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EXTENT AND VALUE

OF

THE POSSESSORY RIGHTS.

OF

THE HUDSON'S BAY COMPANY

IN

OREGON, SOUTH OF FORTY-NINTH DEGREE.

37969

PUBLIC ARCHIVES
OF CANADA

1849

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CONTROLA CLAUDI

ALABAS TO

37969

PROPOSITION OF HUDSON'S BAY COMPANY.

[Confidential.]

HUDSON'S BAY HOUSE, *Lachine, January 14, 1848.*

MY DEAR SIR: With reference to our conversation, when I had the pleasure of seeing you in Montreal, about two months ago, on the subject of a sale of the Hudson's Bay Company's and Puget Sound Company's possessions, &c., west of the Rocky mountains, south of latitude 49°, either to the United States government or to a joint stock company, I should be glad to know, as early as possible, if there is any probability of your being in a condition to make a proposition in time to enable me to communicate thereon with the governor and committee in England before taking my departure for the interior, soon after the opening of the navigation.

The Hudson's Bay Company have, south of 49°, thirteen trading establishments or villages, situated on the most eligible sites as regards commerce, water power, agriculture, and dealings with the natives, while their flocks and herds pasture over large districts of country; such occupation of itself forming a good title to the districts in question. Our possessions, moreover, embrace the very best situations in the whole country for offensive and defensive operations, towns and villages, while our right of navigating the Columbia, which we hold in perpetuity, inasmuch as our charter is interminable, is saleable and transferable.

According to my construction of the term "possessory rights" in the treaty, it secures to us the right to cultivate the soil, to cut down and export timber, to carry on the fisheries, to trade for furs with the natives, and all other rights we enjoyed at the time of framing the treaty; but the term is so comprehensive as not to be easily defined. As regards the Hudson's Bay Company's interest, there is a feeling among the residents in the country that our business is likely to benefit rather than be injured by the sovereignty of the country, might lead to endless disputes, which might be productive of difficulties between the two nations, and would therefore feel disposed to submit to a very great sacrifice, in order to avert dangers of so grave a nature, by selling their lands, flocks, herds, rights of trade and navigation, &c., and withdraw within the British territory, north of 49°, if they could obtain but a moderate consideration for the same. Such consideration would indeed be moderate at one million of dollars, payable within a reasonable period. But for the reasons stated above, I should feel myself authorized to conclude an arrangement at that amount, which on a rough estimate is little more than the outlay incurred in the erection of buildings, fencing, bringing land into cultivation, and other improvements, and importing stock since our first occupation of the country. If your government were to look at the importance of getting a powerful trading association, belonging to a formidable neighboring, out of its territory, and to the great value of the real property that would be acquired; besides securing to the United States the exclusive navigation of the Columbia river and a valuable trade in furs, with

other branches of commerce, now carried on by the Hudson's Bay Company, I should think that it would readily avail itself of so favorable an opportunity for accomplishing those desirable ends.

In speaking of the possessions of the Hudson's Bay Company, I include those of a large pastoral and agricultural association, formed under their auspices, styled the Puget Sound Company, who, as well as the Hudson's Bay Company, have incurred very heavy outlay in the introduction of the most approved breeds of sheep and cattle from Europe and other parts of the world. Their flocks and herds are now exceedingly numerous, roaming over hundreds of miles of the finest country for agricultural operations west of the Rocky mountains, including fine water power for machinery, and several of the best sites for towns and villages on the shores of Puget's Sound. This association was formed in 1839, with a capital of £100,000 sterling; and so promising and productive is it, that it has this season divided ten per cent. on the paid up capital, while the stock on hand is valued at less than one third of its original cost.

As a commercial operation an arrangement on the terms I have proposed would be highly advantageous to the purchasers, by the resale of the real property and the large flocks, herds, and bands of horses, throwing aside, altogether, the national advantages arising from securing the exclusive navigation of the Columbia and of portions of the territory and trade now enjoyed by the British subjects; and I cannot help thinking that if you got this subject brought fairly before your government or leading capitalists, it could not fail to receive the most prompt and favorable consideration.

I remain, dear sir, very faithfully, yours,

G. SIMPSON.

GEORGE N. SANDERS, Esq., *New York.*

LETTER FROM SIR GEORGE SIMPSON.

HUDSON'S BAY HOUSE, *Lachine, C. E.*, November 14, 1848.

DEAR SIR: In your negotiation with the United States government for the sale of the company's possessory rights in Oregon, I do not know whether you have omitted the condition of our establishment as regards defence.

All those establishments, say thirteen in number, as per list annexed, the sites of which have been carefully selected for offensive and defensive operations, and for the military command of the country, are protected by strong picketing and corner bastions, rendering them defensible against Indians, or other irregular force, while the possession of Cape Disappointment, which is a position of great strength, affords the holders thereof the entire command of the navigation of the Columbia river.

I am, dear sir, your most obedient servant,

G. SIMPSON.

GEORGE N. SANDERS, Esq., *New York.*

List of the Hudson's Bay Company's establishments, referred to in the annexed letter.

- | | |
|---|---------------------------------|
| 1. Cape Disappointment. | 8. Fort Okunagan. |
| 2. Fort George. | 9. Fort Colvill. |
| 3. Fort Vancouver. | 10. Kootonais. <i>Kootnaico</i> |
| 4. Fort Umiqua. <i>Umiqua</i> | 11. Flat Heads. |
| 5. Fort Halla Halla. <i>Halla Halla</i> | 12. Nisqually. |
| 6. Fort Hall. | 13. Cowilitz. |
| 7. Fort Baisée. | |

FROM MAJOR J. L. MEEK, MARSHAL OF OREGON.

WASHINGTON, *August 10, 1848.*

MY DEAR SIR: With reference to your inquiry as to my idea of the value of the Hudson's Bay Company establishment, of Fort Vancouver, which, in fact, from the number and extent of the buildings may be considered a small town, I think, after much consideration, I am under the mark in saying that it must have cost the Hudson's Bay Company at least \$200,000, independent of the very heavy outlay incurred in bringing into cultivation several thousand acres of land, fenced in and under crop, from year to year. It may be proper to add, that Fort Vancouver is situated on the most eligible spot on the Columbia river, within ship navigation, for the site of a town; and that Bellevue point, on which it is situated, must, in due time, become the site of the capitol of Oregon. Fort Vancouver, you are aware, is the principal depot of the Hudson's Bay Company, on the west side of the Rocky mountains; and its defences, with a small force within the fort, are quite sufficient to afford protection to a large population against any attack from the natives.

JOSEPH L. MEEK.

LEGAL OPINION OF R. S. COXE.

WASHINGTON, July 26, 1848.

SIR: You have requested my views of the territorial rights of the Hudson's Bay Company and Puget Sound Company within the region of country lying to the south of the line established by the treaty between the United States and Great Britain of the 15th June, 1846.

The subject is not free from difficulties. In its practical operation it involves matters of fact as well as law, and it is obviously impossible to anticipate the various circumstances which may materially modify or even prevent the application of the general principles which must ultimately govern the case.

The third article of the treaty referred to in your inquiry provides that, "in the future appropriation of the territory south of the 49th parallel of north latitude, as provided by the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may already be in the occupation of land or other property, lawfully acquired within the said territory, shall be respected." The fourth article provides that "the farms, lands, and other property of every description belonging to the Puget Sound Agricultural Company on the north side of the Columbia river shall be confirmed."

The treaty, therefore, recognises and confirms the existing rights, whatever they be, but furnishes no light in ascertaining what those rights actually are. For this we must have recourse to extraneous sources of information.

It is, I think, clear, that in deciding this point, reference must be had to the law of England, which must furnish the rule by which these rights are to be defined; and to that general law, as bearing upon the charters or original grants of title, and the various statutes of Great Britain by which it may be modified or controlled. The original charter of the Hudson's Bay Company is said by Mr. Greenough to have been granted by Charles II., on the 16th May, 1669, (p. 455.) Anderson, in his History of Commerce, (vol. 3, p. 25,) gives the date of this grant as the 2d May, 1670. I have not been furnished with an authentic copy of this charter, and have relied upon the above cited authors for my knowledge of its provisions. According to them, its language is very comprehensive. It comprehended not only "the whole trade and commerce of those seas, straits, and bays, rivers, lakes," &c., but "all the lands, countries, and territories upon the coasts and confines of the seas, straits, bays, lakes, rivers," &c.

The terms of this charter nearly resemble those granted to some of the colonies upon this continent by the British crown, which have ever been construed to confer a proprietary interest in the soil as well as a modified sovereignty over the entire country granted. Such grants are not, in general, to be interpreted by the same rules which govern in the construction of private conveyances between individuals.

The territory on the west coast of America was not comprehended within this original charter, but its general provisions have been extended to that region by subsequent acts. The statute 43, George III., passed on the 11th August, 1803; that of July 2, 1831; the royal grant of 21st December, 1821, and another still more recent, to be found in Greenough, extend the territorial rights to this northwest country, and modify in some particulars the terms of the original grant. 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. The convention between that government and the United States of October, 1818, and the express saving of the rights of the United States in the last grant to the company, materially affect this branch of the case.

Under these circumstances the treaty of June, 1846, was framed, and its language must be construed with reference to the foundations upon which the rights of the company then rested. It is well known that the Hudson's Bay Company not only appropriated to its own particular and exclusive use various tracts of land lying within the general description in the grant to it, but also exercised the power of making grants of extensive tracts to sub-purchasers. The objects of the company, originally chiefly commercial and mainly confined to the fur trade, enlarged in the progress of time, and became vastly more comprehensive. Mr. Greenough says, (p. 33:) "The Hudson's Bay Company's establishments in Oregon have been, until recently, devoted entirely to the collection of furs, but within a few years many farms have been laid out and worked, and large quantities of timber have been cut and sawed and exported to the Sandwich Islands and Mexico, for the benefit of the company." The Hudson's Bay Company's establishments west of the Rocky Mountains are called forts, and are all sufficiently fortified to resist any attacks which might be expected. They are by the latest accounts twenty-two in number, of which several are situated on the coasts.—*Ibid.* Captain Wilkes (vol. 5, p. 126) estimates the number of the forts occupied by the company at twenty-five, and says they "are located at the best points for trade, and so as to secure the resort of the Indians without interfering with their usual habits."

