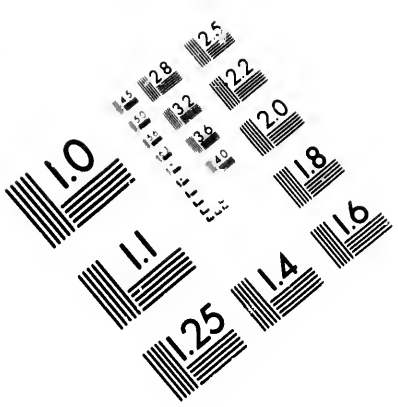


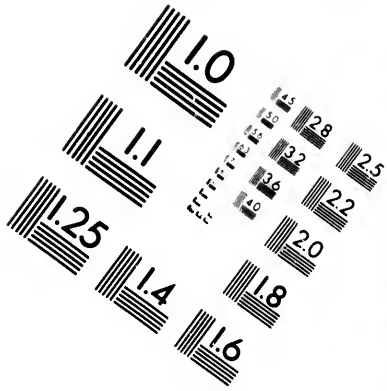
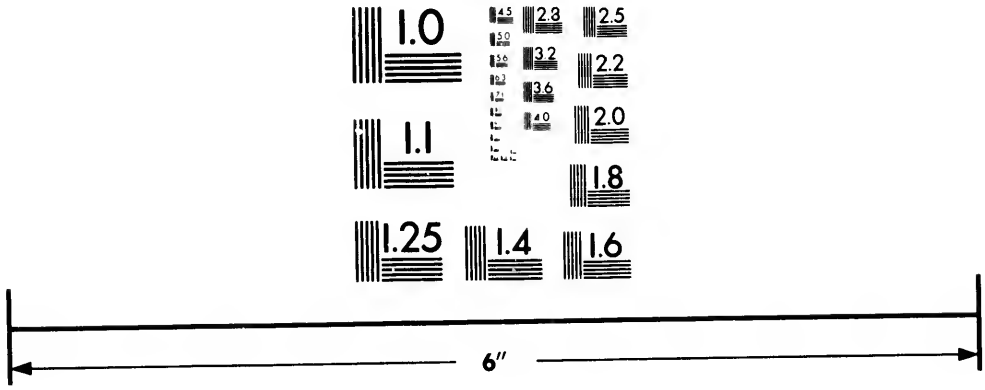
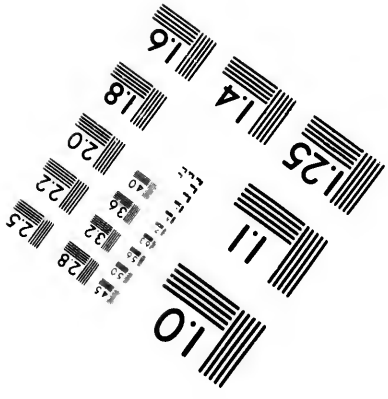
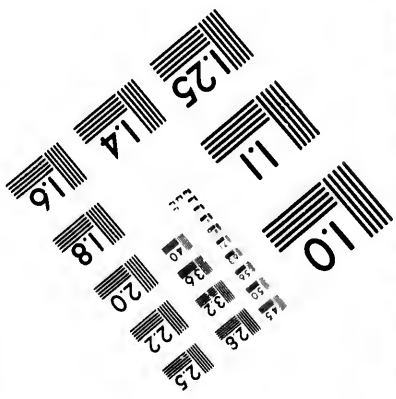


IMAGE EVALUATION TEST TARGET (MT-3)







Photographic Sciences Corporation

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

Technical and Bibliographic Notes/Notes techniques et bibliographiques

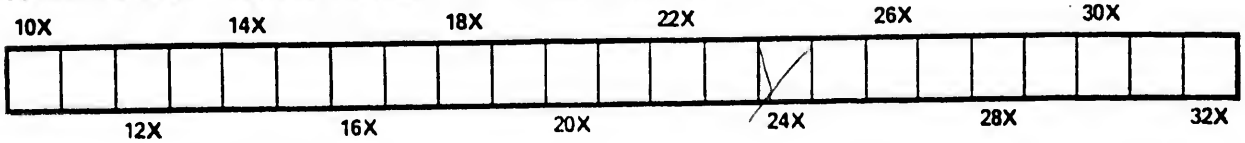
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

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 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;

- ☐ 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.



