



CONFIDENTIAL.

Memorandum respecting the Island of  
San Juan.

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*Foreign Office,*  
*September 23, 1859.*

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THIS question with the Americans in regard to the Island of San Juan, is one the solution of which must depend upon the interpretation to be given to the Treaty of 1846, by which the boundaries of the British and United States' possessions westward of the Rocky Mountains were settled and defined.

It should never be lost sight of that this is a Treaty question—a question to be determined not by the estimate which Great Britain and the United States may have formed of what was the value of their respective titles to the Oregon territory before the Treaty of 1846 was signed, nor by assertions made in the face of the Treaty as to the intentions of this or that Government at the time the Treaty was negotiated, nor, as regards the water boundary, by comparisons instituted since the Treaty was signed, with regard to the relative merits of this or that channel, but by a reference to the wording of the Treaty itself.

Now, Article I of the Treaty of 1846 runs as follows:—

“From the point on the 49th parallel of north latitude where the boundary laid down in existing Treaties and Conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said 49th 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 49th parallel of north latitude remain free and open to both parties.”

It was observed in the instruction addressed to Lord Lyons on the 21th of last month, that, as far as there is only one channel separating the Continent from Vancouver's Island, no doubt can be entertained as to the true boundary line, which the Treaty says shall run down the middle of the channel which separates the Continent from Vancouver's Island. The commencement of that channel is undoubtedly the Gulf of Georgia, and down its centre the boundary line must run; but it may be asked, what is the continuation of the channel from the point where the Gulf of Georgia comes to an end, and where does the boundary line join the Straits of Fuca?

With regard to these points, the Treaty is not sufficiently explicit; and it is to be regretted that there was not attached to the Treaty a map or chart by which the meaning and intention of Article I could have been authoritatively ascertained; nevertheless, as has been already observed, the true interpretation of the Treaty is the only law to which either party is entitled to appeal. It is only when the interpretation of a Treaty is doubtful, or when the difficulty of carrying into effect the precise words of a Treaty is proved to be insuperable, that one is entitled to have recourse to arguments derived from other sources.

But is it quite impossible to interpret the Treaty correctly, and is the difficulty as to carrying out Article I insuperable?

Let us analyse these questions, and in so doing we will proceed to consider the wording of the Article under three heads.

1. What is its natural and obvious meaning?
2. What other possible meaning could it have had? And
3. What is the meaning which the words cannot fairly and honestly be said to bear?

And first, as to its natural and obvious meaning.

It is well known that even so late as the year 1846 our information with regard to that distant region was very imperfect. The only chart at hand in this country was that drawn by Vancouver, on which is shown the track taken by him in his voyage through the Straits of Fuca and up the channel into the Georgian Gulf, then called King George's Sound. Now, the passage navigated by

Vancouver on leaving the Straits of Fuca (his course was from the south) was the Eastern Channel, which he called by his own name, that now known as the Rosario Straits. The channel, therefore, with which we were acquainted, the main artery by which we believed the Continent to be separated from Vancouver's Island, was the channel navigated by Vancouver. There might be other channels, but we knew nothing of their length or depth, or adaptability to the purposes of navigation. The channel which we were dealing with, and the channel which we assert to have been intended by the Treaty, was that which we believed, on the authority of Vancouver, to be the natural highway between Fuca's Straits and King George's Sound.

On these premises, and with Vancouver's Chart before us, the words of the Article present no longer any ambiguous or doubtful meaning. The channel spoken of in the Treaty was the channel through which Vancouver, on leaving the Straits of Fuca, sailed, and Vancouver's Chart shows that a line starting "southerly" from the point at which the 49th parallel of north latitude intersects the Gulf of Georgia, passes naturally and uninterruptedly down that gulf, through the Rosario Straits, and so into the Straits of Fuca. In fact, the Gulf of Georgia and the Straits of Rosario were for the purposes of the Treaty but one channel. They constitute together an uninterrupted water line; it is admitted that it would have been better to have defined the water boundary with greater distinctness, and to have spoken of the channel as running down the Gulf of Georgia and through the Rosario Straits; but the line so drawn at all events does no violence to the Treaty, while, taken in connection with the preceding facts and observations, and with the expression in the Article that the line shall be continued through the "said" channel, it affords a satisfactory solution of the intentions of the negotiators, and explains what is inexplicable if any other boundary line is adopted, viz., why the Treaty, in dealing with the space separating the Continent from Vancouver's Island, speaks of two divisions only, viz., the "Channel" and the "Straits," and leaves apparently out of sight the intervening channel or channels by which the Gulf of Georgia and the Straits of Fuca are connected.

And secondly. As to what other possible meaning the Treaty could have had.

It is possible that the word "channel" used in Article I of the Treaty, may have been intended by the negotiators to embrace the whole of the water-space separating the Continent from Vancouver's Island, that is to say, the Gulf of Georgia, the Rosario Straits, the Haro Channel, and the intermediate channel or channels formed by the islands by which those channels are intersected. Assuming this to have been the case, and that the whole of the space was regarded as one channel only, the boundary line would be traced down the centre of the Gulf of Georgia to its southernmost point, and from thence would have to be carried southerly through either one of the smaller channels connecting the Gulf of Georgia with Fuca's Straits, or in a direct line across the islands which such line might intersect in its course to those Straits. While, however, there is nothing in the wording of the Article which would absolutely reject such an interpretation of it,—and the proposition to run the boundary line down the central channel recommends itself for adoption as being, on the whole, an equitable arrangement,—it must be admitted that it is not very probable the negotiators had any intention of running the line either through a lesser and unknown channel, or across islands which would have thus become partly the property of Great Britain, and partly of the United States, according as they were traversed by the line of boundary.

And thirdly. As to the meaning which the words cannot fairly and honestly be said to bear.

That meaning is the construction put upon the Article by Mr. Campbell, the United States' Commissioner, who asserts that the Channel of the Treaty is the Haro Channel.

It is confidently asserted that the Haro Channel cannot be adopted without disregarding the Treaty altogether.

In the first place, the Haro Channel is not the channel discovered by Vancouver; neither was the British Government, at the time the Treaty was signed, acquainted with its capabilities as a navigable channel. Moreover, it is not, in regard to its general configuration, a continuation in a southerly direction

of the Gulf of Georgia; but it is, on the contrary, rather a distinct and independent channel, having its commencement in the Straits separating Saturna from Vancouver's Island, and running parallel to that gulf.

Again, the Haro Channel cannot be adopted as the channel of the Treaty, without doing violence to the expression "southerly," contained in Article I.

If the boundary line is to be diverted from the southernmost point of the Gulf of Georgia into the Haro Channel, it must take, for a considerable distance, not a southerly, but a westerly, direction, describing for that purpose an acute angle before the southerly course spoken of in the Treaty could be resumed. Consequently, as was stated in the instruction to Lord Lyons, if the Plenipotentiaries had intended that the boundary line should pass through the Haro Channel, they would undoubtedly have specified that channel by name, in order to distinguish it from "the Channel;" that is to say, the channel used by Vancouver—the channel which was the continuation of the Gulf of Georgia; and they would also have added some modified qualification to the word "southerly."

For all these reasons it is contended that the Canal de Haro is neither according to the letter of the Treaty nor the intentions of its negotiators, the channel through which the boundary line was to run.

The Americans lay great stress on the fact that Mr. McLane, the American Minister at this Court in 1846, in reporting to his Government the terms of arrangement which he thought the British Government would probably offer, said he believed they would concede the Canal de Haro as the boundary line; and also to a declaration afterwards made by Mr. Benton in the Senate, that the boundary line had been so fixed. But it is obvious that this evidence is of a secondary character, and cannot be allowed to override the wording of the Treaty.

The Americans, moreover, contend that the 49th parallel of north latitude was fixed by mutual consent as the basis of the boundary line, and that the deflection from that parallel was only conceded by them in order to give to us the whole of Vancouver's Island. Again, the American Commissioner argues in favour of the Canal de Haro, on the ground that

it is the shortest, the deepest, and the widest of the several channels connecting the Georgian Gulf with the Straits of Fuca.