It must, I apprehend, be conceded that the possessory rights of the company are secured by the treaty as they existed at its date under the authority of the British government. They appear, with the knowledge and at least the implied sanction of that government, to have exercised an unlimited authority, as well to grant to others as also to appropriate in severalty the absolute proprietorship of such lands as they pleased. No particular formality was prescribed or seems to have been required or followed in segregating these particular portions from the common mass; and, indeed, any such would obviously have been unnecessary and superfluous. As against British subjects, at least, what was not conveyed to others was reserved to themselves. Any act indicating the intention must necessarily have been all-sufficient. It cannot, in my judgment, and from the evidence accessible to me, be contended, with any shadow of reason, that actual surveys, lines of exact demarkation, enclosures, or anything else defining and circumscribing the extent of ground thus appropriated or reserved, such as might be necessary in the case of a private individual asserting an adverse possessory right against a paramount legal title, can, under any circumstances, be required as an essential foundation or support of the title of the company. The felling of timber *sparsum* throughout a tract of forest land, the pasturing of cattle over plains and hills, are all legal acts of ownership, and, under circumstances, would constitute the most

conclusive evidence of such possessory rights as are recognised and protected in the treaty of June, 1846. In regard to the Puget Sound Agricultural Company, the information which I possess is even less distinct and authentic. I am not informed whether it is a private association of individuals, or an incorporated company; whether it holds by immediate grant from the crown, by authority of statutory enactment, or with the consent and under sub-purchase from the Hudson's Bay Company. This latter may be presumed to be the tenure by which they hold. However this may be, the right of the company to the farms, lands, and other property of every description belonging to it, is fully confirmed by the treaty. Captain Wilkes (*vide supras*) says in relation to it, that, although they have made no dividends, the accumulation of their live stock may be considered as an equivalent for monied profits. In the event, however, of the country becoming the abode of a civilized community, the farms and other land possessed by the company must become very valuable, as the posts occupy all the points most favorably situated for trade, and the agricultural establishments for farming operations.

Under all the circumstances of the case, and with the very limited means of information at my command, it is manifest that, in answering your inquiry, I can do little more than state general rules and principles, leaving the application of them to particular cases until the precise circumstances of such cases shall be ascertained.

It will doubtless occur, unless prompt measures be taken to prevent the evil, that a vast amount of troublesome and expensive litigation, and possibly even national controversies, may be expected to grow out of this subject, materially impeding the settlement of the country, and seriously retarding its progress in improvement.

RICHARD S. COXE.

GEORGE N. SANDERS, Esq.

OPINION OF MR. WEBSTER UPON THE NAVIGATION OF THE COLUMBIA RIVER.

WASHINGTON, *August 16, 1848.*

SIR: In answer to your further inquiries I have to state, that, in my opinion, the reservation of the right in the Oregon treaty to navigate the Columbia river, enures to the benefit of the Hudson's Bay Company alone. The object was not a general grant of privilege to English commerce, or English subjects, generally.

It is quite clear, that if the company agree to release or extinguish their rights, it is annihilated, and the reservation contained in the treaty is gone forever:

DANIEL WEBSTER.

GEORGE N. SANDERS, Esq.

**CASE HAVING REFERENCE TO THE ACCOMPANYING
DOCUMENTS.**

The opinion of counsel is required on the following questions, viz :

Firstly. As to the nature of the rights of the Hudson's Bay Company over its territories ; how those rights were acquired ; and in what manner now secured ?

Secondly. What the expression " *possessory rights,*" contained in the treaty between Great Britain and the United States, herewith submitted, comprehends ?

Thirdly. Whether the use of the Columbia river, under the terms of that treaty, continues to British subjects in case of the surrender by the Hudson's Bay Company of its territory to the United States ?

The opinion being required for foreign information and perusal, counsel is requested to prepare it with reference to that object.

OPINION.

The nature of the rights of the Hudson's Bay Company over its territories cannot be better defined than in the words of the Royal Charter from Charles II., dated the 2d May, 1670.

After the ordinary grant of incorporation, with the powers incident thereto, and after providing for the internal regulations of the body, the charter goes on to declare—

"And to the end the said Governor and Company of Adventurers, of England, trading into Hudson's Bay, may be encouraged to undertake and effectually to prosecute the said design of our more especial grace, certain knowledge and mere motion, we have given, granted, and confirmed, and, by these presents, for us, our heirs and successors, do give, grant, and confirm unto the said Governor and Company, and their successors, the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that are not already actually possessed by, or granted to, any of our subjects, or possessed by the subjects of any other Christian prince or State, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, inlets, and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid; and all mines royal, as well discovered as not discovered, of gold, silver, gems, and precious stones to be found or discovered within the territories, limits, and

" places aforesaid ; and that the said land be, from henceforth, reckoned and reputed as one
 " of our plantations or colonies in America, called Rupert's Land. And, further, we do,
 " by these presents, for us, our heirs and successors, make, create, and constitute the said
 " Governor and Company, for the time being, and their successors, the true and absolute
 " lords and proprietors of the same territory, limits, and places aforesaid, and of all other
 " the premises, saving always the faith, allegiance, and sovereign dominion due to us, our
 " heirs and successors; for the same to have, hold, possess, and enjoy the said territory,
 " limits, and places, and all and singular other the premises hereby granted as aforesaid,
 " with their and every of their rights, members, jurisdictions, prerogatives, royalties, and
 " appurtenances whatsoever to them the said Governor and Company, and their successors,
 " forever to be holden of us, our heirs and successors, as of our manor of East Greenwich,
 " in our county of Kent, in free and common soccage, and not in capite, or by knights' ser-
 " vice, yielding and paying yearly to us, our heirs and successors, for the same, two elks and
 " two black beavers, whensoever, and as often as we, our heirs and successors, shall happen
 " to enter into the said countries, territories, and regions hereby granted.

" And further, our will and pleasure is, and by these presents, for us, our heirs and succes-
 " sors, we do grant unto the said Governor and Company, and to their successors, that it shall
 " and may be lawful to and for the said Governor and Company, and their successors, from
 " time to time to assemble themselves for or about any the matters, causes, affairs, or busi-
 " ness of the said trade, in any place or places for the same, convenient within our dominions
 " or elsewhere, and there to hold court for the said Company and the affairs thereof. And,
 " also, it shall and may be lawful to and for them, and the greater part of them, being so as-
 " sembled, and that shall then and there be present, in any such place or places, whereof the
 " Governor or his deputy, for the time being, to be one, to make, ordain, and constitute such
 " and so many reasonable laws, constitutions, orders and ordinances, as to them, or the
 " greater part of them, being then and there present, shall seem necessary and convenient
 " for the good government of the said Company, and of all governors of colonies, forts and
 " plantations, factors, masters, mariners, and other officers employed, or to be employed, in
 " any of the territories and lands aforesaid, and in any of their voyages, and for the better
 " advancement and continuance of the said trade, or traffic and plantations, and the same
 " laws, constitutions, orders and ordinances, so made, to put in use and execute accordingly,
 " and at their pleasure to revoke and alter the same, or any of them, as the occasion shall
 " require. And that the said Governor and Company, so often as they shall make, ordain,
 " or establish any such laws, constitutions, orders, and ordinances, in such form as aforesaid,
 " shall and may lawfully impose, ordain, limit and provide, such pains, penalties, and
 " punishments, upon all offenders, contrary to such laws, constitutions, orders and ordinances,
 " or any of them, as to the said Governor or Company, for the time being, or the greater
 " part of them, then and there being present, the said Governor or his deputy being always
 " one, shall seem necessary, requisite, or convenient for the observation of the same laws,
 " constitutions, orders and ordinances, and the same fines and americiaments shall and may,
 " by their officers and servants, from time to time to be appointed for that purpose, levy,
 " take and have, to the use of the said Governor and Company, and their successors, with-
 " out the impediment of us, our heirs and successors, or of any the officers or ministers of us,
 " our heirs or successors, and without any account therefor to us, our heirs and successors,
 " to be made. All and singular which laws, constitutions, orders and ordinances, so as
 " aforesaid to be made, we will to be duly observed and kept under the pains and penalties

“therein to be contained; so, always, as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the laws, statutes, or customs of this our realm.

“And, furthermore, of our ample and abundant grace, certain knowledge, and mere motion, we have granted, and, by these presents, for us, our heirs and successors, do grant, unto the said Governor and Company, and their successors, that they, and their successors, and their factors, servants, and agents, for them, and on their behalf, and not otherwise, shall, and forever hereafter have, use, and enjoy, not only the whole, entire, and only trade and traffic, and the whole, entire, and only liberty, use, and privilege, of trading and trafficking to and from the territory, limits, and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas, into which they shall find entrance or passage, by water or land, out of the territories, limits, or places aforesaid; and to and with all the natives and people inhabiting, or which shall inhabit, within the territories, limits, and places aforesaid; and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits, and places, which are not already possessed as aforesaid, or whereof the sole liberty or privilege of trade and traffic is not granted to any other of our subjects.

“And we, of our further royal favor, and of our more especial grace, certain knowledge, and mere motion, have granted, and, by these presents, for us, our heirs and successors, do grant, to the said Governor and Company, and to their successors, that neither the said territories, limits, and places, hereby granted as aforesaid, nor any part thereof, nor the islands, havens, ports, cities, towns, or places thereof, or therein contained, shall be visited, frequented, or haunted, by any of the subjects of us, our heirs or successors, contrary to the true meaning of these presents, and by virtue of our prerogative royal, which we will not have, on that behalf, argued or brought into question; we straightly charge, command, and prohibit, for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly, do visit, haunt, frequent, or trade, traffic, or adventure, by way of merchandise, into or from any of the said territories, limits, or places hereby granted, or any or either of them, other than the said Governor and Company, and such particular persons as now be, or shall hereafter be, of that company, their agents, factors, and assigns, unless it be by the license and agreement of the said Governor and Company, in writing first had and obtained under their common seal, to be granted—upon pain that every such person or persons that shall trade or traffic unto or from any of the countries, territories, or limits aforesaid, other than the said Governor and Company, and their successors, shall incur our indignation and the forfeiture and the loss of the goods, merchandise, and other things whatsoever which so shall be brought into this realm of England, or any of the dominions of the same, contrary to our said prohibition, or the purport or true meaning of these presents; for which the said Governor and Company shall find, take, and seize, in other places, out of our dominions, where the said company, their agents, factors, or ministers, shall trade, traffic, or inhabit, by virtue of these our letters patent; as also the ship and ships, with the furniture thereof, wherein such goods, merchandise, and other things shall be brought and found; the one-half of all the said forfeitures to be to us, our heirs and successors, and the other half thereof we do, by these presents, clearly and wholly, for us, our heirs and successors, give and grant unto the said Governor and Company, and their successors.

“ And, further, all and every the said offenders, for their said contempt, to suffer such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient; and not to be in any wise delivered until they, and every of them, shall become bound unto the said Governor, for the time being, in the sum of one thousand pounds at the least, at no time thereafter to trade or traffic into any of the said places, seas, straits, bays, ports, havens, or territories aforesaid, contrary to our express commandment in that behalf, set down and published.

“ And, further, of our more especial grace, we have condescended and granted, and by these presents, for us, our heirs, and successors, do grant unto the said governor and company, and their successors, that we, our heirs, and successors will not grant liberty, license, or power to any person or persons whatsoever, contrary to the tenor of these our letters patent, to trade, traffic, or inhabit unto or upon any of the territories, limits, or places afore specified, contrary to the true meaning of these presents, without the consent of the said Governor and Company, or the most part of them.”

