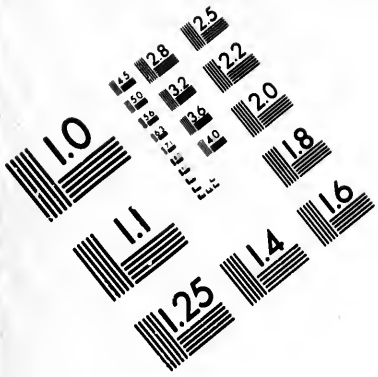

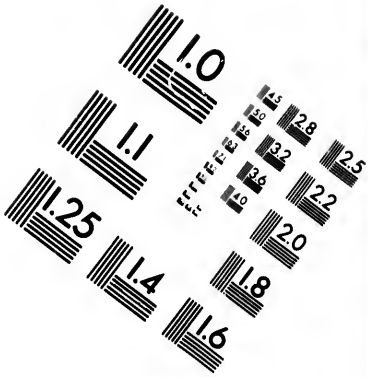

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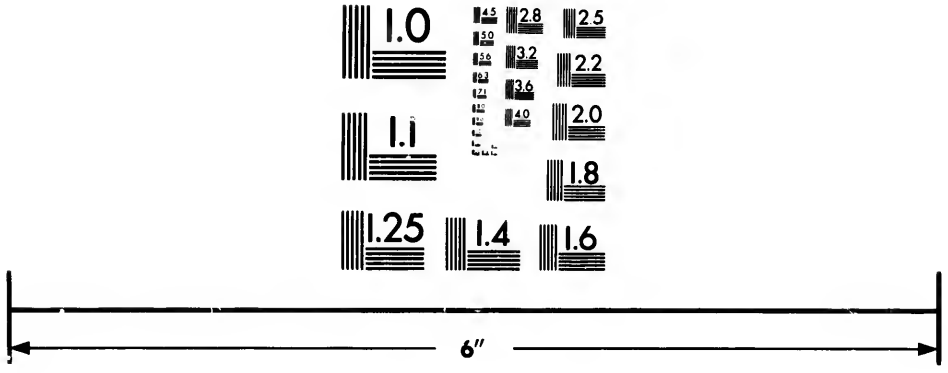

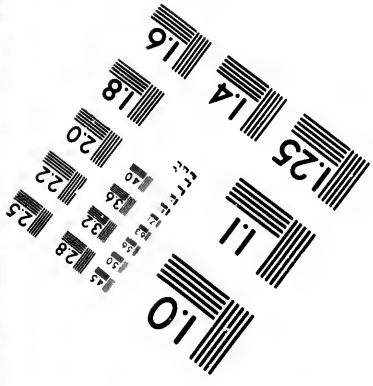

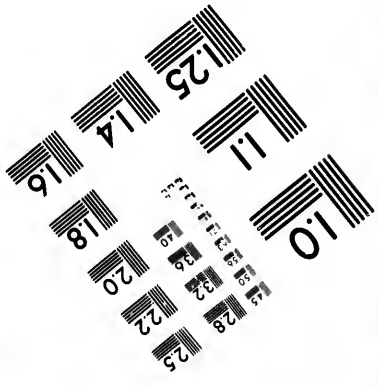

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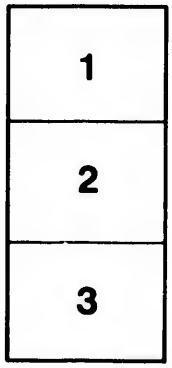

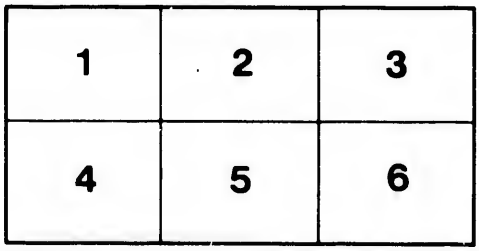

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20th Congress, 1st Session. [Doc. No. 199.] Ho. of Reps. Executive.

TERRITORY WEST OF THE ROCKY MOUNTAINS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING THE CORRESPONDENCE BETWEEN

THIS GOVERNMENT AND THAT OF GREAT BRITAIN,

ON THE SUBJECT OF THE

CLAIMS OF THE TWO GOVERNMENTS

TO THE

TERRITORY WEST OF THE ROCKY MOUNTAINS.

