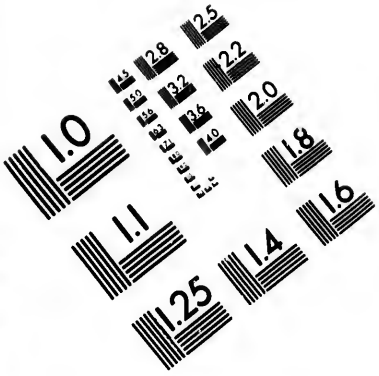


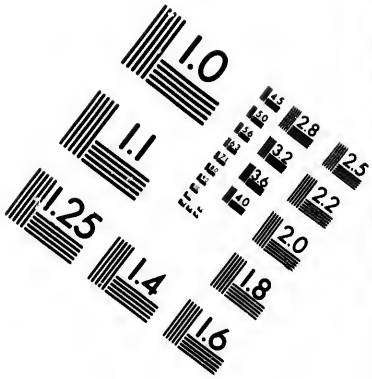
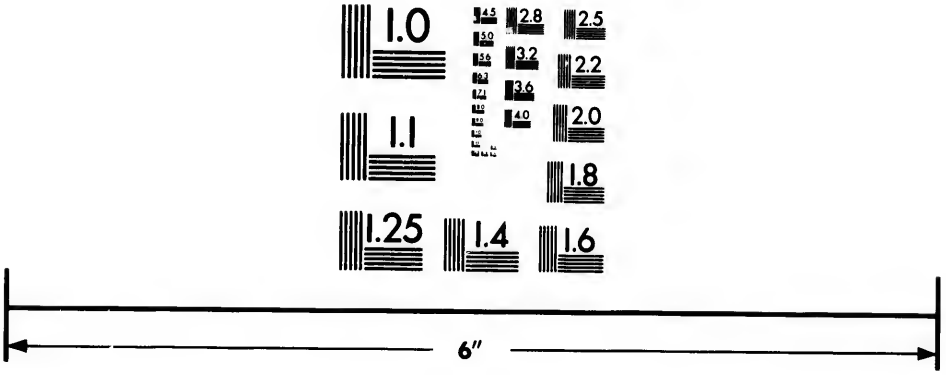
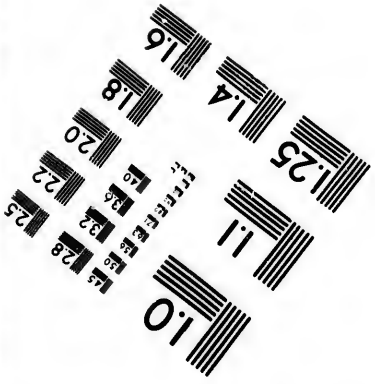
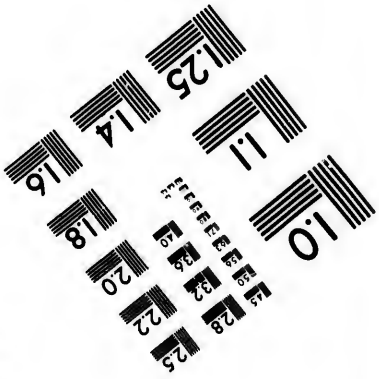


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

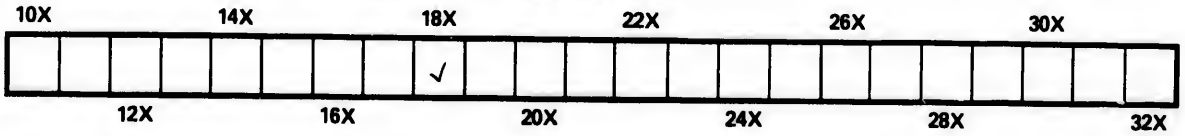
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☐ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.