After the mention of sundry other minor privileges, there is a further grant, as follows: “ And further of our especial grace, certain knowledge, and mere motion, we do, for us, our heirs, and successors, grant to and with the said Governor and Company of adventurers of England, trading into Hudson’s bay, that all lands, islands, territories, plantations, forts, fortifications, factories, or colonies, where the said companies, factories, and trade are, or shall be, within any the ports or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns; saving the faith and allegiance due to be performed to us, our heirs, and successors as aforesaid. And that the said Governor and Company shall have liberty, full power, and authority to appoint and establish governors and all other officers to govern them; and that the governor and his council of the several and respective places where the said company shall have plantations, forts, factories, colonies, or places of trade, within any the countries, lands, or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, and shall live under them in all causes, whether civil or criminal, according to the laws of this kingdom, to execute justice accordingly.”

The territories mentioned in this charter are: “ All those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatever latitude they shall be, that lie within the entrance of the straits commonly called Hudson’s straits, together with all the lands, countries, and territories upon the coasts and confines of the seas, straits, bays, lakes, rivers, creeks, and sounds aforesaid, which are not now actually possessed by any of our subjects, or by the subjects of any other Christian prince, or state.” This grant is a perpetual grant, and, as such, has been recognised by repeated legislative enactments.

In the year 1819, difficulties arose between the Hudson’s Bay Company and the ‘North-west Company of Montreal,’ an association of persons formed for like trading purposes, respecting the exclusive right of trading on the territories mentioned in this grant, and the animosities and feuds arising from this competition between the companies led to such serious breaches of the peace, that Parliament was compelled to interpose to put an end to them.

Accordingly, by the act of 1st and 2d George IV., chap. 66, the crown was empowered to make grants, “under the hand and seal of one of the principal secretaries of state, to

“any body corporate or company, of such parts of North America as shall be specified in those grants, not being part of the territories theretofore granted to the Hudson’s Bay Company, or any of the North American provinces, or of the United States of America.”

By a grant executed under the authority of this act, bearing date the 5th of December, 1821, the Hudson’s Bay Company acquired “an exclusive right of trading in all such parts of North America to the northward and westward of the lands and territories of the United States, as do not form any part of our provinces of North America, or of the United States.”

This grant was given for a period of twenty-one years; at the end of which time it was renewed for a like further period of twenty-one years.

Under the authority of this act and grant, and of other acts, the Hudson’s Bay Company have taken possession of and cultivated lands, erected forts and houses, and exercised various other acts of ownership and possession, and have been invested with a civil and criminal jurisdiction over the territory.

The effect of these grants is not to deprive the Hudson’s Bay Company of any of the territory or rights, secured under the original charter from Charles 2d, nor in any way to limit the duration of those rights. It appears to me, therefore, that the right of the Hudson’s Bay Company over the territories mentioned in the original grant, are those of sovereignty and ownership, and that on the other lands they have, in addition to the exclusive right of trading secured to them by the license, acquired the rights of individuals who have improved the soil, built habitations, and otherwise possessed and used property, in good faith, with the consent of the owner, during a long series of years. These rights, which the good faith of the government would be bound to recognize, have been protected by the treaty.

On the second question, with reference to the reserve of the *possessory rights* of the Hudson’s Bay Company, contained in the third article of the treaty, two points arise, namely: Firstly, what is the nature? and, secondly, what the local extent of the rights herein spoken of?

On the first question I am clearly of opinion that the right is such a fixed right, in the soil, as would, in law, prevent its alienation to others. There is not in my mind, any doubt, but that an action would be at the instance of the party in possession for any interruption in that possession: the right must be looked to with reference to the object for which it was given, and the purposes for which it was intended to be applied.

The second branch of this question involves more difficulty.

To determine the local extent of the right, reference must again be had to the object for which the grant was given, and the expressed intention of the legislature with reference to those objects. A due estimate of these considerations leads to the conclusion, that the legislature meant that the possession should extend over the whole territory.

We find a civil and a criminal jurisdiction given in the following words:

“That it shall be lawful for his Majesty, if he shall deem it convenient so to do, to issue a commission or commissions to any person or persons, to be and act as justices of the peace within such parts of America as aforesaid, as well within any territories heretofore granted to the company of adventurers of England trading to Hudson’s bay, as within the Indian territories of such other parts of America as aforesaid; and it shall be lawful for the court in the province of Upper Canada, in any case in which it shall appear expedient to have any evidence taken by commission, or to have any facts or issue, or any cause or suit ascertained, to issue a commission to any three or more of such justices to take such evi-

“ dence and return the same, or try such issues; and, for that purpose, to hold courts, and
 “ to issue subpoenas, or other processes, to compel attendance of plaintiffs, defendants, jurors,
 “ witnesses, and all other persons requisite and essential to the execution of the several pur-
 “ poses for which such commission or commissions had issued, and with the like power and
 “ authority as are vested in the courts in the said province of Upper Canada; and any order
 “ verdict, judgment, or decree, that shall be made, found, published, or declared, by and
 “ before any court or courts held under and by virtue of such commission or commissions,
 “ shall be considered to be of as full effect, and enforced in like manner, as if the same had
 “ been made, found, declared, or published, within the jurisdiction of the court of the said
 “ province; and at the time of issuing such commission or commissions shall be declared the
 “ place or places where such commission is to be opened, and the courts and proceedings
 “ thereunder held; and it shall be, at the same time, provided how and by what means the ex-
 “ penses of such commission, and the execution thereof, shall be raised and provided for.

“ *And be it further enacted,* That it shall be lawful for his Majesty, notwithstanding any
 “ thing contained in this act, or in any charter granted to the said Governor and Company of
 “ adventurers of England trading to Hudson’s bay, from time to time, by any commission
 “ under the great seal, to authorize and empower any such persons so appointed justices of
 “ the peace as aforesaid, to sit and hold courts of record for the trial of criminal offences
 “ and misdemeanors, and also of civil causes; and it shall be lawful for his Majesty to order,
 “ direct, and authorize the appointment of proper officers to act in aid of such courts and
 “ justices within the jurisdiction assigned to such courts and justices in any such commis-
 “ sion; any thing in this act or in any charter of the Governor and Company of merchant
 “ adventurers of England trading to Hudson’s bay, to the contrary notwithstanding.

“ *Provided always, and be it further enacted,* That such courts shall be constituted as
 “ to the number of justices to preside therein and as to such places within the said territo-
 “ ries of the said company or any Indian territories or other parts of North America afore-
 “ said, and the times and manner of holding the same, as his Majesty shall from time to
 “ time order and direct; but shall not try any offender on any charge or indictment for any
 “ felony made the subject of capital punishment, or for any offence, or passing sentence
 “ affecting the life of any offender, or adjudge or cause any offenders to suffer capital pun-
 “ ishment or transportation, or take cognizance or try any civil action or suit in which the
 “ cause of such suit or action shall exceed in value the amount or sum of two hundred
 “ pounds; and in every case of any offence subjecting the person committing the same to
 “ capital punishment or transportation, the court, or any judge of such court, or any justice
 “ or justice of the peace, before whom any such offender shall be brought, shall commit such
 “ offender to safe custody, and cause such offender to be sent in such custody for trial in the
 “ court of the province of Upper Canada.”

“ *And be it further enacted,* That nothing in this act contained shall be taken or construed
 “ to affect any right, privilege, authority or jurisdiction which the Governor and Company of
 “ adventurers trading to Hudson’s bay are by law entitled to claim and exercise under their
 “ charter; but that all such rights, privileges, authorities, and jurisdiction shall remain in as
 “ full force, virtue, and effect, as if this act had never been made, any thing in this act to the
 “ contrary notwithstanding.”

These provisions of the law are in substance embodied in the subsequent grants. It is
 manifest from this, as well as from the nature of the business which the Hudson’s Bay Com-
 pany was authorized to carry on, that the imperial parliament never meant to circumscribe

the possession of the company within such limits as might be defined by actual and visible boundaries.

The supposition of an adverse possession by any other party of any portion or subdivision of the territory is at variance, not only with the whole spirit of the act, but is repugnant to the idea of an exclusive right of trade over a waste and uncultivated country.

The end and object of the grant was to do away with the disputes engendered by undefined possessions, inseparable from the nature of the trade and circumstances of the country.

On the third question: The right reserved in the second article of the treaty, namely, that the navigation of the branch of the Columbia river shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, is, in my opinion, intended exclusively for the benefit of the Hudson's Bay Company, and cannot be extended to confer a general right on all British subjects, except for the purposes of such trade.

If, therefore, the Hudson's Bay Company dispose of their rights, the object for which the reservation was made ceases, and the right, in my opinion, becomes extinct.

JNO. ROSE, Q. C.

MONTREAL, December 1, 1848.

OPINION OF HON. LOUIS McLANE.

An opinion of John Rose, esq., Queen's Counsel, Montreal, Canada, upon the following questions, has been shown to me:

Firstly. As to the nature of the rights of the Hudson's Bay Company over its territories, how those rights were acquired, and in what manner now secured?

Secondly. What the expression "possessory rights," contained in the treaty between Great Britain and the United States, concluded the day of A. D., 1846.

Thirdly. Whether the use of the Columbia river, under the terms of the treaty, continues to British subjects in case of the surrender, by the Hudson's Bay Company, of its territories, and the right of using the river to the United States?

And my opinion has also been requested particularly upon the third question, and, with entire confidence in the researches and conclusions of Mr. Rose upon the first and second questions, I proceed to state it accordingly.

I am quite clear that the second article of the treaty related exclusively to the rights and trade of the Hudson's Bay Company, and intended to reserve for those objects a limited privilege only, which, without the article, would not have been claimed. The sole object of this provision was to keep the navigation of the river open for the trade of the Hudson's Bay Company, if carried on by that company and British subjects. It was not a general but a particular right; even British subjects could not use the river as such, unless they were engaged in the trade with the Hudson's Bay Company; and I am of opinion that, if the Hudson's Bay Company surrender or dispose of their rights, the object of the treaty would cease, and the right reserved by the second article would be extinct.

LOUIS McLANE.

BALTIMORE, *January 6, 1847.*

OPINION OF JOSIAH RANDALL.

I have attentively examined the treaty concluded the 15th June, 1846, between the United States of America and the united kingdom of Great Britain and Ireland, respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky mountains, and the rights of the Hudson's Bay Company and the Puget's Sound Agricultural Company, therein contained. I have also read the opinions of Messrs. Daniel Webster and Richard S. Coxe, and sundry other documents and letters accompanying the same.