SECOND POSTSCRIPT TO A PAMPHLET ENTITLED "THE OREGON QUESTION," BY THOMAS FALCONER, ESQ., IN REPLY TO THE "REJOINDER" OF MR GREENHOW, AND TO SOME OBSERVATIONS IN THE 'EDINBURGH REVIEW.'

Mr Greenhow is evidently a very intemperate person; but he is also dull, in not having an accurate perception of the arguments which he professes to answer.

I cited from the "History of the Federal Government," written by Alden Bradford, LL.D., the following passage respecting the purchase of Louisiana:—

"The purchase included all lands '*on the east side of the Mississippi River, not then belonging to the United States, as far as the great chain of mountains which divide the waters running into the Pacific and those falling into the Atlantic Ocean; and from the said chain of mountains to the Pacific Ocean, between the territory claimed by Great Britain on the one side, and by Spain on the other.*'"

The words in Italics are placed between inverted commas, as a citation, by Dr Bradford, himself. Respecting this passage, Mr Greenhow repeats, that I *have produced it* as a stipulation *in* the Treaty of 1803, whereby France ceded Louisiana to the United States.

This is not a correct statement of the fact. I cited the passage from Dr Bradford's work, referring to that work for it, and *not* referring to the Treaty. Any person turning to the Treaty would have at once observed that the reference was made to the work of Dr Bradford *only*, and could not have been misled. In my first Essay, I spoke of it inaccurately, in some passages, as I have before explained; but in subsequent editions of my argument I corrected the expressions, and also referred to the passage as containing the terms of "an agreement," or, in the words of Dr Bradford, of the "purchase" of Louisiana, confirmed by the Treaty of 1803.

Now, in order to make "a purchase," there must be "an agreement;" but Mr Greenhow asserts, "that it is *not* the fact that Dr Bradford says anything calculated to induce the supposition that the passage cited by him related to any agreement." I cannot agree with Mr Greenhow, nor do I think any other person can agree with him. Assuming that Dr Bradford spoke of a "purchase" as necessarily meaning an agreement, which he must

have done, the next question is, whether the words which he cites, as the terms of "the purchase," are correct or not. It is true that Mr Greenhow, in his first Reply to me, spoke of "a merely gratuitous and unfounded opinion as to the limits of Louisiana." This remark I thought referred to some opinion of my own; but he now says, that he applied it to Dr Bradford's statement, which I had said, he did not declare to be inaccurate. These American authorities are, therefore, opposed to each other. Dr Bradford, unfortunately, is no longer alive. He was a man of learning and talent, and I should not think him to have been capable of inserting in his history, as a citation from authority, a merely gratuitous and unfounded opinion of his own. He had no motive to misrepresent the facts, and I prefer his authority.

Mr Greenhow says, there is no "agreement" except the Treaty of 1803. I think he merely plays on words. The Treaty does not define the boundaries of Louisiana; but before any Treaty can be signed, there must be certain negotiations to settle the subject matter of it. If, when the Treaty is signed, it contains particulars of the subject matter, then the Treaty is the agreement to which the parties refer. But if the Treaty does *not* contain such particulars, and the documents which passed between the respective Governments do contain them, such documents may be referred to. If, therefore, Dr Bradford has cited an official document accurately, in the passage I cited from his work, it is good evidence in this question. The public documents of a public negotiation cannot be set aside as worthless when a Treaty is concluded.

But the fact is, that Mr Greenhow, in this discussion on the word "agreement," altogether loses sight of the object for which I cited the passage from Dr Bradford's work. It is an American authority respecting the existence of British rights in that part of the Oregon Territory in which the existence of such rights is now denied.

Secondly, I stated, "that prior to the exercise of any authority in the Oregon Territory, under the orders of the Government of the United States, the Government of Great Britain had "taken possession" of it; and that the "taking possession" of a new country by persons officially authorised—and no private person could assume the authority—was the exercise of a sovereign power, a distinct act of legislation in the case of the British Government—the Crown having the power to legislate alone in such cases—by which the Territory became annexed to the dominions of the Crown. I added, that the Spaniards never *occupied* the country; and that if they had done so, the Government of the United States could have made no claim to any part of it in 1814—five years before the Florida Treaty was made. The country was open to any *Government* to possess and occupy it, notwithstanding any mere formal act of possession, unaccompanied by occupation, which any Government might have already sanctioned.

