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THE OREGON TREATY

AND THE

HUDSON'S BAY COMPANY.

1869

(21)

THE OREGON TREATY.

The following lines are penned in order to enable the public to form an opinion of the manner in which the stipulation in the third Article of this Treaty is being carried out by the present Hudson's Bay Company. The third Article was inserted in the Treaty for the protection of the British Rights which had arisen in the Oregon Country; through the Fur Traders from Canada, the North West Company, they having explored and subdued and settled in the Territory for the purposes of traffic with the natives.

The wording of the Article runs thus :

“III. In the future appropriation of the Territory south of the 49th parallel of north latitude, as provided in Article I. of the said Treaty, the possessory Rights of the Hudson's Bay Company, and of all British subjects who might be already in the occupation of land or other property lawfully acquired within the said Territory shall be respected.”

Then, the Fur Traders, nearly the only white inhabitants of that country, and who had also become the officers of the Hudson's Bay Company, by a coalition or Amalgamation with that concern, held a community of interest to the extent of four tenths of the business there conducted. They were likewise the occupants of the Territory, long known as the Columbia Department of the North West Company. As the stipulation

expresses it, they were "already in occupation of land." They were the successors of the North West Company, who had explored and settled in the Territory for the purposes of their trade. Thus the rights arising or flowing from such their occupation, and purposes of trade, were shared in by the Hudson's Bay Company to the extent of six tenths, the traders still possessing the four tenths attached to the trading business,

That the rights attached to the Fur Trade interests were respected and preserved intact in former times by the Hudson's Bay Company's Board can be shown by the following preamble to the Deed Poll of 1834. This will be found in a "*Return to an address*" from the House of Commons, at Ottawa, dated 18th November, 1867. The reading is as follows, (in page 11.)

"At a Court of Proprietors of Hudson's Bay Stock, held at the Hudson's Bay House on Friday, the 7th March, 1834.

"Whereas the co-partnership created by the Indenture of the 26th day of March, 1821, was thereby agreed to be continued for a term of 21 years, to end with the returns of outfit 1841, has been some years passed dissolved, (save and except so far as related to the 40 Shares appointed by a Deed Poll of the same date, and hereinafter referred to), and the whole of the partnership, effects and concerns, are and have for some time centered wholly in the Governor and Company of Adventurers, of England, trading into Hudson's Bay, and the trade and concern thereof has been and is still carried on by them exclusively, and for their own benefit, *save and except, and without prejudice to the rights and interests of the persons entitled to*

“the 40 Shares under the said Deed Poll, and whereas it
 “is deemed expedient that the said trade and concern
 “should be continued for an unlimited period.”

Here we have a solemn preamble to a change in the Company's affairs in 1834, where the “*rights and interests attached to the persons entitled to the 40 Shares*” of the Fur Trade are saved, and excepted, and preserved without prejudice.

In the same “return to the House of Commons,” (at page 10), is a letter to Governor Dallas from Mr. Miles, who was long at the head of the business of the Northern Department at York Factory Depot, an officer held in high trust and of known integrity. In that letter Mr. Miles tells Governor Dallas that “when the country on the west side of the Mountains was claimed under Treaty by the American Government, the Northern and Southern Councils were advertised by our departed late friend, Governor Sir George Simpson, that a claim of One Million Pounds Sterling would be made on that Government for the possessory rights acknowledged by Treaty, and that a portion thereof would accrue to the Commissioned Officers, conformable to their interests.”

Here the words “*conformable to their interests*,” (in a public notification to the two Councils of chief Factors and Traders of the Northern and Southern Departments), could refer only to their 40 Shares in the business, *upholding still, at that period, faithful recognition of their rights and interests, as protected in the preamble already quoted.* Of course the assurance of Sir George Simpson, and the Hudson's Bay Board was an honest assurance. It was not a false card. Sir Stafford Northcote himself cannot and would not say so.

Then what are we to think of the language of the Board now. Their Secretary writes to this purpose.