First. I am of opinion that the Hudson's Bay Company, and the Puget's Sound Agricultural Company, have a legal title to the lands in their enjoyment and possession. At the date of the treaty, and under the treaty, such title is protected to its fullest extent. What constituted such a possession as confers a title may be a matter of some difficulty, but the rule on this subject is clearly stated by Mr. Coxe, and I cheerfully subscribe thereto.

It is true the third 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, and I think the true meaning of the section is, that, although the sovereignty of the country is vested in the United States, yet that the private property of the Hudson's Bay Company, and British subjects, is intended to be recognized and held sacred, as theretofore used and enjoyed.

Secondly. The fourth article of the treaty contemplates the purchase, by the United States, of farms, lands, and other property, within the territory ceded and assigned to them. The advantages of buying out British companies located within the country of the United States are obvious, and will, of course, be appreciated by our government whenever the negotiations to effect that object shall be commenced.

Thirdly. The second article of the treaty secures to the Hudson's Bay Company, and all British subjects trading with the same, the right to navigate the Columbia river. The terms securing this right, taken in connexion with other matters, are not explicit; but, nevertheless, I am of the opinion that, whenever the Hudson's Bay Company shall be bought out by the government of the United States, and their rights under the treaty extinguished, the privilege to navigate the river ceases, and, from that time, neither the company nor British subjects retain any privileges not held by the subjects of other foreign States.

Fourthly. It is not necessary to refer more particularly to the opinions of Messrs. Webster and Coxe, excepting to say that I substantially concur in the views expressed by those gentlemen.

JOSIAH RANDALL,

PHILADELPHIA, *December 18, 1848.*

OPINION UPON THE NAVIGATION AND POSSESSORY RIGHTS OF THE
HUDSON'S BAY COMPANY IN OREGON.

By the Oregon treaty of June 15, 1846, the right to navigate the Columbia river was secured to the Hudson's Bay Company, and to all British subjects trading with the same. *Art. II.* The "possessory rights" of that company south of the forty-ninth parallel of north latitude are to be respected. *Art. III.* 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, are confined to said company, subject to be transferred to the government of the United States, at a proper valuation, if deemed by that government to be of public and political importance. *Art. IV.*

These rights of navigation, possession, and property, are offered by the respective companies to the government of the United States, for one million of dollars.

The proposition involves a consideration of the nature, extent, and value of the rights and property in question; and the validity and effect of such transfer. To understand the subject fully, a brief historic sketch may be essential.

The Hudson's Bay Company* was incorporated by charter of Charles the Second to Prince Rupert and his associates, dated the 2d day of May, 1670,† under the title of "The Governor and Company of Adventurers of England trading into Hudson's Bay," with the exclusive privilege of trading to all parts within the entrance of the strait, commonly called Hudson's strait. The charter was ample and perpetual.‡ But the exclusive privilege, not being sanctioned by parliament, was said to have been taken away by act of 1 *Will. & Mary*. The company, however, continued to claim and exercise exclusive and prohibitory rights.§ Superior advantages over individual traders enabled them to extend operations through nearly the whole fur region of North America, and secured a monopoly until the establishment, in 1783, of the Northwest Fur Company. This company disputed the exclusive right of the Hudson's Bay Company, actively opposed it, and hostilities frequently ensued between the servants of the two companies.||

At length, in 1821, 3d July, by an act of parliament to regulate the fur trade, &c., Great Britain extended her civil and criminal jurisdiction over her subjects engaged in the fur trade in that territory. In the same year the two rival companies were united by license of the "British crown," and the whole business was thereafter conducted under the name of the

* The following historical sketch of the Hudson's Bay and Puget Sound Companies, is derived chiefly from the highest American authorities; Silliman's Journal, Encyclopædia Americana, Irving's Astoria, Wilkes' Narrative, Greenhow's Oregon, Presidents' message and accompanying documents, and the Congressional debates. Of the latter, Mr. Benton's speech in the Senate, on confirming the treaty, and Mr. Owens' speech in the House of Representatives, on the Oregon question, are chiefly used. The British authorities cited are also of the highest character within reach. Greenhow says the charter was dated 16th of May, 1669; other authorities, British and American, give 2d May, 1670.

† Rees' Cyclopædia.—*Am. and Can. Dic.*

‡ Mr. Benton on ratifying the treaty.

§ Rees' Cyclopædia.

|| Encyclopædia Americana.—Greenhow's Oregon.

Hudson's Bay Company. This license, sanctioned by act of parliament, granted to the Hudson's Bay Company exclusive trade with the Indian tribes in the Oregon territory, subject to a reservation that it shall not operate to the exclusion "of subjects of any foreign States, who, under or by force of any convention, may be entitled to and engaged in such trade."* This license was for twenty-one years, but afterward it was renewed for the further period of twenty-one years. By this union, the only formidable rivalry to the Hudson's Bay Company ceased, and by the crown license its monopoly was secured against all further question or denial.

From this period the operations of the company were greatly extended north, east, south, and west. Forts and trading-houses were erected, colonies planted, and settlements made, so that as early as 1834, the country extending from the Pacific, east to the Rocky mountains, and from fifty-three degrees north latitude to the Columbia river, was occupied by the Hudson's Bay Company.† Within the portion lying between the Columbia river and the boundary line of the 49th degree are thirteen forts and trading establishments, erected for defence against the Indians and other irregular force. These have been carefully selected for offensive and defensive operations, for the military command of the country, and one position of great strength, Cape Disappointment, holds entire command of the navigation of the Columbia river.‡ The American traders and trappers, instead of enjoying a participation in the trade of the Columbia river and its tributaries, were obliged to keep south of that river, out of the track of the Hudson's Bay Company.§ That company induced the removal to what they call the American side of the river of every citizen of the United States who attempted a settlement on what they term the British side.|| Not one American citizen has found a home north of that stream.¶

The Hudson's Bay Company was established mainly for purposes of trade. Its charter precluded agricultural operations.** Besides, much of the country occupied by the company was not adapted for agriculture. In so wretched a country there can be no plantations, properly so called, nor any towns and villages. The resident traders, therefore, must be supplied with bread, beef, flour, peas, and other necessaries from England, or some parts of America.†† The Puget Sound Agricultural Company was therefore established under the auspices of, and as auxiliary to, the Hudson's Bay Company, with the chartered right and capital to found extensive agricultural settlements of the most permanent kind.‡‡ Captain Wilkes gives the following account:

"As the charter of the Hudson's Bay Company precludes their engaging in agricultural operations, another company has been organized under the title of the Puget Sound Company, the shares of which are held by the officers, agents, and servants of the Hudson's Bay Company, and its officers are exclusively chosen from among them. * * * * The capital is £500,000, (two millions of dollars.) Its operations are large, comprising importations of stock from California, and some of the best breeds of cattle from England. They have

* Pres. message, 1845.

† 25 Silliman's Journal, 324. 2 Irving's Astoria, 270.

‡ Sir George Simpson.

§ Irving's Astoria, 269. 25 Silliman's Journal, 324.

|| Robert Dale Owen, House Rep. Jan. 25.

¶ Greenhow, 299.

** 4 Wilkes' Narrative, 307.

†† Rees' Cyclopaedia. Furs.

‡‡ Mr. Owen.

also entered into farming on an extensive scale, using as laborers the servants of the Hudson's Bay Company, who are bound to do all manner of service required of them, even to bearing arms." 4 Wilkes' Nar. 307, 308. 8vo. ed.

Its location embraces the most valuable portion of the Oregon territory for agricultural and commercial purposes. The centre of their operations is Fort Nisqually, at the southern extremity of Puget sound, the very point at which, in all probability, a line of communication hence to China and the East Indies would terminate, and the consequent embarkation of the Asiatic trade; the New Orleans, in short, of the Columbia valley, with half the world directly open to the vessels that shall leave her wharves.*

By Senator Benton, the Puget Sound Company is thus spoken of:

"The company is in the Olympic district, and it will be of public and political importance that no foreign company should be established there. The Olympic district is detached from the valley of the Columbia, is fertile and picturesque—a square of mountains and valleys on the sea coast—and will make a fine American settlement of one hundred miles every way. Puget's sound and its waters will afford select positions for naval stations. * * * * A naval station, especially for large ships, may be established there; and in that point of view it may be of public and political importance that no foreign company should be there. If the article had been simply for the confirmation of their lands to the company I should have had great objections to it; but the option of taking them at a valuation removes the difficulty."†

Such was the position of the Hudson's Bay Company, and the Puget Sound Agricultural Company, in reference to the territory south of the 49th°, at the date of the Oregon treaty. Its stipulations are to be construed with reference to the contracting parties, the subject matter, and the persons on whom it is to operate. *United States v. Arredondo and others*; 6 Peters' Reports, 710. The treaty contains the following articles:

"ART. 1. From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's island; and thence southerly, through the middle of the said channel, and of Fuca's straits, to the Pacific ocean: *Provided, however*, That the navigation of the whole of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties.

"ART. II. From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia river, the navigation of the said branch shall 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 shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be so construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

* Mr. Owen.

† Mr. Benton on confirming the treaty.

"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.

"ART. IV. 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, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States government 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 shall be transferred to the said government, at a proper valuation, to be agreed upon by the parties."

I. THE NAVIGATION RIGHT.

Is the British right to navigate the Columbia river, under the terms of the Oregon treaty, EXCLUSIVE in the Hudson's Bay Company, and is it PERPETUAL?

This is the first question arising under the offer now made to the United States government.

By the first article of the treaty, the sovereignty of the river within the prescribed boundary is vested in the United States, subject to the right specified in the second article. It is apparent that no other right than that expressly mentioned was contemplated by the high contracting powers; and that no claim, founded on pretence of the upper portion of the northern branches being within British dominion, was intended to be recognized. While the right of a nation, possessing the upper parts of a navigable river, to descend to the sea, may be sometimes acknowledged, it is, nevertheless, termed by jurists a right of imperfect obligation.* But when, as in the present instance, a territory has been in dispute, a boundary agreed upon, and a special right to navigation stipulated to one of the parties, it is not to be conceived that any further right, dehors the treaty, would be seriously set up by such party, or in any degree tolerated by the other. The British navigation right is, therefore, limited to the extent expressed by the treaty, and cannot be extended beyond its plain letter, on the ground of the upper branches passing through British territory, or upon any other pretence whatever.

The stipulation is exclusively in favor of that company, extending for its benefit to British subjects, trading with the same. Not only, then, is the right limited to subjects of a particular description, but the privilege itself appertains to the company, being for its exclusive use. And if the company may relinquish the chief and primary benefit of navigation for themselves, their officers, agents, &c., it would seem beyond doubt, that the merely secondary and subordinate privilege extended to those trading with them may also be relinquished. The company's power to surrender any right belonging to it has not been questioned; for, independent of any positive law, all corporations have the absolute *jus disponendi*, neither limited as to objects, nor circumscribed as to quantity.† Settlements had been made, trading establishments erected, business extensively engaged in by the company in reference to the navigation of the Columbia. It was, therefore, an act of duty in the British govern-

* Kent's Com. 35.—citing Grotius, lib. 2.—Puff. lib. 3, ch. 3.—Vattel, lib. 2, sec. 212.