Mr Greenhow charges me with inconsistency in these remarks. They are perfectly consistent. The mere act of "taking possession" by the Spaniards was of no avail, for they abandoned the Territory. The act, also, of "taking possession" by Vancouver, under the orders of his *Government*, and with its approval, would have been a nullity, if a settlement or occupation had not been made. Such possession, however, followed by occupation, was first

made under the authority of the British Government; and its right to do this, though not dependent on, was recognized in the Convention of the Escurial in 1790.

To the above remarks Mr Greenhow replies that he "denies them *in toto*."

"The coasts of Oregon," says Mr Greenhow, "were first explored by the Spaniards, who, in 1774 and 1775, landed there in many places, and 'took possession' for their Sovereign before they had been seen by the people of any other civilized nation; and the first *settlement* made in any part of the regions now known as Oregon, was that of the Spaniards at Nootka in May, 1789. The next, in point of time, were those of the Americans on the Columbia, in 1809, and the subsequent years to 1814. The earliest British settlements west of the Rocky Mountains were made in 1806, in the region north of Oregon. The 'taking possession' by the Spaniards, and afterwards by the British, was, as I have termed it in my History, 'an empty pageant, securing no real rights to those by whom, or in whose names, it was performed;' but the priority in this point belongs to the Spaniards. The settlements at Nootka and Astoria were meant to be permanent: they did not prove so, any more than those made in old time at Babylon, Palmyra, or Thebes."

The history of the Spanish Babylon at Nootka, and of the American Palmyra at Astoria, will not support this statement of Mr Greenhow. Let us first take the Spanish Babylonian settlement. The following are the contradictory accounts given of it by the same author:—

"It should be observed, with regard to the right of the Spanish Government thus to take possession of Nootka, that, before the 6th of May, 1789, when Martinez entered the Sound with that object, *no settlement, factory, or other establishment whatsoever, had been founded or attempted*, nor had any jurisdiction been exercised by the authorities or subjects of a civilized nation in any part of America bordering upon the Pacific between Port San Francisco, near the 38th deg. of N. latitude, and Prince William's Sound, near the 60th."—'Greenhow's History of Oregon,' &c., p. 187.

"— Forgetting or concealing the facts, that Spanish officers had landed on all those coasts, and, on *each occasion*, had most formally taken possession in the name of their monarch, AND *had made a settlement by direct and special orders of their Government*, before any attempt for the same purpose had been made there by the people of any other nation." — 'Mr Greenhow's Strictures,' pp. 3 and 4.

I am charged with concealing the fact that the Spaniards, *on each occasion*, when they landed on the coast, "took possession," *and* made a settlement by the special orders of their Government. In his 'History,' Mr Greenhow admits, that however often the Spaniards may have landed on the coast, before May 6, 1789, they never made, nor even attempted to make, a settlement! The historian has so little control over his own temper, that, in order to contradict me, he denies the authority of his own history! The denial is wrong, and the 'History' is correct. The Spaniards did not make a settlement on each occasion when they landed on the coast.

When Martinez entered the harbour of Nootka, he seized some buildings which had been previously erected by the English. He

did not come to lay the foundation of a Babylon, but treacherously to seize English property. That he had no authority to make a settlement is proved by the official declaration of the Spanish minister, the Conde de Florida Blanca, dated Aranjuez, June 4, 1790, who contended for certain claims — "though Spain might *not* have establishments or colonies planted upon the coasts or ports in dispute." If there had been a settlement at Nootka, in 1789, his case would have been complete. The authority of the Spanish minister, that there were no settlements in the disputed territory, is unanswerable. Moreover, the Spanish Government ordered Nootka to be abandoned when Martinez's proceedings were called in question. No settlement was made by the Spaniards before 1789; none was made at that time, and none was made afterwards. The Spaniards, therefore, never made a settlement, for no settlement, on account of which public rights can be advanced, can be made without the authority of a Government.

The American claim, set up on account of the alleged settlement on the Columbia — the Palmyra of Mr Greenhow — is utterly untenable. The parties who went there were private speculators; not subject to any law, and not under the orders or control of any Government; and the majority of the adventurers were British subjects. They could not extend the dominions of the United States; and no law had been passed to give them any authority. The Government of the United States did not *occupy* the country, nor was any settlement made under its authority.

