this law, and the general law, are pertinent to show what is meant by occupation, as the source of "possessory rights."

Never, until in this case, was it pretended that cutting timber on the public domain for sale, (that is, stealing it,) or suffering cattle to roam over thousands of acres of unsettled public lands, (that is, wholesale trespass,) gave the party title to such land.

Nor was it ever pretended, before now, that the occupant possesses a fee simple.

The nature of his possessory rights is unmistakable. He occupies, with right of purchase, on compliance with certain conditions. If his inchoate right, as pre-emptor, shall thus ripen into an absolute right, then he purchases of the Government, at the statute price of the public lands. If his inchoate right shall not so ripen, then, and he abandon the land, all his rights, as against the United States, are at an end. He may, indeed, sell his improvements to a succeeding settler, following him in the occupation, but he can claim nothing of the Government for such improvements.

What, then, is the value of the pre-emptor's interest? Obviously, only the worth of the improvements, in excess of the statute price of the land. The settler can pass nothing else; he has nothing else to sell.

Suppose, now, that the Government needs the land for public use. Is the Government to pay the settler *for its own land?* Of course not. The Government will pay

for the improvements only, not for the fee. The occupant has no fee. The fee is still in the Government.

Let us apply these views to the claim of the Hudson's Bay Company.

First, it is to be noted that the treaty, in precisely the same language, guarantees the possessory rights of "British subjects" to land in the territory, as it guarantees those of the Hudson's Bay Company. Any individual being a British subject, and in the lawful occupancy of land in the territory, is entitled, by the treaty, to have his possessory rights in such land respected precisely to the same extent as those of the Hudson's Bay Company.

Such being the case, suppose an individual British subject should claim the benefit of the guarantee, to what would he be entitled?

Would he be entitled to anything more than to be put on an equal footing with American citizens in the contemporaneous occupancy of land in the territory?

The American citizen, if in the occupancy of land in the territory, under the special pre-emption laws would have a pre-emption right to three hundred and twenty acres, with the accompanying possessory rights until the patent issued, and this although he may have been in the occupancy of much more than three hundred and twenty acres of land.

Would the British subject in the same category be entitled, by virtue of the treaty, to have his possessory rights respected to a larger extent than the American? Certainly not beyond the extent of the donation act.

The treaty provides that his possessory rights shall be respected, but it does not say in what manner or to what extent they shall be respected. It is necessary to conclude that the manner in which these rights are to be respected is to be left to the discretion of the United States. And it is sufficient for the United States to respect them in the same manner it respects the possessory rights of its own citizens under the same circumstances.

The treaty would relieve the British subject from the necessity of declaring his intention to become an American citizen in order to get the benefit of the pre-emption laws, and there would be no obstacle to his acquiring title to the land occupied by him to the extent of three hundred and twenty acres. But he must pay for the land if he seeks to acquire title from an occupation as pre-emptor.

In reference to the possessory rights of the Company, they would be as possessory rights of precisely the same character as those of the individual pre-emptor by the general law. But the Company would have no privilege of pre-empting the land; and in this respect there would be a marked difference between the legal status of the Company and the pre-emptioner.

The possessory rights proper of the Company, the only rights in reference to land the Company possessed, would be in quality identical with those of the pre-emptor. The difference would be in the duration of those rights.

In the case of the ordinary pre-emptor they continue twelve months. The only question is, how long they continue in the Company?

It is plain that they could continue in the Company only so long as the Company should be in the lawful and actual occupancy of the land claimed. And they are in the lawful occupancy so long as the license of the Indian trade continues, and the occupancy of the land is necessary to their carrying on that trade, and no longer, as we have already demonstrated.

Their possessory rights cease with their actual occupancy. This is the settled rule of law in the case of pre-emptions.

United States v. Stanley, 6 McLean, U. S. C. R., 409.

This is manifest, because the Company's possessory rights arise from occupancy. They spring from occupancy, they perish with occupancy. Where, therefore,

the Company voluntarily abandon the occupancy of land, their possessory rights in such abandoned land are at an end.

In view of all which, it is manifest that, as against the United States, the Company has claim to compensation only for the value of improvements. It can have no shadow or pretence of right to the land as land until it shall have paid the statute price thereof to the Government.

And, if the Government is to take the improvements off its hands, and still retain the fee according to the stipulations of treaty, how preposterous it is for the Company to pretend that the Government, which has never parted with the fee, shall itself pay to the Company the value of its own public land.

In truth, this pretension of the Company, that compensation to them for their "possessory rights" *in the land of the United States* shall include the value of the *land* as well as the *improvements*, exhibits a sublimity of impudence, without parallel in the history of all the many efforts of private claimants to impose upon and defraud the Government.

(C.)—Right of Trade.

I. The Company claim that their rights of trade have been infringed. They construe their rights of trade to include three items:

1. Indian trade.
2. General trade, other than with the Indians.
3. Right of cutting and exporting timber.

II. It becomes important to ascertain what rights of trade the Company had in this territory.

We insist that the Company had no right to function in this territory, except by virtue of the license of trade granted to it in 1838. The original charter of the Company limited its operations to the country around Baffin's

Bay. In 1838 the Company obtained a special license for exclusive trade with the Indians in this and other territory on the Pacific, not embraced in its original charter.

We ask reference in this connection to the original charter of the Company, and to the license to trade granted to it in 1838.

From this original charter and this license to trade we claim that, under the original charter, the Company was confined in its operations to the country around Baffin's Bay, and that its right to operate in this territory is derived entirely and exclusively from its license of trade in 1838.

The acceptance of this license of trade is, we insist, a conclusive estoppel on the Company to prevent them from claiming a right to trade in this territory by virtue of their original charter, independent of their license of trade.

The business powers or functions of the Company in this territory must, therefore, be determined by the privileges conferred in the license of trade.

On reference to the license of trade it is found to confer upon the Company "the exclusive privilege of trading with the Indians." The license of trade has this extent, no more.

The Company have no other power of trade than their license of trade gives them. A corporation is limited by its charter, or grant, and cannot go beyond. A corporation for the business of insurance cannot carry on the business of banking. A corporation for banking cannot engage in manufacturing.

The general doctrine upon this point is stated in Angell & Ames on Corporations, p. 233, as follows:

"A corporation in general can make no contract which is not necessary, either directly or incidentally, to enable it to answer that purpose," (the purpose of its charter.) And further, "a corporation can make no contract for-

bidden by its charter."—(*Ib.*) Again. In determining whether a corporation can make a particular contract, * * "we are to consider whether the contract is entirely foreign to that purpose," (the purpose for which it is chartered.)

Reference is further had to the following adjudications:

A grant to a life insurance and trust company "of a power to buy and sell drafts and bills of exchange" does not confer the power to issue paper designed to circulate as money.

In the matter of the Ohio Life Insurance Company, 9 Ohio R., 291.

Ducan v. Maryland Savings Institution 10 Gill & Johns., (Md.) R., 299.

New York Firemen's Insurance Co. v. Ely, 2 Cowen, (N. Y.) R., 664.

Lane v. Bennett, 5 Conn. R., 574.

Philadelphia Loan Company v. Towner et al., 13 Conn. R., 249.

So a corporation authorized for "the exclusive privilege of trading with the Indians" cannot engage in general trade.

Nor can they engage in the business of cutting and exporting timber.

The only business the Hudson's Bay Company could lawfully conduct in this territory was the Indian trade, and as a means necessary and proper to carry this on, they could cultivate land and pasture it, and cut wood for the purpose of keeping up their posts and employees in the territory. Beyond this any general trading or cutting and exporting of timber was *ultra vires.*

It is submitted, then, that the only business the Company could lawfully engage in in the territory was trading with the Indians. Engaging in general trade, cutting and exporting timber, were outside of their license of trade, which was, in effect, the charter under which they were acting in the territory.

Between a mere Indian trade, and the general trade which the Company aspired to with California, the Sandwich Islands, and the Russian possessions in America and the local American trade, there is immense difference. The British Government might have been willing to permit the mere Indian trade, and yet well hesitate before establishing a new East India trading company on the shores of the Pacific.

Assuming, then, that the Company, so far as its general business transactions are concerned in this territory, must be confined to the specific privilege granted in its license of trade, trading with the Indians, then the question arises whether the Company are protected in this right by the treaty of 1846, and if so, whether the United States have done their duty in the premises?

It is submitted, that the treaty providing that "the possessory rights of the Company, * * in land or other property," does not embrace the Company's right of trade with the Indians.

"Possessory rights" are rights growing out of the possession of tangible property, real or personal. Before "possessory rights" can exist there must be possession of property. There can be no possession except of that which has physical existence. There can be no "possessory rights" except of property which has physical existence, as land, or a house, or a table, or something which has material substance. Trade is not a thing of physical existence. It is impalpable, immaterial, ideal. It is, therefore, not capable of actual possession in the sense which gives rise to "possessory rights." One may have possession of the house in which trade is carried on, and possessory rights will arise as to the house, from such possession, but one cannot have possession of the trade carried on in the house, and "possessory rights" cannot arise as to such trade. We insist, then, that the guaranty of the treaty in regard to "possessory rights" does not apply to the trade of the Company. This guaranty ap-

plies only to the visible property in the occupancy of the Company. So far as their trade was concerned, it was left to the general protection of the Constitution and laws of the United States.

But whether we are right or wrong in our opinion that the guaranty of the treaty in reference to the "possessory rights of the Company" does not embrace their business of trading with the Indians, yet we insist that the United States have respected whatever right of trade the Company had with the Indians in as large a measure as was obligatory on the United States.

We insist that after the treaty of 1846 the Company's right to trade with the Indians was not to be exercised as an exclusive trade with the Indians, as provided in their license of trade from the British Crown, but was to be exercised subject to the laws of the United States. The Company, at the outside, could only claim to carry on this trade on an equal footing with citizens of the United States. The United States had a system of laws in operation, in 1846, regulating intercourse with the Indians. The Company's right to trade with the Indians was to be exercised subject to these general laws, and such other general laws as should be made by the United States, not unjustly discriminating against the Company. Tested by these principles, we submit that the right of the Company to trade with the Indians was fully respected by the United States.

The Company make vague complaints on this subject.

1. They say Gov. Stevens, and Dart, the Superintendent of Indian Affairs, forbade the Company to trade with the Indians. But chief trader, McTavish, admits the Company paid no attention to these orders.

So, therefore, the attempted prohibition amounted to nothing.

But we submit these orders prohibiting Indian trade, attributed to Gov. Stevens, were either lawful orders, which it was competent to him to issue, as being in

consonance with the general laws of the United States in regulating the Indian trade, or they were unlawful orders, and therefore of no legal effect, and the United States are not responsible for them.

2. They complain of their trade with the Indians being injured by the settlement of the country, and the customary Indian wars. But in both these instances, we submit, the legal maxim of *damnum absque injuria* will apply.

The United States are not in any way responsible for the diminution of the trade with the Indians from these causes. The settlement of the country was a natural and desirable result in the interests of civilization. And it would be more than the Company had right to expect that this territory should continue indefinitely the hunting ground of the Indians, when it was needed for the use of civilized man.

As regards the Indian wars, they were unavoidable; they were brought about without any default on the part of the United States. Those wars caused a very large expenditure of money to the United States, and but for the execution of the power of the United States the "possessory rights" of the Company would have been of scarcely appreciable value, and their buildings at Vancouver and other points, upon which they place such exhorbitant value, would have been consumed by the Indians.

3. They complain of the Indians in certain localities being placed upon reservations, whereby their trade in furs was diminished. But this measure of policy, it is submitted, was one entirely within the competency of the United States as sovereign in the territory, and justifiable as a proper exercise of governmental discretion.

It can scarcely be maintained that the United States, by agreeing to respect the "possessory rights" of the Company, intended to abdicate the exercise of any of their sovereign rights in relation to the Indian tribes within their jurisdiction.

In every aspect, then, in which the subject can be considered, it is submitted, that the Company have no ground of complaint against the United States growing out of the subject of the trade with the Indians.

On the subject of the general trade of the Company other than the Indian trade, it may not be inappropriate to remark that there can be no pretence that the United States, in any degree whatever, interfered with or placed impediments in the way of such general trade.

On the contrary, the Company were left the largest liberty in this respect, and were free to exercise every function of trade as untrammeled as any American citizen or American corporation in the territory. On this point there can be no just complaint against the United States.

Indeed, it may more properly be said that the United States, in permitting the Company to transform themselves from an association of fur traders to a vast mercantile association, carried their forbearance to an improper limit, as necessarily working injustice to their own merchants.

(D.)—Navigation of the Columbia.

As regards the navigation of the river Columbia, and any claim the Company may have thereto, it is submitted—

1. That this matter is not within the jurisdiction of the Honorable Commissioners in this case.

The treaty of July 1st, 1863, authorizing the Honorable Commission in this case, defines explicitly the jurisdiction of the Commission in the following terms:

"It is hereby agreed that the United States of America and her Britannic Majesty shall * * * appoint each a commissioner for the purpose of examining and deciding upon all claims arising out of the provisions of the above quoted (the 3d and 4th) articles of the treaty of June 15th, 1846."

The said 3d and 4th articles of the treaty of June 15th, 1846, have no reference to the navigation of the river Columbia. That subject is provided for in the 2d article of the treaty.

The jurisdiction of the Commission in this case is, therefore, restricted to the matters arising out of the 3d and 4th articles of the treaty, and does not embrace the navigation of the Columbia.

If we are correct in this view, the question of the navigation of the Columbia river is effectually disposed of, so far as the present Commission is concerned.

An attempt is made in the Company's argument to claim the navigation of the Columbia as a "possessory right," embraced under the general provisions in reference to "possessory rights" in the 3d and 4th articles of the treaty of 1846; but it is submitted, that those articles have no reference to the right of navigation of the Columbia.

This, we consider, is manifest.

1. From the very terms of the 3d article, which provides that "the possessory rights of the Hudson's Bay Company, * * who may be already in the occupation of land or other property lawfully acquired within said territory, shall be respected."

The term "possessory rights," as we comprehend it, necessarily imports in this connection rights of possession growing out of the occupancy of land or other property. The right of navigation is not, as we understand it, a possessory right in this sense.

In order to understand what the "possessory rights" of the Company might entitle them to in reference to the right of navigation, we will, to put the case in the strongest light for the Company, suppose that they were the owners in fee simple of the land at Vancouver, and such other points as they claimed along the river, and then inquire what their rights in reference to the river would be. They would have such riparian rights therein, and the land

to that extent under the water; and the water flowing over would belong to the riparian proprietor, subject to the public easement of a right of navigation.

Angell on Water Courses, p. 597.

Where the water course is not navigable, the riparian proprietor is absolute owner of the land and water, and may as proprietor have exclusive use of it in every form in which it is capable of being used, subject to one limitation, that he does not prejudice the proprietors above or below him.

From this brief summary of the law, it is evident that the Company's "possessory rights" to land on the Columbia give them no right to the navigation of the Columbia distinct from the common right of every citizen to navigate this common highway.

The effort to claim the right of navigation of the Columbia, as a "possessory right," has, it is submitted, no basis whatever to rest upon.

What makes this view of the subject conclusive, is the fact that this right of navigation is provided for specially in a separate and distinct article, the 2d article of the treaty.

The extent of riparian rights depend on the character of the river.

If the river is navigable, it is not subject to private ownership. The proprietor of the land on the river holds only to the bank. The water of the river, and the ground covered by water, are public domain.

Angell on Water Courses, p. 603.

In reference to a river of this character, the riparian proprietor has no more right or privilege than any other person. He has no property or possessory right whatever by reason of his ownership of the bank. Whatever privilege he has in regard to the river, he owes it, not to his being a riparian proprietor, but a citizen. If, then, the Columbia river at Vancouver is affected by the tide, the Company, if owners in fee, would have no property right

or right of any kind in the river deducible from proprietorship of the bank. They would stand in regard to water rights or privileges precisely on the same footing as other inhabitants of the country.

If the "possessory rights" of the Company had been supposed to embrace the right of navigation of the Columbia, there would have been no use for the 2d article. The insertion of a special article in reference to the navigation of the river, shows that the parties, who framed the treaty supposed this matter was not covered by the article in regard to the possessory rights of the Company.

The Company have never had any particular right in the rivers of the territory, other than such as they had in the air and the light. They never *possessed* navigable waters in the same sense that they *possessed* land.

Further, to show that this right of navigation is a matter not embraced in the term "possessory rights" as used in the treaty, it is proper to understand, with some precision, what is meant by article 2d, providing for the navigation of the Columbia.

It does not mean merely the privilege of having the personnel and the goods of the Company transported on the same footing as citizens of the United States. That privilege, if not secured by prior existing treaties, would, it is submitted, have been agreed on the principle of the comity of nations, and certainly by the practice of the United States in like cases.

But the privilege of navigation secured by the first clause of the article to "the Hudson's Bay Company, and all British subjects trading with the same," means something more. It means, as we conceive, that the Company, and all British subjects trading with the same, may navigate the Columbia in British vessels, officered by British officers, manned by British crews, and sailing under the British flag.

Now it is ridiculous to claim that such a great right as this can be claimed as a "possessory right" in perpetuity, because of the occupancy of land in the territory.

We assume, then, as a matter too clear for denial, that the right of navigation of the Columbia is not one of "the possessory rights" of the Company secured by the 3d article, and is a matter provided for by the 2d article, and no other.

In regard to this right of navigation, embraced, as we think, exclusively in the 3d article, we have but little more to say.

1. We admit this right precisely as laid down in the 2d article, and we have no disposition to circumscribe it in any degree. We do not regard its rightful exercise by the Company as of any detriment whatever to the United States, and we hope the Company will indulge themselves in the largest possible exercise of this great privilege.

2. We cannot refrain from expressing our gratification at the great value which the Company find this right of navigation to be to them, estimating it, as they do, at the sum of $1,460,000, with the assurance that "the actual value is much more at the present time, and its progressive increase hereafter cannot be easily estimated." We must be permitted, however, to express both regret and surprise that a right so immensely valuable should, so far as we are informed, be in a condition of practical non-user at the present time. It would seem eminently expedient that the Company should make the largest possible use of a right which they appreciate so very highly.

3. We would further remark in this connection, that, if the United States should ever desire to put an end to this privilege of navigation, it would be properly a subject of negotiation between the two sovereign powers, who are parties to the treaty, inasmuch as it is not merely the Hudson's Bay Company who are to have this privilege of navigation, but "all British subjects trading with the same." And as the Company could only relinquish this right of navigation for themselves, and not for "all British subjects," it would be impossible to make a satisfactory negotiation with the Company alone.

The Portages.