† Kent's Com. 281.—1 Ves. & Bea. 226. Angell and Ames on Corporations, 125, 126; 2 Bland, 142.

ment, and of just liberality on the American side, to stipulate for that right so long as required by the interests of the company. And to ascertain the extent of this stipulation, we may refer moreover to the fact, that the right to trade, upon which the right to navigate is dependent, was, by express terms of the royal license, limited to persons "authorized by said company;" all other British subjects being prohibited. This prohibition was rigorously enforced; so that the right to navigate, being dependant upon the capacity to trade with the company, and that capacity resting upon authority of the company, the stipulation, if relinquished by it, can enure to no other British subject. This right, therefore, belongs exclusively to the Hudson's Bay Company, to be enjoyed, for its benefit, by British subjects trading with it, and, like any other exclusive right, may be surrendered or transferred to the government of the United States, so as forever to exclude all other claims.

It is also perpetual. The right being stipulated without limitation of time, necessarily attaches for the duration of the company's existence. An opinion has been expressed, that according to the terms of the treaty, this right can exist only during the term of the present crown license.*

This opinion is based upon the assertion that the Hudson's Bay Company, referred to in the treaty, is not the one chartered by Charles the Second, but is a distinct company, created in 1821, and existing by license of the crown, continued for twenty-one years by new license in 1842 † Supposing the fact to be as alleged, the conclusion that the navigation right under the treaty must necessarily expire with the present crown license, may perhaps be questioned. The company has an artificial existence created by sovereign authority, which existence may terminate at a specified period, or be indefinitely extended by an exercise of the same sovereign power. This power known to the contracting parties, is, nevertheless, unrestricted in its exercise by the treaty; nor is there any word or reference indicating a restriction to the present being of the company. An extension of corporate existence is regarded not as a new creation, but merely a continuance, or protraction, of former being. Former rights and privileges necessarily accompany this continued existence. Supposing, therefore, that the existence of the Hudson's Bay Company commenced in 1821, and may expire in 1863, by the terms of the present license, yet there is no reason to doubt that an extension would be sought for and granted. Were the United States, in such a case, to deny the right of navigation after such extension, it would scarcely be assented to by the British government; so that new occasion for difficulty and collision must arise.

But it is said that, upon this understanding, the Senate advised the acceptance of the treaty; notice thereof being given to the British minister without protest from his government.‡ To this it may be answered, that the notification signified only the understanding of one party, and cannot, in the absence of express assent, conclude the other, who may rely upon the plain letter of the treaty, and its obvious import. And the British government would, doubtless, be slow to acknowledge Mr. Buchanan's notice to Mr. Packenham as a part of the treaty, or as a modification, or interpretation of its terms. Besides, the stipulation was for the benefit of the Hudson's Bay Company. Notice to the company and its assent to this restricted acception may have been deemed essential by the British government; so that in any view, grave difficulty may arise upon this point between the two nations, unless an arrangement be made with the Hudson's Bay Company.

* Senate debate on ratifying the treaty.

† Senate debate on ratifying the treaty.

‡ Ibid.

But again, it is conceived that the treaty refers to the same company, chartered by Charles the Second, and not a second or different company.

The Northwest Fur Company having been established, as has been seen, in 1783, the exclusive privileges of the Hudson's Bay Company were denied, and a ruinous competition ensued. But in 1821, a coalition took place; the two companies were united; the relics of the Northwest Company became merged in the rival association, and the whole business was thereafter conducted under the name of Hudson's Bay Company.* In the same year British laws were extended over the territory, and by license of the British crown exclusive privileges of great magnitude were granted to the Hudson's Bay Company. The "union, or coalition," of the two companies, the "merging" of the Northwest into the Hudson's Bay Company, are spoken of, as also the "Crown license," granting exclusive privileges to the Hudson's Bay Company, but no mention is made of the creation of any "second" Hudson's Bay Company, distinct from that chartered by Charles the Second.†

But, reference to a few facts and documents are conclusive on this question.‡ Charles the Second's charter to the governor and Company of Hudson's Bay was perpetual, the corporate name being "The Governor and Company of Adventurers of England trading into Hudson's Bay." The powers were almost sovereign, the charter providing that the company, "at all times hereafter shall be personable and capable in law to have, purchase, receive, possess, enjoy, and retain lands, rents, privileges, liberties, jurisdiction, franchises, and hereditaments, of what kind, nature, and quality soever they be, to them and their successors." * * The whole trade, fishery, navigation, minerals, &c., of the country is granted to the company exclusively; and the company is empowered "to send ships and build fortifications for the defence of its possessions, as well as to make war and peace with all nations and people not Christians."

The act of 1 Will. & Mary, heretofore mentioned, is said to have taken away the exclusive privileges of the charter, but they continued to be claimed by the Hudson's Bay, and resisted by the Northwest Company. In 1804, an act of 43 Geo. III. extended the jurisdiction of courts of justice to certain parts of North America, adjoining the provinces of Upper and Lower Canada.

But, in 1814, the enmity existing between the Hudson Bay and Northwest Companies broke out into regular war, which was openly carried on. Posts were taken and destroyed on both sides, and battles fought. These affairs were brought before parliament in June, 1819. A compromise was effected by ministerial mediation, and, on the 2d of March, 1821, an agreement was made for putting an end to competition, and carrying on the trade in the name of the Hudson's Bay Company exclusively. Four months afterwards, 2d July, 1821, an act of parliament to regulate the fur trade and establish criminal and civil jurisdiction, was passed. It recited the competition and strife heretofore existing between the companies, and, among other provisions, authorized his Majesty to grant a royal license to the Hudson's Bay Company, by its chartered name, for the exclusive privilege of trading. The same company is expressly named by its chartered title, in the first, third, ninth, tenth, and eleventh sections of the act, and finally the fourteenth section is as follows:

"XIV. *And be it further enacted,* That nothing in this act contained shall be taken or construed to affect any right, privilege, authority, or jurisdiction, which the *Governor and*

* Irving's Astoria.—Silliman's Journal.—President's message, 1845.

† See documents.—Greenhow, 465, 476.

‡ Greenhow's Oregon.—En. Am. Irving's Astoria.

Company of Adventurers trading in Hudson's Bay, are by law entitled to claim and exercise under their charter; but that all such rights, privileges, authorities, and jurisdictions shall remain in as full force, virtue, and effect as if this act had never been made."

Under the first section of the act, a royal license was issued on the 21st day of December, 1821, and is entitled a "Grant of the exclusive trade with the Indians of North America to the Hudson's Bay Company." After reciting, as in the act of parliament, the previous difficulties between the two companies, and an agreement between them to put an end to competition, and carry on the trade "in the name of the said governor and company exclusively," it proceeds to grant the exclusive privilege of trade to the Governor and Company of Adventurers, trading into Hudson's bay, and certain members of the Northwest Company. Three years afterwards, in 1824, the interest of the Northwest Company, under this license, was, by mutual agreement, extinguished, the Hudson's Bay Company becoming solely possessed of the privileges. In 1838, four years before this license by its terms would have expired, it was surrendered, and a new grant, for a yearly rent to the crown, was made to the company for twenty-one years from its date. This grant recites the preceding, and that "the said governor and company have acquired to themselves all the rights and interests" of the members of the Northwest Company, under the preceding grant, with express prohibition of trade to all other British subjects, "other than and except the said governor and company, and their successors, and the persons authorized by them."* The company, referred to by the treaty, would seem, therefore, to be the same chartered by Charles the Second. It does not date its existence from 1821; but that period marks a great change in its fortunes by the coalition with, and merging of, its rival, and by the "crown license" establishing, by sovereign authority, privileges either not before possessed, or until then contested and denied. The union with the Northwest Company was not the formation of a new association, but the merger of an old rival, followed in 1831 by final extinction. And the crown license existing at date of the treaty, was not the creation of a new company, but a new grant to an old existing company. It created, not a trading right, but a trading monopoly. It was occasioned by competition; to put down future competition was its object. It is apparent, therefore, that the Hudson's Bay Company, referred to in the second article, is the same chartered by Charles the Second; that it has a perpetual existence under the royal charter, and may claim, under the Oregon treaty, a right to navigate the Columbia river forever.

But, be this as it may, the charter of Charles the Second does not seem to have been at any time surrendered by the company, nor limited or revoked. But, on the contrary, it is repeatedly recognized by the act of parliament as in force; and, by the 14th section, its rights, privileges, authorities, and jurisdictions are declared to be in full force, virtue, and effect. And, moreover, the royal license existing at the date of the treaty, was granted to the Hudson's Bay Company alone, reciting upon its face the final extinction of the Northwest Company, and granting exclusive privileges of trade solely to the governor and company created by Charles the Second's charter. The company claims its existence under the charter, and its new privileges under the crown license. While, therefore, the exclusive privileges granted by the crown license may expire, yet the company may continue with all its powers in perpetuity. Its *monopoly* of trade ends with the license. Its *general right* of trading remains "*all time hereafter*" under the charter. So that the company, having this perpetual existence at the date of the treaty, with exclusive privileges, limited to a specified time, but

* Greenhow, 475.

not essential in any degree to the right claimed under the treaty, may insist on the exercise of that right, with all its inconvenience to the American government. The company thus existing by charter of Charles, and it being admitted* that the charter is perpetual; that the navigation privilege is limited in duration only by the period which, at the treaty's date, limited the company's existence, the argument may be stated in its simplest form: the treaty right endures while the company exists; the company has perpetual existence; by consequence it has perpetual right.

Whether it was created by the charter of Charles, or by the crown license; whether its existence be limited or perpetual; in either view of the case, the Hudson's Bay Company, and the British subjects trading with them, have, under the second article of the treaty, a right to navigate the Columbia river; that is of the utmost importance to American interests, as well as for the future peace and amity of the two nations, to be terminated without delay, in the only possible mode, viz: by a fair and amicable arrangement between the United States government and the Hudson's Bay Company.†

II. THE POSSESSORY RIGHT.

The next question is as to the "possessory rights" of the Hudson's Bay Company, and of British subjects in occupation of land or other property lawfully acquired in said territory. By the third article it is stipulated that these rights shall be "respected."