The parties by whom the British settlements in Oregon were made, acted under an authority given to them by the British Government; and the Crown having previously "taken possession" of it, the British title is complete. "I," says Mr Greenhow, "in my book, have called the act of taking possession, a solemn pageant, securing no real rights." But neither the book, nor the author, are of any authority on matters guiding the conduct of civilized nations. The formal taking possession of a country is a very important notice to the different Governments of the world. It is the open promulgation of a public claim inviting discussion, if liable to be contested,—a declaration challenging just remonstrance, if any ground for it exists; and, as respects its own subjects who may pass into the country, it is the subjugation of them to the authority of the Crown, making them amenable to the laws of their own country. What is proposed to be substituted for this solemnity? The Americans propose to establish claims to a new country, based on the unauthorised acts of the agents of a merchant of New York, and on the proceedings of trappers and squatters, whose crimes in the territory claimed no court in the United States could punish! They call that country theirs in which no officer of the United States could execute a single law of his own Government!

Thirdly, Mr Greenhow asserts that "the British Government did not instruct Vancouver to take possession of the Oregon: and that the assertion of such a right is not reconcilable with the Convention of the Escurial, which was at that time binding on both Great Britain and Spain."

The authority which Vancouver had, must and can only depend on the sole evidence of the British Government. He did officially

"take possession;" and he reported the fact to his Government. The Government approved of what he had done; his report of what he did was published by order of the Government; and the British Government confirmed what he did and asserted public rights in consequence.

The right of our Government to take possession of Oregon was perfectly reconcilable with the Convention of the Escurial. The British Government did not then contemplate the folly, introduced in the discussions with the Government of the United States, of having a *joint occupancy* of the country with Spain—a state of things in which no law could be administered. The Convention merely recognized the right of both countries—as a right common to both—to make settlements, under the control of their respective Governments. The extent of territory with which any settlement should be actually connected depended on its locality, and the rules applicable to the extent of territory which might be claimed in connection with it, have been laid down by the American Government in its correspondence with Don Louis de Onis. In the first instance, it was necessary that the British Government should ascertain what part of the coast was waste, abandoned, or unoccupied, in order to ascertain where it was lawful to make settlements, and to prevent any conflict with Spanish authorities. This duty was performed by Vancouver, who took possession under the authority of his Government of the abandoned and waste territory. After this was done, it still remained open to the Government to regulate any settlement which might be made, to define its limits, and to abandon, by distinct orders, what part of the territory it pleased, or impliedly to abandon it by not planting any settlement. Such proceedings were perfectly consistent with the Convention of the Escurial. By that agreement no right of sovereignty over the territory we might occupy was to be abandoned. Subsequently the settlement on the Columbia was made. It was sanctioned and approved of by the British Government; and it was the first settlement made on that part of the coast that received the sanction and authority of any Government. But if the British Government had not "taken possession" of the country, the Hudson's Bay Company could not have had jurisdiction in it. Their authority can only be exercised within the limits of that territory over which the Crown has declared its sovereignty to extend.

Fourthly, Mr Greenhow asserts, that I misquoted him in citing a passage from his 'History' respecting the northern limits of Louisiana. I reply, that he has no ground for the complaint. "The Spaniards," he said, "claimed the vast region called Louisiana, stretching from the Gulf of Mexico northward and northwestward to an undefined extent;" but he now adds:—

"I never said that Louisiana extended indefinitely northward at any time. On the contrary, I have proved that it was bounded in that direction by the Hudson Bay territories. I showed that its boundaries on the east were defined by the Treaty of 1763, and that on the north and northwest, they were *undefined*—that is, that they had not been defined by any agreement between the parties interested. Mr Falconer could not possibly be mistaken as to the difference between what I said and what he represents me to have said. That Louisiana did not extend indefinitely to the north, no reasons were required from Mr Falconer to prove; and those

adduced by him are, unfortunately, all either irrelevant or unfounded. Louisiana was *not* partly formed out of the province of Canada; it was made subordinate to the Government of Canada in 1712; but in 1717 it became an independent Government, and continued so as long as France held possession of it. No one ever doubted that Louisiana did not extend further north than the Illinois; or that all north of Illinois and south of the Hudson's Bay territory formed part of Canada. But the Illinois lies east of the Mississippi; while the question was exclusively confined by me to the regions north and northwest of the river."