There is nothing in the pretensions of the Company more preposterous, extraordinary as most of them are, than the claim of damages from the United States on the ground of the alleged obstructions to the navigation of the Columbia, caused by local improvements at the portages on that river.

These alleged obstructions consist in well-appointed railroads in full operation, open to the use of the Company, as to all others who choose to avail themselves of such facilities.

The railroads at these points, running in connection with steamers on the river above and below the portages, render the transportation of freight and passengers far more expeditious and cheaper than under the old system of bateaus, with carriage across the portages, which the Company had been accustomed to in past times. That transportation on the Columbia is improved by being done by steamboats and railroads is a proposition so clear, as to be incapable of argument.

We had supposed, if any thing distinguishes the age in which we live from the centuries preceding, it is its wonderful material progress; and one of the greatest glories of this progress, the application of steam to land and water-carriage. But this great achievement, which, if it has not abolished distance, has in a large degree overcome it, does not seem to meet the approval of the Company. They sigh for the old-fashioned mode of stemming the current by human force, and carrying the boats and their freight on the heads of Indians around the rapids of the river. Being so attached to this old system, we are surprised that the Company does not still resort to it. The United States have no objection whatever to their doing so. And, according to the evidence, there is no obstacle in the way of their so doing.

Cain, witness, says:

"The portages on the Washington side of the Columbia river have never been obstructed. I am not familiar with the Oregon side, on the Lower Columbia; but the portages of the Upper Columbia, on both sides, both Oregon and Washington, have never been obstructed." (Evidence for U. S., Pt. 2, p. 246, answer 10.)

"There is a wagon road on each side of the river at the Cascades. The one on the Washington side has always been a public highway. There is also a wagon road at the Dalles portage, which is a public highway." (*Ib.* p. 248, answer 2.)

He further says, the means of transportation across these portages, for wagons or pack-animals, or for the backs of men, are better than they were prior to the construction of the railroads. (*Ib.*, p. 248, answer 3.)

Ainsworth, witness, says:

"There is a public trail and highway, that any one can travel, both at the Cascades and Dalles. (U. S. Ev., Pt. 1, p. 6, ans. 13.)

Even Mr. Mactavish, who, to say the least, is disposed to look at matters in a sufficiently favorable, rose-colored, or, rather gorgeously-purple, light for the Company, is driven to abandon the portage complaint. He testifies as follows:

Int. 885. "Had the Company ever been deprived of, or abridged in, the use of the portages of the Columbia river?

"Ans. Not that I remember of." (U. S. Mis. Ev., p. 173, ans. 885.)

So that the claim is in fact given up.

The course of examination of witnesses on the part of the Company's counsel might induce one to suspect that they meant to claim the portages as their property. Such claim would be quite in keeping with other claims of theirs. They set up title to vast regions of land, wheresoever they had cut trees on the ground, or allowed cattle to wander wild in limitless waste. They claim exclusive rights of trade. The Columbia and all its affluents are theirs, according to their own pretensions. Why should they not claim every highway in the country, actual or possible, and every track ever traversed by their servants and horses, or their tributary Indians? To do so, would be entirely in the spirit of their grasping, rapacious, exorbitant, and presumptuous character and conduct, as exhibited in their general claims against the United States.

The Company seems to proceed on the hypothesis, that whatever, on the continent of America, it, or any of its factors, agents, clerks, or servants, or its horses, cattle, sheep, or dogs, ever used or abused, becomes its property thenceforth;

and after advancing such claims, it might well now file an amendment, claiming a second half million extra for the atmospheric air, and a third half million extra for the sun light, of Oregon and Washington. Its unimaginable ravenousness passes the limits of indignation, and reaches the region of ridicule and contempt.

(E.)—Miscellaneous Points.

I.—Remarks on Certain Witnesses.

The course of the counsel of the Hudson's Bay Company justifies further comment on a point, heretofore touched, indeed, namely, the character of the witnesses produced in behalf of the Company.

Those who have been in the Company's service, though their connection with it is at an end, may well be supposed to symathize very deeply with it, and to feel and testify, therefore, under a certain prejudice.

Those, who are still in the service of the Company, have, generally speaking, a direct pecuniary interest in the result. They testify, therefore, to put money into their own pockets. The evidence of these witnesses should be closely scrutinized, to say the least, and due allowance made for the bias on their part.

We think it proper to cite the names of these witnesses.

1.—Witnesses formerly in service of Company.

Thomas Lowe was a clerk in Company's service from 1841 to 1850. Co.'s Ev.. p. 7.

Sir James Douglas was in the service of the Company from 1821 to 1859. During the latter part of his service he was chief factor. Ib., p. 49.

H. F. Crate was in service of Company, with some intermission, from 1832 to 1860. Ib., p. 104.

Thomas Flett generally in service of Company from 1833 to 1851. Ib., p. 167.

Neil McArthur was in service of Company ten years. Ib., p. 61.

N. McKinlay was a chief trader. Ib., 72.

2.—Witnesses, in service of Company when examined, or pecuniarily interested.

Alexander C. Anderson,

Was in Company's service from 1831 to 1854. From 1846 to 1854, was a chief trader. Since 1854 has not been in the employment of the Company, but retains "a retrospective pecuniary interest." Co.'s Ev., p. 33.

This witness attests that the Company's claim at Colvile, "including White Mud pasturage and all, is from five to six miles square, making sixteen to twenty thousand acres, more or less." Ib., p. 36.

Values the cultivable land in the neighborhood of the fort at about $25 per acre; estimates the cultivable land about the fort at fifteen hundred acres, and back of the fort, in the vicinity of White Mud at at least three thousand acres more. Ib., 36. Values remainder of this land claim at $1 25 per acre. Ib., p. 37.

Describes Company's land at Okanagan: estimates the horse range at Okanagan at from twenty-five to thirty miles, "in which the different enclosures were contained." Says certain portions of it were very fine pasture. Ib., p. 37. Values land at Okanagan at $50,000. Values improvements and land at Okanagan at £30,000. Ib., p. 38.

Values the post at Colvile, including the White Mud and the outposts of the Kootanais and Flatheads, at £100,000. Ib., p. 39.

States extent of the pasture land at Vancouver. Ib., p. 39.

Witness' interest is one eighty-fifth in the fur-trade branch. Ib., p. 39.

Values Vancouver in 1852–'3 at £200,000. Ib., p. 48.

William Charles,

Is a chief trader. Ib., p. 171.

Asserts abandonment of Walla-Walla and property there by order of the United States Indian agent. Ib., p. 173.

H. A. Tuzo,

Is a chief trader. Ib., p. 176.

Describes Company's claim at Vancouver. Ib., p. 176. Values the building at Vancouver. Ib., p. 177–8. Values land at Vancouver. Ib., p. 179. Thinks Company might have realized $1,000,000 by sale of town site at Vancouver. Ib., 182. Thinks Company lost $40,000 or $50,000 per annum of profit on sale of agricultural produce from two thousand acres of land at Vancouver. Ib., p. 182.

Dugald Mactavish,

Is chief factor. Ib., p. 197.

His interest is two eighty-fifths of forty one hundred parts of the profits of the fur trade. Ib., p. 221. "My interest extends to the whole amount of the claim of the Hudson's Bay Company." Ib., p. 222.

Mr. Mactavish is, perhaps, the most important of all the Company's witnesses. His testimony is very extravagant for the Company, especially in reference to the extent and value of the claim at Vancouver.

We have devoted already some space to Mr. Mactavish, but shall presently refer to him in particular relations.

Angus McDonald,

Is chief trader. Company's Ev., p. 150.

Describes Fort Hall.

Pasturage at along left side of Snake river for eighteen to twenty miles, and extending southward about eleven miles. Ib., 152.

Says it would cost from seventy to one hundred and seventy thousand dollars to build Fort Hall. Ib., p. 153. Would give $1,000,000 for the claim at Fort Hall. Ib. The enclosed land at Fort Hall is worth $20 to $30 an acre. Ib. These lands increased in value every year since 1846. Ib.

Describes post at Boisé, (Ib.,) and considers it equally valuable as Fort Hall. Ib. The enclosed land at Boisé worth, when witness was there, $50 an acre; now it is worth much more.

The unenclosed land worth from $1 25 to $1 50 an acre, and have increased in value since 1846. Ib., 154.

Values land at Walla-Walla. Ib., p. 155.

Values the arable land at Colvile at $40 an acre, and that at White Mud at the same. Ib., 160. Values the pasture land, where hay is cut, at $5 an acre, the balance at $2 per acre. Ib., $160. Values the mill at Colvile at $20,000. Ib. Values building at Colvile at from $70,000 to $120,000. Ib.

Thinks, if he bought Fort Hall at $1,000,000, he would get his money back by turning it into a *zoological park!!* Ib., p. 162.

John M. Wark,

Is a chief trader. Ib., p. 189.

Testifies circumstances under which Company left Vancouver. Ib., p. 189.

3. It will thus be seen that the Company have relied in a very large degree, in the proof of their claim, on the evidence of persons in their service, who have a direct pecuniary interest in the result. If the evidence of these witnesses were stricken out, the Company would have but little to stand upon. It is submitted that, in comparing this evidence with the evidence of the numerous witnesses introduced by the United States, ample allowance should be made for the evident bias under which the interested witnesses speak, as manifested by the monstrousness and flagitousness of their extravagant estimations. Their falsehood is established by numerous witnesses produced on the part of the United States.

This important fact, which we have just referred to, namely, the effort of the Company to make out its case, especially on the point of value of the various posts, in such a large degree, by interested witnesses, receives vast additional signification, when we remember that the Company have in their possession the books of the various posts, which would show precisely the cost of each, at least so far as the items of materials and wages are concerned, which are indeed the only substantial items of cost in the case.

That this conduct of the Company, in relying upon the bubble

testimony of interested witnesses to prove their case, when they persistently refuse to produce their books, must weigh fatally against them, we cannot but assume. In a case before any court of justice, in a suit between individuals, such conduct on the part of the plaintiff would furnish conclusive presumption of bad faith, which, unexplained, would necessitate a verdict for defendant.

4. The important *role* performed by Factor Mactavish, as witness and agent of the Company, demands a special notice of his testimony.

(*a*) Mr. Mactavish has been in the continuous service of the Company since 1833, rising from the position of clerk to the high dignity of chief factor. During this long period of service Mr. Mactavish has been located at various and distant points in the service of the Company. At one time we hear of him among the frozen regions of Baffin's Bay, next at the post of Mechipecoton on Lake Superior, then on the island of Montreal. In 1839 he crossed the Rocky Mountains, the next year he retraced his steps to Baffin's Bay. We next hear of him at Vancouver, San Francisco, the Sandwich Islands, and England; and finally he appears in Canada and this portion of the United States, for the purpose, principally, as it seems, of supervising the prosecution of the Company's claim, and incidentally of giving evidence.

We have referred thus to Mr. Mactavish's history, in order to show the important position he occupied as an official in the Company. One so long in the service of the Company, transferred in his career from one locality to another so widely separated, and finally engaged in the most important matter which this powerful Company now has pending, must occupy a very distinguished position in the official ranks of the Company. It is fair to presume that no official of the Company of his grade possesses a larger degree of its confidence, and is more familiar with its history and official acts, its purposes, wishes, and claims, so far at least as this case is concerned.

He may justly be considered in this case as the embodiment of the Company, its type, and representative.

These circumstances give peculiar importance to his testimony, and justify us in a closer scrutiny of it, than of the evi-

dence of ordinary witnesses. When Mr. Mactavish is on the stand it is in effect the Company in *propria persona*. When Mr. Mactavish speaks, it is the voice of the Company we hear.

With these remarks, we proceed to consider Mr. Mactavish's testimony.

(*b*) Why Mr. Mactavish is here.

"Int. 114. Are you not really here acting as client in this case.

"Ans. I am here not as client, but as a chief factor of the Hudson's Bay Company.

"Int. 115. Are you not here as an agent of that Company, to look after their interest in this case?

"Ans. I suppose I am.

"Int. 116. Under whose directions or orders are you here?

"Ans. My orders come from the Hudson's Bay House in London.

"Int. 117. When did you receive those orders?

"Ans. I left London on the 28th of October, 1864, previous to which I received my orders; since then I have occasionally had communications with the house."

It will thus be seen that Mr. Mactavish is present during the progress of this case, as the real representative of the Company, under direct orders from London. He says, in answer to Int. 104:

"My principal duty at present is in Washington, looking after the proceedings going on before the Commissioners in this case."

In answer to Int. 105, he says:

"I did go from Montreal to that place, (Charlotte, N. C.,) and was present when Admiral Wilkes was examined."

In answer to Int. 110, "Have you not been present, and have you not desired to be present, at the examination of various other witnesses of the United States in this case since January last," he says:

"I have been present of my own desire."

Thus, when we consider the able counsel by whom the Com-

pany were represented in the conduct of this cause, the very great importance, attached to Mr. Mactavish's services by the Company, becomes manifest. Even in the matter of examining witnesses, it was deemed important for Mr. Mactavish to be on hand. So likewise in the preparation of the memorial, Mr. Mactavish's valuable services are called into requisition. On being asked (Int. 123) if he did not assist the counsel in preparing the memorial, he says:

"I believe I did so." Miscellaneous evidence for the United States, p. 65.

We propose now to point out some of the peculiarities of Mr. Mactavish's testimony.

(*c*) In reference to the buildings at Vancouver, he says, in answer to Int. 5, first examination:

"In 1846, the establishment at Vancouver, with its out-buildings, was in very thorough order, having been lately nearly all rebuilt." Company's Evidence, p. 200.

Again he says: "Up to the time I left Vancouver in 1858, the buildings in the occupation of the Company were kept in thorough repair." Ib., p. 201.

Upon this point other witnesses, with ample personal knowledge, of unimpeachable character, and not swearing up a bogus claim, positively contradict and fully disprove these statements of Mr. Mactavish.

The Hon. Mr. Nesmith says: "As far back as 1843, the buildings were becoming wrecked and dilapidated on account of the insufficiency of the foundations." U. S. Evidence, part 2, page 23.

Lloyd Brooke, in 1849, speaks of several of the houses as dilapidated. Speaking in reference to 1860, "I think there had been no repairs on the buildings, and they had suffered the usual wear of ten or eleven years." Ib., page 129.

W. H. Gray, referring to a period subsequent to 1836, says: "All the old buildings were propped up, and were in a miserable condition. Ib., page 164. Further, he says, speaking of some time after 1846, "the main house was in rather a shaky condition." Ib., page 181.

Lewis Love says, from 1850 to 1854, "the buildings were

getting pretty old from appearance. * * Some of the floors were settling out of shape. * * The outward appearance of the buildings looked as if they were going to decay." Ib., page 237.

Levi Douthet says, in 1853, "the buildings looked very old; the sills, I think, were much decayed." Ib., page 246.

General Ingalls, speaking in reference to 1860, says the buildings were "very dilapidated." Ib., page 3.

Colonel C. B. Wagner, speaking of 1857, says: "The buildings were old, and some were very much dilapidated." United States Evidence, part 2, page 59.

Major Chauncey McKeever, referring to 1860, says: "They (the buildings) were all in a dilapidated condition." Ib., p. 78.

Major General A. J. Smith, referring to 1860, says the buildings "were very dilapidated; not habitable." Ib., page 84.

Major Alfred Pleasanton, speaking in regard to the interval of time from 1858 to 1860, says: "The whole establishment was out of repair, dilapidated." Ib., page 135.

Major General P. H. Sheridan says, referring to 1855–'56, "the large, gloomy looking storehouses inside the picket enclosure were, I think, very old, * * and had the decay of old age." Ib., page 267.

General Benjamin Alvord says: "In 1859, when the Company left, the buildings were most of them very much dilapidated." Ib., page 351.

George Gibbs says: "The buildings in and outside of the fort were all old and considerably decayed." Ib., page 408.

So much upon this point.

(*d*) Mr. Mactavish says, Company's Evidence, page 212: "At the different establishments, particularly at Fort Vancouver, there were roads made at considerable outlay."

We cannot see how the roads at Vancouver should cost so much, for the soil there is generally gravelly.

On this point Lloyd Brooke says, in reference to the roads at Vancouver: "I know of no roads of the same character in Oregon; they are better than the ordinary roads in Oregon on which I have travelled, owing to the nature of the soil and face

of the country. The roads leading to most of the plains beforementioned pass over gravelly soil."

Major R. McFeely says of the land around Vancouver, back of the stream: "It was not fertile, being sandy and gravelly and very dry during the summer season." Ib., page 121.

Major Alfred Pleasanton says the land around Vancouver was "gravelly and poor." Ib., page 136.

In short, without citing further from the evidence, we may assume, as a fact beyond dispute, that the land around Vancouver was sandy and gravelly; such being the fact, the cost of roads could not have been much.

(*e*) Further, Mr. Mactavish estimates the value of the establishment at Vancouver, with its outbuildings, in 1846, to the Company, at from $500,000 to $600,000. Company's Evidence, page 200.

It is instructive to see the value put by other witnesses on this establishment.

Captain W. A. Howard says: "The buildings were rude structures; made of the wood of the country; built by the common labor of the day; I think $100,000 would be a large allowance for building the fort and all its appurtenances. United States Evidence, part 2, page 67, Ans. 4.

C. McKeever says, in 1860, "I inspected the buildings in June, 1860; I considered the whole of them worth about $1,000. United States Evidence, part 2, page 78, Ans. 6.

Major General Ingalls says he "could have built the fort with its stockade and buildings, within three years before 1849, for $50,000." United States Evidence, part 2, page 526, Ans. 5. "Thinks one hundred men, ten being skilled and the rest ordinary, could have built post mostly in the course of a year. Ib., page 536, Ans. 6.

Chief Justice Nelson says, in reference to this post: "The original cost I know nothing about, except as Dr. McLaughlin told me; he stated it cost about $100,000, all told; as to their value in 1852 it is difficult for me to answer; they had, in my judgment, outlived their day." United States Evidence, part 2, page 89, Ans. 10.

Captain C. B. Wagner says in 1861 building within stockade not worth over $6,000 or $8,000. United States Evidence, part 2, page 60.

Major General A. J. Smith says in 1860 the value of the stockade and buildings to the Government would not be over $250; "they were going to decay rapidly; dry rot." United States Evidence, part 2, page 84.

Major Robert McFeely says: "To the United States the buildings had no value at all in 1860, either as storehouses or for quarters." United States Evidence, part 2, page 119, Ans. 5.

Major General P. H. Sheridan, referring to 1855–'56, says: "I can recollect very well that my impressions at the time were that it would be a good thing if they (the buildings) would burn down." United States Evidence, part 2, page 286, Ans. 4.

T. R. Peale does not think the erection of the buildings and stockade could have cost over $25,000. United States Evidence, part 2, page 346, Ans. 12.