The copy filmed here has been reproduced thanks to the generosity of:

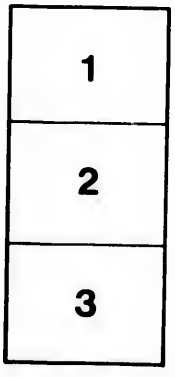
Library Division
Provincial Archives of British Columbia

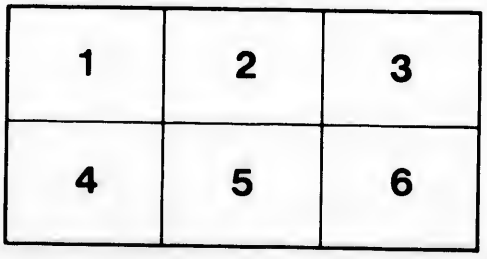
The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:





L'exemplaire filmé fut reproduit grâce à la générosité de:

Library Division
Provincial Archives of British Columbia

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

OREGON TERRITORY.

MR. PAKENHAM,

THE BRITISH PLENIPOTENTIARY'S

REPLY TO THE

AMERICAN GOVERNMENT.

WASHINGTON, JULY 29th, 1845.

NOTWITHSTANDING the prolix discussion which the subject has already undergone, the undersigned, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, feels obliged to place on record a few observations in reply to the statement, marked J.B., which he had the honour to receive, on the 16th of this month, from the hands of the Secretary of State of the United States, terminating with a proposition on the part of the United States for the settlement of the Oregon question.

In this paper it is stated that "the title of the United States to that portion of the Oregon territory between the valley of the Columbia and the Russian line, in 54° 40′ north latitude is recorded in the Florida treaty. Under this treaty, dated on 22d February, 1819, Spain ceded to the United States, all her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42d parallel of latitude." "We contend," says the Secretary of State, "that at the date of this convention, Spain had a good title, as against Great Britain, to the whole Oregon territory, and, if this be established, the question is then decided in favour of the United States," the convention between Great Britain and Spain, signed at the Escurial, on the 28th October, 1790, notwithstanding.

"If," says the American plenipotentiary, "it should appear that this treaty was transient in its very nature; that it conferred upon Great Britain no right but that of merely trading with the Indians, whilst the country should remain unsettled, and making the necessary establishments for this purpose, that it did not interfere with the ultimate sovereignty of Spain over the territory; and, above all, that it was annulled by the war between Spain and Great Britain, in 1796, and has never since been renewed by the parties, then the British claim to any portion of the territory will prove to be destitute of foundation."

The undersigned will endeavour to show not only that when Spain concluded with the United States the treaty of 1819, commonly called the Florida treaty, the convention concluded between the former Power and Great Britain, in 1790, was considered by the parties to it to be still in force; but even that, if no such treaty had ever existed, Great Britain would stand, with reference to a claim to the Oregon territory, in a position at least as favourable as the United States.

The treaty of 1790 is not appealed to by the British Government, as the American plenipotentiary seems to suppose, as their "main reliance" in the present discussion; it is appealed to to show that, by the treaty of 1819, by which "Spain ceded to the United States all her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42d parallel of latitude," the United States acquired no right to exclusive dominion over any part of the Oregon territory.

The treaty of 1790 embraced, in fact, a variety of objects. It partook in some of its stipulations of the nature of a commercial convention; in other respects it must be considered as an acknowledgment of existing rights, an admission of certain principles of international law, not to be revoked at the pleasure of either party, or to be set aside by a cessation of friendly relations between them.

Viewed in the former light, its stipulations might have been considered as cancelled in consequence of the war which subsequently took place between the contracting parties, were it not that by the treaty concluded at Madrid, on the 28th of August, 1814, it was declared that all the treaties of commerce which subsisted between the two nations (Great Britain and Spain) in 1796 were thereby ratified and confirmed.

In the latter point of view, the restoration of a state of peace was of itself sufficient to restore the admissions contained in the convention of 1790 to their full original force and vigour.

There are, besides, very positive reasons for concluding that Spain did not consider the stipulations of the Nootka convention to have been revoked by the war of 1796, so as to require, in order to be binding on her, that they should have been expressly revived or renewed on the restoration of peace between the two countries. Had Spain considered that convention to have been annulled by the war—in other words, had she considered herself restored to her former position and pretensions with respect to the exclusive dominion over the unoccupied parts of the North American continent, it is not to be imagined that she would have passively submitted to see the contending claims of Great Britain and the United States to a portion of that territory the subject of negotiation and formal diplomatic transactions between those two nations.