“SIR,—I am desired by the Governor and Committee
 “to acknowledge your letter of the 21st ult., claiming
 “your share of the compensation awarded by the
 “American Government to the Company for their
 “possessory rights in Oregon, and in reply I am to
 “inform you that the whole case was submitted to
 “eminent Counsel, who advised the Board that the
 “officers had no claim on the Company.

“I am, Sir, &c., &c., &c.

“(Signed) W. ARMIT,

“*Secretary.*”

With one single remark that such extraordinary contradictions between the principles of the old Board and those of the present day are well worthy of the serious contemplation of every man interested in the welfare of the Dominion of Canada, I shall proceed to review the opinions of governments, regarding the claims of the Fur Traders under the third Article of the Oregon Treaty. These opinions coincide entirely with the ideas of the old Boards, and with the old Status and relations, and are diametrically opposed to the principles and action of the present Board in Lime Street, and their “Eminent Counsel.”

The actual position in which the Fur Traders who claim under the Treaty were, at the period, 1846, is a matter of history, as appears from public and official documents, which were of weight then, however much they may be slighted or disregarded by the authorities of the current day. The British statement annexed to the Protocol of the 16th November, 1826, when Mr.

Huskisson was one of the Commissioners contains the following passages :

“ Great Britain affirms, and can distinctly prove, that
 “ if not before, at least in the same and subsequent years,
 “ *her* North Western Trading Company had by means
 “ of their agent.* Mr. Thomson already established
 “ their posts among the Flathead and Kootanie Tribes
 “ on the head waters of the Northern or main branch of
 “ the Columbia, and were already extending them down
 “ the principal stream of that River. * * * * *

“ In the interior of the Territory in question *the sub-*
 “ *jects of Great Britain* have had for many years, numer-
 “ ous settlements and trading posts, several of these
 “ posts on the tributary streams of the Columbia, several
 “ on the Columbia itself, some to the northward and
 “ others to the southward of that River, and they
 “ navigate the Columbia as the sole channel for the
 “ conveyance of their produce to the British stations
 “ nearest the Sea, and for the shipment of it from thence
 “ to Great Britain.”

“ To the interests and establishments, which British
 “ industry and enterprize have *created, Great Britain*
 “ *owes protection. That protection will be given,* both as
 “ regards freedom of trade and navigation, with every
 “ attention not to infringe the co-ordinate rights of the
 “ United States.”

This declaration of Mr. Huskisson, that to the *interests and establishments which British industry and enterprize have created “ Great Britain owes protection” and “ that protection will be given,”* how has it been fulfilled now ?

* Mr. David Thomson was for many years employed by the North West Company as the Astronomer and Explorer in western Caledonia and Columbia, the Oregon of the United States.

Has it been fulfilled according to that declaration, and the assurance of the old Hudson's Bay Company, and of Governor Sir George Simpson, to the northern and southern councils of the Fur Trade, that a proportion of the grant would accrue to the commissioned officers "conformable to their interests?" No. The Language of the Hudson's Bay Board on the 10th January last is to the effect "that the whole case has been submitted to eminent council, who advised the Board that the officers had no claim on the company!!!" Alas for Mr. Huskisson, alas for the Pellys and the Garrys, and Sir George Simpson! New ministers, new board, and new counsel rule the roast, and cook the Treaty!!!!

Let us now consider what Judge Day and the American Law authorities can furnish of *their* views respecting the Fur Traders as claimants for losses under the Oregon Treaty. The learned Judge in page 18 of his memorial and argument to the Commissioners pleads thus:

7. "The British statement annexed to the protocol of the 16th December, 1826, distinctly and repeatedly affirms the establishment and possession of posts as well to the southward as to the northward of the Columbia, *by British subjects* (necessarily meaning the Northwest and Hudson's Bay Companies); and in strong and pointed terms avows the determination of the Government to protect 'the interests and establishments which British industry and enterprize have created,' *both as regards settlement, freedom of trade, and navigation.*"

8. "The country known as Oregon, extended far to the north of the 49th parallel of North Latitude. It

“reached to the 54th degree, and was all included in the claim of the United States. The establishments of the Hudson’s Bay Company over the whole region originated in precisely the same manner and under the same circumstances as those on the Columbia River. They were, indeed, parts of the entire system of settlements in Oregon, comprehended in the recognition already stated. And the British Government granted in its confirmations of title to lands there, 3080 acres of land in Vancouver’s Island, which, as shown by actual sales, were worth more than the whole of the present Land Claim at Fort Vancouver.”

