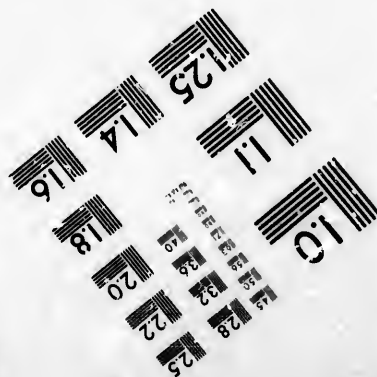
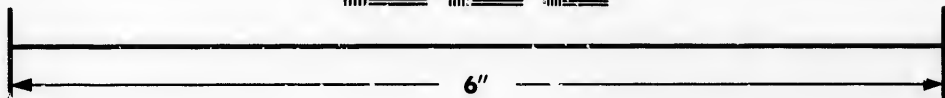
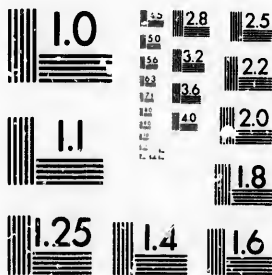


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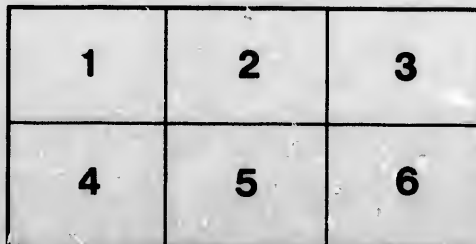
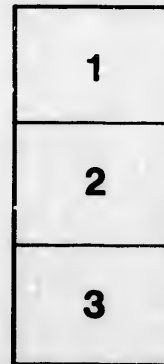
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SAN JUAN,

ALASKA,

AND

THE NORTH-WEST BOUNDARY.

BY

A. G. DALLAS,

LATE GOVERNOR OF RUPERT'S LAND.

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2

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SAN JUAN, ALASKA,

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THE NORTH-WEST BOUNDARY.

WHILE fully accepting the settlement of the San Juan question as irrevocable, I am induced to endeavour to clear up, in as few words as possible, the misconceptions by which the case is still surrounded.

If apology were needed for reviving the subject at all, it must be borne in mind that we are not yet out of the wood, either in regard to the Haro Strait or the land and water boundary between our territories and Alaska, where precisely similar difficulties present themselves, subject to the same differences of interpretation.

Some vindication of our national character in the eyes of the world is also imperatively demanded; standing convicted, as we do, of having so long and persistently asserted a claim which has been authoritatively decided against us, while it is but little known that the basis of our contention had been expressly excluded from the arbitration.

Our experience in this, as in other questions, revives the consideration of how far, and under what circumstances, it may be practicable, on the part of the Executive, to consult Parliament before committing the country to Treaties or Conventions. In this instance, our representatives consented to nullify a Treaty,

which a reference to Parliament would certainly never have sanctioned.

The importance of the possession of San Juan island, whether exaggerated or not, must depend upon the measure of value placed upon it. It is certainly not worth going to war about, and no reasonable man ever contemplated such a contingency; but rather than lose it in the way we have, I submit that it would have been more consistent with our dignity, and less humiliating to our pride, to have made the United States Government a present of the whole question at issue, than to have consented to set aside the Treaty, and refer to arbitration two alternative and subordinate propositions, not even alluded to in it, on conditions almost entailing defeat.

The Treaty of 1846 defined the north-west water boundary to be "a line drawn from the middle of the channel which separates the continent from Vancouver's Island southerly through the middle of the said channel and of Fuca Strait to the ocean."

The Government of that day has been blamed for not having appended a map or chart to the Treaty. It is a sufficient reply to this, that there was at that time no complete chart of the Straits in existence, and that the words of the Treaty supplied in themselves a perfect definition. They demanded not necessarily a *navigable ship channel* (any more than the land boundary demanded a road or pathway), but a *line of demarcation* through the middle of the *whole channel* separating the continent from Vancouver's Island. Such a line, including the free navigation of the whole channel to both parties, would fulfil every condition of this explicit Treaty, which either of the substituted passages, De Haro and Rosario, fails to do.¹

¹ *Vide* opinion of Sir Richard Pakenham, our representative in negotiating the Treaty of 1846:—"I deny that either can exactly fulfil the conditions

Though the existence of the De Haro and Rosario channels was known to the negotiators of the Treaty of 1846, yet these passages were not even alluded to in that Treaty.

The Gulf of Georgia and the Strait of De Fuca were evidently and reasonably treated as one channel, to be connected by a centre line of demarcation, irrespective of the more or less navigable and tortuous passages, more or less known to have existed through the interposing archipelago. I would here beg to call particular attention to this argument:—If the line of the water boundary had been intended to apply to a navigable passage, why were the words “whole channel” used in securing the right of free navigation to both parties? These words are evidently superfluous if applied to one navigable channel separating two independent States—such a channel necessarily carrying with it a free right of navigation.