It is, on the contrary, from her silence with respect to the continued occupation by the British, of their settlements in the Columbia territory, subsequently to the convention of 1814, and when, as yet, there had been no transfer of her rights, claims, or pretensions to the United States; and from her silence also, while important negotiations respecting the Columbia territory, incompatible altogether with her ancient claim to exclusive dominion, were in progress between Great Britain and the United States, fairly to be inferred that Spain considered the stipulations of the Nootka convention, and the principles therein laid down, to be still in force.

But the American plenipotentiary goes so far as to say that the British Government itself had no idea in 1818, that the Nootka Sound convention was then in force, because no reference was

The undersigned trusts that he has now shown that the convention of 1790, (the Nootka Sound Convention), has continued in full and complete force up to the present moment.

By reason, in the first place, of the commercial character of some of its provisions, as such expressly renewed by the convention of August, 1814, between Great Britain and Spain.

By reason, in the next place, of the acquiescence of Spain in various transactions to which it is not to be supposed that that power would have assented, had she not felt bound by the provisions of the convention in question.

And, thirdly, by reason of repeated acts of the Government of the United States, previous to the conclusion of the Florida treaty, manifesting adherence to the principles of the Nootka convention, or at least dissent from the exclusive pretensions of Spain.

Having thus replied, and he hopes satisfactorily, to the observations of the American Plenipotentiary with respect to the effect of the Nootka Sound convention and the Florida treaty, as bearing upon the subject of the present discussion, the undersigned must endeavour to show that even if the Nootka Sound convention had never existed, the position of Great Britain in regard to her claim, whether to the whole or to any particular portion of the Oregon territory, is at least as good as that of the United States.

This branch of the subject must be considered, first, with reference to principle—to the right of their party, Great Britain or the United States, to explore or make settlements in the Oregon territory without violation of the rights of Spain; and next, supposing the first to be decided affirmatively, with reference to the relative value and importance of the acts of discovery, exploration, and settlements effected by each.

As relates to the question of principle, the undersigned thinks he can furnish no better argument than that contained in the following words, which he has already once quoted from the statement of the American Plenipotentiary.

"The title of the United States to the valley of the Columbia, is older than the Florida treaty of February, 1819, under which the United States acquired all the rights of Spain to the north-west coast of America, and exists independently of its provisions." And again, "the title of the United States to the entire region drained by the Columbia river and its branches, was perfect and complete before the date of the treaties of joint occupancy of October, 1818, and August, 1827."

The title thus referred to, must be that resting on discovery, exploration, and settlement.

If this title then, is good, or rather was good, as against the exclusive pretensions of Spain, previously to the conclusion of the Florida treaty, so must the claims of Great Britain, resting on the same grounds, be good also.

Thus, then, it seems manifest that, with or without the aid of the Nootka Sound convention, the claims of Great Britain, resting on discovery, exploration, and settlement, are, in point of principle, equally valid with those of the United States.

Let us now see how the comparison will stand when tried by the relative value, importance, and authenticity of each.

Rejecting previous discoveries north of the 42d parallel of latitude as not sufficiently authenticated, it will be seen, on the side of Great Britain, that in 1776, Captain Cook discovered Cape Flattery, the southern entrance of the Straits of Fuca. Cook must also be considered the discoverer of Nootka Sound, in consequence of the want of authenticity in the alleged previous discovery of that port by Perez.

In 1787, Captain Berkeley, a British subject, in a vessel under Austrian colours, discovered the Straits of Fuca.

In the same year, Captain Duncan, in the ship Princess Royal, entered the straits, and traded at the village of Classet.

In 1788, Meares, a British subject, formed the establishment at Nootka, which gave rise to the memorable discussion with the Spanish Government, ending in the recognition, by that power, of the right of Great Britain to form settlements in the unoccupied parts of the north-west portion of the American continent, and in an engagement, on the part of Spain, to reinstate Meares in the possession from which he had been ejected by the Spanish commanders.