General Benjamin Alvord estimates the value of the stockade and all the buildings owned by the company within the pickets in 1852 at about $25,000. United States Evidence, part 2, page 351, Ans. 6.

Without pursuing this point any further, we may safely conclude that the testimony of Mr. Mactavish is not reconcilable with any hypothesis of common truth or good faith, and stands here in print to his dishonor as a gentleman and a man.

(*f*) In his first examination Mr. Mactavish informs us, "I never had any particular charge of the farming operations of the company. My particular work was with the books, but I rode about and knew pretty much what was going on." Company's Evidence, page 223, Ans. 11.

This declaration, made in the first step taken by him as a witness, gave hope for much valuable information; but on his final examination Mr. Mactavish, after a larger experience of the witness vocation, is inclined to take a much more modest view of his capabilities for giving information. Very much to our surprise, after the statement made by him, to which we have alluded, he informs us, in answer to Int. 490, that "My acquaintance with the lands used by the company arose simply

from riding about at times; I had no charge whatever of the farming operations of the company, so that I knew but little as to what was going on upon the lands, in comparison with the officer or officers in charge, who had that special duty in charge."

Whether Mr. Mactavish's first confidence in his means of information, or his subsequent diffidence upon the subject, is the best founded, we will not pretend to say. It appears to us, however, not unlikely, judging from the character of his evidence, that he did at the outset place, perhaps, too high an estimate upon the value of his information. On the other hand, we incline to the opinion that Mr. Mactavish permitted his modesty to have too great play towards the close of his examination.

(*g*) As an illustration of this excessive modesty we would call attention to some extracts from his testimony:

Int. 913. Was not Dr. McLaughlin censured by the Company's directors for his kindness to American immigrants?

Ans. He never said so to me.

Int. 914. Do you not know that he was?

Ans. I do not.

Int. 915. What do you know about the matter?

Ans. I know nothing further than I have said; I do not know that I know anything about it.

Int. 916. Did you ever own any of the stock of the Puget's Sound Agricultural Company?

Ans. I believe I had two shares.

Int. 917. When did you come in possession of them?

Ans. Some time, I think, in the year 1839 or 1840.

Int. 918. Do you own them now?

Ans. I think so.

Int. 919. What is their par value?

Ans. I do not know; I have no papers here to refer to; I recollect nothing about them, except the fact that I have the two shares.

Int. 920. How much have you ever paid on them?

Ans. I think I paid £10 a share.

Int. 921. Did you pay that in the beginning?

Ans. I think so. I cannot say.

Int. 922. Have you paid anything on them since?
Ans. I do not remember to have done so.
Int. 923. Have you received any dividends upon them?
Ans. I think so.
Int. 924. When was your first dividend, and what was it?
Ans. I do not recollect; it was some time ago.
Int. 925. When was your last dividend, and what was it?
Ans. That I cannot answer, neither as to time or amount.
Int. 927. What was the capital stock of the Company?
Ans. I cannot say.

(*h*) In reference to the cattle, Mr. Mactavish says: "There must have been a good many cattle lost in the winter, from time to time." Co.'s Ev., p. 224, ans. 20. In the final examination Mr. Mactavish seems disposed to review and overrule his first opinion on this point. He says, in answer to—

Int. 394, "Were not a a great many cattle lost in the winter from time to time?"

"Ans. I don't know that there were absolutely many. U. S. Miscellaneous Ev., p. 108.

Which of these statements is correct we will not undertake to say, but our impression is that the first statement is nearer the truth of history, and we think Mr. Mactavish might have safely stood upon it, without fear of contradiction.

(*i*) In his first examination, Mr. Mactavish says, in regard to the eastern line:

"I think there was some boundary marked or blazed out for a mile or two back from the river.

"Ques. 16. Did you ever see any such marks or boundary line?

"Ans. My impression is that I have seen them, but I could not be positive, it is so long since I was there." Co.'s Ev., p. 223.

In his final examination Mr. Mactavish says:

"Int. 443. Did you ever see these blazes?
"Ans. I have some recollection of seeing them.

"Int. 444. State all that you distinctly recollect about these blazes.

"Ans. I recollect the trees blazed there about a mile inland, the trees were blazed here and there.

"Int. 450. How long a distance do you think that you remember that you saw that the trees were blazed?

"Ans. From a quarter to half a mile." U. S. Ev., Miscellaneous, pp. 114, 115.

This evidence is curious as showing that memory may become more vivid with the flight of time. When Mr. Mactavish was first examined he could not be positive that he had ever seen the blazes on the trees, "it was so long since," but in his last examination, his memory, from some unknown cause, had improved, and he remembered that the trees were really blazed about a mile inland. But in the twinkling of an eye his memory again became impaired, and he only remembers seeing that the trees were blazed from a quarter to half a mile.

In defining the boundaries of the land at Vancouver, Mr. Mactavish says the lines running inland from the river, run in a northerly direction. Answer to Int. 341, p. 99. But immediately on being shown the map of the surrounding country, he admits that he should have said the line running inland from the mouth of the Cathlapootle must run in an eastern direction. This was a very important error, and does not impress us with the witness' care in defining boundaries.

(*k*) Mr. Mactavish says, in reference to Vancouver, in answer to Int. 665, U. S. Mis. E., p. 145, "I don't know now what the Company's actual land claim there is."

This seems very strange, when we remember that the witness is here as the representative of the Company. Further, on this point, the witness says:

"Int. 654. Did you, at the time you wrote the letter referred to in 'interrogatory 647,' know the claim or claims to land on the Columbia river, near Vancouver, made by the Hudson's Bay Company.

"Ans. I was not aware what the claim was."

Again, he says, in answer to Int. 337, that he knows "only

by supposition" that the tract of land around Vancouver was claimed by the Company before 1846. U. S. Mis. Ev., p. 99. When he is asked, "Int. 338. Why do you suppose they (the Company) claimed it (the land at Vancouver) before 1846," he says, "because the Company used and occupied the land." Further:

"Int. 339. Have you any other reason for supposing they claimed it before 1860."

Ans. Not that I remember of."

One of the chief factors, and one stationed at Vancouver, does not remember having any other reason for supposing that the Company claimed this land, except that at one time they had used and occupied it.

(*l*) There is one further statement of this witness to which we would call attention. It is the answer to Int. 150.

"Int. 150. Do you mean to say that one hundred and fifty engaged servants of the Company were employed for seven full years, beginning with the autumn of the year 1839, in making permanent improvements at and around the post at Vancouver?

"Ans. There may have been a greater number sometimes and fewer at others, but to the best of my knowledge and belief, I think that number was so employed on an average one year to another."

This statement is so extraordinary as to need no comment.

(*m*) Be it remembered, also, that all this peculiar evidence comes from Mr. Mactavish in the face of the suppression of the annals of the Company, the existence of which is proved by himself, which would have constituted the best and highest proof of cost as an element of value; and the non-appearance of which is so extraordinary, whether imputable to the fault of the agents of the Company to the prejudice of it, or the fault of the Company to the prejudice of the United States.

III. *Suppression of its Accounts by the Company.*

The Company present a very large claim against the United States, which consists in considerable part of the assumed cost and value of the buildings and various improvements at the different posts named in the memorial.

This matter of the buildings and improvements at the posts is made one of very great importance by the Company; as is evident from the statement made by Mr. Mactavish, that one hundred and fifty men were continuously employed at the one post of Vancouver alone, in the improvement of that place, for seven years, from 1839 to 1846, when the joint occupation of the two Governments ceased.

In relation to the buildings, improvements, and other matters, it was therefore extremely important that the books of the Company, especially the books setting forth the transactions of each post, should be produced by the Company.

The production of these books should, it is to be presumed, be the very thing the Company should desire. Thus, the Company would have been able to approximate at least to the amount expended by them for the buildings and improvements at the different posts. Mr. Mactavish, says:

"During my connection with the place (Vancouver), then, I suppose the outlay could be found in the local books of the place, that is to say, the wages and material used for the buildings." (Ans. to Int. 39, U. S. Miscel. Ev., p. 52.) He further says, he thinks he has seen these books of wages paid to servants for some of the years he was at Vancouver, and that these books were in the Company's office at Victoria. (*Ib.* p. 53.) He further says, it was the custom carefully to preserve all the books of the Company. Further, he states, that the Vancouver books were taken to Victoria. (*Ib.* p. 54.

Yet, these books, so important to the Company, have never been produeed. One might have supposed that the Company would make haste to produce their books, as showing, by reference to them, facts, fixing beyond dispute the amount of expenditure on the different posts. But though the Company had it entirely in their power to produce these books, and thus add to the strength of their case; yet, strange to say, they have not thought proper to do so, presenting at last only abstracts of secondary matters.

Not only did the Company fail to produce their books voluntarily, but even under the pressure of an express demand

for their production by the United States, the Company have not produced the books.

In reply to Mr. W. Carey Johnson, Dr. Tolmie, representing the Company, says, under date of April 15, 1867:

"I have to acknowledge receipt of your letter, dated Victoria, April 11, 1867, applying, as you therein state, by direction of Mr. Cushing, for access to books, and information on various points, far beyond what, under my only instructions on the subject from Mr. Day, of which you have received a copy, I conceive myself authorized to furnish. I regret, therefore, that I cannot comply with your request."

U. S. Miscellaneous Ev., p. 201.

That there were books showing the expenditures for improvements at the various posts, is evident from the evidence of Mr. Mactavish previously cited.

That these books were preserved, and in possession of the Company, also appears from Mr. Mactavish's testimony.

Such being the fact, why were these books not produced, on the demand of the United States?

It was the interest of the Company to produce these books in the first instance, if they corroborated the statements of the memorial. But it became especially incumbent on the Company to produce the books, after the demand of the United States, because failure to produce them could not but prejudice the Company's claim.

Take the case of an individual who is called upon to produce his books, where it is known that entries are made throwing light upon the matter of litigation; and suppose he declines to produce his books:—what inference is drawn? The natural inference is, that his books will benefit his adversary more than himself.

The same inference must be made against the Company in this case. The Company, beyond all dispute, have possession of the books. The books would show the expenditures made on improvements. This information is one of the very matters in controversy. Yet the Company, instead of producing the books which would furnish us with facts, produces Mr. Mac-

tavish, or Mr. Tolmie, or Sir James Douglas, to testify from memory, without vouchers, as to the cost and value of the structures and other improvements, including mills, belonging to the Company.

The failure of the Company to produce their books is a fact of great significance, involving all possible conclusions against the Company.

Indeed, by the statutes of the United States, non-production of books by a party plaintiff subjects him to non-suit. (Act of Sept. 24, 1789, U. S. Laws, vol. 1, p. 82.) (See Iasigi *v.* Brown, 1 Curtis' C. C., 401.) And equity would compel production under similar penalty. (1 Greenf. Ev., by Redfield, 555–9, and *seq.*)

At various stages of the evidence, as well that of the Hudson's Bay Company as that of the United States, the Government, it appears, made frequent efforts to obtain access to the books of the Company.

We sought for them at Montreal; and there we were referred to London.

The claimant Company had repeatedly and urgently notified the United States of its earnest desire to take evidence in London: in consequence of which the Government, at considerable expense, employed special counsel to attend to that object; but, when the time for action arrived, the Company backed out, and gave notice that it did not intend to take any testimony in Great Britain. (U. S. Misc. Ev., pp. 1–11.)

Hereupon, the United States took upon itself the disadvantage of itself calling on the Hudson's Bay Company, and also on the Puget's Sound Company, at the seat of their power, in London, for the information which the officers of the Company in America had refused or declined to furnish: thus converting the head officers of the Companies themselves into witnesses of the United States.

To be sure, the Government found it no easy task to discover the *habitat*, or even the personality, of either Company.

We put upon the scent of the Companies one of the most sagacious attorneys accessible to us, and he pursued the faint traces of them, which he could discover, with commendable

zeal and persistence, and all the keenness of perception of an expert in such matters.

It appeared, at length, that, in the task of hunting down either of these Companies, the representative of the United States was engaged in an expedition not less arduous than that of the adventurous Nova Scotian, who, in the innocence of his heart, supposed that somewhere in England he might discover the Mother Country.

Mr. Halyburton did at length detect the Mother Country, in the person of an old gentleman by the name of Stephens, with a quill over his ear; and, in like manner, Mr. Clarence Seward unearthed the Hudson's Bay Company, in the person of another old gentleman with a quill over his ear, of the name of Roberts, purporting to be the accountant of the Hudson's Bay Company.

But Mr. Clarence Seward was not equally successful in finding the Puget's Sound Agricultural Company: being put off, as to that Company, by reference to another old gentleman, with a quill over his ear, of the name of Armit; and this person, after all, seemed to be but a counterfeit presentment of the Puget's Sound Company, seeing that he was in fact registrar of shares of the Hudson's Bay Company. We submit, that here was a case of superfetation at least, if not of false personation.

However this may be, the United States could get neither from the accountant nor the registrar any satisfaction touching the facts under investigation.

If Mr. Roberts and Mr. Armit are to be believed, the Hudson's Bay Company, with its venerable age of two full centuries, (the Puget's Sound Company does not count, that being still *en ventre sa mère*,) lives in torpid ignorance and superannuated unconsciousness of its own affairs, like a fossilized image of incorporations: receiving cargoes from America and transmitting cargoes from England; paying bills of exchange or remitting specie; and placidly receiving, or failing to receive, dividends, at such times and of such amount as Mr. Somebody, hidden somewhere in the great hyperborean regions of this continent, between the Atlantic and Pacific oceans,

may condescend to dole out to the confiding stockholders in London.

But of the *accounts* of the Company, the official accountant himself knows nothing; that is a branch of useful knowledge not open to earnest inquirers after truth at the headquarters and corporate centre of the Hudson's Bay Company.

Who, then, does possess this branch of valuable knowledge?

Why, forsooth, Dr. Tolmie, at Victoria, out of whom the United States had already labored in vain to extort the desired information there; and Mr. Mactavish, at Montreal, who had in like manner disavowed all knowledge on the subject. (U. S. Misc. Ev., p. 15.)

In this dilemma, the Government fell back once more on Dr. Tolmie and Mr. Mactavish.

As to Dr. Tolmie, he was not ready or willing to say anything; but, after undergoing severe pressure, he at length did give to us a quantity of figures, of no importance; but declined to give the important information required by the United States. (U. S. Misc. Ev., p. 189.)

We then applied the screws of investigation to Mr. Mactavish a second time, and diligently labored with him night and day, in season and out of season, in the pursuit of knowledge under difficulties. From him we obtained most ample and satisfactory proof, that he did not possess any definite knowledge in regard to the material facts, which had constituted his occupation as book-keeper, clerk, accountant, chief trader, and representative agent, of the Hudson's Bay Company, from the anno Domini of 1833 to that of 1867 inclusive, the date of his second deposition at Washington; although, when deposing previously at Montreal, he knew everything with the positiveness of inspiration, (not divine, but of the Company's counsel.)

And, so it happened, that the long examination of Mr. Mactavish at Washington, consisting of nearly one thousand questions and answers, occupying one hundred and forty-two pages of reasonably-compact octavo print, wound up with the deplorable catastrophe, the result of the long-continued application of the *peine forte et dure* to a dumb witness, of the

following expiring gasp, which is the last we hear of Mr. Mactavish:

"*Int.* 952. Will you please produce here, for examination by the United States or their counsel, all accounts, account-books, and letter-books of the Hudson's Bay Company which were kept at the various posts of that Company, south of the 49th parallel of north latitude, during their occupation by the Company, together with the regulations under which their books were kept, and the regular forms of contracts with the Company's servants?

"*A. I cannot say whether I will produce them or not.*"

Such is the melancholy *finale* of all the painstaking and praiseworthy endeavors of the United States to extort from the Hudson's Bay Company, its officers—great and small—whether at the centre or anywhere between there and the circumference of their power—a single FACT concerning its expenditures on its various posts, on account of which, by means of conjectures, suppositions, and opinions, it presumes to demand *millions* of compensation from the United States.

We might, perhaps, have filed a bill of discovery in aid of the ordinary course of inquiry by deposition; but we shrank from the waste of time and money involved in such a line of action.

The Government now stands on its rights, legal and equitable, and says to the honorable the Commissioners: These claimants make out their case by being their own witnesses; they have filled the record with their opinions and conjectures in the place of facts; they obstinately refuse to communicate the facts; they deliberately suppress the information which it most imports the Commissioners to have; and you, the Commissioners, will judge these parties as they deserve to be judged: that is to say, you will, we trust, reject their shameless claims, and pay no heed to the secondary and incompetent evidence in their support placed before you, whether by the Hudson's Bay Company, or by its illegitimate and fictitious offspring, the Puget's Sound Agricultural Company.

IV. *Testimony of Mr. Gibbs.*

We are surprised at the violence of the attack of the Company's counsel on Mr. Gibbs.

This testimony is not, as we conceive, so important as to require such attack, because there is no material fact testified by him which has not been proven by other witnesses. If his testimony were struck out entirely, it would not alter the result in the slightest degree. Mr. Gibbs has only stated facts testified by others. It sometimes happens in a case, that it turns entirely upon the evidence of a single witness. Then it becomes essential for the party, against whom this evidence weighs, to destroy the witness, if possible. Hence, in such case, we expect counsel to bring every possible force to bear to accomplish this purpose. But in the instance of Mr. Gibbs no such reason existed for a desperate assault upon him.

The points attempted to be made against him are, we think, most signal failures.

The first exception taken to Mr. Gibbs goes back to 1850, some seventeen years before his testimony was given, and refers to his official action as deputy collector of Astoria. It appears that under date of March 10, 1850, Mr. Gibbs, as deputy collector of Astoria, addressed a communication to P. G. Ogden, Esq., in which is found the following passage:

"In relation to the schooner 'Prince of Wales,' I am also obliged to inform you, that she must forthwith obtain a permit from this office for the navigation of the river, and prove her character and ownership according to law, and that hereafter she cannot be employed in any other than the actual service of the Company, as defined in the second article of the treaty of Oregon, nor be allowed to navigate the Willamette river. The instructions to this office and the requirements of law are on these subjects definite."

The first observation we would make on this extract is, that the statement, "the instructions to this office * * are on these subjects definite," must be taken as true, until counter-evidence is introduced. No such counter-evidence having been introduced, we are bound to take for granted, that such instructions were given. Such being the case, whether the instructions were right or wrong, the responsibility for them does not rest on Mr. Gibbs, but on the Treasury Department of the United States.