If Mr Greenhow merely meant that there was no *defined line drawn* on the west side of the Mississippi, to distinguish the territory of Louisiana on the north and north-west, I should not have found fault with his statement; but his argument appeared to extend his meaning much further, namely, that Louisiana extended indefinitely, or was so far undefined, north, that the American Government ought not to have assented to the parallel of 49° N. lat. as the northern boundary of the territory west of the Mississippi. I, on the contrary, alleged that the northern limit was so far defined, that there is no pretence for saying that Louisiana extended north or north-west of *the source* of the river Mississippi after the cession of Canada under the Treaty of 1763. That Treaty did define the highest point of Louisiana.

I correctly understood Mr Greenhow to apply his remarks to the territory west of the river; and my answer was applied to the western district, though part of the evidence in support of it was derived from facts applying also to territory on the east side of the Mississippi. His charge of misstatement arises from his own want of perception of the force of the facts and of their application.

"Louisiana," says Mr Greenhow, "was *not* partly formed out of Canada." This is a very clear denial. What are the facts? In Mr Greenhow's 'History of Oregon' (p. 277), is the following passage:—

"The northern branches of the river Mississippi were explored in the latter years of the seventeenth century by the French from Canada; and before 1710, many French colonies and posts had been established on its banks, in virtue of which Louis XIVth claimed possession of all the territories to a great distance *on either side of the stream.*"

Were all the territories at a great distance on either side of the stream, before 1710, part of Canada or part of Louisiana? Louisiana was subordinate to the Government of Canada in the first instance; it was subordinate to it in 1712, when its northern limit was distinctly declared not to reach further north than the Illinois. The colonies and posts, therefore, on the sides of the northern branches of the Mississippi, remained under the jurisdiction of the Government of Canada. This is very evident. Subsequently the Illinois territory was added to Louisiana. What did not form part of the Illinois still remained part of Canada; but the Illinois having been part of Canada, Louisiana, when this addition was made to it, was thus partly formed out of Canada. The denial of this fact by Mr Greenhow is not very discreet. The territory on both sides of the Mississippi north of the Illinois remained part of Canada after the Illinois was added to Louisiana; and when the Treaty of 1763 fixed the source of the Mississippi (lat. 47° 10′) as the highest point of Louisiana, the country north of this point was not conceded, and

remained subject to the French rights which had been transferred to Great Britain. In 1803 the American Government obtained the French title to Louisiana, which, being derived from the same source as the British title to Canada, must be bound by the evidence of French authorities respecting its extent.

The French maps used in 1762, in the official discussions respecting the cession of Canada, are clearly receivable to prove the extent of Canada in opposition to any assertions now set forth to limit its extent and to extend the boundary of Louisiana, though they would not be evidence in favour of a French title in opposition to titles dependant on any origin not French. Such maps are of avail respecting territory on this side of the Rocky Mountains, but beyond these mountains they prove nothing, the French Government having neither discovered nor occupied the territory watered by the rivers flowing into the Pacific.

The importance of these facts is great, if the pernicious and most dangerous doctrine of "contiguity" is to be of any avail in determining the title to any part of Oregon. By conceding to the American Government—and it was an undoubted concession—the territory between the parallels of latitude 47° 10′ and 49° on this side of the mountains, under the Convention of 1818, the British Government ceded no territory within those parallels, west of the mountains. The title by contiguity, as it existed in 1818, is unaffected by the Convention made in that year.

Mr Greenhow is indignant that I do not declare some opinions of M. de Mofras to be true or false, because "his assertions were specific, and were either true or false." He ought to be satisfied with the reply made by me in my former 'Postscript;' and I am quite contented to have shown that my argument was valid and the proofs of it complete, without the aid of M. de Mofras. I am not in the least disposed to term the mistakes Mr Greenhow has committed, falsehoods, or to imitate his example in speaking of a certain article in the 'London Quarterly Review,' as "an article filled with assertions most impudently false" ('History of Oregon,' p. 266 n.). My experience of Washington convinces me that such language would be condemned there, and that it would be erroneous to infer that it prevails in the public departments.

Lastly, in reply to some comments on Mr Greenhow's remark, "That it is the true policy of the American Government, by all lawful means, to resist the extension of European dominion in America, to confine its limits, and to abridge its duration,"—he asks, "Has Mr Falconer not heard of treaties, of purchases, or concessions of territories *in exchange* for other advantages? Are these not lawful means of abridging the limits and duration of a dominion? Finally, may not a nation lawfully resort to war for such purposes, when it considers its own safety threatened by its neighbours?"