In 1792, Vancouver, who had been sent from England to witness the fulfilment of the above-mentioned engagement, and to effect a survey of the north-west coast, departing from Nootka Sound, entered the Straits of Fuca; and after an accurate survey of the coasts and inlets on both sides, discovered a passage northwards into the Pacific by which he returned to Nootka, having thus circumnavigated the island which now bears his name. And here we have, as far as relates to Vancouver's Island, as complete a case of discovery, exploration, and settlement as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of that island.

While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander Mackenzie, a partner in the North-west Company, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and, following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in those latitudes. On the return of Mackenzie to Canada, the North-west Company established trading posts in the country to the westward of the Rocky Mountains.

In 1806 and 1811, respectively, the same company established posts on the Tacoutché, Tessé, and the Columbia.

In the year 1811, Thompson, the astronomer of the North-west Company, discovered the northern head waters of the Columbia, and, following its course till joined by the rivers previously discovered by Lewis and Clarke, he continued his journey to the Pacific.

From that time till the year 1818, when the arrangement for the joint occupancy of the territory was concluded, the North-west Company continued to extend their operations throughout the Oregon territory, and to "occupy," it may be said, as far as occupation can be effected in regions so inaccessible and destitute of resources.

While all this was passing, the following events occurred which constitute the American claim

made to it on the part of England during the negotiation of that year on the Oregon question.

In reply to this argument it will be sufficient for the undersigned to remind the American plenipotentiary that in the year 1818 no claim, as derived from Spain, was or could be put forth by the United States, seeing that it was not until the following year (the year 1819), that the treaty was concluded by which Spain transferred to the United States her rights, claims, and pretensions to any territories west of the Rocky Mountains, and north of the 42d parallel of latitude.

Hence, it is obvious that in the year of 1818 no occasion had arisen for appealing to the qualified nature of the rights, claims, and pretensions so transferred—a qualification imposed, or at least recognized, by the convention of Nootka.

The title of the United States to the valley of the Columbia, the American Plenipotentiary observes, is older than the Florida Treaty of February, 1819, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound convention was correct, it could not apply to this portion of the territory in dispute.

The undersigned must be permitted respectfully to inquire upon what principle, unless it be upon the principle which forms the foundation of the Nootka convention, could the United States have acquired a title to any part of the Oregon territory, previously to the treaty of 1819, and independently of its provisions? By discovery, exploration, settlement, will be the answer.

But, says the American Plenipotentiary, in another part of his statement, the rights of Spain to the west coast of America, as far north as the 61st degree of latitude, were so complete as never to have been seriously questioned by any European nation.

They had been maintained by Spain with the most vigilant jealousy, ever since the discovery of the American continent, and had been acquiesced in by all European Powers. They had been admitted even by Russia, and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire, who, when complaints had been made to the court of Russia against Russian subjects, for violating the Spanish territory on the north west coast of America, did not hesitate

to assure the King of Spain that she was extremely sorry that the repeated orders issued to prevent the subjects of Russia from violating, in the smallest degree, the territory belonging to another power, should have been disobeyed.

In what did this alleged violation of territory consist? Assuredly in some attempted acts of discovery, exploration, or settlement.

At that time Russia stood in exactly the same position with reference to the exclusive rights of Spain as the United States; and any acts in contravention of those rights, whether emanating from Russia or from the United States, would necessarily be judged by one and the same rule.

How then can it be pretended that acts which, in the case of Russia, were considered as criminal violations of the Spanish territory, should, in the case of citizens of the United States, be appealed to as constituting a valid title to the territory affected by them; and yet from this inconsistency the American Plenipotentiary cannot escape, if he persists in considering the American title to have been perfected by discovery, exploration, and settlement, when as yet Spain had made no transfer of her rights, if, to use his own words, "that title is older than the Florida treaty, and exists independently of its provisions."

According to the doctrine of exclusive dominion, the exploration of Lewis and Clarke, and the establishment founded at the mouth of the Columbia, must be condemned as encroachments on the territorial rights of Spain.