Now it is perfectly true that the 49th parallel of latitude, which had been fixed by the Treaty of 1818 as the boundary between the British Possessions and those of the United States, from the Lake of Woods to the Rocky Mountains, was accepted by us in 1846 as the boundary from the Rocky Mountains westward to the sea.

But the British Government did not accept that boundary line absolutely. Lord Aberdeen, after admitting that it was a reasonable suggestion that the 49th parallel should form the general basis or principle of division, remarked that, on the other hand, it might be justly observed that any division of territory in which both parties possess equal rights, ought to proceed on a principle of mutual convenience, rather than on the adherence to an imaginary geographical line; and that in this respect it must be confessed that the boundary thus proposed would be manifestly defective. It would exclude us from every commodious and accessible harbour on the coast; it would deprive us of our long-established means of water communication with the interior for the prosecution of our trade; and it would interfere with the possessions of British colonists resident in a district in which it was believed that scarcely an American citizen, as a settler, had ever set his foot.

It will be seen from the above-quoted words of Lord Aberdeen's despatch, that the British Government did not accept the 49th parallel as the basis of division, so far as Vancouver's Island and the adjacent waters were concerned; and the Treaty was accordingly drawn up so as to exclude the possibility of any such assumption on the part of the United States.

The Americans make much of having conceded to us the whole of Vancouver's Island; they seem to be astonished that we can think of demanding more: but they forget that our title to the whole of the Oregon territory before the signature of the Treaty of 1846, was at least as good as theirs. It is true that the pretensions of the United States were in some quarters pushed to the length of denying our right to any territory whatever on that



coast; but, if any good result could thereby be attained, it would be easy to show that our title to the Oregon territory was good as far south as the parallel of 42, and that, in surrendering the valley of the Columbia, and a coast studded with ports and harbours, we were giving up an extent of territory, and a valuable sea-coast, which fully entitled us to require, as a set-off, that, in regard to the boundary line between Vancouver's Island and the Continent, we should be placed in such a position as to secure to us every advantage which the possession of Vancouver's Island entitled us to claim.

With regard to the statement that the Canal de Haro is the shortest, the deepest, and the widest channel, this might be a very fair argument to advance as a reason why it should serve as the boundary line if the Treaty were now about to be negotiated; but it has no bearing upon the question whether it was the channel selected by the negotiators of the Treaty of 1846. It might just as well be asserted that, because the Great Belt is the widest and the deepest of the several channels connecting the Baltic with the Cattegat, therefore the Great Belt, and not the Sound, ought to be the boundary line between Denmark and Sweden. If this, which is purely an *ex post facto* argument (inasmuch as it is only since the signature of the Treaty of 1846 that the capacity of the Haro Channel has been ascertained), were to be allowed any weight, we should be equally entitled to advance, as an argument in support of our view of the case, that the small islands situated midway between Vancouver's Island and the Continent had always been considered as dependencies of Vancouver's Island, while, with regard to San Juan, the immediate bone of contention, the proposition of Lord Aberdeen that any division of territory in which both parties possess equal rights ought to proceed on a principle of mutual convenience (a proposition which, without doubt, was enunciated by Sir R. Pakenham in his negotiations with the United States' Plenipotentiary), must decide the question with regard to that island in our favour, because it is on all hands admitted that its retention as a British island is necessary to the security of our possessions in that quarter, while to the United States it is of no intrinsic value whatever, unless for purposes of offence against Great Britain.

Before advertng to the steps which have been more recently taken by Her Majesty's Government, with a view of arriving at a solution of this question, it will be as well to take a cursory view of what has passed since the date of the signature of the Treaty.

As early as February 1847, Mr. Pakenham inclosed a copy of a Memorandum by Sir George Simpson, the principal officer of the Hudson's Bay Company, drawing attention to the importance of determining, by means of a Commission, which of the channels separating the mainland from Vancouver's Island should form the line of demarkation, as otherwise the question of the sovereignty of the Islands might very soon become a source of dispute between British and American settlers.

Mr. Pakenham, No. 15 ;  
February 25, 1847.

Lord Palmerston informed Mr. Pakenham in reply, that Her Majesty's Government concurred in that suggestion ; but as the space through which the boundary line was to run was still imperfectly known, his Lordship thought it better that the consideration of the subject should be postponed until the Admiralty was in possession of the Reports of the Commanders of Her Majesty's ships "Herald" and "Pandora," which were engaged in surveying those waters.

To Mr. Pakenham, No. 25 ,  
April 19, 1847.

But in the following December an instruction was addressed to Mr. Crampton, informing him that it had been ascertained at the Admiralty that there was no probability of our acquiring, within any reasonable period, that detailed information with regard to those waters which had been hoped for from the surveys of Her Majesty's ships "Herald" and "Pandora," and Mr. Crampton was therefore directed to propose to the Government of the United States the appointment of a Commission, for the purpose of tracing the boundary.

To Mr. Crampton, No. 21 ;  
December 18, 1847.

With regard to the water boundary, Lord Palmerston observed that a preliminary question arose, which was one that turned upon the interpretation of the Treaty, rather than upon the result of local observation and survey.

The Convention of the 15th June, 1846, declared that the line should be drawn down the middle of the "channel" which separates the continent from Vancouver's Island ; and upon this it might be asked what the word "channel" was intended to

mean. Generally speaking, the word "channel" when employed in Treaties, meant a deep water or a navigable channel. In the present case it was believed that in one part of the Gulf of Georgia, not far from midway between the 48th and 49th parallels of north latitude, where the Gulf is studded and obstructed by numerous small islands, only one channel, that, namely, which was laid down by Vancouver in his chart, had been hitherto surveyed and used, and it seemed fair to assume that the negotiators of the Oregon Convention, in employing the word "channel," had that particular channel in view.

If that construction of the Treaty, Lord Palmerston observed, were mutually acknowledged, no preliminary difficulty would exist.

Mr. Crampton was accordingly furnished with a draft of instructions which he was to propose that the two Governments should address to their respective Commissioners, and in which the Eastern or Vancouver's Channel was taken to be the channel through which the boundary line was to be run.

Mr. Crampton reported, in January 1848, that he had had an interview with Mr. Buchanan, and, in compliance with his request, had addressed a note to him on the subject.\*

Mr. Crampton said that Mr. Buchanan, speaking of the word "channel," as employed in the Convention of 1846, observed that he himself, and he presumed Mr. Pakenham, in negotiating and signing that Convention, had always conceived "channel" to mean the "main navigable channel," wherever situated. But he admitted that he had never himself examined, nor did he even recollect ever to have seen, Vancouver's Chart; and although he did not seem prepared to contest the probability of the channel marked with soundings by Vancouver in that chart, being in fact the "main navigable channel," he evidently hesitated to adopt that opinion without further geographical evidence, throwing out a suggestion that it would, perhaps, be better that such instructions should be given to the naval officers to be employed as joint Commissioners, as would enable them both to determine which of the chan-

Mr. Crampton, No. 2;  
January 13, 1848.

\* Mr. Crampton, in addressing Mr. Buchanan in writing, went beyond his instructions. The American Commissioner afterwards made use of that note.

nels was in fact the main navigable channel, and to mark the boundary down the middle of that channel, as soon as ascertained.

Mr. Buchanan finally assured Mr. Crampton that the subject should receive the immediate attention of the United States' Government. It was not, however, until October 1849 that Mr. Crampton was enabled to report to Lord Palmerston that he had been informed by Mr. Clayton, in answer to his communication to Mr. Buchanan of the previous year, that the proposal for a Commission should be laid before Congress at its next session, in order that, if concurred in, the necessary appropriation might be made.

Mr. Crampton. No. 91;  
October 29, 1849.

The Congress, however, failed to make any appropriation for the purpose, and accordingly nothing was done. In the meantime, attempts seem to have been made by American citizens to occupy the Arro Islands, viz., San Juan, Lopez, and Orcas; but in November 1853, Mr. Douglas, the Governor of Vancouver's Island, and the agent of the Hudson's Bay Company in that quarter, after giving an account of an attempt made by a Mr. Cousins, with a party of American citizens, to form a Settlement on Lopez Island, and stating that many parties of Americans had been assembling about the Islands, reported that he had hitherto succeeded in defeating every attempt to form a settlement; and that the Arro Islands consequently remained a *de facto* dependency of Vancouver's Island, unoccupied by any white Settlement, either British or American, excepting a fishing-station belonging to the Hudson's Bay Company on the Island of St. Juan.