This answer is not official; and it need hardly to be remarked, that it is not the policy of the Government of the United States to seek for a war, though Mr Greenhow explains this to be included in what he means as part of the policy which he recommends; and it certainly forms no part of the policy of the British Government to threaten the safety of the American Federation.

The anxiety of Mr Greenhow to make personal charges has

prevented him from perceiving that I have discussed the question as one of public importance, and not as a private affair, in which he has any personal interest. I am not responsible for the defects of his history or the deficiencies of his argument. I assumed that he made the best statement his case enabled him to do, and I cited his book with every desire to do so fairly, notwithstanding his charges to the contrary, as less open to contradiction than any other authority which I could produce.

Two articles have lately appeared on this subject, the one in the 'Foreign Quarterly Review,' (No. 70) and the other in the 'Edinburgh Review.' The former is written with great ability, and gives a very complete and admirable statement of the history and of the arguments of the case. The latter, which is an enlargement of an article which was previously printed in the 'Examiner' newspaper, contains some singular inferences, which have not met with the assent of persons who have examined this question. Nor is this surprising, for the author, in order to establish his inferences, has rejected the most important and indisputable facts; a very unusual mode of dealing with evidence in this country.

The writer of the article in the 'Examiner' thus refers to the events which followed the Convention of the Escurial, which, adopting to the new American expression, he says, is called the "*Nootka Sound* Convention:"—

"The northernmost point then occupied by Spain was Port San Francisco, in lat. 38°. Next year, Capt. Vancouver was sent by the English Government with instructions to receive the surrender of Nootka Sound, and to explore the north-west coast. On his way out Vancouver committed one of the most remarkable pieces of maritime diplomacy on record. He took exclusive possession, in the name of the King of England, of the whole territory from lat. 39° 20′, to the Straits of St Juan de Fuca, in lat. 48°. That is to say, the Treaty having stipulated that the whole coast north of the Spanish possessions should be open to the settlement of the subjects of both nations, he quietly seized, in the name of the King of England, more than two-thirds of the habitable part of it. It does not appear that any attempt was ever made to act on this absurd assumption of sovereignty. A large portion of the territory comprehended by it, that between 39° 20′ and 42°, is now under the undisturbed sovereignty of Mexico.

In referring to the same events in the 'Edinburgh Review,' they are thus spoken of:—

"During his voyage, we trust without instructions, Vancouver was guilty of an assumption of sovereignty more ridiculous than even the average absurdity of such transactions. He first took possession, in the name of England, of all the country from lat. 39° 20′ to the Straits of Fuca, and afterwards from the Straits of Fuca to the 59th parallel. That is to say, the Treaty, to superintend the execution of which he was dispatched, having stipulated that the whole coast should be open to settlement by England and Spain, he took exclusive possession of nearly the whole of it on the part of England. We are glad to think that no British negotiator has relied on this assertion of claim. Indeed, the northern part of the territory comprised in it is now under the undisputed sovereignty of Russia, and the southern under that of Mexico."

So far from the proceedings of Vancouver being ridiculous, they were necessary and proper, and perfectly in conformity with the

terms of the Convention of the Escurial. What he did was published with the sanction and authority of the Government, and no more distinct approval and confirmation of his proceedings could have been given. The Government of Spain made no remonstrance, nor did it complain of any violation of the terms of the Convention. If his acts had not been just and proper, our Government would not have given to them publicity or the approval which they received; nor would the Government of Spain have allowed them to pass uncensured.

After the Treaty of the Escurial, it was just to declare over what part of the coast British settlements might be made in conformity with the rights it sanctioned. To do this, Vancouver was sent to ascertain what part of the coast was abandoned and unoccupied, and to determine the limits within which settlements could be made. By "taking possession" of the vacant coast, an inchoate right of sovereignty was established concurrent with the inchoate and imperfect right of sovereignty existing in the Spanish Government—if such right existed after the Spaniards abandoned the coast. It did not supersede the necessity of *occupation*, but it anticipated and prevented any renewal of disputes when any actual settlement should be officially sanctioned by the British Government. Neither did it imply or render necessary actual settlements throughout the whole extent of country thus taken possession of. It was a proceeding preliminary to the establishment of any settlement. The limits of subsequent occupation could not then be determined, as they could only be fixed by the position of any settlement that should be made.