According to the opposite principle, by which discovery, exploration, and settlement are considered as giving a valid claim to territory, those very acts are referred to in the course of the same paper as constituting a complete title in favour of the United States.

Besides, how shall we reconcile this high estimation of the territorial rights of Spain, considered independently of the Nootka Sound convention, with the course observed by the United States in their diplomatic transactions with Great Britain, previously to the conclusion of the Florida treaty? The claim advanced for the restitution of Fort George, under the first article of the treaty of Ghent; the arrangement concluded for the joint occupation of the Oregon territory by Great Britain and the United States; and, above all, the proposal actually made on the part of the United States for a partition of the Oregon territory; all which transactions took place in the year 1818, when as yet Spain had made no transfer or cession of her rights—appear to be as little reconcilable with any regard for those rights, while still vested in Spain, as the claim founded on discovery, exploration, and settlement, accomplished previously to the transfer of those rights to the United States.

Supposing the arrangement proposed in the year 1818, or any other arrangement for the partition of the Oregon territory to have been concluded in those days, between Great Britain and this country, what would, in that case, have become of the exclusive rights of Spain?

There would have been no refuge for the United States but in an appeal to the principles of the Nootka convention.

To deny, then, the validity of the Nootka convention, is to proclaim the illegality of any title founded on discovery, exploration, or settlement, previous to the conclusion of the Florida treaty.

To appeal to the Florida treaty as conveying to the United States any exclusive rights, is to attach a character of encroachment and of violation of the rights of Spain to every act to which the United States appealed in the negotiation of 1818, as giving them a claim to territory on the north-west coast.

These conclusions appear to the undersigned to be irresistible.

The United States can found no claim on discovery, exploration, and settlement, effected previously to the Florida treaty, without admitting the principles of the Nootka convention, and the consequent validity of the parrallel claims of Great Britain founded on like acts; nor can they appeal to any exclusive right as acquired by the Florida treaty, without upsetting all claims adduced in their own proper right, by reason of discovery, exploration, and settlement, antecedent to that arrangement.

in their own proper right.

In 1792, Gray entered the mouth of the Columbia River.

In 1805, Lewis and Clarke effected a passage across the Rocky Mountains, and discovering a branch of the Columbia River, followed it until they reached the ocean.

In 1811, the trading post or settlement of Astoria was established at the mouth of the Columbia, on the northern side of that river.

This post or settlement passed during the last war into British hands by the voluntary act of the persons in charge of it—a fact most clearly established. It was restored to the United States in 1818, with certain well-authenticated reservations; but it was never actually re-occupied by American citizens, having, from the moment of the original transfer or sale, continued to be occupied by British subjects.

These are the acts of discovery, exploration, and settlement, referred to by the United States as giving them a claim to the valley of the Columbia, in their own proper right.

The British Government are disposed to view them in the most liberal sense, and to give to them the utmost value to which they can in fairness be entitled; but there are circumstances attending each and all of them, which must, in the opinion of any impartial investigator of the subject, take from them a great deal of the effect which the American negotiators assign to them as giving to this country a claim to the entire region drained by the Columbia and its branches.

In the first place, as relates to the discovery of Gray, it must be remarked that he was a private navigator, sailing principally for the purposes of trade, which fact establishes a wide difference, in a national point of view, between the discoveries accomplished by him and those effected by Cook and Vancouver, who sailed in ships of the Royal navy of Great Britain, and who were sent to the north-west coast for the express purpose of exploration and discovery.

In the next place, it is a circumstance not to be lost sight of, that it was not for several years followed up by any act which could give it value in a national point of view; it was not in truth

made known to the world either by the discoverer himself, or by his Government. So recently as the year 1826, the American Plenipotentiaries in London remarked, with great correctness, in one of their reports, that, "respecting the mouth of the Columbia River, we know nothing of Gray's discoveries but through British accounts."

In the next place, the connexion of Gray's discovery with that of Lewis and Clarke is interrupted by the intervening exploration of Lieutenant Broughton, of the British surveying-ship Chatham.