Hudson's Bay Company  
February 4, 1854.

Mr. Douglas went on to say that the three principal Islands of the Archipelago were of considerable extent, and also exceedingly valuable, not only on account of their relative position to Vancouver's Island, but also on account of their productive salmon fisheries, forests of timber, and for the great extent of arable surface which they contain. They were capable of maintaining a large population, and formed an appendage of incalculable importance to the Colony.

Mr. Douglas gave his reasons for contending that the boundary-line ran through the Rosario Straits, stating that Fremont's Chart, published under the order of the Senate of the United States, in 1848, showed that no second navigable channel leading

from the Straits of Fuca into the Gulf of Georgia, was known to exist when that Treaty was made, neither had any channel which could be safely navigated by sailing ships been discovered even to that day, except Vancouver's Strait, which, up to that hour, was the route invariably taken by sailing ships bound to and from the Gulf of Georgia.

Mr. Douglas added that something like proof in respect to the true line of boundary might be gathered from the common opinion of the day. Now, they who lived almost on the spot, had always believed that Vancouver's Strait was the true line of boundary between the two countries, and as a proof that they were not alone in that opinion, Mr. Douglas inclosed Mr. Fremont's map, on which the boundary line was carefully traced through the middle of Vancouver's Straits.

Colonial Office;  
May 20, 1854.

In a subsequent report, dated February 27, 1854, Mr. Douglas stated that a claim had been vaguely made by the Oregon Assembly to the Arro Islands when dividing the Oregon territory into districts, and that the revenue collector in that territory had threatened to make a seizure of British property on the Island of San Juan. Mr. Douglas had, therefore, taken such measures as appeared to him to be proper for the protection of British property. Not having any military force at his disposal, which, moreover, he should hesitate to use on such an occasion, he proposed to effect the protection of British property by the operation of the civil law, and he had, therefore, appointed Mr. Griffin, of the Hudson's Bay Company's service, to be Justice of the Peace for the district of San Juan, and had charged him to apprehend and commit for trial any person who might disturb the Queen's peace within his jurisdiction. Should the United States' collector appear there for any unlawful purpose, he would be treated as a common offender, unless he brought with him a large force, in which case Mr. Griffin would apply for needful support in order to enforce the law.

To Mr. Crampton, No. 139;  
June 26, 1854.

Upon this, Lord Clarendon instructed Mr. Crampton to call Mr. Marcy's attention to Mr. Clayton's note of the 29th of October, 1849, and again to press upon the United States' Government the importance of appointing a Commission to mark out the boundary line.

Hudson's Bay Company;  
June 26, 1854.

A few days after that instruction was sent off, the

Hudson's Bay Company inclosed an extract of a further report from Governor Douglas, stating that he had been informed, by letters from Nisqually, that Mr. Ebey, the Collector of Customs for Washington territory, had left with two boats' crews to seize the British property on the Island of San Juan, and that Governor Douglas had thereupon dispatched the "Otter," with a force of whites and Indians, to support the magistrate in the discharge of his duty, and to prevent breaches of the Queen's peace.

Lord Clarendon transmitted a copy of that report to Mr. Crampton, and instructed him to request that the United States' Government would give such orders as would prevent such proceedings on the part of their authorities taking place.

To Mr. Crampton, No. 154;  
June 30, 1854.

The Government of the United States replied to Mr. Crampton's representation that they had conferred with the Governor of Washington territory upon the subject, and that he had informed them that he had no knowledge of any intention on the part of the United States' authorities of Oregon to take possession of the Hudson's Bay Company's property on the Island of San Juan, and that he did not believe that there was any foundation for the apprehension; but that as the Island of San Juan was regarded there (as it was at Washington) as a part of the territory of the United States, it was probable that the Collector of the district of Paget's Sound might have stationed some of his subordinates on the island, but not with the view of interfering with the property or possessory rights of the Hudson's Bay Company.

Mr. Crampton, No. 186;  
July 17, 1854.

Mr. Crampton, No. 192;  
July 24, 1854.

Notwithstanding this, Governor Douglas reported on the 20th of October, 1854, that an United States' cruiser was now stationed about San Juan; she was armed with six guns, and was commanded by officers of the United States' Navy: they appeared resolved to gain forcible possession of the disputed territory, and Mr. Douglas hardly knew how to prevent them.

Hudson's Bay Company;  
January 22, 1855.

However, on the 27th of February, 1855, Mr. Douglas informed the Governor of the Hudson's Bay Company that they had had no further molestation from the American authorities since Christmas-day, when the last trial of strength ended in their (the British) favour, and Mr. Douglas hoped

Hudson's Bay Company;  
May 17, 1855.

it was now virtually decided that the place belonged of right to the British Government.

Mr. Stevens, the Governor of Washington territory, had lately paid him a visit at Victoria, and had alluded to the Island of San Juan merely to remark that the best plan for the settlement of the disputed point of sovereignty would be to leave it to the decision of the Supreme Government—an opinion in which Mr. Douglas entirely agreed.

To Mr. Crampton, No. 101 ;  
May 21, 1855.

Lord Clarendon sent a copy of that report to Mr. Crampton, adding that in the opinion of Her Majesty's Government the officers of the Hudson's Bay Company had adopted a proper course with respect to the question of disputed sovereignty over the Island of San Juan.

Hudson's Bay Company ; July 6,  
1855.

In July and August, 1855, we received from the Hudson's Bay Company, and from the Colonial Office, accounts of further aggressions on the part of the United States' authorities upon the Island of San Juan ; and more particularly of the forcible seizure and carrying away from that island of certain valuable stock sheep, in payment of taxes levied on behalf and in the name of the United States of America.

Colonial Office ; August 15, 1855.

Mr. Douglas also inclosed copies of a representation he had addressed to Mr. Stevens, the Governor of Washington territory, and of Mr. Stevens' answer. The following extract from Governor Stevens' answer is given, as containing, in great measure, the " case " of the United States :—

" By the Act of the Legislative Assembly of the territory of Oregon, previous to the separation therefrom of the territory of Washington, the boundary line, as between the two Governments, was held to run through the Canal de Arro, and by the Act of the Legislative Assembly of the territory of Washington, ' to organize the county of Whatcomb,' the Island of San Juan is included within the bounds of that county.

" The Sheriff, in proceeding to collect taxes, acts under a law directing him to do so. Should he be resisted in such an attempt, it would become the duty of the Governor to sustain him to the full force of the authority vested in him.

" You say the Island of San Juan has been in the possession of British subjects for many years, and it is, with the other islands in the Archipelago de

Arro. declared to be within the jurisdiction of the colony, and under the protection of British laws - 'I have also the orders of Her Majesty's Ministers to treat those islands as part of the British dominions.'

"The Acts before referred to have declared those islands to be within the jurisdiction formerly of the territory of Oregon, now of the territory of Washington, and the general laws of those territories, so far as they may be applicable, have thereby been extended over them.

"The ownership remains now as it did at the execution of the Treaty of the 11th June, 1846, and can in nowise be affected by the alleged possession of British subjects.

"The contemporaneous exposition of the Treaty, as evinced by the debates in the United States' Senate, shows the Canal de Arro to be the boundary line, as understood by the United States at that time; and the doubt of the British Government as to any claim beyond that is plainly manifested by the note of Mr. Crampton, the British Minister, to Mr. Buchanan, Secretary of State of the United States, dated 13th January, 1848.

"Indeed, on Arrowsmith's map of Vancouver's Island and the adjacent coast, (published in London 11th April, 1849,) the boundary line is laid down as running through the Canal de Arro. This map is compiled from the surveys of Vancouver, Kellett, Simpson, and others, and would seem to establish that, even as late as some three years subsequent to the Treaty, the great English navigators and hydrographers, as well as the American Government, considered the Canal de Arro, as in the terms of the Treaty, the channel which separated the Continent from Vancouver's Island."