These “actual sales,” talked of by Judge Day could have been no other than the sales of “*Trade Lands*” spoken of by Secretary Fraser, in his answer to enquiries on the point, when he writes :

“In reply, I am directed to inform you that the first sale of the *Fur Trade Lands* was in 1853. Since that period sales have been effected every year, down to 1861, inclusive, with the exception of 1857, when there were no sales; and the proceeds of such sales have invariably been carried to the credit of the *Fur Trade*, for the outfit during which the sales were effected.”

Here, of course, the Fur Traders have “their share, conformable to their interests,” as before assured to the Fur Trade Councils; and as the Company’s own Lawyer pleads in his memorial “*The establishments of the Hudson’s Bay Company over the whole region, originated in precisely the same manner, and under the same circumstances as those on the Columbia River.* Yet strange to say, the Board now states that the officers in these Oregon rights “had no claim on the Company.”

Sickening as the exposure of such contradictions may be, it is necessary to dwell a little longer on the subject to learn what American Jurists have to say touching these rights of British subjects, on the Columbia. Judge Day avails himself of their opinions in his memorial, and pleads most powerfully in favor of the Fur Traders Rights, by quoting the American Law Authorities.

In page 35 of the memorial, he quotes Mr. Webster to strengthen his case, thus :

Mr. Webster says: "The local extent of these possessory rights it may be in some degree difficult to fix or define. They must depend upon facts, and the nature of the occupation, *wherever there has been a possession, according to the use originally intended, there and to that extent the possessory right attaches.*"

It is quite clear from Mr. Webster, that, depending upon "the nature of the occupation," and according to the use "originally intended, (which means here the Fur Trader's use, "*there, and to that extent the possessory right attaches.*" The possessory right, therefore, attached to the Fur Trader's use and occupation, and could to nothing else; and the 40 shares of the *Joint Business* of the Fur Trade ought to have had their "conformable proportion of the grant," instead of which the concern in England has retained the whole, saying that "eminent Counsel advise them that the officers "have no claim." This is one way, certainly, for the Board to throw the onus of the Act they are thinking of perpetrating off their own shoulders, and to repudiate, gracefully if possible, the relations which have all along bound up together the Fur Trade and the

Company, as acknowledged and acted upon by the Old Boards in Fenchurch street, and their accredited Governor, Sir George Simpson.

Judge Day also produces Mr. Stanton's opinion regarding the possessory rights on the Oregon. In page 35 of the memorial the American authority speaks in this manner :

“The term of the Treaty ‘possessory rights,’ 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,” &c., &c.

The close of Stanton's opinion is in the following remarkable words :

“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.”†

Who would or could have believed that the Hudson's

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

† Mr. Justice Cution in *Smith vs. Clarke* ; 13, Peters 201.

Bay Company's Board would have repudiated the claims of the Fur Traders, after it had by its counsel pleaded such decisions of the supreme Court of the United States, and the authority of such men as Webster and Stanton, as to the possessory rights of the Oregon "*attaching to the Fur Trade, from its very uses and occupations,*" that the repeated decision of the Supreme Court, "*as a settled principle, had been 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.*"

Now that the Hudson's Bay Board has got the whole grant for the losses in Oregon into its own hands, it has turned round, and repudiated the strength and virtue of these pleadings, and disowned the Fur Traders who had been driven out from their possession and occupation, refusing them their fair share, viz., four tenths of the compensation. Mr. Huskisson's open promise of the valuable shield of protection of the British Government is taken from them, the recognition of their claims and the fair dealing of the old Hudson's Bay Company and Sir George Simpson are denied to them, and the decisions of the Supreme Courts and the political power of the United States become a vanishing shade, not, however before these decisions and the opinions of American Lawyers of high celebrity to the same effect, had served the turn of the Hudson's Bay Board itself. That having been accomplished, repudiation of the Fur Traders' claims quickly followed.