It is understood that the British subjects referred to are those claiming by grant, or otherwise, from the company, for none others were in the territory; nor could there be, under the terms of royal grant, and the jealousy of the company, which suffered no one else to set foot in the territory. The term possessory rights, indicates not merely occupation, or naked possession being in the company, but also that rights entitled to respect accompany this occupation and possession. Sovereignty of the United States government over the territory is established by the treaty. But under the British claim of title, by sanction of the crown and protection of British laws, the Hudson's Bay Company had taken possession of portions of the territory, established settlements, and made grants of lands to other British subjects, who were in occupation of lands and other property within the territory, lawfully acquired, as against the British government. All this may be termed a violation of the convention between the two governments. Let it be so; and grant that the American government, in the absence of any treaty stipulation, might have regarded all the titles of the Hudson's Bay Company as illegal and void, and might, therefore, justly seize their possessions, and turn out the occupants and possessors, as mere intruders and trespassers; yet the case was very different with the British government. Had they fallen within the British lines, these possessory rights would have been valid to the utmost extent. For not only was the possession of the Hudson's Bay Company recognized by its government, but also their absolute right to grant and convey vast and unlimited portions of territory.‡ When the line came to be established, the sovereignty of the territory now in question was found to be in the United States; but with care and watchfulness, characteristic of the British government, it

* Cong. Debates.

† See, also, 3 Hunt's Merchants' Magazine, 185. 11 Ib. Annals, Am. Commerce, 69. 14 Hunt's Mag., 532. Lecture of Hon. Wm. Sturgis on Fur Trade. Penny Cyc. London, Fur.

‡ Greenhow, Silliman's Journal; Irving's Astoria, Encyc. of Geo. vol. 3, 340. Lord Selkirk purchased, from the Hudson's Bay Company, one tract of 116,000 acres, to which he transported a colony of various nations, chiefly Dutch and German.

is expressly stipulated that the possessions and property acquired under its sanction shall be respected as rights. The term *respect* imports that they are to be esteemed as of real worth; for such is an ordinary signification of that word.* It has, moreover, received a judicial exposition by the Supreme Court to the same effect.† The American government is bound, therefore, by the treaty, to respect as a rightful possession what might otherwise have been regarded as mere trespass. And the possessory rights of the Hudson's Bay Company have, under the third article of the treaty, the same validity against the United States government as they would have possessed against the crown of England, if within British boundaries. In other cases, where the United States have acquired territory in which individuals or natives claimed rights of possession or occupancy, under governments to whom the territory had once belonged, it has been held by the Supreme Court of the United States, that such guaranties were also binding upon this government, and that the possessors were entitled to be protected in their occupations.‡

The extent of these possessions has already been stated—embracing, according to high American authority, all territory north of the Columbia. It has been said, however, that “the fence is the limit of possession.” This might be true if the possessors and occupiers were to be regarded in the light of mere trespassers or intruders. For, in some cases the principle is just and well settled, that against a good title the intruder's possession is limited to his enclosure. But such is not the position of the Hudson's Bay Company. They are in under British title, and their possession is to be “respected,” in the same manner as if the question were between the company and the crown. The charter, as has been seen, was ample, the privileges extensive and liberal, with express powers to trade, colonize, make settlements, and with all the implied powers essential to such as were expressly granted. Their relation to the country and its inhabitants, under the charter and crown license, was that of a possessory lord; and this is one specific signification of the word *possessory*.§ They are not, therefore, to be limited to actual erections, enclosures, or improvements. Their possessory right is not to be estimated by the mere *possessio pedis*. The term of the treaty “possessory right,” being a relative term, is to be interpreted according to the subject matter, the nature and purpose of possession. Even in case of intruders without color of title, holding against the rightful owner, settler's possessions have been defined in the State of Pennsylvania, where such claims have been much discussed, as embracing *the whole* of an unseated tract where the settler has entered, claiming and exercising ownership, putting up buildings, clearing and fencing more or less, *using it according to the custom of the country*, the clear land either as arable, meadow or pasture, and the woodland for obtaining timber *as often as the settler shall have occasion for it to answer his purpose, &c.*||

Now the territory north of the Columbia is adapted chiefly for the fur trade; possession would, therefore, be manifested “according to the custom of the country,” by hunting and trapping. A hunting, or a fur-trading country, must either be incapable of legal possession, or its possession must be manifest by some other means than habitation, fence, and enclosure; for these are wholly inconsistent with purposes of hunting. But in this country, the posses-

* Webster's 4-to ed.

† Clark v. Smith, 13 Peters, 201.

‡ Mitchell v. The United States, 9 Peters, 711.

§ Webster, 4-to ed.

|| 7 Watts Rep. 580. 3 Penn. St. Rep. 216.

sion of hunting grounds has been recognized ever since the revolution. All Indian purchases proceed upon such possession. Every tribe has its hunting ground, marked, not by fence, wall, monument, stake, blaze, or corner; but defined by the hunter's and trapper's range. And every year millions are paid by the United States government to extinguish possessory rights of the same nature, and defined by exactly the same means that limit the Hudson Bay Company's possessions in the fur region. Possession of such grounds has never been held restricted to an "occasional village, or cornfield." But, on the contrary, it has been declared by the highest judicial tribunal in this country, that possession of hunting grounds is to be considered in reference to the occupant's habits and mode of life, and that, in legal contemplation, such lands are held as much in actual possession as cleared fields.* The Olympic district, around Puget's sound, being suited to agriculture and stock grazing, possession would be manifested by building, clearing, pasturing cattle, &c. "as the settler shall have occasion." 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, "for the Hudson Bay Company came into possession of *all those parts*, extending their posts *north, east, south and west*, and settlers were encouraged with assistance and protection."† Large trading establishments were built, forts erected, settlements made, vast quantities of timber cut and exported.‡ Every intruder was removed.§ Walls, enclosures, monuments, and the like, serve to indicate appropriation and possession, and as such *indicia* only, have they any importance. The exclusive possession and absolute dominion of the Hudson Bay Company could not, therefore, have been more effectually exercised, nor more plainly manifested by actual ditch, wall, and rampart, around the whole territory, and this with the knowledge and sanction of the British government.

So that, by the treaty, this government holds the territory north of the Columbia in fee, encumbered with a right of occupation by the Hudson Bay Company, which is valid until extinguished by transfer, and would bar ejection; for it has been repeatedly decided by the Supreme Court of the United States, as a settled principle, that the right of occupancy is as sacred as a fee simple,|| and the possessors of hunting grounds are to be protected in their possession, although the fee be vested in the State. "The right of occupancy in hunting grounds has been protected by the political power, and respected by the courts. So this court and the State courts have universally held."¶

And hence, to respect these possessory rights, according to the spirit and meaning of the treaty, would seem to imply an acknowledgment of title and interest in the company, inconsistent with any claim by the United States government, beyond mere sovereignty with a naked fee, the possession and occupancy of the lands being a treaty right belonging to the company, which the United States are bound to respect.

To define or limit these possessory rights in any manner consistent with peace and harmony between the two governments, will involve difficulties that can be avoided in no way so easily as by purchase from the company.

* Fletcher v. Peck, 6 Cranch, 87.—Johnson v. M'Intosh, 8 Wheaton, 535.—Mitchell v. the United States 9 Peters, 746.—Clarke v. Smith, 13 Peters' Reports, 192.

† 25 Silliman's Journal, 325.

‡ Greenhow's Oregon, 33, 400. 5 Wilkes' Nar. 136.

§ Cong. debates. Mr. Owen.

|| 6 Cranch 87. 8 Wheaton, 535. 9 Peters, 746. 13 Peters, 192.

¶ Mr. Justice Catron in Smith v. Clarke, 13 Peters, 201.

III. PROPERTY OF THE PUGET SOUND COMPANY.

Respecting the farms, lands, and other property of the Puget Sound Agricultural Company, there would seem to be no question. Considerations of public and political importance inducing the purchase, are weighty, numerous, and manifest. The most grave and important of them were stated in the Senate by Mr. Benton, and need not here be repeated. The purchase was distinctly considered in making and ratifying the treaty, and but for this option, there would have been great objection to the treaty as ratified.*

It may be difficult to estimate their actual value. But occupying the Olympic district, "fertile, picturesque, and forming a settlement one hundred miles every way," with the advantageous harbors of Puget's Sound and Fort Nisqually as centre of operations, it would take a close calculator to discover that too large a sum is required, more especially when the improvements, forts, trading establishments, herds, agricultural implements, and capital expended in their acquisition, is taken into the account.

For the protection of American traders and settlers against Indians, forts and trading establishments will be required. Such protection the company are under no obligation, nor is it their interest to furnish. In the meantime, before government can provide defence, our settlements are exposed to attack and massacre, as has already occurred since the treaty. It appears by the President's late message that an Indian war is now raging, and military force required there. By this purchase, protection can be had without delay. Until the purchase shall be made, the Oregon settlers from the United States will come into collision with the Hudson's Bay Company, and its settlers, at every step north of the Columbia river. Strife and contention must ensue, to the constant annoyance of government and hazard to public peace. Even if this possession, as well as the navigation, were expressly limited to twenty-one years, time is an element of great value. And the advantage of immediate, undisputed, exclusive possession, instead of twenty-one years of rivalry and contention with powerful companies and foreign interests adverse to settlement, is to be estimated at more than millions of dollars.

But the question of value is, as has been truly said, of minor importance. The great point was to preserve peace by establishing the boundary. "That being settled, statesmen do not permit subordinate and accessorial matter to baulk their conclusion." While establishing the boundary, it still remains the duty of government to guard and protect its citizens or subjects. That duty both governments are mindful of; and although much has been accomplished by the treaty, its ablest friends admit that its full benefits cannot be enjoyed by the United States until the stipulated rights of navigation and possession belonging to the Hudson's Bay Company and Puget Sound Agricultural Company shall be extinguished. To accomplish this end, by the purchase now offered, are combined all the considerations inducing the treaty, so forcibly urged upon the Senate, and fully approved by the American people.

The conclusions to be drawn from the whole subject are:

1. That under the second article of the Oregon treaty, the Hudson's Bay Company, and all British subjects trading with them, have a perpetual right to navigate the Columbia river, which may be surrendered by the company.
2. That the *possessory rights*, stipulated in the third article embrace the whole territory

* Mr. Benton.

north of the Columbia river; or they are so extensive and undefined in character as greatly to embarrass the settlement of the territory, and endanger the peace and amity of the two nations, unless extinguished by purchase from the company.

3. That the Puget Sound Company, occupying the most valuable, if not the entire agricultural region north of the Columbia, being in possession of important posts and harbors on Puget sound; considerations of public and political importance require these rights to be extinguished, as was contemplated by both the high contracting parties to the treaty.

EDWIN M. STANTON.

PITTSBURGH, *December 15, 1848.*

OPINION OF GEO. M. BIBB.

WASHINGTON, *January 8, 1849.*

Your inquiries as to the public policy and expediency of a purchase, proposed to be made by the United States, of the rights and possessions of the Hudson's Bay Company in the Oregon country south of the forty-ninth parallel of north latitude, have received my serious consideration.