But, independently of the protection these instructions afford Mr. Gibbs, on reference to the communication it is not perceived that any serious objection can be taken to it. If we were laying down instructions upon the subject now, the only point, (upon which there would probably be any difference of opinion) is, whether the Company's vessels could be employed in any other than the actual service of the Company. Upon all other points, the requisitions made by Mr. Gibbs seem entirely proper. As to the navigation of the Willamette river by the Company, there is certainly the gravest reasons to doubt whether it is conceded by the treaty. Our construction would be that it is not.

Upon this subject, Mr. Gibbs says:

"As regards the Prince of Wales, I have to say, * * I acted in accordance with the requirements of the revenue laws, and under the advice of Mr. Holbrook, the United States district attorney." (U. S. Ev., Pt. 2, p. 419, Ans. to Int. 43.)

An attempt is made to prejudice this proceeding on the part of Mr. Gibbs, by supposing that he had an interest in a rival steamer. But it does not appear from the evidence that he had more than a temporary and contingent interest in such vessel, from which he promptly withdrew.

It is clear there was nothing in the magnitude or certainty of this interest calculated to improperly influence the official action of Mr. Gibbs.

In considering this point, it must be remembered, in justice to Mr. Gibbs, that he was acting as deputy collector, and, in law, the action had by him was the action of his principal, the collector-in-chief, General Adair. In the absence of any evidence to the contrary, the presumption of law is, that Mr. Gibbs merely obeyed the orders of his immediate superior, General Adair, under whom he acted. It does not appear that General Adair, in any degree, dissented from the letter of his subordinate.

When we consider, further, that he acted under the advice of the district attorney, Mr. Holbrook, the person specially appointed by the law for that purpose, we cannot see that any responsibility can attach to Mr. Gibbs in the premises.

It is not fair to Mr. Gibbs to judge him exclusively by his action in reference to the Prince of Wales. His entire conduct should be considered as deputy collector, in regard to the Company. Mr. Gibbs states: "I went beyond the law in affording faculties, which nothing but the necessities of the country would have justified." (U. S. Ev., Pt. 2, p. 419.) This statement is uncontradicted; indeed, it is confirmed by Mr. Ogden's letter of March 25, 1860, to Mr. Gibbs, in which he says: "Under these peculiar circumstances, I trust the collector will extend to us the *same privilege he has already done* with our ships, when, I trust, all the different forms, as required by the United States Government, will be duly performed; and we feel no wish to cause any derangement in your official rules and regulations which we can possibly avoid." (Company's Ev., p. 399.) From this letter, it is clearly inferable that Mr. Gibbs had gone out to the very end of the law to extend "privilege" to the Company.

The truth is, it was no easy matter to satisfy the Company. They found it difficult to play a subordinate part in a country, where, in effect, they had exercised sovereign powers.

We call attention to the fact, as appears from the above-cited letter of Mr. Ogden, that the Company protested against the payment of duties on imports. It requires no argument to show that, so far as the goods imported by the Company were consumed or sold in the country, they were liable to duties. The protest of the Company on this point exhibits the extravagance of their pretensions. It is much to the credit of Mr. Gibbs's obliging disposition as an officer that, under the circumstances, he was able to discharge his duties in such an acceptable manner as to give the Company such very slight ground of complaint.

The assumption in the argument, that because of the letter of the Secretary of State of the United States, some two years afterwards, under date of April 8, 1852, Mr. Gibbs became hostile to the Company, appears to be entirely gratuitous. It is true the Secretary does speak of "the collector misapprehending the law." But Mr. Gibbs was not the collector. The remark did not apply to him. And there was nothing in the

remark to excite mortification, even on the part of the collector, the person referred to by the Secretary of State. A collector may possess all possible intelligence and every virtue, and yet misapprehend the law in a new case, under such a complicated system as the custom-house regulations of the United States. To suppose, then, that Mr. Gibbs became hostile to the Company from this trivial incident, is a violent and unreasonable supposition,—a supposition which would not hold good in regard to men generally, and is peculiarly unjustifiable in reference to Mr. Gibbs, whose amiability of character, generosity of nature, and freedom from the prejudice of narrow minds, are signally and honorably conspicuous.

The next complaint against Mr. Gibbs is, that he became clerk of the American Commissioner in this case. The argument of the Company seems to insinuate that Mr. Gibbs, actuated by a settled hostility to the Company, obtained the situation of clerk, for the mere purpose of pursuing the Company with his hostility. Such a suggestion as this would be more appropriate in a sensational romance than in real life. In the case of Mr. Gibbs it is entirely out of place, and does more credit to the imagination of the learned counsel who prepared the argument, than to his other intellectual faculties.

The naked fact of the case in this connection, stripped of all rhetorical embellishment, is, that Mr. Gibbs, though one of the clerks of the Commissioner, has taken some interest in ascertaining what persons could give evidence in the case, and what their evidence was, and giving this information to the counsel for the United States.

It is not perceived, that there is anything improper in this conduct on the part of Mr. Gibbs. He was clerk to the Commissioner on the part of the United States, and another gentleman was clerk to the Commissioner on the part of Great Britain. Each clerk had an equal right to inspection of the records, and their proper verification. There is no pretence that Mr. Gibbs has not discharged all the business acts required of him as clerk. Upon this point no complaint is made. The objection is that Mr. Gibbs has gone outside of his sphere of official action, and aided in bringing evidence into the case. Mr.

Gibbs's offence is in aiding to produce evidence. It is difficult to see what is wrong in such a procedure.

The object of the Commission was to receive evidence on the subject of the Company's claims. Any citizen of the United States, feeling a just interest in his country, if he had been aware of the existence of competent evidence bearing on the subject-matter of investigation before this Commission, would most unquestionably have been authorized, without being subject to the charge of officiousness, to communicate to the proper representative of the United States the information in his power. Indeed, his silence on the subject would not be the full discharge of his civic duties. Mr. Gibbs, by becoming one of the clerks of this Commission, did not cease to be a citizen of the United States, and did not relieve himself from the civic obligations arising out of that relation. He was as free to take the interest he did in the case as any other citizen.

It is not pretended that he produced interested witnesses or false evidence. The Company, if they were confident of the merit of their claim, should desire the fullest possible investigation, and, instead of complaining of Mr. Gibbs for throwing light upon their case, should rather have been grateful to him. Parties who have meritorious claims do not object to the fullest consideration of them. They court scrutiny. It is only those who have a bad claim, who fly from the light and avoid investigation.

It must be remembered, in justice to Mr. Gibbs, that he was peculiarly situated in this matter. He had lived in Washington Territory; he had had intimate acquaintance with the operations of the Company in that Territory; he had seen many of their posts; he had studied the country as a man of science; he knew a great many people who had been living in Washington Territory. In short, he possessed information in regard to the Company, and in regard to witnesses, superior to, perhaps, any one in this part of the United States. Under these circumstances, what was Mr. Gibbs to do? The Company were pressing an exorbitant claim before the Commission, which he, in common with many other persons of intelligence, might well consider in the last degree unconscionable. If he

did nothing, he committed what he supposed was an injustice to the United States. The path of duty seemed to him to be plain. It was to inform the counsel for the United States of the names of such persons as he knew were proper to be witnesses in the case.

Objection is further made that Mr. Gibbs prepared some of of his own interrogatories. But when we consider the fact of an intelligent witness, with abundance of leisure, and counsel pressed with business engagements, we can readily understand how this may, very properly, be done, for the mere purpose of expediting matters. Every proper examination of witnesses, produced by a party, presupposes some knowledge of the points to which the witness is to speak, to be communicated to counsel. This is usually done by previous conversation of the counsel with the witness, and noting the substance of his statement. Where the witness is intelligent, and comprehends clearly the matter on which he is to be examined, there can be no objection to his preparing himself the statement of facts with which he is familiar. This preparation may as well take the form of interrogatories as not. As a matter of convenience, to save time, Mr. Gibbs, doubtless, drew up the particular interrogatories referred to. If there is nothing improper in the interrogatories, it matters but little by whom they are prepared. And no exception is taken to the form of the interrogatories in this instance. It seems to us, therefore, that the fact that they were prepared by Mr. Gibbs is a circumstance of no importance.

Mr. Mactavish states in his examination, (U. S. Miscellaneous Ev., p. 69,) that the counsel for the Company gave him questions, and that he then wrote off his answers, returning both questions and answers to the counsel, and further states, that he may have consulted with his counsel about his answers. He further testifies as follows:

"Int. 154. Did you not, at some time after your answers were sent to Judge Day, alter them in consultation with him, either by leaving out certain parts of them, or by adding to them?

"Ans. I may have done so, but I have no recollection of it now." (U. S. Ev. Mis., p. 70.)

This mode of preparing a witness for examination would seem to estop the Company from complaining of a witness merely preparing his own interrogatories.

Complaint is made, in connection with Mr. Gibbs, that the manuscript evidence has not been correctly printed. In reference to L. Brooke's evidence, it appears that the words "as to" are printed, though they do not exist in the manuscript. This is evidently a mere error of the printer, and does not alter the sense in the slightest degree.

The argument continues: "And, on the same page, $1 per acre is printed, instead of $100, which it ought to be." (Argument for Co., p. 167.) What shows conclusively that this was a mere error of the printer, overlooked in the correction of the proof sheets, is the fact, that the statement made is in reference to ten acres of land purchased by General Ingalls in Vancouver, which statement is printed correctly in General Ingalls' evidence, (Answer to Int. 26, U. S. Ev., Pt. 2, p. 7,) as follows:

"In 1860 I purchased some ten acres of land in Vancouver, at what I considered the most eligible site on the river, for $1,000, and during the present year have sold it for the same." That is to say, the context indicated the error of the printed price per acre, and no misapprehension was occasioned by this error.

Such is the slender foundation upon which this complaint rests. From this we may judge of the spirit with which Mr. Gibbs has been pursued in this case.

The effort is evidently to punish him for being instrumental in the production of important witnesses. His offence is not so much, we imagine, in his own testimony, as in the testimony brought into the case on his information.

We regret that the Company have thought it expedient to wage such unrelenting war against Mr. Gibbs. His signal probity is too well known to require any further defence at our hands. His gifted intellect, his scholarly attainments, his devotion to scientific pursuits, his generosity of character, command for him the respect and esteem of all who know him.*

*In the Supplement and Appendix for the United States, it will be shown under what circumstances and impulses of duty he acted, so as completely to vindicate him from all imputation in the premises.

V. *Motion of the Company in amendment of its Memorial.*

Since the filing of the memorial, the Company have moved to amend, so as to increase the amount claimed by them in the sum of $459,900.

The original amount claimed in the memorial is $3,822,036 67. The total amount now claimed under the amendment is, $4,281,036. Of this increased amount of $459,900, the sum of $413,666 66 is set down for the land at Vancouver.

The reason of the proposed increase is stated in the motion to amend to be, "because it appears by the evidence of record, that the lands claimed by the Hudson's Bay Company at each of the posts of Vancouver and Colvile, greatly exceed in value the respective amounts stated and claimed for them in the memorial." (Argument for Company, p. 15.)

The motion comes in long after the close of the evidence on both sides. We deny the right of the Company to file such a motion at such a time. We protest against it as too late. We insist that, if received, it shall be regarded as reopening the whole case for additional evidence. The United States can and will, if *permitted*, produce much and conclusive *additional* evidence to the falsity of the new claims of the Company.

It is generally presumed that a party states his own claim with sufficient liberality. At any rate, such is the ordinary experience in business transactions. The bias of interest is generally sufficiently operative to insure this result.

Where, therefore, a party, after ample time, as in this case, and elaborate preparation, fixes his own claim, a subsequent departure from his own estimate is calculated at least to awaken surprise; ordinarily it would tend to excite a certain degree of prejudice against the claim, as being vague and speculative. In the case of the Company, where, by their elaborate system of accounts, and the able officials employed by them, the greatest possible precision and accuracy in all business transactions may readily be arrived at, it seems the more inexcusable that, in the progress of the case, there should

be a necessity of opening the amount of the claim and largely increasing it.

The unfavorable impression thus produced is deepened, when we consider that this proposed increase is almost entirely set down to a single item,—the land at one post, Vancouver. The proposed increase in this one item is $413,666 66. If the proposed increase had been spread over numerous items of the claim, it would not have been so striking. But it is applied in chief to the single item of land at Vancouver. One would have supposed that the value of the land at Vancouver might have been approximated in the preparatory estimate nearer than $413,666 66. It appears from Mr. Mactavish's evidence that he proposed a higher valuation on Vancouver than was placed on it in the memorial. But this higher estimate was rejected on doubtless the most mature consideration. The subsequent motion to amend, therefore, from consideration of this fact, creates the more astonishment and suspicion.

The increased estimate is brought about by the fact that the Company's witnesses value the lands at Vancouver and Colvile at a far higher rate than the Company did.

The natural effect of the witnesses assigning a far higher value on lands at Vancouver and Colvile than the Company did, is, that such higher valuation excites suspicion as to the value of the evidence. It gives the impression that the witnesses are extravagant in their estimates. In short, it impairs our confidence in the reliability of the witnesses.

Either the original estimate of the Company or the subsequent estimate of the witnesses is erroneous. Both cannot be correct. And the difference is so large, $413,666 66, in regard to the one item of land at a single post, that this error cannot be considered as immaterial. It is too great and important an error to be so treated. The error is vital. It reflects on the Company,—on the witnesses. We might well think the Company are nearer the truth than the witnesses, because the ordinary principles operative on human nature are almost certain to cause a party to value his claim high enough; and we must therefore suppose that the Company did so in this case.

This extraordinary spectacle of the witnesses in a case going beyond the principal in fixing the amount of the recovery, gives great force to the objections to the principal evidence for the Company, as coming from interested witnesses,—officers and employés of the Company. And we are forcibly admonished of the necessity of scrutinizing the evidence on behalf of the Company with the most suspicious caution.

VI. *The Company's own estimation of its value.*

The Companies have themselves, at various times, rated and fixed the value of their various claims, at a sum, which reflects most disparagingly on their present pretensions.

Thus, in 1860, they offered, through their Government, to accept $500,000 in full satisfaction of all their claims, including the navigation of the Columbia river.

But this offer is not the only occasion in which the Companies have exhibited their own estimate of the value of their claims. They have done it at other times, and in other forms, in memorable contrast with the attitude in which they now stand.

Thus, in 1852, Sir George Simpson, speaking for the Companies, offers to dispose of all their rights for $1,000,000, although he pretends that this is less than *half* their value. He does not profess that it is less than one-*fifth* of their value. (U. S. Misc. Ev., p. 280.)

Lord Lyons to Gen. Cass, December 10th, 1860, United States Evidence, Miscellaneous, p. 284.

In this despatch, Lord Lyons says:

"I am accordingly instructed to state to you, sir, that, if the United States Government will agree to pay to the Hudson's Bay and Puget's Sound Companies a sum of five hundred thousand dollars, ($500,000,) in extinction of all their claims against the United States, under the treaty of June 15, 1846, her majesty's Government will be prepared to accept that amount in behalf of the two Companies, and to release the United States Government from all further liability, so far as regards their engagements to Great Britain, under the third and fourth articles of that treaty, in behalf of the Hudson's

Bay and Puget's Sound Companies in Oregon, whether on account of land and buildings, or on account of privileges mentioned in the aforesaid articles."

It will be noted that this proposition comes direct from the British Government to the Government of the United States.

It shows the estimate the British Government placed on the claims of the Companies. While it is conclusive upon the British Government, the party to the treaty of 1846, it is also conclusive upon the Companies; because the Companies, having placed their claims in the care of the British Government, were bound by the action of such Government. Besides, it is not to be supposed that the British Government would have volunteered an estimate of the Companies claims, the Government must necessarily have received this estimate from the Companies.

We submit, that this proposition of the British Government, to receive $500,000 in full satisfaction of all the claims of both Companies, is conclusive upon the Companies, and is a moral estoppel against their claiming a larger sum now. The companies may recover less than $500,000; but, by their own action, they are precluded from claiming more.

This action on the part of the Companies, as we conceive, is entitled to a great deal more significance, as being a claim against a great Government, than in the case of an individual proposing to settle his claim against another individual. An individual may offer to take less than he thinks he is entitled to, because he may be distrustful of the integrity or ability of his debtor. But no such motive could exist in this case. The integrity of the United States, as also its ability to pay, was above all exception. Nothing, therefore, can be imagined more improbable than that a company so sagaciously managed as this Company is, having a valid claim against a party so eminently responsible as the Government of the United States, would voluntarily abate its claim of $4,281,036, and that of its excrescence, the Puget's Sound Company, for $1,168,000 00, and propose to receive $500,000 in full satisfaction of both claims, unless it well knew that the lesser

sum it proposed to receive is all to which it was justly entitled.

The eminent counsel for the Company sees the immense moral effect of this transaction, and he puts forth all his ability in advance to break its force. It is unnecessary to follow him in his ingenious argument. There stands the great fact: the seal cannot be rubbed off the bond. That fact speaks a language so potential, that we leave it to certify for itself; satisfied that no force of professional intellect can fritter away its strength.

In showing that the British Government in 1860 deemed the aggregate claim of the two Companies as of the value of only $500,000, we present but a very small part of the facts bearing on this most important and vital question. We proceed to show that in the offer of $500,000, made in the year 1860, the British Government acted advisedly, and did ample justice to the real claims of the two Companies.

The question of the rights of the Companies had just undergone thorough examination, on the part both of the Government and of Parliament. In the sequel we shall show what and how much cause there was for this investigation.

In the course of that investigation, the committee of the House of Commons called on the Hudson's Bay Company for an exhibit of its financial condition.

The Company responded with a statement, which we abridge as follows:

	£	s.	d.
Stock in the name of proprietors	500,000		
Lands and buildings, exclusive of Vancouver's Island and Oregon	318,884	12	8
Advanced for various objects at Vancouver's Island	87,071	8	3
Amount invested in Victoria and other posts on Vancouver's Island	75,000		
Paid the Earl of Selkirk	84,111	18	5
"Property and investments" in Oregon, secured to the Company as "possessory rights" by treaty with the United States, say, $1,000,000	200,000		
Total capital	£1,265,067	19	4

Parl. Rep. on Hudson's B. Co., p. 449, Ap. No. 18.

We perceive, in this exhibit, the commencement of deception on the part of the Company.

In the first place, they put down the whole capital at the low sum of about a million and a quarter pounds, which, as we shall presently see, is an under-estimate of the miscellaneous assets which the Company really possessed, independent of its territorial rights within its chartered limits on Baffin's Bay.

Secondly, in this exhibit the Company exaggerates its claim against the United States, stating it at $1,000,000, which claim at a time much nearer to its inception, and when the structures of the Company were in a better condition, the Company, through its governor, Sir John Pelly, estimated at only $700,000. (U. S. Misc., p. 246.)