I will not here enter into the reasons why the plain words and obvious meaning of the Treaty, pointing to the middle of the space between the continent and Vancouver's Island, throughout the whole length of the line of water boundary, were departed from, and the De Haro passage to the extreme left contended for by the Americans, while we claimed that of Rosario on the extreme right. Apart from the various arguments advanced, and not without strong presumptive evidence, on both sides, it exactly suited the American view of the case to insist on this departure, as they might win everything on the De Haro standpoint, while they were certain

“of the Treaty, which, according to their literal tenor, should 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 of 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 Art. I. of that Treaty.”

to lose something on the middle ground of the Treaty. We, on the other hand, reasonably concluded that if beaten upon the Rosario, we could fall back upon a middle channel and the express terms of the Treaty. How we came to grief may be told in a few words.

On the failure of the Commissioners specially appointed by both parties, in 1856, to settle the boundary on the spot, the Clarendon-Johnson Treaty was negotiated in 1869. This Treaty, so far as related to the north-west boundary, was unexceptionable, as it simply provided for a reference of the Treaty of 1846, in all its integrity, to arbitration. This, however, did not suit the views of our astute antagonists, and the Clarendon-Johnson Treaty was never ratified by the American Senate.

At the Washington Convention, on March 15, 1871, the American Commissioners proposed to abrogate the Treaty so far as related to the water boundary. This, after a reference to England, was declined. They however carried their point by a flank movement in this wise, viz., by declining to adopt, or even allow the arbitrators to consider, a channel intermediate between De Haro and Rosario. To this our Commissioners unaccountably and fatally consented, thus abrogating the Treaty of 1846. They also allowed that the *only channel* open to free navigation, to both parties, should be the one to be selected by the Arbitrator, though the Treaty provided that the navigation of the *whole* channel and strait south of the 49th parallel of north latitude should remain free and open to both parties.¹ By this concession the Rosario Strait would seem to become an inland water of the United States.

In this Conference the United States Commissioners, as

¹ The whole story is told in Blue Book, "North America," No. 3 (1871). London: Harrison and Son, Pall Mall (C-346). Price 2½d.

above shown, declined to admit the words of the Treaty pointing to the middle ground, on the frivolous pretext that they desired a *decision*, not a compromise—as if one did not involve the other ; while, with the same breath, in rejecting the Treaty, they actually substituted a *compromise*. It is unaccountable that we did not avail ourselves of the opportunity, and secure a *decision on the whole Treaty*, instead of the fatal compromise.

The question then submitted to arbitration being, not the Treaty of 1846, but its application to another issue, and expressly excluding a centre line of demarcation pointed to in the Treaty, it is no wonder that, in the absence of satisfactory explanation, a belief has gained extensive ground, both in this country and the colonies, that the Island of San Juan was purposely given up with the view of conciliating America. The only other conclusion we can come to is that we were overreached.

Although the decision of the Emperor of Germany, even on the point submitted, has been called in question by high authority,¹ it must be borne in mind that we had the preponderating influence of Mr. Bancroft, the only survivor of the negotiators of the Treaty, against us at Berlin. Without questioning the honesty of his understanding of the meaning of the Treaty of 1846, it does not follow that the opposing parties had understood the question in the same light,²

¹ See opinion of Professor Cristofa Negri, in *Times* 4 November last :—" I am able to say that the English are not in the wrong. I have arrived at the conviction that at Berlin too complete a victory has been given to the Government of the United States. The decision of the umpire has been given, and that decision is law, even if it were erroneous. I deplore that it should have been rendered improbable that, in international controversies, at least in those that do not spring from a mere desire of predominancy, recourse will in future be had to the system of arbitration."

² I need only refer to the well-known misunderstandings of "*understandings*" on the late indirect "Alabama" claims.

Our negotiator, Sir Richard Pakenham, as already shown, had a totally different impression from that of Mr. Bancroft as to the Treaty of 1846.

fortified as they were by the speeches and writings of contemporary American statesmen and other authorities,¹ and by the published American maps of Fremont, Preuss, and Preston.

The exact words of the award, "am meisten im Einklange," &c., translated in our Blue Books as "*most* approaching the meaning of the Treaty," are perplexing and apt to mislead, in that they apply an absolute term to a comparative issue. The award is clearly a decision upon a comparative and subordinate issue, not an absolute decision upon the whole Treaty, which has never yet been adjudicated upon.

The people of the Dominion of Canada have been almost taunted with putting up so quietly with the loss ; but it would have been both undignified and unpatriotic to have done otherwise. It is of course folly to cry over spilt milk, but it may not be amiss to inquire how the milk came to be spilt.

We have no ground to flatter ourselves that we have gained a step in conciliating the Americans, educated as they have been in the belief that they were contending for an undoubted right, yielded by us only when it could be no longer withheld.