With respect to the expedition of Lewis and Clarke, it must, on a close examination of the route pursued by them, be confessed that, neither on their outward journey to the Pacific, nor on their homeward journey to the United States, did they touch upon the head waters of the principal branch of the Columbia River, which lie far to the north of the parts of the country traversed and explored by them.

Thompson, of the British North-west Company, was the first civilized person who navigated the northern, in reality the main branch of the Columbia, or traversed any part of the country drained by it.

It was by a tributary of the Columbia, that Lewis and Clarke made their way to the main stream of that river, which they reached at a point distant, it is believed, not more than 200 miles from the point to which the river had already been explored by Broughton.

These facts, the undersigned conceives, will be found sufficient to reduce the value of Lewis and Clarke's exploration on the Columbia to limits which would by no means justify a claim to the whole valley drained by that river and its branches.

As to settlement, the qualified nature of the rights devolved to the United States, by virtue of the restitution of Fort Astoria, has already been pointed out.

It will thus be seen, the undersigned confidently believes, that on the grounds of discovery, exploration, and settlement, Great Britain has nothing to fear from a comparison of her claims to the Oregon territory, taken as a whole, with those of the United States.

That reduced to the valley drained by the Columbia, the facts on which the United States rest their case are far from being of that complete and exclusive character which would justify a claim to the whole valley of the Columbia; and

That, especially as relates to Vancouver's Island, taken by itself, the preferable claim of Great Britain, in every point of view, seems to have been clearly demonstrated.

After this exposition of the views entertained by the British Government respecting the relative value and importance of the British and American claims, the American Plenipotentiary will not be surprised to hear that the undersigned does not feel at liberty to accept the proposal offered by the American Plenipotentiary for the settlement of the question.

This proposal, in fact, offers less than that tendered by the American plenipotentiaries in the negotiation of 1826, and declined by the British Government.

On that occasion it was proposed that the navigation of the Columbia should be made free to both parties.

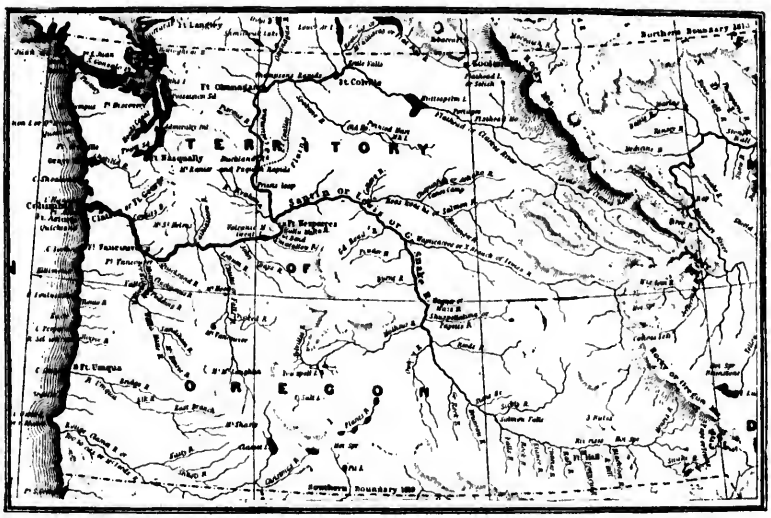
On this, nothing is said in the proposal to which the undersigned has now the honour to reply; while, with respect to the proposed freedom of the ports on Vancouver's Island south of latitude 49°, the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole island, would seem to deprive such a proposal of any value.

The undersigned, therefore, trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government, as defined in the statement (marked D), which the undersigned had the honour to present to the American plenipotentiary at the early part of the present negotiation.

The undersigned British Plenipotentiary has the honour to renew to the Hon. James Buchanan, Secretary of State and Plenipotentiary of the United States, the assurance of his high consideration.

Hon. James Buchanan, &c. P. PAKENHAM.

Wm D Fenton



MAP OF OREGON COUNTRY, JUNE 6, 1838, WITH REPORT OF SENATOR LINN