MARCH 15, 1828.

Read, and laid upon the table.

WASHINGTON:

PRINTED BY GALES & SEATON.

1828.

To the House of Representatives of the United States:

WASHINGTON, 15*th March*, 1828.

In compliance with a resolution of the House of Representatives, of the 21st ultimo, requesting me to lay before the House, correspondence, not heretofore communicated, between the Government of the United States and that of Great Britain, on the subject of the claims of the two Governments to the Territory westward of the Rocky Mountains, I transmit, herewith, a report of the Secretary of State, with the documents requested by the resolution.

JOHN QUINCY ADAMS.

DEPARTMENT OF STATE,

Washington, 13th March, 1828.

The Secretary of State, to whom has been referred a resolution of the House of Representatives, of the 21st ultimo, requesting the President to lay before that House any correspondence, not heretofore communicated, which may have taken place between the Government of the United States and that of Great Britain, on the subject of the claims of the two Governments to the Territory westward of the Rocky Mountains, if, in his opinion, the same can be communicated without injury to the public interest, has the honor to report to the President the accompanying pamphlet, which, with the manuscript copy added thereto, contains copies of so much of the correspondence required, as, in the judgment of the Secretary, can, with propriety, be made public at this time.

Respectfully submitted.

H. CLAY.

List of Papers accompanying the report of the Secretary of State, of the 13th March, 1828.

Mr. Clay to Mr. Gallatin, - -	19th June, 1826.	Extract.
Same to same, - - - -	23d June, 1826.	do.
Same to same, - - - -	8th August, 1826.	Copy.
Same to same, - - - -	24th Feb. 1827.	do.
Mr. Gallatin to Mr. Clay, - -	16th Nov. 1826.	do.
Same to same, - - - -	25th Nov. 1826.	do.
Same to same, - - - -	2d December, 1826.	do.
Same to same, - - - -	5th Dec. 1826.	Extract.
Same to same, - - - -	12th Dec. 1826.	do.
Same to same, - - - -	20th Dec. 1826.	Copy.
Same to same, - - - -	29th May, 1827.	Extract.
Same to same, - - - -	20th June, 1827.	do.
Same to same, - - - -	23d June, 1827.	Copy.
Same to same, - - - -	27th June, 1827.	Extract.
Same to same, - - - -	7th August, 1827.	Copy.

Protocols, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13.
Project of Convention.
Project of an article of Convention, A.
Declaration proposed to be annexed to the renewal of the Convention respecting N. W. boundary.

[EXTRACT.]

Mr. Clay to Mr. Gallatin.

JUNE 19, 1826.

"2. The establishment of a boundary between the territories of the two parties, beyond the Rocky Mountains, and on the Northwest coast of America.

It is not thought necessary to add much to the argument advanced on this point in the instructions given to Mr. Rush, (a copy of which is herewith communicated,) and that which was employed by him, in the course of his negotiation, to support our title, as derived from prior discovery and settlement at the mouth of the Columbia, and from the treaty with Spain, concluded on the 22d of February, 1819. That argument is believed to have conclusively established our title, on both grounds. Nor is it conceived that Great Britain has, or can make out, even a colorable title to any portion of the Northwest Coast. If she had any claim, prior to the treaty of 1763, it was renounced by that treaty, according to which the Mississippi was fixed as the western limit of her territories on this Continent. If she acquired any title, subsequent to that epoch, we have yet to learn how, and by what means, it was obtained. The settlement at Nootka Sound, in 1788, cannot be admitted to have conferred any; but if it did, that settlement was north of the line, to which we are now willing to agree. By the renunciation and transfer contained in the treaty with Spain of 1819, our right extended to the 60th degree of north latitude. By our treaty with Russia, of April, 1824, it has been agreed to limit it to the 54th degree. By agreeing to our proposal, to adopt the parallel of 49, which is conceived in a genuine spirit of concession and conciliation, and under the operation of the Russian Treaty, Great Britain will acquire, what she had not before, or, at least, what was open to much controversy, a clear title to an extent of five degrees of latitude fronting on the Pacific, which is but little short of that which will appertain to the United States. It was stated by the British Plenipotentiaries to Mr. Rush, that the surrender to the United States of the post at the mouth of Columbia river, was in fulfilment of the stipulations of the first article of the treaty of Ghent, without affecting questions of right on either side. It is most true that the restoration was in conformity to that article, but there is nothing in the terms of the article which implies any reservation of right on the part of Great Britain. And does not the stipulation itself, in virtue of which she was bound to restore it, demonstrate that, at the date of that treaty, she had no pretensions to the mouth of Columbia? If she then had any claim, would she have contracted to restore the possession unconditionally, and without even the formality of a reservation of her right? The course which was adopted in re-