The Hudson's Bay Company have carried on their extensive and magnificent operations by virtue of two royal charters—the first, unlimited in its duration; the second of limited existence. The Hudson's Bay Company was created—a body politic and corporate by a royal charter of Charles II., dated May 2, 1670, granting to the company their rights, powers, and privileges in perpetuity over “all those seas, straits, bays, rivers, lakes, creeks, and sounds, in whatever latitude they shall be, that lie within the entrance of the straits, commonly Hudson's straits, together with all the lands, countries, and territories upon the coasts and confines of the seas, straits, bays, lakes, rivers, creeks, and grounds aforesaid, which are not actually possessed by any of our subjects, or by the subjects of any other Christian prince or state.”

This charter, of 1670, established a proprietary government in the Governor and Company, with all powers of civil and criminal jurisdiction over the territories and places described in the charter, “to be henceforth reckoned and reputed as one of our colonies and plantations in America, called Rupert's land.”

The Governor and Company, and their successors, are expressly made “the true and absolute lords and proprietors of the same territory, limits, and places, and of all other the premises, saving always the faith, allegiance, and sovereign dominion due to us, our heirs, and successors;” “to have, hold, possess, and enjoy the said territory, limits, and places, with all and singular the premises hereby granted as aforesaid, with their, and every of their rights, members, jurisdictions, prerogatives, royalties, and appurtenances whatsoever, unto them, the said Governor and Company and their successors, forever, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in the county of Kent, in free and common socage, and not in capite, or by knight service, yielding and paying yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever, and as often as we, our heirs and successors, shall happen to enter into the said countries, territories, and regions hereby granted.”

Among the various powers, rights, and privileges, specially enumerated in the charter, are the following: That the Governor and Company, and their successors, their factors, servants, and agents shall have “the whole, entire, and only trade and traffic, and the whole, entire, and only liberty, use, and privilege of trading and trafficking to and from the terri-

tory, limits, and places aforesaid;" and "also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas into which they shall find entrance or passage by water or land, out of the territories, limits, or places aforesaid, and to and with all the natives and people inhabiting, or which shall inhabit, within the territories, limits, and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to said territories, limits, and places which are not already possessed as aforesaid, or whereof the sole liberty or privilege of trade and traffic is not granted to any other of our subjects."

The charter furthermore grants and declares, "that neither the said territories, limits and places hereby granted, as aforesaid, nor any part thereof, nor the islands, havens, posts, cities, towns, or places thereof, or therein contained, shall be visited, frequented, or haunted by any of the subjects of us, our heirs or successors, contrary to the true meaning of these presents." "We straightly charge, command, and prohibit, for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree and quality soever they be, that none of them directly or indirectly, do visit, haunt, frequent, or trade, traffic, or adventure, by way of merchandize, into or from any of the said territories, limits, or places hereby granted, or any or either of them, other than the said Governor and Company, and such particular persons as now be, or shall hereafter be of that Company, their agents, factors and assigns, unless it be by the license and agreement of the said Governor and Company, in writing first had and obtained under their common seal, to be granted; upon pain"—"of forfeiture and the loss of the goods, merchandize, and other things whatsoever, which shall be so brought into this realm of England, or any of the dominions of the same, contrary to our said prohibition, or the purport and true meaning of these presents;"—"as also, the ship and ships, with the furniture thereof, wherein such goods, merchandize and other things shall be brought and found;" the one-half of all the forfeitures to be for the use of the crown, the other half to the use of the said Governor and Company.

The charter also grants and declares, "that we, our heirs and surveyors, will not grant liberty, license or power, to any person or persons, contrary to the tenor of these our letters patent, to trade, traffic or inhabit unto, or upon, any of the territories, limits, or places afore specified, contrary to the true meaning of these presents, without the consent of the said Governor and Company."

The second grant was made to the Hudson's Bay Company, under the act of 2 George IV., chap. 66, bearing date 5th December, 1821, limited to twenty-one years, and renewed for the further term of twenty-one years, (to expire in December, 1863.) This grant does not affect the rights, powers, privileges, or duration of the original charter, inasmuch as it is not founded either upon a surrender, or a repeal of the original charter, but was a grant to the corporation as existing, and by way of enlargement of its circuit of action. By this second grant, the Hudson's Bay Company acquired an exclusive right of trading "in all such parts of North America to the northward and westward of the lands and territories of the United States as do not form any part of our provinces of North America, or of the United States." So far from curtailing any of the rights, powers, benefits, or privileges of the original charter, or the duration thereof, the act of parliament under which this grant of 1821 was made and renewed, only empowered the crown to make grants under the hand and seal of one of the principal Secretaries of State, "to any body corporate, or company, of such parts of North America, as shall be specified in those grants, not being part of the territories theretofore granted to the Hudson's Bay Company, or of the North American provinces, or of the United States of America."

The facts are notorious, that the Hudson's Bay Company took possession of, and have long used, occupied and enjoyed, large tracts of country south of the forty-ninth parallel of north latitude, and established trading houses and posts, strongly fortified, on the most eligible places for trade and traffic; cultivated farms, erected dwellings and mills, and other improvements; opened mines of coal, and other fossils, and worked them; kept large flocks and herds ranging over numerous and undefined pasture grounds; cut timber in various places; sawed lumber for domestic supplies, and for exportation, and exercised various other acts of ownership and possession, within the territory called Oregon, of a character too strongly marked to be misunderstood as the evidences of claims of property and possession, made by those professing to be the true proprietors under their charter of incorporation. These acts of ownership had been done, exercised and made known, before the treaty between the United States and Great Britain, for adjusting the boundary between them, west of the Rocky mountains, concluded and signed at Washington on the 15th June, 1846.

In the preamble to that treaty, it appears that its object, purpose and end, was to put to rest the state of doubt and uncertainty which theretofore prevailed respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky mountains, by amicable compromise of the rights mutually asserted by the parties over that territory.

ARTICLE I. established for the future boundary the forty-ninth parallel of north latitude, continued westward from the formerly established boundary "to the middle of the channel which separates the continent from Vancouver's island, and thence southerly through the middle of the said channel, and of Fucas straits, to the Pacific ocean: provided, however, that the navigation of the whole of said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties."

"ART. II From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia river, the navigation of the said branch shall 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 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 shall, in like manner, be free and open. In navigating said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present treaty.

"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."

Upon the proposal of the Hudson's Bay Company to release and assign to the United States their rights in the Oregon territory, alluded to in the second and third articles of the treaty, a question has been started whether the second article of the treaty secures to British subjects generally the right of navigating the Columbia river, or is confined to the Hudson's Bay Company, and to such particular British subjects as are trading with the company.

Before entering upon that question, I cannot forbear to express my opinion and firm con-

viction that, in weighing the proposition that the United States shall purchase and extinguish the rights of the Hudson's Bay Company within the territory assigned to the United States by the compromise of the conflicting claims of jurisdiction, sovereignty, and domain, in the treaty aforementioned, this question about the navigation of the Columbia river, whether taken as a general right to all British subjects indiscriminately, or as a particular right to the Hudson's Bay Company, and British subjects trading with that company, does not deserve consideration as weighing a feather in the balance, in comparison with the extinguishment of the possessory rights of the Hudson's Bay Company, stipulated for in the third article.

As to this question of the navigation of the Columbia, mentioned in the second article of the treaty, my opinion is that the guaranty in that article does not extend to British subjects generally, but is confined to British subjects specially who are of the Hudson's Bay Company—their agents, factors, and servants, and those who are trading with the company by their special permission and license.

The letter of this second article reserves the right of navigating the Columbia river only to the Hudson's Bay Company, and to such British subjects as are "trading with the same;" not to all British subjects generally, and without qualification. The true intent and reason, soul and spirit of that reservation in favor of the Hudson's Bay Company, and British traders with them, may be found in their charter granting to them the sole and exclusive right of trade and traffic to and from their possessions, and the sole and exclusive right of granting license to others "to visit, haunt, or trade, or traffic, or adventure by way of merchandise into or from" any of their territories or places, and the whole and sole power of regulating the trade with them. This article was introduced into the treaty for the sole benefit of the Hudson's Bay Company, and in pursuance of that guardian care and good faith which the British government has ever most scrupulously observed towards the rights and interests of corporations created by charters emanating from the crown.

The position that this second article was not intended to give a right of navigating the Columbia river to British in general, irrespective of their trading with the Hudson's Bay Company by their permission and license, according to the terms of their charter, is further illustrated by contrasting the stipulations in this second article, relative to the navigation of the Columbia river, with the stipulations in the first article respecting the navigation of the channel which separates the continent from Vancouver's island, and of the Straits of Fuca, south of the forty-ninth parallel of north latitude. In article I., the words employed to reserve the right of all British subjects, without any qualification or restriction, to navigate that channel and the straits, are so comprehensive, clear, and unconditional, as not to admit of doubt or misconception. In the second article, there is a clear, regular, continuous, train of thought and expression confining the right reserved to navigate the Columbia river to the Hudson's Bay Company, and British subjects trading with the company, by words and terms definite and precise, to the exclusion of British subjects not "trading with the same." The first article comprises all British subjects as a genus; the second article includes only particular British subjects as a species; therefore the Hudson's Bay Company may elect to release and assign to the United States, and abandon all right of themselves to navigate, and all right to license others to trade with them by navigating the Columbia river, in so far as it depends upon that second article, and by such release the right of navigating the Columbia river will be withdrawn from the guaranty of the treaty, and to that extent extinguished.

A right in British subjects generally, without regard to the trade with the Hudson's Bay Company by their license, cannot (in my opinion) be deduced from the second article of this treaty. It must be sought for in the principles of the law of nations, applicable to the state and condition of two potentates; the one owning and occupying the country on both sides of the lower part of a great navigable river, with the entrance thereof into the sea, the other owning and occupying the country on the upper waters of the same river. In such like cases the law of nations allows to the people owning and inhabiting the upper country the right of passage by the river to and from the sea, for the purposes of lawful trade and commerce, they conducting themselves peaceably and with due respect to the rights of others; coupled, however, with the condition that the nation through whose territory such foreigners are to have passage, may make all regulations, and take all precautions, necessary and proper for the preservation of its neutral relations, safety, and defence.

In time of peace the navigation of the Columbia river by British subjects, for the lawful purposes of trade and intercourse, will be of small concern. In time of war, former treaties relating to matters not executed, but executory between the belligerents, cease to have any further obligation or effect than the one or the other parties shall voluntarily allow; unless some special matter shall have been agreed otherwise in reference to the breaking out of hostilities. In times of peace and war, the law of nations will justify the United States in using all precautions, and making all regulations, necessary and proper for self defence and security, and the preservation of their own just rights, and of their neutral relations.

When to these principles of international law we add the known policy and usages of the United States to cultivate trade and intercourse with all foreign nations, denying to none the navigation of our waters for the purposes of lawful commerce to and from their own dominions, conducted with due respect to the law of nations and to our domestic relations, the navigation of the Columbia river by British subjects sinks into insignificance, into a mere abstraction, in comparison with the value and importance of the possessory rights of the Hudson's Bay Company, under their charter and the guaranty contained in the third article of the treaty.