It is strange, however, that no account ever appears to

¹ Mr. Senator Benton, in his speech of June 18th, 1846, said : " I knew " the Straits of Fuca, and that these straits formed a natural boundary for " us, and also divided the continent *from the islands*, and the fertile from the " desolate regions. I knew that the continental coast and the inhabitable " country terminated on the south shore of those straits, and that the north- " west archipelago—the thousand desolate and volcanic islands, derelict of all " nations—commenced on their shore ; and I wanted to go no farther than " the good-land and continental coast went. I was always in favour of a deflec- " tion of a line through the Straits of Fuca, but I said nothing about it. It " was a detail, and I confined myself to the proposition of the line as a basis. " I had expected the deflection to have commenced further back (*south*) on the " continent, so as to have kept our line a little farther off from Fort Langley, at " the mouth of Fraser's River, almost in sight of which it now passes. If " this had been asked, I, for one, would have been willing to grant it."

be taken of the desirability of conciliating the people of England. We seem to treat the Americans as children whom it is incumbent on us always to keep in good humour, while flattering ourselves that we stand on higher ground. It is not until we come into actual conflict that we are painfully reminded that the reverse is more like the truth.

It may not be out of place here to refer to one example. Under the Nootka Sound Convention of 1790, as well as in agreement with our treaties with the United States in 1818 and 1828, we were at full liberty to settle upon any part of the disputed region. In July, 1859, the island of San Juan—then in the quiet, and almost sole, occupation of the Hudson Bay Company as a sheep farm, under a convention with Mr. Marcy, on the part of the United States, declaring the disputed islands under the Treaty of 1846 to be neutral ground—was suddenly, and in defiance of this convention, forcibly taken possession of, on a frivolous and untenable pretence, by the United States troops under General Harney. To the wholesome dread of responsibility, and owing to great forbearance on the part of our authorities on the spot, it is alone due that the United States troops were not summarily ejected by the preponderating British naval force which immediately assembled. From the position thus usurped the Americans never receded. After the usual war of words and despatches, we were allowed to land a similar number of troops on the other side of the island. There they have remained till within the last month or two, to the great advantage, no doubt, of the colonists, but at the cost of the British tax-payer. No reparation was ever made by the United States Government for this unprovoked outrage.

It is to be hoped that the experience of the past will enable us to deal more satisfactorily with the still open

question of the boundary between our territories and Alaska. By the Treaty of 1825 with Russia, this territory, subsequently sold to the United States in 1867, by Treaty of June 20 in that year, was in neither case more accurately described in its western boundary, than by a line to be drawn not more than ten marine leagues from the coast. The difficulty of determining this line will be apparent when it is borne in mind that the coast for 600 miles is mountainous and rugged in the extreme, densely wooded, and intersected by arms of the sea, very much like the west Highlands of Scotland. Add to this, that through these thirty miles and along this coast there are several streams, rising in British territory, through which, under our Treaty of 1825 with Russia, we possess the right of navigation.

The Naas River, flowing exclusively through British territory, is one of the two largest and most important streams north of Fraser River, and runs into an arm of the sea separating our territory from Alaska. This arm is obstructed by islands, offering precisely similar difficulties as in the case of San Juan. They are of little or no value in themselves, but may command our access to the Naas River from seaward, and their possession be of great importance to us.

There is no reason, I believe, why these difficulties should not be amicably settled at Washington or in London, without the necessity of sending Commissioners to the spot.

In estimating the value of what we have lost, or may yet lose or gain, the following opinion, in regard to one of the finest portions of the American Union, by a leading London journal, while reviewing a speech of Lord Aberdeen in support of the Treaty of 1846, may serve as a caution to writers and speakers ignorant of the country, and ill-informed on the question in dispute :—

"The Oregon Territory (*which then included Washington Territory*) is really valueless to England and to America. "The only use of it to America would be to make it an addition to territories already far too large for good government, or even for civilization. The emigrants to Oregon must pass through thousands of miles of unoccupied land, with a soil and climate far better than they will find on the shores of the Pacific. And when they get there, what will be the social state of a few thousand families, scattered through a territory more than six times as large as England, and three thousand miles from the seat of government? They will mix with the Indians, and sink into a degraded race of half-caste barbarians. If she could obtain sovereignty over the whole of the lands west of the Rocky Mountains to-morrow, every wise American statesman must wish that the next day they should sink into the sea." *Verbum sat.*

Since writing the above I have been surprised to find, in a pamphlet just published by Lord Bury, the following remarks, under the head of "San Juan":—"Whether the decision be or be not satisfactory to us, it cannot be laid to the account of the Treaty now under discussion." Again: "Serious as may be the results to the Dominion of the award given by the Emperor of Germany, it must, I think, be conceded that the fortune of the question was neither made nor marred by the Treaty of Washington. The High Commissioners did nothing more than refer the meaning of a former Treaty to arbitration."

A reference to Blue Book No. 3, 1871, must, I think, satisfy his lordship that the fortune of the question *was* marred by the Treaty of Washington, and that the High Commissioners *did not* refer the meaning of a former Treaty to arbitration.

LONDON :
R. CLAY, SONS, AND TAYLOR, PRINTERS,
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