So march political power, justice, and law in England if we can believe the repudiators, and there is no public writer at present in this land to brighten up

the complexions of these principalities and powers in the old country, in their present wretched condition of miserly grasping and repudiation, short-comings, portentous of evil to their friends, if not foreshadowing and ominous of decadence to themselves. It is well, however, that Canada should have some idea of the *modus operandi* of the Hudson's Bay Company, in their various arrangements for forwarding their plans in this country. It has also to be considered how far their constancy can be depended upon, in their relations with those who may come into business connections with them, like the Fur Traders and the old North West Company.

The Company of Adventurers into Hudson's Bay became entirely changed in its aspect and character after the year 1863, when Sir Edmund Head, and others, brought about the wholesale transfer of the stock, doubling it nominally, and thus rendering an accommodation with Canada doubly difficult. The change also cast the four-tenths interests of the Joint Fur Trade, never for a moment consulted, into the power of a ravenous lot of speculators, who had bought in high. They expected that everything would be screwed up to the extent that they would reap as great a proportional profit for their double price, as used to be gained by the old Stockholders. No sympathy for the Traders existed with these new men, but all had to be sacrificed to their longings by the Board, until the Fur Trade, once an independent body, was prostrated by the crew. In a celebrated pamphlet written by a Shareholder to his brother Shareholders, and entitled "A Million, shall we take it?" The brisk and eager author boasts to his brethren how much had

been already absorbed. In dwelling upon the position of the Company, in page 6, he tells them this :

“The Hudson’s Bay Company, as you are aware, was originally incorporated in 1670, under a Royal Charter of King Charles II. by this Charter, the Governor and company of adventurers trading with Hudson’s Bay, were invested with a vast tract of territory, extending from Upper Canada to the Pacific Ocean, together with the sole right of trade and commerce, and all mines royal within the territory.”

How he jumped over the Rocky Mountains it is difficult to say.

At page 34, talking of Canada he observes, to his brother shareholders.

“The miserable pedlars in Canada have the smallest ideas of enterprise and advancement. With one of the largest and finest territories in America at their feet, the Canadians remain almost a stagnant people, numbering in both their provinces a population inferior in number to that of the single state of New York, and scarcely greater than that of the recently populated state of Ohio. The Canadians are spiritless and poor, and as too often happens with poverty stricken people, they are insanely jealous of every one richer than themselves, or who is likely to do better.”

And a great deal more indulgence of this kind does the lively Shareholder take to himself at the expense of Canadians, *usque ad finem*. It appears never to have occurred to him, that as to the climate, a great portion of Canada fell behind New York in that respect, as much as Hudson Bay Territory falls behind Canada; and there was equal good reason for his blaming his own

loved Rupert's Land for remaining "stagnant," and not advancing in enterprise, and increasing its population. It did not strike him either that New York had had always facilities for extending, *its* commerce westward, a freedom of entry into the regions beyond, while Canada could never get over the barrier of obstruction to *her* progress, set up by the charter of the British Monarch in the privileges of the Company of Adventurers, of whom our author became one. But now that these disabilities are being removed, and the impoverishing effects gradually disappearing, I trust Canada will take his friendly hints and get her pedlars to stir, and make acquaintance with the ducks and gesse of Hudson's Bay, fetching a few Martins, Minks, and Otters, to the Toronto and Montreal Furriers, to prevent the necessity of going to seek furs so far as New York, or the Shareholder's stores in the City of London. Canada, like other free countries, dislikes absorption, so much of her juices having been already drained by that process; and if ever she have the vigour to raise another N. W. Company, there is enough of blood left in her yet to prevent its being so easily absorbed as the former one.

GEO. BARNSTON,
JOHN SWANSTON.