gard to another territorial possession, claimed by both parties, was very different. She had reduced, by her arms, Moose Island, in the Bay of Passamaquoddy, as well as the post at Columbia. She refused to restore Moose Island, on the ground of the title which she set up to it, as being included within the limits of Nova Scotia; and the respective titles of both parties were agreed to be referred to a Board of Commissioners. Now, if, with respect to two possessions, taken by her arms during the war, she agreed to restore one unconditionally, and insisted upon retaining the occupancy of the other, as belonging to her, is not the inference irresistible, that her present claim to that which was so restored, did not then exist, but has been subsequently gotten up?

It is true that the third article of the Convention of 1818, recognizes that Great Britain *then* had claims on the Northwest Coast, but it neither defines nor settles them, nor specifies when they had their origin. The same article contains an express declaration that it is not to affect the claims of any other Power. Now, it having been shown that the title of Spain extended to the 60th degree of north latitude, that must have been one of those which were particularly in the contemplation of the parties to the above Convention of 1818. And we have already seen, that, subsequently to that period, the United States acquired from Spain all her territorial rights on the Northwest Coast, north of the parallel of 42, as far as they extended, and consequently up to 60. As by the Convention of 1818, the 49th parallel of north latitude has been agreed to be the line of boundary between the territories of the United States and Great Britain, east of the Stony Mountains, there would seem to arise, from that stipulation, a strong consideration for the extension of the line along the same parallel, west of them, to the Pacific Ocean. In bringing themselves to consent to this boundary, the Government of the United States feel that they are animated by a spirit of concession and compromise, which they persuade themselves that of Great Britain cannot but recognize, and ought not to hesitate in reciprocating. You are then authorized to propose the annulment of the third article of the Convention of 1818, and the extension of the line on the parallel of 49, from the eastern side of the Stony Mountains, where it now terminates, to the Pacific Ocean, as the permanent boundary between the territories of the two Powers in that quarter. This is our ultimatum, and you may so announce it. We can consent to no other line more favorable to Great Britain. You are authorized, further, to agree, that, if the above line shall pass any of the branches of the Columbia river, which are navigable from where it intersects them to the ocean, British subjects shall not be disturbed in the right freely to navigate such branches, and the Columbia itself, to the ocean, in common with the citizens of the United States. That, in the mean time, until the line is actually traced and marked out, this right of navigation shall be so enjoyed in common; that the contracting parties will adopt measures in concert to have the line marked within the next ensuing term of fifteen years; and that, if upon the experiment

being made, the branches of the Columbia are not navigable by boats from where the line passes them to the Columbia, the British right to navigate them shall cease. If the British Plenipotentiaries should insist upon British subjects, who may have made any settlements or establishments south of 49, being allowed time for removal, you may agree to the term of five years for that purpose; making the stipulation reciprocal, so as to comprehend American settlements or establishments, if there be any, north of that parallel. And you will further propose, as a regulation which is deemed by the Government of the United States to be material in preventing collisions, that the citizens and subjects of the two parties shall, in trading with the natives, and in the pursuit of game and fur, be restricted to the sides of the line agreed upon, of their respective countries. It would be competent for each Government, after the fixation of the line, by its separate legislation, to exclude foreigners; but it is better that notice of such exclusion, to all persons concerned, should be at once promulgated in the body of the treaty itself."

"The third and fourth articles of the Convention of the 20th day of October, 1818, negotiated by you and Mr. Rush, are limited, respectively, to a period of ten years from that date. As the term will now soon run out, it is necessary for the parties to consider whether those articles shall be allowed to expire, or be continued with or without modifications. The third article relates to the territories claimed by the contracting parties, on the Northwest Coast of America, westward of the Stony Mountains, and provides, among other things, that they shall be free and open, for the abovementioned term, to the vessels, citizens, and subjects, of the two Powers. If you should be able, according to the instructions herein previously given, to agree with the British Government on a boundary between the territories of the two parties, that article may be rescinded, or left to expire by the lapse of time. If you should be unable to come to any such agreement, you may consent to that article remaining in force during another term of ten years. From a despatch just received from Mr. King, communicating a note from Mr. Canning, under date of the 20th April last, (copies of both are herewith,) the probability is strong that you will find no difficulty in arranging this question of boundary satisfactorily.