That the Mexican Government or that Russia should now enjoy part of the coast "taken possession of" by Vancouver, is perfectly consistent with the claim asserted by the British Government; for the claim contended for in the contest with Spain was not exclusive of that which any other country might establish by actual occupation. Our assertion of a right to make settlements was founded on the principle that a vacant and abandoned territory, not within the limits or control of any jurisdiction, is open to occupation by the subjects of any Government having its authority to settle in it and subject to the jurisdiction of the laws of their own country.

If, by the statement that no attempt was ever made to act upon what is called "the absurd assumption of sovereignty," is meant that we have not continued to assert a title to the *whole* country "taken possession of"—rejecting the word "absurd"—this statement may be assented to; and the reasons for not asserting so extensive a title have already been mentioned. But if it is meant that we have made no claim on account of this assumption of sovereignty to *any part* of the country, the assertion is incorrect. In the British statement annexed to the protocol of the sixth conference held at London in 1826, the British negotiators did rely on the assertion of the title arising from the country having been taken possession of by Vancouver. And in the earlier negotiations, the late Sir C. Bagot, the British Minister at Washington, declared—"That the post at the mouth of the Columbia had *not been captured* during the late war, but that the Americans had retired from it under an agreement with the North-West Company, which had purchased their effects, and ever since retained peaceable possession

of the coast;" and "that the territory itself was early taken possession of in his Majesty's name, and had since been considered as forming part of his Majesty's dominions." (Greenhow's 'History of Oregon,' pp. 307, 448). Can the reply to the reviewer be more complete?

In a previous page other reasons have already been given why the British Government acted justly in "taking possession" of the country; and the imputation on its character, implied in the language of the reviewer, is not only improper, but is based on a rejection of the clearest facts, and then is used to colour inferences drawn from an assumption of the absence of those facts! Well might Lord John Russell say (August 6, 1845) "that nothing that he had read had shaken the opinions which he had previously expressed upon this question."

The reviewer states (p. 257), in opposition to the declaration of Sir C. Bagot, "that in the course of war between England and America, Astoria *was taken by a British force*, the British standard hoisted, and the name changed to Fort George. This, he adds, is the only case in which any part of the Oregon territory has been occupied by any person under the authority of the British Government." In the first place, *it was not taken*, for the squatters, who had no title to be there, had sold their goods, and departed before the 'Racoon' reached the place; and secondly, the reviewer himself states, "that it is strange that a man of Mr Gallatin's ability should have relied [as a title to the territory] on the settlement made by Mr Astor. Omitting, for the present, *the fatal objection* that it was *a private*, not a Government enterprise,—it was a mere attempt to establish a trading post." If it did not form part of the territory of the United States, it could not have been taken from the Government of that country; and no public question can arise out of the private transactions of the persons who had retired from the place before the 'Racoon' reached it. If, under the pressure of expected hostilities, the post had been sold by the authority of public officers, it would not be just to assert that it had been voluntarily abandoned; but in order to deprive the transaction of its private character, and to prove that the post was a proper subject of public demand, as a capture, it should be proved—which the reviewer admits it could not be—to have been within the jurisdiction of the Government of the United States.

The post was in the possession of the British Government when delivered up — not restored — conditionally to the United States, and it was a possession against which no adverse public claim existed. The settlement, also, made at Vancouver, has been recognized and sanctioned by the British Government. The prior title, by occupation, to the Columbia river, and consequently to the territory drained by it, is vested in the British Government; and if the settlement at Vancouver has not been extensively enlarged, it has arisen from the temporary engagements which the British Government has entered into respecting the whole country.

I do not think it to be necessary to correct certain other representations of facts, and inferences from them, made by the reviewer, which I think to be erroneous; such as the inferences from the fact that the title to the land in Oregon is not vested in the Hudson's Bay Company; his absurd opinions of the settlements contemplated under the Convention of the Escurial; and other matters which

would only occasion a repetition of arguments already published; but there is one statement respecting the doctrine of "contiguity" entitled to notice.