We perfectly understand how, in this exhibit, the sum of $1,000,000 is stated as the amount of the claim against the United States; for that is the sum to which the claim was forced up by Sir George Simpson, when he appeared at Washington, December 3, 1852, and put this matter into the *claim market*, taking care, of course, to demand such amount as should leave ample room for abatement by the Government, and, even after that, have a spacious margin left for the benefit of Mr. George M. Saunders and his associates, who were, it appears, engaged to state this claim in the State Department and before Congress. Compare the *confidential* letter of Sir George Simpson to Mr. George M. Saunders, and the "memorandum of the same person with reference to the Hudson's Bay Company and Puget's Sound Company's possessory rights in Oregon." U. S. Misc. Ev., pp. 241, 250.

Sir George Simpson means to wear the *appearance* of exactness; for he files a bill of particulars. We pray the Commissioners to scrutinize this bill of particulars, and compare it with the present estimate of the Company.

And yet it is manifest that the estimates there presented were intended only as a *show*, in the expectation of some smaller sum being offered in return by the United States.

We now propose to call attention to certain circumstances, which took place when, in July, 1863, the whole interests of the Hudson's Bay Company were transferred to Mr. Edward W. Watkin, and certain gentlemen acting with him, and Sir

Edmund Head was elected Governor of the Company. (U. S. Mis. Ev., p. 336.)

The stock of the Company previous to this transfer was nominally £500,000, but it rated on the London stock exchange at double that sum. The market value of the Company was therefore £1,000,000. The new society paid £1,500,000 for the transfer to them of the entire interests of the Company.

The parties to whom the transfer was made seem to have organized themselves under the name of "The International Financial Society," and thus, by a sort of transmigration of soul, or metempsychosis, the Hudson's Bay Company shuffles off its mortal coil, and reappears as "The International Financial Society." *Stat nominis umbra.*

The prospectus issued on behalf of the "Financial Company," to induce subscriptions to the new issue of stock which followed upon this, states the resources of the Company as follows:

1. The assets (exclusive of Nos. 2 and 3) of the Hudson's Bay Company, recently and specially valued by competent valuers at £1,023,569.

2. The landed territory of the Company, held under their charter, and which extends over an estimated area of more than 1,400,000 square miles, or upwards of 896,000,000 acres.

3. A cash balance of £370,000. (U. S. Ev. Mis., p. 21.)

Mr. Armit, registrar of shares in the Hudson's Bay Company, says: "I do not know what assets were included in the paragraph numbered one of the prospectus." Such paragraph was supposed to include all the property of the Company, except as therein excepted. (*Ib.*, p. 18.)

Further, Mr. Armit says: "I do not know how the sum mentioned in paragraph one was arrived at, nor any of the details of which it was composed. (*Ib.*)

It seems strange that Mr. Armit, occupying the official position he does in the Company, should be so ignorant as he seems to be on a matter of so much importance, and about which the information should be so clear. The Company, proposing to issue stock upon a valuation of £2,000,000, issues

its prospectus, stating its assets, with certain named exceptions, to be £1,023,569, and yet one of its chief clerks, whose duties would seem peculiarly to authorize such information, is wholly ignorant upon the subject.

The Company, being aware that such information was sought for by the United States, were bound to have produced a witness who could give this information.

The fact that Mr. Armit, the witness tendered to the United States, could not give this information, and that the Company failed otherwise to furnish it, furnishes, we conceive, just subject for comment, and authorizes conclusions unfavorable to them.

It was certainly a matter of great importance to the United States to ascertain the items included under the head of No. 1, in the prospectus, which went to make up the sum of £1,023,-569, because, in this way they could ascertain the estimate placed by the Company, as late as July, 1863, on their claim against the United States. The United States called for such information from the Company, and the witness offered by the Company is unable to give this information. If this information could have been advantageous to the Company, we have every reason to presume it would have been furnished. Its not being furnished is a circumstance against the Company. Practically, it is the suppression of information which it was the duty of the Company to furnish, when demanded of them. This action on the part of the Company necessarily justifies all inference unfavorable to it.

But we are not left either to speculation or to inferences founded on the reticence of the Company for means of conclusion respecting the elements of the calculation of values, which constituted the basis of the transfer of the property, as well of the Puget's Sound Company as of the Hudson's Bay Company, to the International Financial Company. We find this clearly explained in the Report of the Delegates of the Canadian Government, (July 12, 1865,) as follows: "It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets, in which were

included a large sum of cash on hand, large landed properties in British Columbia and elsewhere, not included in our arrangement, a very large claim against the United States Government under the Oregon treaty, and ships, goods, pelts, and business premises in England and Canada, valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at." (U. S. Mis. Ev., p. 350.)

Now, let us analyze this statement, presenting its contents, in the first place, in a schedule, as follows:

Remember, the sum total paid for the entire property and assets purports to be £1,500,000.

To make up in part this grand total, we have the enumeration of various items, specific sums for which are not carried out, but the sum total of which is £1,023,569.

Then we may state the following account, according to the report of the delegates:

	£	s.	d.
1. A large sum of cash in hand			
2. Large landed properties in British Columbia, and elsewhere.			
3. Ships			
4. Goods			
5. Pelts			
6. Business-premises in England			
7. Business-premises in Canada			
8. Claim against the United States Government			
Total	£1,023,569		
Add value of the territorial rights of the Company	476,431		
Grand total	£1,500,000		

We entreat the careful attention of the Commissioners to all and each of the items of this exhibit, and the several sums not specified, as well as the sums specified.

The territorial rights of the Company include the vast domain granted by the charter of Charles II; in that immense territory, stretching from Canada north indefinitely toward the pole, and from the Atlantic ocean westward, into beyond the centre of the continent of America. Here the Company is not troubled by the vagueness of possessory rights only; and it does not need to tortue the vernacular idiom, or to falsify all the principles of jurisprudence, or to corrupt its

own conscience, in the vain endeavor to transform and magnify possessory rights into fee simple, as it does in Oregon and Washington: all such violation of right and of truth is superfluous within its chartered limits, resting on Baffin's bay: there it has a fee simple by the express grant of the Crown.

Nor, within those limits, does the Company need to exhaust itself in the vain effort to establish possessory rights in running water, or respirable air, or in vivifying sun-light; for all these, in that region, the Company deals with as chartered proprietor of the soil and lord of the territory.

Moreover, in that vast region, the Company has trading-posts and structures of residence or business of far more importance than its ruined and abandoned posts in Oregon and Washington, whether the mud-hovels of Fort Hall, or Fort Boisé, or the more pretentious edifices of Fort Vancouver.

We suppose, also, that as the Company owns the land of its chartered territory, it also owns the portages, and has no occasion to fabricate there any *bogus* claims in this respect.

We suppose, furthermore, that in that territory the Company does not need to fly in the face of common sense, by undertaking to set up fee simple title to any of the waste pastures where its horses or cattle may have happened to crop a blade of grass while wandering in the wilderness, or wheresoever any servant of the Company may have happened to fell a tree or cut a twig in the forest: the Company is driven to such ridiculous expedients and pretences for the foundation of fee simple title only when prosecuting claims against the United States in Oregon or Washington.

And yet, *mirabile dictu!* whilst the Company, on a regular and well-considered contract of sale, values the sum total of its proprietorship, of whatever nature had placed in that vast territory, of earth, water, sky, air,—and all of natural objects it contains, as aboriginal man, beast, bird, fish, insect, and forest,—and whatsoever of costly improvements the Company has, in the course of more than two hundred years, introduced there; and whatsoever rights of navigation or trade its charter, or its misconstruction of its charter, may prompt it to assert;—all these vast proprietary interests the Company

deliberately, and on full consideration, in the year 1863, valued and sold for the sum of £476,431; whilst now, it has the superlative shamelessness and assurance to claim of the United States the sum of £1,119,850, on account of scattered possessions remaining to it in Oregon and Washington, of not one hundredth, no, not one-thousandth part the value of its proprietary rights in the chartered territory of the Company.

Look we now for a moment into the blanks of the balance of the price for which the Company sold itself to the Financial Society.

Into their balance enters not merely a sum of cash in hand, but a large sum. We know how much that sum is, for which reason we might fill up the amount in the exhibit, it being stated (£370,000) in the Prospectus of the Financial Society.

There is some question, it is true, whether this cash balance is a part of, or in addition to, the £1,023,569, it being stated one way at p. 350 and another at p. 28. But, as we shall find in the sequel, the value of the other items is so great, that it is quite immaterial whether the particular sum be included in or excluded from the general amount. If excluded there, it distinguises the amount to be credited for the territorial rights of the Company.

Enter, also, not simply landed properties in British Columbia, but landed properties elsewhere also; where, is not stated, but certainly not in England, nor in Canada, nor in the United States; and these are large landed properties.

Then we have ships, who knows how many? We readily conceive that neither Mr. Roberts, the accountant of the Hudson's Bay Company, nor Mr. Armit, the registrar and the accountant of the Puget's Sound Company, can afford to give us any knowledge on this subject; for we have already seen that the factors, agents, and clerks of the Company, expatiating at will in the boundless expanse of their occidental empire, expend as much money as they please, consume as many goods as they please, build and sail as many ships as they please, while transmitting as little money as they please, and subjecting themselves to as little accountability as they please, to

their nominal superiors of the Hudson's Bay House at London.

But that these magnificent signors and high-mightinesses did have ships, and those of the best, in ample number, we may not doubt.

Then we have "goods" and "pelts," as distinguished from "goods."

Pelts constitute the production and result of the business of the Company, being the natural crops, as it were, of the immense territory between the Atlantic and Pacific seas on the east and west, and between the inhabited country of the Canadas and the United States on the south, and on the north the Arctic sea. For we know that all created animals in that region are born and live for the sole purpose of being killed by the Indians for the benefit of the Company, and that all the Indians therein are born and live for the sole purpose of promoting the gain of the Company. We imagine, therefore, though we do not know exactly, the large sum requiring to be entered in the blank left for this item of the assets of the Company.

Next, we have "goods," which word it is obvious, from the context, is intended to designate all merchandise belonging to the Company other than pelts, whether the same be in England, in British America, in the United States, or passing to and fro on the ocean; cargoes of the ships appertaining to the Company, and engaged in its wide-spread commerce. For this merchandise, then and there, large sums must be entered in the appropriate blank of the exhibit.

Finally, we have the business-premises of the Company in England and in Canada; of these, no specific valuation is vouchsafed to us. But we can well imagine that the business-premises of such a Company must be of great value, in Canada as well as in England.

As to England, the establishment, denominated in the evidence the Hudson's Bay House, has a name which speaks for itself as magnitude and value, and for this item, then, another large sum is to be entered in the proper blank of the exhibit.

We now appeal to the wisdom and common sense of the

Commissioners to say, after all the above items shall have been carried out in the exhibit, how much, or how little rather, can be left as the true appraisement of the claims of the Company against the United States?

We respectfully submit, that by no possibility can that appraisement exceed the estimate of $700,000 made by Sir John Pelly, or the sum of $500,000 demanded by Lord Lyons, or, as a barely possible maximum, the sum of $1,000,000 claimed by Sir George Simpson.

Here we ask attention to that most instructive, complete, and exhaustive estimate and exhibit of the rights of the Company, communicated to the Department of State by Governor Stevens.

See U. S. Misc. Ev., pp. 209–226.

His appraisement of $300,000 would suffice, relatively to the other items of the exhibit, to fill up the blank for the claims against the United States, as mutually appraised by the Hudson's Bay Company and by the International Financial Company, in their contract of purchase and sale.

We defy the learned and able counsel of the two Companies to argue away these facts. No conceivable ingenuity of counsel can serve to shake their strength.

Remember, that this appraisement was made by "competent valuers," mutually agreed, of course, between the Hudson's Bay Company and the Financial Society.

U. S. Misc. Ev., p. 21.

Note, also, that the price paid by the Financial Society for the *entire stock* of the Hudson's Bay Company was but £1,500,000: more than two-thirds of which would be paid by the United States, if the plans of these AMERICAN *speculators* against their own Government succeed, leaving the speculators in the condition of paying about £350,000 for the entire commercial and miscellaneous property and territorial rights of the Company!!

The Company seem to have a chronic habit of setting up extravagant claims against Government. It appears from Mr. Brown's report, (*Ib.*, p. 346,) that the Company demanded of

their own Government £1,000,000 for relinquishing their proprietary pretension in the country lying northwest of Canada, which country the Canadian authorities deny ever rightfully belonged to the Hudson's Bay Company, because at the date of their charter it was a part of the French possessions in America.

Upon this point, Mr. Brown, speaking in his official character for the Canadian authorities, denies the validity of such claim of the Company; but, conceeding it for the sake of argument, he insists that £1,000,000 is more than they were entitled to receive for the relinquishment of all their claims from Canada to the Rocky Mountains and from the American line to the extreme north. (*Ibid.*)

It further appears that certain persons, Sir Curtis Miranda Lampson, and, it is believed, Mr. Morgan, banker of London, and other American citizens, are largely interested in the Hudson's Bay Company as stockholders thereof. Sir Curtis Miranda Lampson is named in the Prospectus already referred to as deputy governor.

The singular spectacle is thus presented of American citizens, under the name and sanction of a powerful British corporation, engaged in urging huge speculative claims against their own Government. To this peculiar and remarkable feature of the case we desire to call, as it deserves the attention of the Commissioners.

The transaction, as represented to the United States and as proved by the oral and documentary evidence, may be stated in brief thus: "The London Financial Society agreed to purchase up the stock, water it, and then reissue it at an advanced value, and sell if they could. This was done to a great extent, but no actual change was made in the organziation of the Company."

U. S. Misc. Ev., p. 1 and p. 20.

We take it for granted that this operation of watering the stock of the Hudson's Bay Company, and attributing to it pretended rejuvenescence by the empirical contrivance of infusing into its veins, not a dose of fresh blood, but a very volumi-

nous dose of fresh water, must have been conceived in New York.

After the Financial Society had thus *blown up* the old carcase of the Hudson's Bay Company into such simulated condition of youthful vigor, which, after all, was nothing but the morbid bloatedness of dropsy, it was quite natural, that, while their hand was in, they should proceed to water the Company's claim against the United States.

As we understand the stock operation, it was to issue certificates of £20 of the new Company for £1 of the old Company.

This rule of proportion being suggestively at hand, the managers seem to have proceeded to apply it to their claim against the United States.

The end of which has been, to *water* the claim of the Company until it came to be *water-logged*, and lies now stretched out motionless and lifeless, an object of pity and derision to all beholders.

A little touch of discretion is needed, even in the inflation of bubbles: which seems to have been forgotten by the manipulators of this branch of the affairs of the Company.

We pray the Commissioners to note how large was the property of the Hudson's Bay Company, independently of these claims against the United States.

We quote from the Prospectus of the "International Financial Society. (U. S. Miss. Ev., p. 22.)

1. The commercial property of the Company.

"The assets of the Company, in which these subscribers will be entitled to an interest corresponding to the amount of their subscription, will consist of goods in the interior, on shipboard, and other stock in trade, including shipping, business-premises, and other buildings necessary for carrying on the fur-trade, in addition to which there will be funds immediately available for the proposed extended operations of the Company, derived partly from the cash balance of the Hudson's Bay Company, and partly from the new issue of stock, amounting in the whole to a sum of not less than £370,000."

We submit to the Commissioners that the above-quoted exhibition, of commercial assets and premises appertaining to the transaction of the commercial business of the Company, presents an imposing sum total, far beyond any possible value of its claims against the United States. If carried out, it must figure largely as an item of the £1,023,569.

2. Miscellaneous real estate of the Company.

"In addition to its chartered territory, the Company possesses the following valuable landed property: Several plots of land in British Columbia, occupying most favorable sites at the mouths of rivers, the titles to which have been confirmed by Her Majesty's Government, farms, building-sites in Vancouver island, and in Canada, ten square miles at Lacloche, on Lake Huron, and tracts of land at fourteen other places."

We pray the Commissioners to contrast this exhibit of the miscellaneous "valuable landed property" of the Company, with all the pretended property or possessory rights of both Companies in Oregon and Washington. Contrast the "ten square miles at Lacloche, at Lake Huron," with the claim at Fort Vancouver; contrast the "tracts of land at fourteen other places" with the scattered petty land-claims of the Company in Oregon and Washington; contrast the "farms, building-sites in Vancouver's island and in Canada," with the farms and pastures of the Puget's Sound Agricultural Company; add "several plots of land in British Columbia, occupying most favorable sites at the mouths of rivers, the titles to which have been confirmed by Her Majesty's Government:" consider all this, and then determine how large a sum, in the general exhibit of the Company's property and assets, is comprehended in the sedulously-modest phrase of "landed properties in British Columbia and elsewhere," making part of the £1,023,569, and how little of that sum will be left attributable to claims against the United States.

And in the face of all these enormous values in commercial assets, buildings, lands, water-rights, and other interests, real and personal, which, in common with claims against the

United States, go to make up the well-estimated sum total of £1,023,569, the Hudson's Bay Company, for itself and the Puget's Sound Agricultural Company, had the unimaginable presumption to come before the Commission rating its claim against the United States at the sum of £1,025,350; about equal in amount to all its immense recognized miscellaneous assets, *including this claim;* and the Company now desire to amend, by adding nearly £100,000 more to their claim, so as to bring it up nearer still to £1,500,000, the estimated value of its entire stock, including all its miscellaneous property and all its vast chartered territorial and proprietory rights in America.

We employ modest terms when we speak of these rights as *vast;* they are truly prodigious in magnitude.

3. Territorial rights of the Company.

"The Company's territory embraces an estimated area of more than 1,400,000 square miles, or 896,000,000 acres, of which a large area, on the southern frontier, is well adapted for European colonization. The soil of this portion of the territory is fertile, producing, in abundance, wheat and other cereal crops, and is capable of sustaining a numerous population. It contains 1,400 miles of navigable lakes and rivers, running, for the greater part, east and west, which constitute an important feature in plans for establishing the means of communication between the Atlantic and Pacific oceans, across the continent of British North America, as well as for immediate settlement in the intervening country. The territory is, moreover, rich in mineral wealth, including coal, lead, and iron."

Here is a marvellous exhibition of property; nearly one million and a half square miles of land, or nearly one thousand million acres; of which, a large area, well adapted for colonization; fertile, producing cereal crops in abundance, and capable of sustaining a numerous population; with fourteen hundred miles of navigable lakes and rivers; rich in mineral wealth, including coal, lead, and iron; all this the undisputed property of the Company in fee simple, and yet appraised by competent valuers, and by free agreement of sagacious and experienced vendor and vendee at £500,000; and then contrast this honest

valuation with the dishonest valuation of £1,119,850 finally placed by the Companies upon the relatively trivial and insignificant possessory interests held or claimed by them within the United States.