Copies of these letters were sent to Mr. Crampton, who was instructed to call the attention of the United States' Government to the statements contained in them.

To Mr. Crampton, No. 142 :  
July 13, 1859.

In the December following, the Hudson's Bay Company again complained of these aggressions, and Mr. Crampton was instructed again to bring the subject to the knowledge of the United States' Government, and to express the regret of Her Majesty's Government that their repeated remonstrances had not led to any measures for restraining the acts of the United States' authorities in Oregon.

Hudson's Bay Company :  
December 6, 1855.

To Mr. Crampton, No. 228 :  
December 11, 1855.



Mr. Crampton, No. 29 ;  
February 11, 1856.

He was further instructed to obtain an answer from the United States' Government as to the course which they intended to adopt in the matter.

On the 11th of February, 1856, he wrote to say that the House of Representatives being at length organized, he had thought the moment a good one for bringing to Mr. Marcy's serious attention the hazardous condition of things on the frontier of the United States, which divides Washington territory from the British possessions occupied by the Hudson's Bay Company. Mr. Marcy entirely concurred with Mr. Crampton in the expediency of not losing any more time in settling the disputed points in regard to the boundary under the Treaty of 1846, and he expressed his sincere regret that, from causes beyond the control of the Executive, those points had not yet been determined.

Mr. Crampton stated to Mr. Marcy, that he had fresh complaints to address to him in regard to the acts of the authorities of Washington territory, which would place in a strong light the evils which had resulted, and which might be expected to result, from further delay in laying down the boundary line, and Mr. Marcy remarked that he would be glad if Mr. Crampton would furnish him, in writing, with any statement of facts which would be likely to quicken the action of Congress in adopting the necessary measures.

Mr. Crampton accordingly addressed to Mr. Marcy a note alluding to the aggressions upon British property in the Island of San Juan, and more especially to the conduct of the Sheriff of Washington territory in carrying off a flock of sheep as distraint for taxes alleged to be due to the authorities of that territory.

Mr. Crampton then reverted to the proposals which he had made to the United States' Government in 1848, and more especially to the proposal that before instructing their respective Commissioners the two Governments should agree to adopt as the "channel" designated by the Treaty that marked by Vancouver in his charts as the navigable channel, and laid down with soundings by that navigator.

Mr. Buchanan, Mr. Crampton said, entirely concurring in the expediency of losing no time in determining the portion of the boundary line, nevertheless felt some objection to adopting the

channel marked by Vancouver as the "channel" designated by the Treaty, in the absence of more accurate geographical information, and he suggested that the Commissioners should be instructed in the first instance to survey the region in question, for the purpose of ascertaining whether the channel marked by Vancouver, or some other channel as yet unexplored between the numerous islets of the Gulf of Georgia, should be adopted as the channel designated by the Treaty, or, in other words, should be found to be the main channel through the middle of which, according to the generally admitted principle, the boundary line should be run.

Mr. Crampton further said that if the proposal for a survey could not be assented to by the United States' Government without further difficulty or delay, he had again to propose the expediency of the adoption by both Governments, as the channel of the Treaty, of the channel marked by Vancouver as the only known navigable channel.

Mr. Marcy answered Mr. Crampton by expressing the regret of the President that any supposed trespasses should have been committed upon the possessions or property of the Hudson's Bay Company, and assured Mr. Crampton that nothing should be omitted by him which might tend to prevent a recurrence of such complaints.

Mr. Crampton, No. 43 ;  
February 21, 1856.

With regard to the question of a survey, measures had been taken for obtaining the requisite appropriation from Congress, and this condition of the business did not, in Mr. Marcy's opinion, render necessary, at present, any answer to Mr. Crampton's proposal temporarily to adopt the line laid down in Vancouver's chart. In any event, however, the competency of the President to take such a step, even for a temporary purpose, might be questioned.

With this answer from Mr. Marcy the correspondence with the United States' Government for the moment came to an end, and Mr. Crampton, as is well known, left Washington in the following May.

Mr. Dallas, however, announced on the 28th August, 1856, that Congress had appropriated a sum of money for the Boundary Commission, and invited the British Government to make corresponding arrangements, but it was not until December 1856 that the appointment of Captain Prevost as First British Commissioner for marking out the water boundary took place. His instructions, after reciting the words of

Mr. Dallas ; August 28, 1856.

Article I of the Treaty of 1846, and recapitulating what had passed since that time with a view of settling the question, enjoined him to endeavour to prevail upon his American colleague to accept the Rosario Straits as the channel of the Treaty.

The various arguments which have already been employed in this paper in support of the British claim were embodied in the instructions to Captain Prevost, who was directed to use his utmost efforts to induce the American Commissioner to assent to the view which Her Majesty's Government had taken of the case.

If, however, the American Commissioner would not adopt the line along Rosario Strait, there was yet a third course open, and that was to attempt to discover another channel among the group of islands lying between Vancouver's Strait and the Canal de Haro.

It was scarcely possible that any such channel could be found which could fairly be adopted as the channel of the Treaty; but Captain Prevost was to make an accurate survey of all the channels intersecting the various islands, and to endeavour to fix upon one on which they both might agree.

But if satisfied that the British claim was unquestionably sound, and he was unable to come to an understanding with his colleague on the subject of an intermediate channel, he was then to propose that they should lay before their respective Governments, either jointly or severally, a statement of the points on which they disagreed, and the reasons by which each of them supported his opinion.

The instructions also directed Captain Prevost to endeavour to persuade the American Commissioner to give up to Great Britain the promontory on the main land north of the 49th parallel of latitude, known as Point Roberts.

Captain Prevost was likewise furnished with technical instructions respecting the survey.

Captain Prevost's Report of his failure to come to an understanding with Mr. Campbell, his American colleague, is dated the 7th of December, 1857, and reached this office on the 16th of February of last year. The whole of the Report is interesting, but it would lengthen this paper too much to give it in full. It may be shortly stated that Captain Prevost most ably conducted the case, employing for that purpose the arguments which have already been set

forth in this Memorandum; that when Captain Prevost found that the United States' Commissioner would not accept the Rosario Channel, he offered the Middle Channel as a compromise, but that Mr. Campbell would not listen to it; adding, in an unofficial note, that there was not "the slightest use in writing or talking any more on the subject, so far as concession on his part was concerned."

The following short extract from Captain Prevost's Report records his failure:—

"I had several formal meetings with Mr. Campbell, the United States' Commissioner, at which it was mutually admitted that through the Gulf of Georgia, and through the Straits of Fuca, there would be no difficulty in tracing the boundary line; but as to the direction in which it should proceed through the space situated between these waters, we found that our opinions differed very widely. Mr. Campbell strongly asserted that the line should be carried through the Canal de Haro (or Arro). I maintained that the Canal de Haro would not answer to the channel described in the Treaty; but that the channel now known as Rosario Strait was the only channel that would, in all points, meet the requirements of the Channel of the Treaty.

"Finding that all I could urge verbally in favour of the Rosario Strait being the channel through which the boundary line should pass, would not weigh in the slightest with Mr. Campbell, and that he persisted in maintaining that the Canal de Haro was the Channel of the Treaty, grounding his opinion upon certain cotemporaneous evidence which he produced, and to which he appeared to adhere more than to the words of the Treaty; and finding it most difficult to keep him to the words of the Treaty, and disinclined to admit that those words should, if practicable, be interpreted strictly and literally, I was induced to address him in writing upon the subject, under the hope that when his reasons and mine, in favour of the respective channels, appeared on paper, it would be seen that the Canal de Haro could not be maintained as a channel through which the boundary line could be traced, according to a close and literal interpretation of the words of the Treaty. I transmit herewith, for your Lordship's information, copies of all the correspondence which has passed, together with

a copy of the Protocol of the proceedings of the last meeting of the Commission, which took place on the 3rd instant, from which your Lordship will perceive that I have been unable to come to any arrangement with my colleague for a settlement of the question disputed between us."

Colonial Office ;  
March 6, 1858.

Captain Prevost's Report having being fully considered by Lord Malmesbury, it was sent to the Colonial Office, who wrote to us on the 6th of March to say that, in Lord Stanley's opinion, measures should be taken for settling the question, if possible, by arbitration.