When the doctrine of "contiguity" was advanced by the Government of the United States, it was put forth as a sort of "make-weight"—a consideration to settle equal, or what it treated as somewhat equally balanced claims. The reviewer, however, advocates it as a distinct doctrine of international law, sanctioned by the British Government. The question of what is fairly continuous territory, and of the extent of country which is necessary for the defence and safe occupation of it, is very different from "contiguity" as a substantive title, in which no such considerations are involved. For the determination of the former some very clear and plain rules have been laid down by the American Government itself. (Pamphlet on the 'Oregon Question,' 2nd edit., p. 31.) The latter doctrine has no public sanction, that I am aware of. The reviewer states (p. 250), "That one of the latest instances of its exercise is the refusal by England to allow any other nation to colonize the Chatham Islands." To these islands we have an undoubted right by discovery, and the conduct of our Government has given no reason to allow it to be inferred that they have been abandoned, their very size not allowing any claim to them to be likened to the demand of Spain to the vast and enormous regions on the west coast of North America. The islands are under the instant and immediate control of our Government; but the western coast of America was beyond any existing or proposed control of the Government of Spain. The political considerations in which all governments have an interest applicable to the two cases are perfectly different.

But is the reviewer correct in citing the conduct of the British Government respecting the Chatham Islands in support of his doctrine? I cannot find any authority whatever for the positive and distinct assertion which he has made. I have examined the official papers published on the subject, and printed by the New Zealand Company (pp. 87 d.—94 d.); and they do not contain an expression to justify his statement; nor, indeed, could the occasion have brought the doctrine of "contiguity" under discussion. The facts appear to have been as follow:—

In October, 1841, the Chairman of the New Zealand Company informed the Secretary for the Colonies that the Company was in treaty with certain parties officially connected with Hamburgh and other free cities of Germany, for the sale of the Chatham Islands. He accompanied this notification with the assertion, that the Company had bought the islands from the natives, and that these islands were an independent country, like New Zealand when certain transactions between the Government and the natives took place. This statement was erroneous, both as respected New Zealand and the Chatham Islands. Lord Stanley immediately, and most properly, peremptorily refused to allow this conveyance of the rights of the Crown to be made. The Company then disclaimed having, as a Company, bought the islands, or having done any corporate act whatever with reference to their disposal, though it appeared that an agent, "acting on behalf of the New Zealand Company," had entered into an agreement respecting them with the Syndicus Sieve-

king of Hamburgh. A communication was then made by Lord Aberdeen to the Syndicus Sieveking, disclaiming all responsibility for the engagement entered into, and informing him that henceforth the Chatham Islands would form part of the colony of New Zealand, subject to all laws in force in New Zealand regarding land purchased from the natives.

It required more than a vivid imagination to infer from these facts —which prove merely that the Government checked an illegal engagement entered into by its own subjects—an enforcement of the doctrine of "contiguity" against a foreign country setting up a title of its own to occupy the Chatham Islands.

I do not believe that "contiguity" has ever been set forth in a time of peace, and independently of pretensions founded on conquest, by any Government in the world—not even excepting that of the United States—as a substantive and independent title to territory. It is a doctrine, at all times, so mischievous and dangerous; so pregnant with evil consequences; so utterly separated from any consideration by which boundaries or limits of any territory can or ought to be drawn, that no doubt can be felt that it will never receive the slightest sanction from the British Government.

The reviewer, however, after replying to Mr Greenhow's arguments, asserts "that no nation possesses any title to Oregon, perfect or imperfect, by discovery, by settlement, by treaty, or by prescription;" but he has omitted to show by what title the Russian Government occupies the coast to the north, south of its own discoveries, and why the grounds of its title, previous to any treaty, were more valid than those set forth in the present case by the British Government, the doctrine of "contiguity" not being of any avail in tracing Russian claims.

The title to part of Oregon, advocated by the reviewer, founded on "contiguity," is clearly bad; and if, as he asserts, every other title set forth on other grounds is also bad, there is no argument available for the support of the claims of either party! But the absurdity to which the arguments are thus reduced, is merely conclusive that his own reasoning is erroneous. He certainly presents a great contrast to American writers. He will receive no evidence, and they advance every possible argument, however contradictory to their own claims. He says we have no title, and that they have none; they say, that even if they had no title before the post on the Columbia was delivered up to them, that that delivery is sufficient to establish a title, — forgetting that by relying on that delivery, whether conditional or not, they trace their claims through the possession and occupation of the British Government, and cannot, on this account, claim more than a mere post on the south side of the Columbia river. The British Government, however, has consented to concede more, in offering to concede the territory on the south bank of the Columbia.

THOMAS FALCONER.

PUTNEY HILL, August 7th, 1845.

REYNELL and WEIGHT, 16 Little Pulteney street.

No reply deemed necessary by
Ro Greenhow