While thus analyzing these documents, and comparing the estimates they contain with those before the Commissioners, in the memorials of the two Companies, and in the testimony of their witnesses, it is difficult to repress the sentiments of indignation which arise irrepressibly in the mind, or to refrain from applying to the sordid fabricators of such claims, and of such testimony, the appropriate language of reprobation and scorn.

Under ordinary circumstances, it would have been sufficient to lay these documents before the Commissioners, alongside of the memorials of the two Companies, and without argument, as without other evidence, to leave the Commissioners to judge.

But the gravity of an international procedure, before an elevated international court, seemed to constrain the United States to a different course; that is, to take up the testimony of the claimants, man by man, and fact by fact, as we have done, and to demonstrate the interested exaggeration and mercenary misrepresentation of the Company's factors, agents, and instruments, by the overwhelming mass of contradictory testimony, which we have brought forward, from the lips of a cloud of witnesses, not surpassable in dignity, general intelligence, especial knowledge, or personal worth, by any body of witnesses ever produced in any cause in the judicial history of Europe or America.

VII. *Remarks on legal opinions in favor of the Company.*

We propose to make some brief comments on the legal opinions concerning the Company's rights, referred to in the Company's argument.

These opinions emanate from different members of the legal profession, living or deceased, including Mr. Richard S. Coxe, Mr. Webster, Mr. Josiah Randall, Mr. Edwin M. Stan-

ton, and others. The opinions were obtained at the instance of the Company in the years 1848 and 1849, and were, we presume, paid for as professional labor, and collected in a printed pamphlet, under the inspiration, it is supposed, of Sir G. Simpson.

The object of these opinions was to influence favorably for the Company the negotiations then pending for a settlement of the Company's claims against the United States.

We find no fault with the procurement of these opinions for the purpose intended. It was perhaps quite legitimate.

But we submit, that little authority can be given to such mere *ex parte* legal opinions thus rendered. They should more properly be denominated arguments than opinions. Professional gentlemen are often applied to, as on this occasion, for an exercise of their legal learning in such a manner as to present a certain side of a question in the strongest light. For this purpose they receive their fee, and for this purpose they exercise their skill. If a lawyer should be so unsophisticated as to render an opinion adverse to his client's interests, such opinion would not be very extensively promulgated by the disappointed client, and the counsel who had given such opinion would not be likely to be called upon for any future exhibitions of his perverse learning.

If Mr. Daniel Webster, as judge, had, after due consideration, given an opinion in favor of the Company, it would be justly entitled to great weight. But an opinion from Mr. Webster as the feed-advocate of the Company has no other force than its intrinsic merits impart. In such case, his opinion is not to be weighed, it is to be considered.

In these remarks, we, of course, do not in any degree intend to censure the practice of members of the bar in giving this class of opinions, but merely to point out their true character, that they may be received in their proper light, as arguments and not decisions.

With these observations, we now refer to certain points of these opinions, in which we do not concur: without attempting to follow the opinions in the order in which they are printed in the pamphlet compilation.

Mr. R. S. Coxe says:

"It is, I think, clear, that in considering this point, (the rights of the Company,) reference must be had to the law of England, which must furnish the rule by which these rights are to be defined."

Pamphlet, p. 3.

We do not consider this proposition as entirely accurate. If we wish to ascertain under what authority the Company, as a corporation, were being and acting in the disputed territory, and what privileges they were authorized to exercise, it is necessary to refer to the laws of England. If, for instance, that law empowered the Company to carry on exclusive trade with the Indians in the territory for ten years, with express denial of all other privilege, and a positive prohibition of longer extension of time, such action of the English law would conclusively determine the rights of the Company in these regards. It is upon this ground, that, as we conceive, the Company's corporate character, and its duration in the territory, are regulated and determined by the license of trade.

But when we come to ascertain the possessory rights of the Company, then, in addition to the English law, we have to consider the law of the United States, and that by virtue of the principle of law known as the *lex loci rei sitæ*. This rule of law is laid down by Mr. Wheaton, as follows:

"The law of a place where real property is situated governs exclusively as to the tenure, the *title*, and the descent of such property."

Wheaton's International Law, p. 81.

See further, Huberus, de Conflictu Leg., 1, title 3, sec. 15.

The general rules as to the transfer of immovable property, *inter vivos*, on which the greatest agreement among the courts and jurists is found, are that the *lex loci rei sitae* must govern in determining: 1. The disposition of immovable property, (real estate;) 2. The *personal capacity to take* or to transfer immovable property; 3. The formalities of possessing title to immovable property; 4. The extent of the do-

minion over immovable property; 5. The question what is and what is not real estate.

Wheaton, p. 81, (note.)

Story's Conflict of Laws, (Redfield's edition,) ch. 10, sec. 424—454.

The first principle of law, to which we call attention in this connection, is this: The territory was always American territory. The treaty of 1846 was not a treaty of cession; it was a treaty of adjustment of boundaries. The treaty did not confer any new title on the United States. It merely acknowledged the title already existing. The United States had hitherto, for a period long antecedent, claimed the territory as a part of the United States, and this claim was controverted by Great Britain. By the treaty of 1846, the title of the United States was admitted. The treaty of 1846 therefore was not a treaty of cession: it was a treaty for the adjustment of boundaries.

The distinction between these two kinds of treaty is well expounded by Mr. Coxe, in his opinion, (p. 47.) After stating that, upon the cession of a territory by treaty, the antecedent titles of land, conferred by the ceding sovereign in the terri. tory, are binding on the sovereign receiving the cession, he adds:

"In regard to treaties entered into for the purpose of adjusting controverted questions of boundary, the principles of law applicable to them are widely dissimilar, if not diametrically the reverse. Each nation admits by an instrument of this character that its former pretensions, beyond the now-adjusted line, have been unfounded, and that the rights of the other party were originally valid. By the mere force and effect of such a settlement, therefore, all the acts of either party, beyond the boundary now fixed as the limit of its territory, are annulled and invalidated. The authority of the government from which they emanated is admitted to have been *ab ougine*, defective and invalid, and any title originating in a source and resting on a foundation confessedly wrong, cannot be maintained."

The question of title to land, then, in this territory, is to

be determined, not by reference to English law, but to the law of the United States.

From these principles of law important consequences flow.

According to the land-law of the United States, as applicable to this territory at the date of the treaty of 1846, there was no provision, by which title to land could be acquired in the territory. The lands had not been surveyed, and were therefore not open to general purchase. The donation law was not then in existence, and the pre-emption law was inoperative, because the Indian title had not been extinguished. Under this state of the law, all persons in the occupation of land in the territory were liable to be treated as trespassers.

To avoid this harsh result, the treaty provided, in exception of the general principles of law applicable to the case, that the possessory rights of the Company to land in the territory should be respected. Without this provision in the treaty, the Company would have had no rights whatever in land: the treaty protected their possessory rights, but nothing more.

We think, therefore, we have established the proposition we started with, namely, that, in determining the rights of the Company, reference must not be had exclusively to the law of England; but, on the contrary, so far as question of title to land is concerned, reference must be had to the law of the United States.

The next correction we make of the opinion of Mr. Coxe is in reference to the following passage:

"The territory on the west coast of America was not comprehended within this original charter, but its general previsions have been extended to that region by subsequent acts. The statute 43 George III, passed on the 11th of August, 1803, that of July 2, 1831, the royal grant of 21st December, 1821, and another still more recent, to be found in Greenhow, extend territorial rights to this northwest country, and modify in some particulars the terms of the original grant." (p. 4.)

We deny that the territorial rights of the Company were extended to this "northwest country," and we call for the production of any charter or license from the British Crown,

or act of the British Parliament, extending the territorial rights of the Company to this region.

By their original charter, the Company were entitled to three great rights at most, namely: 1, possibly a modified jurisdiction; 2, possibly, but probably not, exclusive trade; and, 3, proprietary title to all lands. But the original charter was expressly limited to the country around Baffin's bay.

In the country around Baffin's bay, they were in fact the governing power, with right (if not exclusive) of every kind of trade,—proprietors of all the soil.

In the northwest country, it was the same Company, it is true, but with more restricted powers and privileges. They were not the governing power, though authorized to exercise certain powers in the suppression of crime; they had only an exclusive *Indian* trade; and they were not universal proprietaries of the soil. Their rights and privileges in the northwest country were not by virtue of their original charter, but under their special license of trade with the Indians.

Mr. Coxe further says:

"Had the territory in question been ascertained to be within the absolute control and sovereignty of Great Britain, it would have been difficult to prescribe any limits to the territorial rights of the Hudson's Bay Company." (p. 4.)

We shall show in the sequel, by conclusive evidence, that Mr. Coxe is totally mistaken in this opinion.

The very condition of affairs, which he supposes conjecturally might have taken place, with regard to the Company in this territory, has actually taken place in British Columbia, and their rights have received a practical construction from the British Government, and which, being acquiesced in by the Company, furnishes a conclusive answer to Mr. Coxe's supposition.

The British Government, by proclamation of September 2, 1858, revoked the license of exclusive trade with the Indians.

U. S. Misc. Ev., p. 388.

The Company promptly submitted to that, as a legitimate exercise of power.

Upon this subject, Gov. Douglas, in his despatch to Sir E. B. Lytton, of date of November 27, 1858, says:

"It is, perhaps, unnecessary to occupy your time with remarks concerning the privileges of the Hudson's Bay Company, which have ceased to exist in British Columbia."

U. S. Ev., Mis., p. 393.

Further, we find the following extract in a letter of the date of November 24, 1858, from John Wark and Dugald Mactavish, chief factors of the Company, to Gov. Douglas:

"We beg leave to call your excellency's attention to the following list of claims to land in British Columbia, which we consider as belonging to the Hudson's Bay Company, and trust that their title to the same will eventually be confirmed by Her Majesty's Government."

Here follows the list of fourteen forts.

U. S. Ev., Misc., p. 353.

Here we see no claim of general sovereignty, or universal proprietary right, to all the lands of the northwest; but a modest petition is made for concessions of title to a few isolated spots of ground.

The despatch of Governor Douglas, which accompanies this modest petition, throws a flood of light on the right of the Company to land in British Columbia.

He says:

"Her Majesty's Government may probably consider that the Hudson's Bay Company have acquired rights to the soil through permissory occupation and improvement, as well as by the public service which the Company have rendered to the country, and may, therefore, meet their claims in a spirit of judicious liberality, especially as the settlement of the Company's possessory rights in Oregon, resting on the construction of the third article of the treaty of the 17th of July, 1846, with the United States of America, will probably be influenced by the decision of Her Majesty's Government in allowing or disallowing the possessory rights of the Company in British Columbia."

U. S. Mis. Ev., p. 352.

To comprehend the full force of these expressions of Governor Douglas, it is proper to bear in mind, that he was a strong partisan of the Company, having long been in high official position in tts service, and having previously manifested his zeal by giving a strongly-colored deposition in its favor. Yet Governor Douglas, decided as are his partialities for the Company, does not venture to claim the sites of a few obscure forts for it as a matter of right, but appeals to the grace and bounty of the Government, and this at the very time when he is seeking to have the business so managed as to strengthen the Company's claim to lands within the United States.

We think we may safely conclude, in opposition to the opinion of Mr. Coxe, that there is no difficulty in prescribing limits to the territorial rights of the Company, in territory of the northwest, within the absolute control and sovereignty of Great Britain. This great sovereign power, which assumed such vast proportions in the imagination of Mr. Coxe, lets fall its sceptre, and shrinks within the most narrow limits, at a few written words from Sir E. B. Lytton.

Further, Mr. Coxe says:

"They (the Company) appear, with the knowledge, and at least the implied sanction of that Government, (Great Britain,) to exercise an unlimited authority, as well to grant to others, as also to appropriate in severalty, the absolute proprietorship of such lands as they pleased." (p. 5.)

We know of no fact, which justifies this statement in reference to the territory in the northwest, including this territory. We utterly deny its truth. Such statement may be true in regard to the region embraced within their original charter, around Baffin's bay; but it is entirely unfounded, so far as the territory here in question is concerned.

Mr. Coxe has failed to appreciate the decisively-important fact, that the Company occupied a different position in reference to the territory in the northwest, from what they did in reference to the territory embraced in their original charter. The Company on Rupert's Land were quite another body from

what they were on the Columbia. The difference between the Company at York Factory and at Astoria, was as great as was that of the East India Company on the Ganges and on the banks of the Thames.

At Norway House, the Company is absolute proprietor of a vast portion of the continent; in Oregon Territory, it was a mere fur-trader, with temporary occupancy of land, and shorn of all its princely prerogatives.

It is from not keeping in mind this cardinal fact, that such erroneous impressions have been taken up by Mr. Coxe and others, as to the "possessory rights" of the Company.

To illustrate conclusively the error into which Mr. Coxe has fallen, in the paragraph of his opinion on which we are now commenting, we ask for a single instance in which the Company have granted to others the absolute proprietorship of *any* lands, as he alleges they have done, in this territory, west of the Rocky Mountains. We deny that a single example of this can be found.

Mr. Webster says, in his opinion, speaking of the possessory rights of the Company: "Some years ago, during the controversy respecting Lord Selkirk's settlement, the nature of these possessory rights was examined and considered by very eminent counsel in England, with Sir Samuel Romilly at their head." (p. 6.)

It is evident Mr. Webster falls into the material error of assuming that the Company had the same power and rights in Oregon Territory as at Lord Selkirk's settlement on the Red River of the North. He confounds facts wholly distinct.

The Company claimed the Red-river country as embraced in their original charter, and they asserted as large a measure of rights there, as in the regions lying immediately around Baffin's bay. But even there the claim was disputed. But they do not pretend to have had any such power on the west of the Rocky Mountains. This fundamental error on Mr. Webster's part, arising, doubtless, from an imperfect examination of the subject, deprives his reasoning and his opinion of all the authority it might otherwise derive from his great name.

Mr. Josiah Randall says:

"It is true, the 3d section speaks of the possessory rights of the Hudson's Bay Company. This is the language used in treaties when the rights of individuals are intended to be reserved." (p. 17.)

We totally deny this proposition. It is not true. By reference to various treaties made by the United States, it will be descovered that such is not the usual language employed to protect titles.

In the treaty of 1794, between the United States and Great Britain, it is provided as follows:

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them *according to the nature and tenure of their respective estates and titles therein.*"

U. S. Laws, vol. 8, p. 122.

In the treaty of 1819, between the United States and Spain, it is provided as follows:

"All the grants of land made before the 24th of January 1818, by His Catholic Majesty, or by his lawful authorities in the said territories, shall be confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid, if the territories had remained under the dominion of His Catholic Majesty."

U. S. Laws, vol. 8, p. 258.

The treaty between the United States and the Republic of France, of 1803, provides:

"ART. 3. The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

U. S. Laws, vol, 8, p. 202.

The treaty between the United States and Mexico provides as follows:

"In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected."

U. S. Laws, vol. 9, p. 929.

The language used in the treaty of 1846, in reference to the rights of the Hudson's Bay Company in lands, is entirely different. The treaty speaks of "possessory rights," and provides that they shall be respected. It confers no title in terms or by implication.

The *obligation* to respect "the possessory rights" of the Company to property in the territory is undoubtedly of precisely the same character in this treaty as in the obligation assumed by the United States in the other treaties alluded to, with this single exception, that the *quantum* of interest in the case of the Hudson's Bay Company is expressly limited to "possessory rights," whereas in the case of the other treaties there was no such limitation of the *quantum* of interest. The use of the phrase "possessory rights" is peculiar to this treaty, and of course has a peculiar and appropriate signification.

Hon. E. M. Stanton, in his opinion, says:

"That exclusive possession and dominion, under sanction of the Crown, has been strenuously claimed and diligently exercised over the whole territory north of the Columbia river."

Page 31.

In this, Mr. Stanton has gone far beyond the Company; for they only claim "possessory rights" in *certain posts* and lands around them.

But it may be sufficient on this point to say, such exclusive possession of the territory north of the Columbia was legally impossible, as the license of trade expressly reserved the rights of American citizens to use the territory. However exclusive of all other persons the occupation of the Company might have been, as a practical question, in the country north of the

Columbia, in legal intendment it was not exclusive of American citizens, their right of occupation being expressly reserved. The treaty of joint occupancy was also inconsistent with any such exclusive occupation of a great geographical division of the territory by the Hudson's Bay Company.

Some of these gentlemen allow themselves to be betrayed into singular accuracy of thought and expression, to say the least, when they affirm or argue that "possessory rights" and "proprietary rights" are equivalent phrases, and one implies a title of the same dignity as the former.

We might as well argue that the licensee has the same title as the licensor; the tenant as the landlord; the preemptor as the proprietor-sovereign of the public domain; the Indians, as the Government.

A party who is in possession of land as a mere trespasser,—who has no pretence or color of title, as against an admitted real owner of the land,—has, nevertheless, a possessory right, upon which he can maintain suit against a junior trespasser. (*See* Hubbard *vs.* Little, 9 Cushing, 475; Stearns *vs.* Hendersass, *Ibid*, p. 497.) But to pretend that such admitted trespasser is, in fact or law, the true owner, would be absurd, and mere confusion of language.

Title by possession does not necessarily follow on the presumption of a grant.

Stearns on Real Actions, 238.

Such errors as this, which constitute the very life-blood of the most elaborate of the opinions under review, serve to manifest the uncertainty of opinions, not judicial in their character, made up without contentious argument, and founded on incomplete facts communicated by interested parties.

The completest of all these opinions, that of Mr. Coxe, is from beginning to end mere argument, on partial facts and imperfect investigation of the law, and strongly illustrates the inconclusiveness and unauthoritativeness of the entire collection.

Not one of these gentlemen could or would have rendered such opinion with the present record before him. Any one of

them,—Mr. Coxe, if living, Mr. Stanton now,—we feel sure, if in after life called upon to consider the subject judicially, would, in view of the adverse facts and arguments which the Government presents, overrule his bar opinion as readily as an upright judge corrects *in banc* a hasty ruling at *nisi prius*, or grants review or new trial on satisfactory exhibition of error, and would decide this case, in spite of his printed bar opinion, in favor of the United States, and against the Company.

At the date of these opinions, the legal profession in the United States were not so conversant with foreign titles as they had been at an earlier day, in the course of the adjudication of land claims in Louisiana and Florida; or as they have since become by study of land-titles in California and New Mexico.

The last class of titles have been pre-eminently instructive to the profession.

We begin with the stipulation of the treaty of Guadalupe Hidalgo, affirming protection and inviolability to property in the territories ceded by the Mexican Republic to the United States.

As to the killing of cattle, or trespasses on land, the Government afforded such protection in the shape of proper laws, and courts of justice open to all for the redress of private wrongs.