Admiralty ;  
April 8, 1858.

The Admiralty gave its reasons for thinking that neither the Canal de Haro nor the Rosario Straits completely satisfied the terms of the Treaty. They suggested, therefore, that the boundary line should be drawn so as to give the Island of San Juan to Great Britain ; and if that could not be accomplished, that we should be satisfied with the Canal de Haro : the point of main importance, in the opinion of the Admiralty, being that we should insist upon the whole of the channel or channels between the Continent and Vancouver's Island remaining free to British shipping.

Sir R. Pakenham, our Plenipotentiary in 1846, was also referred to. The following are extracts of his report :—

"I have endeavoured to call to mind any circumstance which might have occurred at the time when the Oregon Treaty was concluded (15th June, 1846), of a nature either to strengthen or to invalidate the pretension now put forward by the United States' Commissioner to the effect that the boundary contemplated by the Treaty would be a line passing down the middle of the channel called Canal de Haro, and not, as suggested on the part of Great Britain, along the middle of the channel called Vancouver's or Rosario Strait. Neither of which two lines would, as I humbly conceive, exactly fulfil the conditions of the Treaty, which, according to their literal tenour, would require the line to be traced along the middle of the channel (meaning, I presume, the whole intervening space), which separates the Continent from Vancouver's Island. And I think I can safely assert that the Treaty of the 15th June, 1846, was signed and ratified without

any intimation to us whatever on the part of the United States' Government as to the particular direction to be given to the line of boundary contemplated by Article I of that Treaty.

"It is true that in a despatch from Mr. McLane, then United States' Minister in London, to the American Secretary of State, Mr. Buchanan, dated 18th May, 1846, which despatch was not, however, made public until after the ratification of the Treaty by the Senate, Mr. McLane informs his Government that the line of boundary about to be proposed by Her Majesty's Government would, 'probably, be substantially to divide the territory by the extension of the line on the 49th parallel to the sea, that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Haro and Straits of Fuca to the ocean.'

"It is also true that Mr. Senator Benton, one of ablest and most zealous advocates for the ratification of the Treaty (relying, no doubt, on the statement furnished by Mr. McLane), did, in a speech on the subject, describe the intended line of boundary to be one passing along the middle of the Haro Channel.

"But, on the other hand, the Earl of Aberdeen in his final instructions, dated 18th of May, 1846, says nothing whatever about the Canal de Haro, but, on the contrary, desires that the line might be drawn 'in a southerly direction, through the centre of King George's Sound and the Straits of Fuca, to the Pacific Ocean.'

"It is my belief that neither Lord Aberdeen, nor Mr. McLane, nor Mr. Buchanan, possessed at that time a sufficiently accurate knowledge of the geography or hydrography of the region in question to enable them to define more accurately what was the intended line of boundary than is expressed in the words of the Treaty, and it is certain that Mr. Buchanan signed the Treaty with Mr. McLane's despatch before him, and yet that he made no mention whatever of the 'Canal de Haro,' as that through which the line of boundary should run, as understood by the United States' Government.

"My own despatches of that period contain no observation whatever of a tendency contrary to what I thus state from memory, and they therefore, so far, plead in favour of the accuracy of my recollection."

Sir R. Pakenham ;  
April 19, 1858.

To Colonial Office ;  
August 4, 1858.

Colonial Office ;  
August 24, 1858.

Colonial Office ;  
September 25, 1858.

Captain Prevost, No. 11 ;  
November 30, 1858.

As it was hoped, however, that Her Majesty's Government would soon be in possession of Captain Richards' survey, Lord Malmesbury proposed to the Colonial office to postpone all further attempts to settle the question, until that Report should have been received.

The Colonial Office assented to the postponement with much reluctance. Sir E. B. Lytton was desirous of impressing upon Lord Malmesbury the very serious and critical addition to the difficulties connected with this question which was created by the discovery of gold in British Columbia, and the probability that the Americans would on that account increase their demands in proportion to the delay which might take place.

In a further letter the Colonial Office, adverting to the fact that the Americans had stationed an officer of Customs on the Island of San Juan, observed, that it was of the utmost importance in a military, maritime, and commercial point of view, and on account of its close proximity to Vancouver's Island, that the Island of San Juan should not be relinquished to the United States, if it could be avoided.

The report of Captain Richards' survey was received at this office on the 2nd of February last. It abounds in nautical and scientific details. In the following extract from it the merits of the different channels are contrasted :—

“As regards the comparative merits of the two Straits—Haro and Rosario—I would observe that, owing to strong tides and the general absence of steady winds, the navigation of either must always be attended with considerable risk and great delay to sailing vessels : the comparatively moderate depth of water in Rosario Strait, which enables a vessel to anchor if caught in a critical position, gives it some advantage to such a class of vessel. As navigable steam channels, I think they possess equal advantages, both being perfectly safe and easy during day-time ; to make them so at night they would require to be lighted.

“Vessels passing through the Strait of Fuca, and bound for the Fraser River or Nanaimo, would, unquestionably, take the Haro Strait, as they would save a distance of from twelve to fifteen miles.

“Those from Port Townshend, or any of the United States’ ports southward, bound to the same places or to their own settlements in Bellingham Bay, would certainly adopt the Rosario Strait.

“The Middle Channel, which is bounded on the west by San Juan Island, and on the east by Orcas, Lopez, and some smaller Islands, though inferior in capacity to the Haro or Rosario, is yet a perfectly safe channel for steamers. It is open to the same objections for sailing-vessels, and in a greater degree, in consequence of its width, which on the average is not much over a mile.”

Captain Richards’ Report was immediately submitted to the Board of Admiralty. The Admiralty, in reply, repeated their opinion of the previous year that the point to be insisted on was the free navigation of the entire channel; the territorial possession of the islands being in their opinion of less importance. It was added that, in the opinion of the Admiralty, the water-boundary should be a line which in a southerly direction would pass nearest to the middle of the whole channel or strait which separates the Continent from Vancouver’s Island.

Admiralty;  
March 2, 1859.

The Colonial Office observed, that whatever mode might be adopted of settling this long-pending question, whether through mutual compromise or arbitration, or the friendly offices of a third Power, a question which Sir E. B. Lytton conceived the Secretary for Foreign Affairs to be best qualified to judge of, it was his duty, as Secretary for the Colonies, to impress one consideration strongly on Lord Malmesbury:—this was the importance of the retention of the Island of San Juan. Sir E. B. Lytton considered the possession of that island so indispensable to the safety of British Columbia, and, if surrendered to the Americans, so certain to result in feuds, and even war, that he regarded it of the highest importance that the claim of the British Government to the island should be firmly adhered to.

Colonial Office;  
April 9, 1859.

Two days afterwards an immediate letter was received from the Colonial Office, inclosing a copy of a report from Governor Douglas, dated the 19th of February, in which he said that he had always treated the Island of San Juan as a dependency of Vancouver’s Island, and a part of the British domi-

Colonial Office;  
April 11, 1859.



nions, according to the instructions contained in Secretary Sir George Grey's despatch No. 4 of the 21st September, 1854. He had, moreover, appointed John Charles Griffin, Esquire, Justice of the Peace for that district, with authority to keep the peace and to punish offences within the jurisdiction of of that office.

The Hudson's Bay Company also formed an extensive stock-farm on the same island, and which they still maintain.

Our occupation of the island had, therefore, been general and complete, as well as undisturbed by citizens of the United States.

A number of American citizens had, however, lately employed a person to make surveys, and to plot out certain parts of San Juan Island (including the portions of the lands inclosed and cultivated by the servants of the Hudson's Bay Company), for the purpose of settlement, and there was no doubt that the whole island would soon be occupied by a squatter population of American citizens if they did not receive an immediate check.

Sir E. B. Lytton said he would only at present observe that he considered the possession of San Juan to be essential to British interests as regarded the navigation of the Straits, and also in a political point of view. Sir E. B. Lytton looked, therefore, upon the recent movement of American citizens as of the highest importance, and one requiring immediate measures to be taken by Her Majesty's Government or the local authorities to prevent a temporary occupation from assuming a permanent character.