The fourth article relates to the Convention concluded at London, on the third of July, 1815, and continues and extends it for the beforementioned term of ten years. You are authorized to agree to its further extension for another period of ten years, and beyond the expiration of that time, until one party shall give to the other six calendar months' written notice of his desire to put an end to it; at the end of which time it shall altogether cease."

Mr. Canning to Mr. King.

FOREIGN OFFICE, *April 20th*, 1826.

The undersigned, his Majesty's Principal Secretary of State for Foreign Affairs, has the honor to request Mr. Rufus King, Envoy Extraordinary and Minister Plenipotentiary of the United States, to have the goodness to inform the undersigned, whether Mr. King is provided with instructions for the resumption of the negotiations of last year, with respect to a settlement of boundaries upon the North-west Coast of America? The undersigned is particularly induced to make this inquiry, by having received, from Mr. Vaughan, a copy of the communication lately addressed by the President of the United States to the House of Representatives, of that part of Mr. Rush's correspondence of last year which relates to this important subject.

The undersigned has to add, that the British Plenipotentiaries, Mr. Huskisson and Mr. Addington, are perfectly prepared to enter into conferences with Mr. King thereupon; and either to renew the proposal brought forward by Mr. Huskisson and Mr. Stratford Canning, in their conference of the 13th of July, 1824, and unanswered; or to bring forward another; or to discuss any new proposal on the same subject, which may be suggested on the part of the Plenipotentiary of the United States.

The undersigned has the honor to renew to Mr. Rufus King, the assurance of his high consideration.

GEORGE CANNING.

RUFUS KING, Esq. &c. &c.

[EXTRACT.]

Mr. Clay to Mr. Gallatin.—No. 5.

DEPARTMENT OF STATE,

Washington, 23d June, 1826.

"Mr. Crook's information adds but little to what was previously possessed. If the land on the Northwest Coast. between the mouth of the Columbia river and the parallel of 49, be bad, and therefore we should lose but little in relinquishing it, the same consideration will apply to the British. The President cannot consent to vary the line proposed in your instructions; and I think when you come to examine them in connexion with the late note transmitted by Mr. King from Mr. Canning, you will not think it necessary."

Extracts of a letter [*No.* 6] *from Mr. Clay, Secretary of State, to Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary U. S. to Great Britain, dated*

"LEXINGTON, *9th August*, 1826.

"Your letter, under date at New York, on the 29th of June last, having been duly received at the Department of State, and submitted to the President, was subsequently transmitted to me at this place, and I now have the honor to address you, agreeably to his directions.

He is very desirous of an amicable settlement of all the points of difference between Great Britain and the United States, on just principles. Such a settlement, alone, would be satisfactory to the People of the United States, or would command the concurrence of their Senate. In stating, in your instructions, the terms on which the President was willing that the several questions pending between the two Governments might be arranged, he yielded as much to a spirit of concession as he thought he could consistently with the interests of this country. He is especially not now prepared to authorize any stipulations involving a cession of territory belonging to any State in the Union, or the abandonment, express or implied, of the right to navigate the St. Lawrence, or the surrender of any territory south of latitude 49 on the Northwest Coast. Adhering to these restrictions, the President would, in other respects, be willing that you should exercise more latitude in the conclusion of a treaty which you believe would be acceptable to the People of our country, and would obtain the constitutional sanction. Desirable as it is to arrange all matters of difference between the two countries, it is much better that they should remain unadjusted than be settled on terms disadvantageous to the United States, and which would therefore be unsatisfactory to the People, and to other Departments of the Government. With these observations, the motive of which your candor will enable you justly to appreciate, I will now proceed more particularly to notice the several subjects of which your letter treats, in the order in which they are there stated.

II. The President cannot consent that the boundary between the territories of the two Powers, on the Northwest coast, should be south of 49. * * * * There is no objection to an extension of the time to be allowed to British settlers to remove from south of 49, to a period of fifteen years, if you should find that it would facilitate an arrangement."