Such protection the Hudson's Bay Company has been entitled to in Oregon and Washington; and if it has not in fact been so protected, (which we deny,) the injury it may thereby have suffered is imputable to its neglect or gross ignorance of its rights, or perhaps to its deliberate calculation to get up a case against the Government.

In the legislation respecting land claims in California and New Mexico, and in the numerous adjudications thereon, we have explored the difference between legal or complete titles,—inchoate or equitable titles,—and mere possessory rights under license, which are neither legal titles, nor equitable ones, but only terminable temporary possession, expiring with the license. In cases of the first and second class, our law reports

abound; and cases of the third class are not wanting: that of DeHaro *vs.* The United States, hereinbefore cited, being strikingly similar to that of the Hudson Bay Company.

VIII. *Authoritative Opinions adverse to the Company.*

While the learned counsel for the Hudson's Bay Company relies on opinions contained in the pamphlet, in assertion of the rights of the Company, he seems indisposed to bring forward the very numerous opinions on the subject, which, at one time or another, have appeared in England. Some of these opinions were official, rendered at the call of the British Government: others were unofficial, obtained by the Company or its adversaries, especially during the controversy between the Hudson's Bay Company and the Northwest Company.

The people of the United States were made acquainted with the desperate and not bloodless controversy between the Hudson's Bay Company and the Northwest Company by the Earl of Selkirk's printed exposition of their respective claims, and by the writings of Washington Irving, to say nothing of the more exact knowledge of the controversy which jurists or legislators acquired by the study of documents and of acts of Parliament. (See Mr. Cushing's Report, 25th Congress, 3d Session, vol. 1, No. 101.)

We refer to the controversy as historical matter, by way of preface to the following remarkable statement made by Mr. Edward Ellice, while testifying, June 3, 1857, before the committee of the House of Commons, appointed to consider "the state of those British possessions in North America, which are under the administration of the Hudson's Bay Company, or over which they possess a license to trade;" which statement we quote as follows:

"5822. The Hudson's Bay Company are incorporated under a charter, I believe?"

"They are incorporated under a charter."

"5823. What rights do you conceive that charter to give them?"

"I conceive that charter to give the rights expressed in it; some of them may be doubtful. I ought to be able to express a tolerably fair opinion upon this subject, since I have taken the opinion of every lawyer against the Company when I was opposed to them, and for the Company since I have been connected with them. We have the opinions of Lord Mansfield, Sir Dudley Ryder, Sir Richard Lloyd, Lord Erskine, Gibbs, Romilly, Cruise, Bell, Scarlett, Holroyd; and the law officers have been consulted upon every occasion by the Colonial Office when this question has come under discussion; and I think the universal opinion, without an exception, of these eminent lawyers, is, that the proprietary rights of the Company cannot be disputed. Some of these opinions maintain the right of the Crown, at the time of the charter, to give an exclusive right to trade, founded upon the former decision of 'The East India Company *vs.* Sands,' by Lord Jeffrey. Other lawyers are doubtful upon the point. But it is scarcely necessary to inquire whether the Crown had the power or not, since, if the Crown had the power, it has not given the Company any means of enforcing its rights: we cannot proceed to seize or confiscate: at least I should think a lawyer would be in some difficulty before he should advise the Company to take that course: therefore I hold that to be an extremely doubtful question. But none of these eminent lawyers, and no lawyer whose opinion I have ever heard quoted either for or against the Company, or taken either for or against them, have expressed the least doubt as to the proprietary rights granted under the charter."

"5824. By 'proprietary rights,' you mean the rights of possessing the soil, as distinguished from the exclusive right of trade?

"I mean the same rights which were granted to other proprietors; honorable members are aware that this is the last proprietary government in existence. There were, I forget how many, proprietary governments in America; Massachusetts, Pennsylvania, and various others; but this is the only case remaining, of a proprietary right, which has not been, somehow or other, either purchased, or amalgamated with the general rights of some one of the colonies in America."

Report of Committee on Hudson's Bay Company, p. 327.

Thus we see, that if, in the present case, the Company needed bar opinions, they could have selected among names

the highest in the jurisprudential annals of England, from Lord Mansfield's time, including Ryder, Erskine, Gibbs, Romilly, down to the time of Lord Abinger.

Why does the learned counsel for the Company pass by all these persons, and settle down for authority upon some equally respectable certainly, but not equally authoritative lawyer, like Mr. George M. Bibb? (Mr. Day's Argument.)

To this pertinent question there can be but one pertinent response. The learned counsel had become aware that, according to the whole current of legal opinion in England, even if the Hudson's Bay Company possessed original validity of incorporation,—which is very doubtful, since the firmest basis of the Company's life is the fact that it lives,—still the sum total of its rights, within its chartered limits, is nothing more nor less than proprietary rights in land.

Such was the conclusion of the Attorney and Solicitor General for the time being, when, in June, 1857, the whole question was referred to them by the Crown, and they examined it in the light of the opinions of all their predecessors back to the day of Lord Mansfield.

We quote from their opinion as follows:

"The questions of the validity and construction of the Hudson's Bay Company's charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various acts both of the Government and the Legislature.

"Nothing could be more unjust, or more opposed to the spirit of our law, than to try this charter as a thing of yesterday, upon the principles which might be deemed applicable to it, if it had been granted within the last ten or twenty years.

"These observations, however, must be considered as limited in their application to the territorial rights of the Company under the charter, and to the necessary incidents or consequences of the territorial ownership. They do not extend to the monopoly of trade, (save as a territorial ownership justifies the exclusion of intruders,) or to the right of an exclusive administration of justice. * * *

"In our opinion, the Crown could not now, with justice,

raise the question of the general validity of the charter; but * * * on every legal principle, the Company's territorial ownership of the lands granted, and the rights necessarily incidental thereto, (as, for example, the right of excluding from their territory persons acting in violation of their regulations,) ought to be deemed to be valid.

"But, with respect to any rights of government, taxation, exclusive administration of justice, or exclusive trade otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company as having been legally granted to them by the Crown." * * * * * *

The opinion of the Attorney and Solicitor General, from which the above extracts are made, appears in the Appendix to the Report of the House of Commons. It is dated July, 1857.

Thus we perceive that the conclusion, which Mr. Ellice arrived at, did but anticipate the conclusion of the Attorney and Solicitor General.

Now, the committee, in their report, clearly show the nature of the rights of the Hudson's Bay Company, as follows:

"The territory over which the Company now exercise rights is of three descriptions—

1st. The land held by charter, or Rupert's Land;
2d. The land held by license, or the Indian territory;
3d. Vancouver's island."

It is the second head of rights, namely, the land held by license, or the Indian territory, in which is comprehended all right, of any name or nature, which the Hudson's Bay Company ever possessed in Oregon and Washington.*

Now, it conclusively appears, not only by the express tenor of the committee's report, but by the whole body of its evidence, and of the documents appended, that, in the so-called Indian territory, the Company held nothing but license to trade; that this license, granted in 1838, was to expire by its

*We reprint the opinion of the Attorney and Solicitor General, above referred to, and also the committee's Report, in the Supplement and Appendix.

own limitation in twenty-one years; and that, whatever the Company did, whatever it acquired, and whatever it held, it did, acquired, and held solely and exclusively in virtue of its terminable license to trade, as granted by the British Crown.

It requires, we apprehend, only one step more to complete the demonstration of the true character of the rights of the Company in Oregon and Washington, namely, to exhibit the revocation of its license to trade, and show the acts of illegality and usurpation on the part of the Company, which compelled and hastened the revocation of its license.

The revocation is a Royal Sign Manual, dated September 2, 1858. (Inserted in U. S. Misc. Ev., p. 388.)

Less than two months prior to the date of this Royal Sign Manual, it became the duty of the Minister for the Colonies, Sir Edward Bulwer Lytton, to address to the commissioned governor of Vancouver island, and governor *de facto* of British Columbia, a despatch, containing some brief instructions on general matters, but chiefly devoted to commanding that governor,—who, as it happened, was the Sir James Douglas of the Hudson's Bay Company, whose evidence we have in this record,—to stop the scandalous abuses of power exercised under his eye by that Company.

We quote as follows:

"But I must distinctly warn you against using the powers hereby intrusted to you in maintenance of the interests of the Hudson's Bay Company in the territory.

"The Company is entitled, under its existing license, to the exclusive trade with the Indians, and possesses no other right or privilege whatever.

"It is, therefore, contrary to law, and equally contrary to the distinct instructions which I have to convey to you, to exclude any class of persons from the territory, or to prevent any importation of goods into it, on the ground of apprehended interference with this monopoly; still more, to make any governmental regulations subservient to the revenues or interests of the Company.

"I am compelled, therefore, to disapprove and to disallow, if still in force, the proclamation of which your despatch

transmitted a copy. To fit out boats and vessels to enter Frazer's river for trade, is 'no infringement of the Hudson's Bay Company,' as that proclamation terms it. Such infringement only commences when any trading with the Indians is attempted, and no steps can rightfully be taken to put a stop to legal acts of this description, on the ground that they may be intended for ulterior purposes, infringing on private rights. For the same reason, to require a 'license from the Hudson's Bay Company' of persons landing in the territory, is altogether unjustifiable.

"I am obliged, for the same reason, to disapprove of the terms which you have proposed to the Pacific Mail Company. They ought not to be put under terms to 'carry the Company's goods and no other;' nor ought they to be prevented from carrying persons not furnished with a gold-miner's license. Such license can be properly required of intending diggers on the ground, but not of persons merely seeking to land on the territory. Still less have the Hudson's Bay Company any right whatever to exact from passengers any fee or head-money, by way, as you term it, of 'compensation.'

"Should, therefore, the Pacific Mail Company have assented to these terms, I must, nevertheless, require their being altered, according to the tenor of these instructions, for the future."

U. S. Misc. Ev., p. 286.

We trust that there will be no further occasion for us to recur to the absurd and utterly groundless pretension of the Hudson's Bay Company, to having any granted rights in Oregon or Washington, beyond the naked license of trade with Indians of prescribed and definite duration.

IX. *Parliamentary investigation of the Company.*

The Hudson's Bay Company, it is now distinctly perceived, is a corporation invested with proprietary rights in British America, in virtue of a charter from the Crown, analogous to the charter granted in the same reign to the Duke of Albemarle and his associates, and of the charter granted in previous reigns to the Virginia Company.

But these last-mentioned Companies, like the great proprietary rights of William Penn, of Oglethorpe, and of Lord Baltimore, were designed, both by the Crown and the grantees,

to be enterprises of *colonization*, and we apprehend that on the part of the Crown, at least, such was one of the supposed objects of the Hudson's Bay Company.

That Company, however, either ascertained or imagined that it could derive more profit from devoting the Crown lands it had thus acquired to the prosecution of the fur-trade.

But the field for the fur-trade is the uninhabited wastes of the earth, or, at any rate, those portions of the earth, which are but imperfectly occupied by human beings in the very primitive stage of humanity, savages themselves, and the fit companions of the wild beasts, which, in common with them, wander over, rather than possess, the primeval wildernesses.

In order, therefore, to execute its projects, it was necessary for the Company, not to cultivate the lands granted to them, but to cultivate the wild beasts thereon; not to colonize, but to exclude colonization: in a word, to maintain their possessions in the condition of a desert, the Indians of which should be the hunters and the servants of the Company.

And thus it was that the possessions of the Hudson's Bay Company have continued to be, from that day to this, a blank on the map of America.

In that vast, uninhabited region, the Hudson's Bay Company, while they were but the proprietors of land, possesssing at least no exclusive rights of navigation, or of interior trade, yet contrived to keep out population, and so, to seem to be sovereign lords of the territory, invested with prerogative powers.

But in truth they possessed no such powers. To pretend to possess them,—to exercise them, in fact,—was mere usurpation; just such as they undertook in British Columbia at a subsequent day, and on account of which they received, as we have seen, such a *verte sémonce* from the British Government, promptly followed by the clipping of their wings and deprivation of the further power of mischief by the due application of a Royal Sign Manual.

When at length the eyes of Great Britain and of the United States came to be turned toward the vast unoccupied region of this continent, in and west of the Rocky Mountains,

a large part of that region was in dispute between the two Governments.

In these circumstances, the British Government adopted a policy, which, whether wise or not, was at least sagacious and far-sighted in the sense of the object which Great Britain had in view, namely, the ultimate appropriation of the whole, or of as large a part as possible, of that magnificent future empire on the shores of the Pacific sea. The British Government granted to the Hudson's Bay Company a license, dated May 30, 1838, "for the exclusive privilege of trading with the Indians in all such parts of North America, to the northward and to the westward of the lands and territories belonging to the United States of America, as should not form part of any of our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European Government, State, or Power."

U. S. Misc. Ev., p. 388.

Here, indeed, was no charter of proprietorship, nor even of colonization; the Company did not receive grant of a single rood of land, and still less of a single atom of running water; nor of any exclusive right to the use of earth, water, light, or air; nor any rights of navigation; but the sole and single right to exclusive trade with Indians. Nevertheless, it was a charter of licensed usurpation and pillage, in the whole of the described region of North America.

But what was the territory? What portion of America did the license describe?

All the world knows,—it is undenied and undeniable,—that the territory described is that which by treaty between Great Britain and the United States had been previously neutralized by the two Governments, and in consideration of which it had been agreed between them, that, whilst open to residence on the part of the subjects of both, it should not be exclusively occupied by either, nor its land be susceptible of individual appropriation.

The British Government well anticipated that the Company would scatter its posts over all that vast region; and that it

would practically, though unlawfully, to the extent of its means, exclude colonization, and even commerce, on the part of citizens of the United States.

And so it proved, to the consequence of so much indignation in the United States, as within a very few years to bring the two Governments to the very verge of war, which was only averted by the conclusion of the treaty, the discussion of which constitutes the staple of the present Argument.

Already it has been sufficiently demonstrated by us that the Hudson's Bay Company, entering Oregon as a special licensee only, could not acquire, and did not acquire, any proprietary rights there whatsoever. Presumptuous as the Company always has been, it did not at that time pretend to any *proprietary* rights, but only to certain *possessory* rights, the same which are now in litigation before the honorable Commissioners.

But the Hudson's Bay Company could not suppress its desire to do something in the way of the usurpation of land-titles: in the gratification of which desire, it proceeded at different times, between April 27, 1846, and April 5, 1849, to cause its servants to enter donation claims in the territory for the benefit of the Puget's Sound Company, (see U. S. Misc. Ev., p. 304, where eighteen of these fraudulent transactions are recorded.) Dr. Tolmie was himself a claimant in one of the interests; and the party participant in the transfer of them all to the Company. And thus the Hudson's Bay Company assumes to acquire and hold proprietary rights through the medium of its outgrowth, branch, or parasite, the Puget's Sound Company, which it could not acquire and hold of itself: as if, by agreement among its members, and a little trickery with its servants, it could make a creature superior to its creator, which is contrary to Holy Writ.

Meanwhile, as time passed on, the people of Great Britain, with their singular aptitude for successful colonization, and the people of Canada, with their natural solicitude for the development of all the resources of British America, of which they constitute such a principal part, began to grow restive at the perception and the reflection of so vast a region of British

America being maintained century after century in the state of wilderness, for the single purpose of gathering petty dividends for the benefit of the Hudson's Bay Company.

Hereupon followed that agitation of the subject in England and Canada, of which the evidences appear in this case.

The immediate result was a parliamentary inquiry, conducted by a committee, among whose names we find those of such eminent persons as Mr. Secretary Labouchere, Lord John Russell, Lord Stanley, Mr. Edward Ellice, Viscount Sandon, Sir John Packington, Mr. Gladstone, Mr. Roebuck, Mr. Lowe, and Viscount Goderich.

Their report settled the fate of the Hudson's Bay Company. Thenceforth it was shorn of all power in being stripped of the mystery which had so long shrouded its rights and its acts. This report is printed in the Appendix.

The revocation of its extra territorial license by Sign Manual followed speedily thereafter.

Ceasing to be a power, the Company was metamorphosed into a common-place denizen of the stock exchange, by the skillful manipulations of the International Financial Society.

Its destiny now is, we presume, to surrender ere long its rights to the Crown, in order that the immense territory, which it has for so long time used and abused, may at length be opened to colonization as a province.

Its younger sister, the Russian American Company, which had for so many years divided with it the sway of the northern parts of the continent of North America, has already sunk under causes of decay which are common to both. These causes are well explained by M. Vattemare, in the "Revue Contemporaine," as consisting of the persistent endeavor of the two Companies to continue their fur-trade monopoly, in despite of their respective *Governments*.

See extracts from the article of M. Vattemare in the Appendix.

We suppose the Hudson's Bay Company only awaits the termination of this cause, to lie down and expire by the side of the Russian American Company. *Requiescat in pace.*

X. *Exceptions to Evidence.*

In the course of the examination of witnesses on both sides, exceptions were frequently made and noted, either to the matter or the form of interrogatories, or to the substance of answers; in some cases, it may be, with, and in some cases without, good and sufficient cause.

We find, on revising the testimony, that the discussion of these exceptions, whether for the purpose of defending the legality of questions put by the Government, or of answers received to questions by it, or for maintaining objections taken by it to questions or answers propounded for the Company, would require great labor, consume considerable time, and occupy much space, but would not carry with it any consequences of moment, either to the United States or to the Company.

To take evidence by depositions is in general a tedious and vexatious task, alike to counsel, to witnesses, and to commissioner, and especially to counsel, whose patience is prone to give way under such unfavorable circumstances.

Thus it happens that while both parties are seeking, in good faith, to bring out, in a competent form, the facts it deems material, yet each fails to do so, or conceives that the other fails to do so, and exceptions multiply.

Of all this the Commissioners will judge. Questions or answers, which they deem illegal,—statements by witnesses, which may appear to be incompetent, for want of knowledge, or as being mere opinions in the place of facts,—the Commissioners will reject or disregard.

As to all the matters of controversy, there is so large a body of evidence on both sides, and so much of it is merely cumulative, and there is so much of unexceptionable evidence on main points, that neither party incurs any hazard by the reception or rejection of any particular parcel of testimony.

Besides which, whilst, in a cause like this, great liberality in the reception of evidence seems to be desirable, so also, with a tribunal like this, any evidence, which either party in good

faith thinks important to him, may well be submitted to the court.

If disposed to criticize evidence in matter or form, we should move to strike out the entire mass of *opinions* for the Company on the subject of values, seeing that such opinions are but secondary evidence in the absence of book-accounts; that few of the witnesses, whose opinions are thus put in, have any pretension to be deemed experts; and that the Company, while confessing that it has in its possession the original books of cost and expenditure, pertinaciously refuses to produce them, and suppresses the true and only competent evidence of the controverted facts.