No time was lost in instructing Lord Lyons to make a representation to the United States' Government respecting these attempts on the part of American citizens to establish themselves on the Island of San Juan, and to request that any such unauthorized proceedings on the part of American citizens might be discountenanced by the neighbouring authorities of the United States.

The question as to whether the Island of San Juan should ultimately appertain to Great Britain or the United States, depended upon the solution to be arrived at in regard to the boundary line between their respective territories, under the Oregon Treaty of 1846. Commissioners had been appointed by

To Lord Lyons, No. 30 ;  
April 28, 1859.

the two parties to ascertain how that line was to be run in conformity with the Treaty. Those Commissioners had not been able to come to an agreement on the subject. It therefore remained for the two Governments to enter into direct communication with each other, for the settlement of a question which very closely affected the good understanding between them.

Her Majesty's Government had deferred taking any step consequent on the disagreement of the Commissioners, until they should be in possession of the results of a survey which they thought necessary to institute of the various channels into which the lower part of the Gulf of Georgia is divided by the numerous islands with which it is studded.

They had now received the report of the British surveyor, and Lord Lyons was to acquaint the American Government that instructions would shortly be sent to him to communicate with them, in the hope of arriving at a satisfactory settlement on the subject. But his Lordship was to add that Her Majesty's Government were sure that the Cabinet of Washington would regret, as much as themselves, that any local collision should arise in the interval, which would tend to embitter a discussion which might otherwise be conducted with cordiality and good-will; and Her Majesty's Government trusted, therefore, that citizens of the United States would be restrained, as far as the institutions of that Government admitted of their being so, from attempts to settle, by unauthorized acts of violence, a question which there would probably be little difficulty in arranging by amicable communication between the two Governments.

And the Colonial Office was informed that it appeared to Lord Malmesbury that the best course to be pursued by Governor Douglas would be to continue to warn off all persons who might attempt to assert any right of occupancy as against the British dominion in the Island of San Juan, and to maintain, as he had hitherto done, the rights of the British Crown to the Island, avoiding giving occasion to acts of violence, and merely upholding British possession by the ordinary exercise of the civil power.

To Colonial Office;  
April 27, 1859.

The illness of Sir E. B. Lytton, and afterwards the change of Government, retarded the issue o.

the instruction which Lord Lyons was given to understand, in the preceding despatch, would shortly be sent to him ; it was, however, sent off on the 24th of last month, and being of considerable length, it is annexed to this paper as an Appendix.

Unfortunately, the recent aggression of General Harney, of which a brief notice appeared in the "Times" of the 5th instant, and which has been since officially reported by Lord Lyons, may make it more difficult for the American Cabinet to recede from their position, even if they should otherwise have been disposed to do so ; but it is impossible that things should now be allowed to remain as they are.

To Lord Lyons, No. 57 ;  
September 12, 1859.

Lord Lyons has been directed to press for an answer to the note which, in pursuance of Lord Malmesbury's instructions, he addressed to General Cass on the 12th of May, respecting the proceedings of the American squatters ; a note to which it has now become essential that an answer should be returned, in consequence of the report that troops of the United States have actually taken possession of the island.

Lord Lyons is to say that Her Majesty's Government cannot doubt that General Cass will be ready to disclaim, on the part of the Cabinet of Washington, the having authorized, or having been in any way privy to, those proceedings, and that he will give an assurance of the determination of the United States' Government to discountenance and to repress, so far as the institutions of the United States will allow, all attempts to settle, by unauthorized acts of violence, a question which ought to be arranged by friendly discussion between the two Governments, and with respect to which Lord Lyons will, no doubt, when he receives this despatch, have already entered into communication with General Cass, under the instructions contained in Lord J. Russell's despatch No. 42 of the 24th of August.

This last instruction to Lord Lyons has crossed a despatch from his Lordship, inclosing a copy of a note which he had addressed to General Cass on hearing of the proceedings of General Harney. Lord Lyons had also had an interview with General Cass, who said that he had sent Lord Lyons' note immediately to the President, and had since seen the President on the subject. The only information

Lord Lyons, No. 174 ;  
September 5, 1859.

respecting it which had reached the Government was. General Cass said, a report from General Harney, which had been forwarded from New York by General Scott, the Commander-in-chief of the United States' army. General Harney reported that he had found it necessary, in consequence of a requisition from United States' citizens, to send a detachment to the Island of San Juan to protect them from the Indians, and from ill-treatment on the part of the English; and that he had sent one company of soldiers for this purpose, and held another in readiness to send also, in case of need.

General Cass proceeded to say that the President had directed the War Department to inform General Harney that the Government of the United States considered that the principle to be observed with regard to disputed territory was that the actual status was to be maintained, and consequently that he was by no means to take possession of the Island of San Juan, or to set up any jurisdiction there;\* but General Cass said that orders had not been sent to General Harney to withdraw the United States' troops from the island. They were to confine themselves strictly to the protection of American citizens; but it might be necessary that they should remain for that purpose. General Cass proceeded to observe that he was not yet in possession of sufficient information to enable him to make an official reply to Lord Lyons' note, but that he should have, in a short time, a Report from the United States' Commissioner, and that he would then make a written communication to him. In the meantime he would beg Lord Lyons to acquaint Lord John Russell with what he had said, and especially to assure him from the President and from himself, that General Harney had not acted upon orders from the Government, but entirely on his own responsibility.

As it was barely possible for Lord Lyons to get

\* In a telegram from Lord Lyons of September 6, he says, "I have recited to the American Secretary of State, in an official note, the substance of my despatch No. 174, which he says is all quite correct except the phrase: 'and that consequently he was by no means to take possession of the Island of San Juan, or to set up any jurisdiction there.' That phrase the Secretary of State wishes cancelled, no such order having been sent to General Harney."

home in time to make this report to Lord John Russell, he contented himself with replying that he considered the affair very serious and painful, and that he should await with considerable anxiety the written communication which the General promised him.

Lord John Russell has informed Lord Lyons in reply, that it is satisfactory as to the past to learn that General Harney did not act upon any order from the Government at Washington, but entirely on his own responsibility.

But as to the future, it is not satisfactory that Lord Lyons' note of the 12th of May should have remained without an answer.

Lord Lyons is instructed to press for an immediate answer to that note, and that instructions should be sent to the United States' officer not to use military force on disputed territory without direct authority from the President ; for if these acts are to take place by the sole direction of subordinate officers, and the President does not disavow them, the consequences must be as evil as if the President had authorized them from the beginning.

It remains to be seen what the formal answer of the American Cabinet will be, and likewise what they will say to our proposal for adopting the middle channel.

If the peremptory rejection of the same proposal, when made by Captain Prevost to Mr. Campbell, be taken as an index of the views of American statesmen on this question, it may be feared that the pretensions of the United States' Government will be maintained with that tenacity which distinguishes all their correspondence on controverted questions of territory and jurisdiction ; if that proposal is rejected, what will be the next step for the British Government to take ?

The Colonial Office has already suggested arbitration, but Lord Lyons has been instructed to deprecate the necessity of it. Moreover, it is believed that an arbitration would be highly unpopular in the United States ; and if speculation as to the probable result of such an arbitration be allowable, it may perhaps be permitted to the writer of this paper to say that while his convictions with regard to the inapplicability of the Canal de Haro, as the channel of the Treaty, remain unchanged, a perusal of the

entire correspondence has left on his mind an impression that the case of the Americans, though specious in the extreme, might yet be argued by them so as to give us trouble. The result of the survey has certainly been to show that some of the arguments on which we had relied are no longer tenable. Unless, therefore, the arbitration were confined to the one question, as to the meaning which the words of the Treaty convey, and all other arguments and considerations were carefully excluded (a restriction to which the Government of the United States might probably not consent), it is not impossible that the result might be adverse to our views.

For these reasons it would seem desirable that every possible effort should first be made to settle the question by friendly compromise, the more especially since, in the last despatch received from Captain Prevost, he writes as follows:—

Captain Prevost, No. 7.  
July 23, 1859.