The possessory rights of the Hudson's Bay Company, alluded to in the third article of the treaty, have grown out of their royal charter of 1670, granting in express terms the powers of government and dominion, and rights of tenure in free and common soccage, with other rights, powers, and privileges of an exclusive character, including the rights of exclusive trade and commerce in perpetuity. The powers, authorities, rights, and privileges expressly granted, carry with them incidental powers necessary and proper to the rightful and just enjoyment of the privileges, and the attainment of the objects and ends for which the company was incorporated. The possessory rights springing out of this perpetual charter, to be respected under this third article, are so wide, so long, so deep, so multiplied, and so indefinite, as to affect seriously the question of public domain which will remain (if any) to the United States after fulfilling in good faith this article of the treaty.

The nature and extent of the rights coming within the compass of this third article of the treaty, whether they extend to the whole territory possessed south of the line of compromise, or only to parts thereof; to what parts; the local extent of the parts; whether they must have been defined by visible boundaries, natural or artificial; or shall have constructive extension incident on actual seating and improving; whether all the grounds commonly used for pasturing herds and flocks, ranging at pleasure, and often changing; whether places commonly used by the company for getting supplies of fuel, timber, and lumber, for pur-

poses of foreign commerce or domestic uses, are within the intendment of the treaty, are questions which will arise under the grants to the Hudson's Bay Company by the royal charters under which they claim and have been exercising their powers and authorities south of the parallel of latitude of forty-ninth degree north, and the comprehensive term, "possessory rights," employed in the third article of the treaty.

Reasoning, from the nature of man, from the history and examples of the past to the future, it cannot be disguised, that this third article is teeming with numerous, complicated, and perplexed questions of fact and law, involving the titles to lands in Oregon in doubt, uncertainties, and multiplied litigations, long protracted, and burdened with heavy costs and charges, bringing in their train evils, grievous in their nature, and demoralizing in their effects, if not prevented by extinguishing, by purchase, the rights of the Hudson's Bay Company.

If these questions are suffered to come to issue and trial, it is to be foreseen that the executive government of the United States will endeavor to reduce the possessory rights of the Hudson's Bay Company to the smallest space, and that the company will strive to maintain their rights and interests to their full compass, having the wealth, enterprise, ability, and influence to prosecute their claims to the last extremity, and to enlist the interference of their government to cause the full measure of justice to be administered to them.

If these contestations shall be suffered to have a beginning, when will they have an end?

East and west Florida were ceded by Spain to the United States by treaty, signed and concluded on the 22d February, 1819. It was stipulated that all grants of lands by the Spanish government made before the 24th January, 1818, should be confirmed to the persons in possession. The United States acquired the possession, under that treaty, in the year 1821. Various litigations respecting the Spanish titles have grown out of that treaty; and now, after the lapse of twenty-seven years and more, the contestations are not ended.

By treaty of 30th April, 1803, for the cession by France, of Louisiana, to the United States, it was agreed that the private rights and interests of lands should be secure, and the inhabitants protected in the enjoyment of their property; and, as yet, after the lapse of forty-five years, the contestations about those claims, originated before the cession to the United States, are not ended; many suits growing out of the treaty are yet pending and undetermined.

The contestations to arise out of the third article of this treaty of 1846, (if not prevented by a prudent forecast on the part of the United States,) are not less complex and entangling than those arising out of the cessions of Louisiana and Florida.

Western Virginia, western Pennsylvania, Massachusetts, Maine, Tennessee, and Kentucky, have experienced the evils, and endured the grievances, of disputed titles to lands. The people of Illinois are now laboring under the very great inconveniences and mischiefs arising out of the titles to land granted to soldiers, for bounties in the year of 1812, which are now held by non-resident proprietors and unknown heirs.

Titles to large tracts of land lying in Massachusetts, in that part now within the State of Maine, granted to companies and individuals, by royal letters patent before the revolution, which, after being long dormant, were asserted against a great number of seaters and improvers, produced tumults and bloodshed; thousands of armed men, feeling the common grievance, marched with intent to overawe a tribunal of justice, or to rescue the accused, if found guilty of murder. The extent and magnitude of the grievances to these settlers induced the legislature of Massachusetts to enact a law to give to settlers and improvers compensa-

tion for their valuable and lasting improvements, made in good faith; as necessary and proper under the existing state of things, and to quiet the public mind. The people of Maine (since that State was formed out of a part of Massachusetts) are yet laboring under the evils of those disputed titles to land; and a case, involving questions of law common to numerous other cases, is now pending in the Supreme Court of the United States.

For forty years and more, the people of Kentucky were infested by the conflicting claims to land. The dockets of the courts, State and federal, exhibited crowds of bills in chancery upon contested claims to lands and of ejectments. The occupying claimant laws, enacted by the legislature of Kentucky, were adjudged, by the Supreme Court of the United States, to be invalid, as contrary to the compact between Virginia and Kentucky, and to the constitution of the United States. In the preamble to the act to compel the speedy adjustment of land claims, enacted by Kentucky, 9th February, 1809, the legislature declared that "the prosperity of this commonwealth hath been greatly checked, its improvement and settlement retarded, and its citizens continually alarmed, and often ruined in their fortunes, by reason of the interference of land claims, founded, or alleged to be founded, on the land laws of Virginia, or of this State;" that dormant claims "are often brought up, not only to alarm, but eventually to turn out naked to the world numerous well settled and industrious families;" "for remedy thereof, and to fix the period to which the citizens of this State, and the proprietors of land therein, may look forward for peace to themselves and safety to their property," this special law was enacted limiting actions at law and bills in equity, upon claims to land by adverse interfering entry, survey, or patent, to seven years, from and after the adverse possession taken and continued. This act was contested by non-residents, as contrary to the compact between Kentucky and Virginia, and to the constitution of the United States. It was finally adjudged by the Supreme Court of the United States, in January term, 1831, not to be in violation of the compact, but constitutional and valid. This decision administered peace and safety to such settlers as came within the enactments of this statute, and relieved the people of the State from an enormous public evil, which had harrassed the commonwealth for so many years.

Difficulties sprung up between the Hudson's Bay Company and the Northwest Company, of Montreal, respecting the rights of the Hudson's Bay Company under their charter of 1670, exciting animosities, heart-burnings, and feuds, which, in 1819, had quickened multitudes into wild commotions and breaches of the peace, so serious in their character as to induce the parliament of Great Britain to interpose to put an end to them, by enacting the statute of 2d George IV., chap. 66.

There are good grounds to believe that the rights of the Hudson's Bay Company, grown up under their original charter, and existing in the Oregon territory, had great effect in protracting the adjustment, by amicable compromise, of the claims to sovereignty mutually asserted by the United States and Great Britain to the territory on the northwest coast of America, lying westward of the Rocky mountains, from the time of the treaty of Ghent, in 1815, to the treaty of Washington, in 1846.

Nor can it be doubted, that the uncertainty so prevailing for so many years respecting the right of the United States to this territory of Oregon, has, in a very eminent degree, retarded the settlement and improvement of that territory, and checked its prosperity. The adjustment of that question, by the compromise in the treaty of 1846, has given an impulse, a visible impetus, to settlements in the territory of Oregon.

Miserable is the servitude of a people—numerous are the ills to which they are a prey in a

country where a great body of the lands are held by uncertain tenures of conflicting, adversary claims, involved in perplexed questions complicated of fact and law. In such a country, slow are the improvements—mean in their kind; great the waste, and slovenly the cultivation. Large bodies of lands, holden by non-resident proprietors, awaiting the augmentation in value, by the progressive labors and industry of the resident proprietors, are also aggravated inconveniences.

The examples before cited, history teaches. All experience proves that disputed land titles, and large bodies of land, in choice situations, holden by non-residents able to await the increased value out of the improvements, labors and expenditures of residents and pioneers, have been, and ever must be, very oppressive to people adventuring, seating and improving in a new country. Such circumstances produce great temptations to trespassers; to breaches of good order and the laws; are demoralizing in their effects; in fine, are a great public calamity.

It is, in my opinion, a matter of very great importance—an object of public policy well worthy of the prompt attention of the United States, to purchase the rights of the Hudson's Bay Company within the territory of Oregon, thereby giving quiet to the people; accelerating the peopling and improvement of the country; removing from that territory the local habitation of that great corporation possessed therein, of thirteen fortifications, on sites selected for the purposes of offence, defence, and the military command of the country; whereof the fortress at Cape Disappointment, by its position and strength, can command the navigation of the Columbia river; extinguishing the rights, possessions and claims, within the Oregon territory, of this wealthy, energetic, influential, powerful corporation of aliens, holding their corporate powers under a royal charter, owing allegiance to, and entitled to protection from, the crown of Great Britain; and by such purchase doing away a probable cause of irritation which might eventually disturb the amicable relations of the two nations, capable of doing to each other in war the greatest harm, in peace the greatest good.

GEO. M. BIBB.

TO GEORGE NICHOLAS SANDERS.

OPINION OF JOHN VAN BUREN, Esq.

SIR:—I have received your favor asking my opinion as to the rights of the Hudson's Bay Company and Puget Sound Company, which are secured to them by the treaty between the United States and Great Britain, of the 15th June, 1846. These are of three descriptions.

First.—The right of the former company to the free navigation of the Columbia river. This right, it seems clear, is reserved to that company exclusive of all other British subjects, and if released by them, is extinguished.

Second.—“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.” This property is confirmed by the 4th article of the treaty to the said company, and provision is made for the purchase of such portions of it as the United States may deem of public or political importance and desire to acquire.

Third.—It appears from a statement made by Sir George Simpson, under date of January 14, 1849, which has been submitted to me, that the Hudson's Bay Company have, south of the 49th parallel of north latitude, thirteen trading establishments or villages, situated on the most eligible sites as regards commerce, water power, agriculture, and dealing with the natives; that their flocks and herds pasture over large districts of country; that their outlay for building, fencing, bringing land into cultivation, and importing stock, amounts to nearly a million of dollars, and that each of these trading villages or posts is protected by strong picketing and corner bastions, rendering them defensible against Indians, or irregular forces, if not formidable for offensive operations.

Assuming this to have been substantially the state of things when the treaty was concluded, I am asked what was intended by the third article, which provides that “In the future appropriation of the territory south of the 49th parallel of north latitude, is provided by the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may already be in the occupation of land, or other property lawfully acquired within the said territory, shall be respected.” It seems to me the obvious construction of this language, used and applied in this connection, that the parties to the treaty regarded the occupation of the Hudson's Bay Company as a lawful one, which gave such a property in the soil as forbade any “future appropriation” of it inconsistent with such occupation.

J. VAN BUREN.

NEW YORK, January 8, 1849.