We have bestowed some reflections on this topic, in the proper place; and we now here, in this relation, adjure the Commissioners to reject and discard every answer of the Company's witnesses, every statement or document, which undertakes to prove value as opinion merely, without being controlled by the proper accounts of expenditure.

All these observations apply to the documents filed by the Company, as well as to its oral testimony. Counsel on both sides have agreed not to exact technical proof of the authenticity of documents, in the absence of any special cause of suspicion: subject to which understanding, we consign the whole matter to the discretion and judgment of the Commissioners.

XI. *Photographs, Maps, and Plates.*

The United States, in consideration of the highly ornamental descriptions of the witnesses of the Hudson's Bay Company, in speaking of the structures at some of their posts, and in consideration of the exaggerated value attributed to the same, have procured a number of photographs of such structures, including, of course, views more or less extensive of the adjacent country.

Such representations of objects are infinitely more instructive and satisfactory than the most perfect oral description. Horace, with his accustomed *curiosa felicitas*, well says:

> Segnius irritant animos demissa per aures
> Quam quæ oculis subjecta fidelibus.

Who, in purchasing an extensive farm and farm-house, or a costly edifice, at a very large estimated price, would be content to buy on the faith of the extravagant description of an auctioneer or other agent of the vendor? If the proposed vendee cannot, by himself or agent, visit the property to be sold, the next best thing for him is to inspect photographs of it, in which the object paints itself with miraculous precision and certainty, and in a form admitting of indefinite multiplication of copies. And such is the information regarding many of the structures of the Company, which we propose to submit to the Commissioners.

The photograph, marked United States Photographs No. 3, exhibits a direct view of the much-vaunted buildings at Fort Vancouver, for the better intelligence of which, comparison should be had with United States Photographs No. 3½, representing the camp of the British Boundary Commissioners at Fort Vancouver.

The photograph entitled United States Photographs No. 6 presents a bird's-eye view of Fort Vancouver, copied from a lithograph in Pacific Railroad Reports, vol. 12, Pt. I.

By means of these photographs, it is plain to see not only the buildings themselves, but the enclosed grounds, and the relation of the whole to the river Columbia.

Photographs Nos. 3 and 3½ are verified by General Alvord. No. 3, being the northeast corner of the stockade viewed from the inside, and embracing the officers' quarters at the one side and that of the servants at the other, constitutes the most favorable exhibition possible of the best of the inhabited structures at Fort Vancouver. U. S. Ev., Pt. II, p. 352.

No. 3½, which the Boundary Commissioners occupied for a time, represents the northwest corner of the stockade, embracing the principal store, and here, of course, we have a representation of the best of the commercial structures. (General Alvord, *ibidem.*)

These two photographs are also both identified by G. Gibbs, (U. S. Ev., Pt. II, pp. 412 and 521.) .

It needs only to cast the most cursory glance at these edifices, as thus photographed, to see how false are the descriptions

and estimations of the officers and servants of the Company in this respect, and how just and correct are those of the witnesses for the United States.

In No. 6 we discern not only the stockade and its enclosed edifices near the river, and the scattered huts and small houses farther back from the river, but also the important mission buildings, and other small dwellings on the edge of the woods —these dwellings belong in part to private persons—by the inspection of which we shall see not only the ordinary character of the structures of the Company, but also shall gather some idea of the visionary city of Vancouver.

Photograph No. 1 represents that which is called in the testimony a "church," but which is in fact only a very humble mission-house, at the post of Kootenay.

This photograph is identified by A. and C. T. Gardner. (U. S. Ev., Pt. II, p. 320 and 322,) by Hudson, (*Ibid*, p. 340,) by Gibbs, (*Ibid*, p. 407,) and by Alden, (*Ibid*, p. 852.)

This building, as we plainly see by the photographs, consists on the sides of six tiers of unhewn logs cut in the neighboring forest, and is testified to be double the size of the only inhabited building at the post belonging to the Company, that occupied by Linklater.

Photograph No. 2 represents whatever there is of most value in the structures of the Company at the Fort denominated Fort Colvile. It is identified by G. C. Gardner, (U. S. Ev., Pt. II, pp. 194, 197–99,) and by A. J. Cain, (*Ibid*, pp. 225 and 230.)

Photograph No. 3, which is a view from Fort Colvile, looking across the Columbia, affords instruction regarding the face of the country, as well as the ordinary style of buildings therein at the time under consideration.

Photograph No. 9 is a representation of the Company's mill near Fort Colvile, the sight of which suffices to dispel the illusory valuations thereof made by the officers and servants of the Company. It is copied from the Pacific Railroad Reports, vol. 12, Pt. I.

Photograph No. 4 consists of an exterior and interior view of Fort Hall, copied from the report of Major Cross, U. S. A.,

to the Quartermaster General, contained in the latter's report of June 30th, 1850, as communicated to Congress.

Photograph No. 5 consists in like manner of views of the interior and exterior of Fort Boisé, copied from photographs in the last above mentioned report.

Each of these photographs serves to contradict unanswerably the testimony of the agents of the Company respecting the same, and to substantiate that of the witnesses for the United States.

Photograph No. 7 represents Fort Walla-Walla, copied from the above-cited volume of the Pacific Railroad Reports.

Great effort was made by the counsel for the Hudson's Bay Company, who cross-examined witnesses of the United States on the subject of Walla-Walla, to endeavor to make out wonderful value, both of buildings and of site. This photograph fully substantiates the testimony of the United States.

Finally, we have, in Photograph No. 8, a correct exhibition of the adobe structures at Fort Okanagan, copied from the same volume of Railroad Reports. For these mud-hovels, the Company claims £2,500, while the witnesses of the United States testify that they are not worth more than $500. That is to say, the Company claims for these buildings about twenty-five times their value, as represented by witnesses of the United States.

By looking at this photograph, the Commissioners have opportunity to perceive not only the extravagant exaggeration of the claim founded on Fort Okanagan, but also, inferentially, in regard to all the other posts of the Company.

The Government also files a number of maps and plats.

No. 1 is a copy of the preliminary Coast Survey chart of the mouth of the river Columbia. Here we see the position of Astoria, as referred to in various parts of the evidence; also, Point Adams; also, Cape Disappointment.

This map is verified, and the notable points upon it are indicated by W. B. McMurtrie. (U. S. Ev., Pt. II, p. 371.)

No. 5 is a special map of a portion of the mouth of the river, with particular reference to Cape Disappointment, prepared by Capt. Van Buren, from authorities in the Engineer

Department. The basis of it is a survey made by Mr. Ogden, chief factor of the Hudson's Bay Company.

Also, the objects upon it are fully explained by Mr. McMurtrie, (U. S. Ev., Pt. II, p. 371,) and by Capt. Van Buren, (U. S. Ev., Misc., p. 367.) See also W. Gibson, U. S. Ev., Pt. III, p. 377.

No. 11 is a copy of the Coast Survey reconnoissance of Steilacoom harbor. It is the subject of evidence and explanation by Mr. McMurtrie of the Coast Survey in U. S. Puget S. Ev., p. 296.

Nos. 2 and 3 are land office maps of Oregon and of Washington, duly certified by the Commissioner of Public Lands. These maps, while serving to show the progress of public surveys to the time of their respective dates, are also convenient for consultation in reference to many of the localities mentioned in the evidence before the Commissioners.

No. 6 is a plat copied from files in the Land Office certified by the Commissioner, and representing the Hudson's Bay Company's claim at Fort Vancouver, as described in a letter from chief factor Ballenden, in 1852, to Mr. Preston, surveyor general of the territory of Oregon.

This map requires to be consulted in studying the question whether of the pretended or of the true limits of the claim of the Hudson's Bay Company.

The map is of particular interest in controlling the evidence of Mr. Mactavish. (See the letter of acting Commissioner Whitney to Surveyor General Tilton. U. S. Miss. Ev., p. 265.)

No. 8 is a map of the military department of Oregon, prepared at the War Department, and will be convenient to the Commissioners in affording a general view of the geography of the entire region of country concerned with the enquiries of the Commission.

No. 10 is a British map of the same region of country as the preceding, copied from one of the Parliamentary Blue Books.

Portions of this map are obscured by the colored lines upon the original, which, in the process of transfer by sunlight, have been converted into deep dark-colored lines. The

straight line is but the boundary-line of the 49th parallel of latitude, and the curve-lines are delineations of the coasts of the ocean, bays, and straits.

The particular utility of this map is in illustrating the evidence respecting the position of Fort Colvile, and the Flat-Head and Kootenay Posts.

Finally, we have two maps to illustrate the relation of the public reserve at Fort Vancouver to the Hudson's Bay Company.

No. 4 was drawn by Lieut. Stuart, in 1850. It is explanatory of a notice declaring the reservation, issued at the time by Col. Loring, commanding the military department. (See U. S. Misc. Ev., 368.)

The reservation, be it observed, saves all the rights of the Hudson's Bay Company.

No. 2 is the military reservation at the same place, as surveyed in 1859, under direction of Gen. Harney.

In order to the better understanding of this map, it is well to compare with it the photograph No. 6, exhibiting a bird's-eye view of Fort Vancouver.

(F.)—*Conclusion.*

Having thus discussed at length all such questions of fact, or of law, as it seemed necessary, in the interest of the United States, to consider, it only remains for us, in the way of retrospect, or *résumé*, to state the propositions which, in one form or another, constitute the basis of this argument.

1. The Hudson's Bay Company is the chartered proprietor of the territory of Rupert's Land.

2. Within its chartered limits, the Company was invested in fact, though by doubtful legality, with the quality of owner of the soil, including such proprietary rights as appertain to a grantee under the Crown.

3. Within its chartered limits, even, however, the Company does not possess the functions of sovereignty, or prerogative powers of any description.

4. Whether or not, within those limits, the Company enjoys

any rights of exclusive trade,—and if perchance, by letter of charter, it holds any such,—it is destitute of any legal means for their enforcement, and they cannot be rightfully maintained.

5. These are the ancient rights of the Company; but by recent especial grant, it exercises or possesses some particular rights, immaterial here, within British Columbia.

6. This Company, in the year 1838, while the territory now constituted as the State of Oregon and territory of Washington, was in litigation between Great Britain and the United States, entered therein, under and by virtue of a license from the British Crown for the exclusive trade with the Indians thereof.

7. This license by the British Crown was, in spirit and effect, if not intention, an act of semi-hostility toward the United States, being contrary to the true construction of the convention regulating the respective *ad interim* rights of the two Powers in the disputed territory.

8. But the license, in so far as it professed to grant privileges of exclusive trade with Indians, could only operate against British subjects, and was nugatory as respects citizens of the United States.

9. The license did not profess to grant to the Company any exclusive right of navigating the waters of the territory: the said waters continued to be free aud open highways, at least to all citizens of the United States.

See, in confirmation of the preceding points, in addition to authorities and arguments previously presented, the memorial of the Hudson's Bay Company, on the showing of which the license was granted by Lord Glenelg, and the license itself, in the Appendix, Nos. 7 and 8.

See, also, in the Appendix, extracts, of the same period, from letters of Sir John Pelly and Sir George Simpson, exhibiting the inducements of aggression, usurpation, and hostility, as respects the United States and the Russian Empire, by which the Company then professed to be governed and guided, and which constituted the avowed objects of its pretension to favor from the British Government.

10. The Company could not, and did not, acquire any possessory *rights*, as distinguished from mere common use, in the trade of said territory or in its navigable waters.

11. The license did not confer on the Company any proprietary rights in said territory: if it had professed to do so, the grant would have been null and void. It was legally impossible for the Company to become the owner of any land there, in view of the peremptory prohibition of the treaty regulating the relations of the two Powers.

12. Under its license, the Company held, for a term of years, certain rights against the British Crown, which, whether or not entitled to be denominated possessory rights, would expire absolutely, by reason of their legal quality and their intrinsic nature, with the termination of the license.

13. That license, in so far as regards any effect it might have, or any consequences relatively to the United States, expired with the local power of the licensor, namely, on the conclusion, in 1846, of the joint occupancy of the two Governments, and the devolution of the territory to the United States.

14. The United States does not hold the dominion and sovereignty of Oregon and Washington in virtue of any cession by Great Britain, but in virtue of original and antecedent right, recognized as such by Great Britain.

The United States were sovereign *de jure* during the joint occupation, although exercise of such sovereignty, in fact, was for a time partially suspended or held in abeyance by convention.

15. Whatever claim, if any, the Hudson's Bay Company (including the Puget's Sound Agricultural Company) holds against the United States, it holds by grace and favor, under the treaty dissolving the joint occupation of the two Powers, and not otherwise.

16. The sole premises of such claim are in the voluntary engagement of the United States to protect the possessory rights, if any, belonging to the Company.

17. Such possessory rights, in any the largest possible legal

or equitable construction thereof, could only rest in fixed and valuable improvements on land, whereof the fee simple, as well as the sovereignty, had always been and still was continuously in the United States.

18. All other rights, which the Company might have had, if any, within the territory, ceased to exist on the termination of the joint occupancy: they became a nonentity, and, of course, not existing, they were incapable of being protected, and could not have been intended or comprehended by the treaty as possessory rights.

19. Reducing, then, the possessory rights of the Company to their true proportion, as improvements made on the land of another by a tenant at sufferance or a licensee, therefore, on his leaving the land, the ordinary rules of law apply to the question of the value of such improvements.

20. By no conceivable rule of right, by no doctrine of justice, to be found in public or private law, or in the construction of treaties, or in international jurisprudence, has the Company here any claim to the fee of land, or indemnification for being dispossessed thereof, or consideration for the transfer of the same to the United States.

The fee simple belongs now, as it always did belong, to the United States, and cannot pass to its owner by transfer from the Company, which is not its owner.

21. The Hudson's Bay Company, including the Puget's Sound Company, has no pretension of right to indemnification by the United States for cattle, horses, or sheep injured or destroyed by private persons, or for any damage done to its improvements by such persons: for the redress of such wrongs the courts of justice in Oregon and Washington were open to the Company, as to all other inhabitants of or sojourners in the United States.

22. As the fee simple of any and all lands ever occupied by the Company belongs to the United States, and as all pretension of right of continued occupation by the licensee Company expired with the power of the licensor Government, or, at the latest possible day, on the revocation of the license by the licensor, the Company has no interest in any prospective value

of the land by reason of the actual or contingent location of railroads, or the actual or contingent foundation of cities or towns:—all claims founded thereon are groundless and false: the Company has no claims in this behalf beyond the actual value of its own improvements.

We make the point distinctly, because misapprehension in this respect is the excuse for most of the extravagant estimations of value by witnesses for the Company.

Compare, for example, the opinion of one of the witnesses, (W. H. Farrar,) in H. B. Co.'s Ev., p. 251, with the explanation and contradiction thereof by the same witness, in U. S. Misc. Ev., p. 183.

23. The Company has no equities to set up; it has abused all its rights; it has been guilty of numerous acts of usurpation; it has been, and is, a mere incumbrance and dead-weight on the British Provinces, by reason of its anti-colonization policy; it wrongfully engrossed and monopolized for a series of years the commerce and production of Oregon and Washington, committing strip and waste there at will, pasturing its herds on the public domain, cutting and exporting timber, and otherwise acting as universal owner, greatly to its advantage and to the injury of the United States; and its claims are to be measured by no rules but those of *strictissimum jus*.

24. As full satisfaction of all the just claims of the Company, and as adequate compensation for the transfer of its rights to the United States, including those of the Puget's Sound Company, an ample sum ($300,000) was proposed by Governor Stevens.

Governor Stevens exhibits in detail the elements of his estimation.

We possess evidence from the Company which strikingly confirms his estimate. It is the enumeration of all the establishments of the Company, which we find appended to the reports of the House of Commons' committee, p. 365.

This document bears unimpeachable testimony to the fraudulent exaggeration of values attached by the Company to its assumed rights in Oregon and Washington.

The total number of all the posts or establishments of the

Company at the date of that enumeration (1856) was *one hundred and fifty-four.*

Many of them are of greater magnitude and importance than Fort Vancouver. We shall do no injustice to the Company in *averaging* all these posts, for the purpose of estimating aggregate and comparative values. *The list includes Nisqually and Cowlitz, set down as establishments of the Hudson's Bay Company.*

Deducting from the sum total the posts in Oregon and Washington, *sixteen* in number, (Cowlitz appearing twice in the memorials,) the balance of one hundred and thirty-eight represents the other posts of the Company.

Now, by rule of proportion, if the 16 posts within the United States are of the value of, say, £1,000,000, (the claim is £1,025,380,) then the *remaining* posts (138) are of the value of £8,625,000. This result does not include *commercial* assets, such as ships, merchandise, pelts, and cash on hand, as per the exhibits of the International Financial Society. Adding those, and adding the present claims, we should reach the result, not of £1,500,000, but of nearly £12,000,000!! as the actual value of the property of the Hudson's Bay Company.

Let us now reverse the terms of the proportion. Take, according to the appraisement of the Company's property on sale to the Financial Society, £1,500,000 as the value of the entire property; deduct, say, £500,000 for cash, ships, merchandise, and pelts, (which is a deduction much below the probable truth,) and there remains £1,000,000 as the *full* value of all the territorial rights and *real estate* of the Company.

If 164 posts, averaged, be worth £1,000,000, then 16 of these, taken at hazard, can be worth only £97,560,—say $407,800 for all the posts in Oregon and Washington.

But still, even that reduced sum will be greatly in excess; for we did not make any deduction from the £1,000,000 of assumed total real estate for the territorial rights of the Company: they were left included. How much ought we to allow for them? On the lowest calculation we have been able to make of them, they stand, in the Company's appraisement, at £476,431. (See supra, p. 112.)

If, now, we deduct this from the assumed £1,000,000, we reduce it nearly one half, and the result will approximate to, say, $250,000; which in our judgment is a large estimation of the value of the rights of the two Companies, and substantiates the favorableness of the calculation of Governor Stevens.

25. When the British Government undertook to negotiate this matter, the sum which it proposed, ($500,000), was greatly in excess of any just valuation of the rights of the two Companies.

26. The sum previously proposed by Sir John Pelly ($700,000) was still more largely in excess of any such just valuation.

27. When Sir George Simpson undertook to value the claims of the two Companies at $1,000,000, the claims passed out of the domain of reason or justice, and sank into the category of fraudulent excess and attempted extortion.

28. And, finally, in the present aspect of the claims of the two Companies, as they stand before the Commissioners, and as tested by the evidence in the record, those claims, over-stated and exaggerated as they are, by interested witnesses, to millions in amount, must of necessity be characterized as a mere speculative adventure under the International Financial Society's auspices, of audacious and stupendous fraud against the Government of the United States.

All of which is respectfully submitted, by

C. CUSHING,

Counsel for the United States.