“San Juan is a fertile and beautiful island, with a large extent of open prairie land; but were it barren and rocky, and intrinsically worthless, it is of the *utmost* value to Great Britain, commanding as it does the channel of communication between Vancouver’s Island and British Columbia. Let the words of the Treaty be perverted as they may, I do not think it possible, under any circumstances—unless the Treaty be put aside, and the testimony of Messrs. Mc Lane and Benton be substituted in its place—that the line of boundary can be directed into the Canal de Haro; and so long as it does not pass through the Canal de Haro, the Island of San Juan cannot be possessed by the United States. In my opinion, it matters not if all the other islands between San Juan and the Continent pass to the United States, but San Juan is invaluable to our possessions; it is clearly ours, both in right and in equity, and to yield it to the United States would be to depreciate our contiguous territory to an extent that some day might prove fatal to Her Majesty’s possessions in this quarter of the globe.”

*Foreign Office,*

*September 23, 1859.*

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## Appendix.

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*Lord J. Russell to Lord Lyons.*

(No. 42.)

My Lord, *Foreign Office, August 24, 1859.*

YOUR Lordship was apprised by my predecessor, in his despatch No. 30 of the 28th of April, that instructions would shortly be sent to you with regard to the boundary between Her Majesty's possessions and those of the United States on the north-west coast of North America, as fixed by the Treaty of 1846. Circumstances prevented that intention from being acted upon previously to the change of Government, and it is now my duty to convey to you those instructions.

Your Lordship is, no doubt, aware that the British and American Commissioners appointed in 1856 to survey and mark out the boundary, differed in opinion as to that portion of it lying between the Gulf of Georgia and Fuca's Straits. As far, indeed, as there is only one channel separating the Continent from Vancouver's Island, no doubt can be entertained as to the true boundary, which, according to the Treaty, runs from the 49th parallel of latitude down the centre of the Gulf of Georgia to its southernmost point, and no question can arise as to that portion of the boundary which is to be drawn through the centre of the Straits of Fuca to the ocean. But, with regard to the intermediate portion of the boundary, the Commissioners differed in opinion: the British Commissioner conceiving that the line should be traced through the channel known as Rosario Straits, while his American colleague maintained that it must be sought for in the Haro Channel. The Commissioners defended their respective positions in a correspondence of some length, marked by much ability on both sides. Neither Commissioner, however, was prepared to defer to the arguments of the other. The American Commissioner rejected an offer to compromise the matter, subsequently made to him by his English

colleague ; and the Commissioners, considering that under these circumstances it was useless to continue their correspondence, signed, on the 3rd of December, 1857, a Minute recording their disagreement and adjourning their proceedings until circumstances should render it necessary for them to meet again.

It is much to be regretted that there was not annexed to the Treaty of 1846 any map or chart by which the true meaning of the expressions made use of in Article I of that Treaty could have been authoritatively ascertained. The British Commissioner was clearly of opinion that both the boundary intended by the Plenipotentiaries who negotiated the Treaty of 1846, and also the channel spoken of in the Treaty, are the channel known as Rosario Straits, and Her Majesty's Government fully share that opinion ; but, inasmuch as it is now proved that there are several channels connecting the Gulf of Georgia with Fuca's Straits, that circumstance afforded to the American Commissioner the means of contesting the views of the case taken by his English colleague, and the result has unfortunately been that a question which Her Majesty's Government had hoped was finally set at rest by the Treaty of 1846, remains still a subject of discussion.

It may be convenient that I should here pass in review a few of the arguments which led Her Majesty's Government to the well-founded belief that the boundary between the British and American possessions, as fixed by the Treaty of 1846, is the Rosario and not the Haro Channel.

The words of Article I of that Treaty are as follows:—

“ From the point on the 49th parallel of north latitude, where the boundary laid down in existing Treaties and Conventions between Great Britain and the United States terminates, the line of boundary between the territories of Her Britannic Majesty and those of the United States shall be continued westward along the said 49th 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 49th parallel of north latitude remain free and open to both parties."

The Treaty, therefore, in dealing with the space separating Vancouver's Island from the Continent, speaks of two divisions only, viz., the "Channel" and the "Straits;" the Channel being that commencing in the Gulf of Georgia, and those Straits being the Straits of Fuca. The information acquired by subsequent surveys, shows that it might have been more correct to have divided that space into three portions, viz., the Gulf of Georgia, the Straits of Fuca, and the intervening Channel or Channels by which the Gulf of Georgia and the Straits of Fuca are connected. A glance, however, at Vancouver's Chart, which was the only map which the British Government, and, it is believed, the Plenipotentiaries of the two Governments, had before them at the time when the Treaty of 1846 was negotiated, will suffice to show why the Treaty speaks only of the "Channel" and the "Straits." Vancouver's Chart depicts the channel through which he sailed as being an uninterrupted water-line passing in a southerly direction through the Gulf of Georgia and the passage known by his name, but since called Rosario Straits, into the Straits of Fuca; and on the assumption, suggested by a study of that map, that the channel discovered by Vancouver was the main artery connecting the Gulf of Georgia with Fuca's Straits, there was no necessity for mentioning the channel which was to serve as the boundary between the British and the American Possessions, otherwise than in the terms used in the Treaty.

For the same reason the Treaty designates as "southerly" the direction which the boundary-line is to take from the westernmost point of the 49th parallel of latitude. Considered with reference to Vancouver's Chart, the term "southerly" is a sufficiently accurate description of a boundary-line to be traced through the centre of the Gulf of Georgia, and of the passage navigated by Vancouver into the Straits of Fuca.

But if the boundary-line had been intended to pass through the Haro Channel, the Treaty must have been otherwise worded. The Haro Channel

could not have been regarded or described as a portion of the Channel commencing with the Gulf of Georgia, for it is neither the Channel discovered by Vancouver, nor is it, in regard to its general configuration, a continuation in a southerly direction of the Gulf of Georgia. Moreover, it was not at that time known—at all events by Her Majesty's Government—to be navigable for shipping, but on the contrary, it was supposed to be a dangerous, if not an unnavigable, Strait.

The Gulf of Georgia extends as far south as the latitude of Orcas and Lummi Islands; consequently the boundary-line between the British Possessions and those of the United States, which, in accordance with the clearly expressed words of the Treaty, runs down the centre of that Gulf, must, if it is to be diverted from the southernmost point of that Gulf into the Haro Channel, take for some distance not a southerly, but a westerly direction, describing for that purpose an acute angle, before the southerly course spoken of in the Treaty could be resumed. Consequently, if the Plenipotentiaries had intended that the boundary-line should pass through the Haro Channel, they would undoubtedly have specified that channel by name, in order to distinguish it from "the Channel," that is to say, the channel used by Vancouver—the channel, namely, which was the continuation of the Gulf of Georgia; and they would also have added some modified qualification to the word "southerly," from which it may be inferred that the boundary channel was intended to be one contiguous to the main land.

Another argument may be adduced in support of the view taken by the British Commissioner, from the fact that the Canal de Haro, so far from being a continuation of the Channel through the Gulf of Georgia, is rather a distinct and independent channel running parallel to that Gulf, and having its commencement in the Straits separating Saturna and the other islands in that quarter from Vancouver's Island.

But all these points were so ably argued by Captain Prevost, the British Commissioner, that Her Majesty's Government do not think it necessary to re-state them in this despatch. They think it sufficient to refer to his report, and to state in general terms their conviction, that whereas the channel

through Rosario Straits does in all essential points answer to the plain meaning and intention of the Treaty, the Haro Channel does not do so.

The Commissioner of the United States rested his view of the interpretation to be given to Article I of the Treaty mainly on the expressions made use of by Mr. Mc Lane, the American Minister at this Court in 1846, in reporting to his Government the terms of arrangement which he thought the British Government would probably offer, and on the language employed by Mr. Benton in the Senate, when the Treaty came under discussion before that body. It appears that both Mr. Mc Lane and Mr. Benton indicated the Canal de Haro : Mr. Mc Lane as that which he thought the British Government would offer as the boundary line ; Mr. Benton as that which the Government of the United States had understood as the boundary.

Her Majesty's Government have not failed to consider, with the attention it deserves, the argument to be drawn from those statements in favour of the position of the American Commissioner ; but while those statements may be taken as evidence of what were the views of Mr. Mc Lane and of Mr. Benton, Her Majesty's Government cannot accept them as necessarily proving what were the intentions of the Plenipotentiaries who signed the Treaty, or what is the fair construction of the Treaty itself.

Her Majesty's Government, indeed, do not think that they should be asked to do so, seeing that the words of the Treaty, which ought to be the guide, do not properly admit of that interpretation, and that it is beyond dispute that the intentions of the British Government were that the line of boundary should be drawn through Vancouver's Channel.

With reference to this point, I have to state to you that the Earl of Aberdeen, to whom I have referred, informs me that he distinctly remembers the general tenour of his conversations with Mr. Mc Lane on the subject of the Oregon Boundary, and is certain that it was the intention of the Treaty to adopt the mid-channel of the Straits as the line of demarcation, without any reference to islands, the position, and indeed the very existence, of which had hardly at that time been accurately ascertained ; and he has no recollection of any mention having been

made. during the discussion, of the Canal de Haro, or indeed any other channel than those described in the Treaty itself.

I also inclose a Memorandum drawn up by Sir Richard Pakenham, the negotiator of the Treaty of 1846. ✓

Such being the state of the question, and Her Majesty's Government being anxious to see it finally settled in a manner satisfactory and honourable to both parties, Her Majesty's Government have had to consider the advice which it behoves them to tender to the Crown, with a view to so desirable a result.

This duty has been rendered in the present instance a comparatively easy one. Her Majesty's Government cannot doubt that their desire for a mutually satisfactory and honourable settlement of the question is fully reciprocated by the Government of the United States, and they feel confident that the gradual disappearance, one after another, through the good sense and conciliatory spirit shown by both Governments, of those points of difference which the President of the United States, in a former Message to Congress, described as "irritating questions," has left no room for doubting that this sole remaining question can also be satisfactorily adjusted.

Her Majesty's Government trust that, as between this country and the United States, the day for tedious arbitrations, and still more for hostile demonstrations, is gone by; they see no reason why this, and indeed any other question which may from time to time arise, should not be settled by direct and friendly communication between the two Governments. The true and just interpretation of Treaty engagements is the only law by which Her Majesty's Government claim to be governed in their dealings with the United States; the force of argument is the only force to which they desire to appeal: and when the interpretation is asserted to be doubtful, or the argument fails to convince, Her Majesty's Government conceive that the only alternative which befits two great nations, bound to each other by such ties as those which unite Great Britain and the United States, is to endeavour to adjust the difference by mutually honourable compromise of conflicting pretensions.

Now the result of the survey upon which Captain Richards, of Her Majesty's ship "Plumper," has been lately engaged, as set forth in the inclosed chart, shows that in addition to the Rosario Straits and the Haro Channel, there exists a third navigable passage, connecting the Gulf of Georgia with Fuca's Straits.

This third channel is, indeed, reported by Captain Richards to answer, in respect of its central position and southerly direction, to the channel described in the Treaty; and assuming it to have been the intention of the Plenipotentiaries that the several channels connecting the Gulf of Georgia with Fuca's Straits should be considered, for the purposes of the Treaty, as one channel, it may fairly be argued that the central passage would not only satisfy the requirements of the Treaty, but would divide between the two countries, in proportions which each party might consent to, the cluster of islands by which the channel is intersected. The advantage of such a line would, indeed, lie with the United States: for there are only three islands of any territorial importance situated between the Haro Channel and Rosario Straits, namely, Orcas and Lopez Islands, and the Island of San Juan; and by the adoption of the central channel as the boundary line, the two first-named islands would belong to the United States, while only the Island of San Juan would remain to Great Britain.

Your Lordship will accordingly propose to the United States' Government that the boundary line shall be the middle channel in the continent of America and Vancouver's Island, as thus defined:—

"Starting from the north, in the parallel of  $48^{\circ} 50'$  north, and the meridian of  $123^{\circ}$  longitude west from Greenwich (as laid down on the accompanying chart), the mid-channel line would proceed due south, passing half-way between Patos Island on the east, and the east point of Saturna on the west, to the centre of Douglas Channel, half-way between Waldron and Orcas Islands. Thence sweeping round to the south-west, south-east, and south, between San Juan on the west, and the Islands of Orcas, Shaw, and Lopez on the east, the line would rejoin the 123rd meridian as soon as the safety of navigation would permit, at about one mile to the southward of the Salmon Bank on the parallel

of 48° 28' north, and continue due south along this meridian, until it falls into the *common* mid-channel course through Juan de Fuca Strait.

“It will thus be observed that the meridian of 123° is assumed as the boundary, and is only departed from when forced to do so by the physical interference of the islands.”

This middle channel, though inferior in some respects to the Haro Channel, or to Rosario Straits, is described by Captain Richards as being perfectly safe for steamers, and also, under ordinary circumstances, navigable for sailing-vessels. Her Majesty's Government, however, do not consider this point as of much importance, since their proposition only extends to making this channel the line of boundary; and they do not propose to alter in any way that stipulation of the Treaty which secures to the shipping of both countries the free navigation of the whole of the channels and of the Straits—a stipulation advantageous to both parties, and which Her Majesty's Government cannot doubt that the Government of the United States will agree with them in thinking must, under all circumstances, be maintained.

It appears to Her Majesty's Government that a boundary line traced through the above-mentioned central channel likewise recommends itself for adoption, as being in accordance with the principles which regulated the division between the two countries of the Islands in the River St. Lawrence.

Her Majesty's Government further submit to the Cabinet of Washington, whether, with a view to mutual convenience, it might not be desirable that the small promontory known as Point Roberts should be left to Great Britain. The point is of no intrinsic value to either Government, but its possession by the United States will have the effect of detaching an isolated spot of small dimensions from the more convenient jurisdiction of the British Colony. As the Government of the United States will obtain, under the proposal now made, the more valuable portions of the islands in the Straits, Her Majesty's Government consider that the retention of Point Roberts can hardly be an object with them.

There is one other consideration to which I should wish to draw the attention of the Government of the United States. In the discussions between

Lord Ashburton and Mr. Webster, which resulted in the Treaty of 1842, the American Plenipotentiaries argued upon the relative importance to the two countries, of the territory then in dispute; Her Majesty's Government admitted the value of that argument, and acted upon it. The same language was employed in 1846, upon the Oregon question, and on both occasions the United States obtained the larger portion of the territory in dispute; their Plenipotentiaries successfully arguing that it was of greater value to the United States than it could be to Great Britain.

Upon the present occasion this state of things is reversed; the adoption of the Central Channel would give to Great Britain the Island of San Juan, which is believed to be of little or no value to the United States, while much importance is attached by British Colonial Authorities and by Her Majesty's Government to its retention as a dependency of the Colony of Vancouver's Island.

Her Majesty's Government must therefore, under any circumstances, maintain the right of the British Crown to the Island of San Juan: the interests at stake in connection with the retention of that island are too important to admit of compromise; and your Lordship will consequently bear in mind that, whatever arrangement as to the boundary line is finally arrived at, no settlement of the question will be accepted by Her Majesty's Government which does not provide for the Island of San Juan being reserved to the British Crown.

Your Lordship will bring to the consideration of this question the same conciliatory spirit and frank and straightforward bearing which have distinguished you on previous occasions; and I am happy to think that in the President and Secretary of State of the United States you will find statesmen animated by the same honourable dispositions.

Her Majesty's Government hope that the American Government will appreciate the arguments you are instructed to employ, and the spirit in which you will advance them; and Her Majesty's Government will not permit themselves to believe that the negotiation can, under such circumstances, fail of a successful issue.

It may be proper, however, that you should make the Government of the United States understand

that this proposal of compromise, that you are thus instructed to lay before them, is made without prejudice to the claim which Her Majesty's Government consider themselves justified in maintaining to the Rosario Channel, as the true boundary between Her Majesty's Possessions and those of the United States. They offer this compromise in the hope that its acceptance by the Government of the United States may obviate any further discussion on the subject; but if it is rejected they reserve to themselves the right to fall back on their original claim to its full extent.

You will read this despatch to General Cass, and will leave with him a copy of it.

I am, &c.

(Signed) J. RUSSELL

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