Extract of a letter, No. 18. *from Mr. Clay, Secretary of State, to Mr. Gallatin, Envoy Extraordinary and Minister Plenipotentiary U. S. to Great Britain, dated*

24TH FEBRUARY, 1827.

"Your despatches from No. 26 to 48, inclusive, have been received, together with the accompanying documents, and have been all

laid before the President. And I shall now, under his direction, communicate to you such instructions as appear to be called for, by the state of the pending negotiations between the United States and Great Britain, with which you are charged. In doing this, I shall take up the several subjects which require notice, in the order in which they have been considered, in the conferences which you have had with the British Plenipotentiaries, beginning with—

1st. The Northwestern boundary.

As there seems to be no prospect of an agreement at this time upon a permanent boundary, which shall separate the territories of the two Powers beyond the Stony Mountains, and as no utility is perceived in prolonging the discussions which have arisen on that subject, I shall abstain from any particular notice of the written statement, annexed by the British Plenipotentiaries to the protocol of the sixth conference, of the claims and views of Great Britain relative to that country. New and extraordinary as those claims and views strike us, they will, nevertheless, receive all the consideration which is due to the high respect which is sincerely felt for the Government of Great Britain, and to the official and deliberate exhibition which has been made of them. They certainly have not yet produced any conviction in the mind of the President, of the validity of the pretensions brought forward, nor raised any doubts of the strength and solidity of our own title. I repeat what has been already stated in your general instructions, that the offer of a boundary on the parallel of 49° was made in a spirit of liberal concession, and notwithstanding our belief that our title might be satisfactorily made out much further north. Supposing Great Britain to have any well-founded claim, if there be, as there are believed to be, no other Powers than the United States and Great Britain who can assert rights of territorial sovereignty, between 42° and 54° 40′, there can be no equitable division of the intermediate space, but an equal partition. Such an equal partition would assign about the parallel of 49° as the common boundary. The Pesident regrets that the British Plenipotentiaries have thought proper to decline the proposal which you made of that line; and I am charged by him to direct you to communicate the expression of this regret, and to declare that the American Government does not hold itself bound, hereafter, in consequence of any proposal which it has heretofore made, to agree to the line which has been so proposed and rejected, but will consider itself at liberty to contend for the full extent of our just claims; which declaration you will have recorded in the protocol of one of your conferences. Such a protest you have already made, and had recorded in the protocol of the third conference; but it will give more weight to it. to have it stated that it has been done by the express direction of the President.

As you have not been able to conclude any agreement, fixing a permanent boundary, it is preferred that there should be a simple renewal of the third article, in the convention of 1818, without any other alteration than that which you proposed, of the omission of the clause respecting the claims of other Powers; and on that modification you will not insist, if it be objected to.

The second article in the projet presented by the British Plenipotentiaries, is inadmissible. So far as its tendency would be to prevent the United States from exercising acts of exclusive sovereignty at the mouth of the Columbia, it would be contrary to their rights, as acknowledged both in the Treaty of Ghent, and by the surrender of that place, made by the British Government in consequence of that treaty. It is also objectionable, because it does not define, but leaves open to disputation, the acts which might be deemed the exercise of an exclusive sovereignty. And it has been properly observed by you, that, from the nature of our institutions, our rights in that quarter must be protected, and our citizens secured in their lawful pursuits, by some species of government, different from that which it has been or may be the pleasure of the British Government to establish. The form of Territorial Government, is that which is most approved by our experience; but such a government might be considered incompatible with the second article, if it were agreed to. If there be a simple renewal of the third article of the convention of 1818, Great Britain will have abundant security in the good faith of the United States for the fulfilment of all its stipulations; and you will therefore resist the adoption of the second article in the British projet, if it should even render you unable to come to any agreement for the renewal of the provision in the convention of 1818.

With respect to the assignment of certain portions of the Territory to each Power, over which they may respectively exercise acts of exclusive sovereignty, leaving an intermediate debatable space, it does not appear probable that such an arrangement as would be satisfactory to both parties can be made. If, for example, we were to agree that such exclusive sovereignty might be exerted by the United States over all the territory, from the mouth of the Columbia south, to the 42d parallel, and by Great Britain, over all the territory from 49° to 54° 40′, the intermediate space between the Columbia and 49°, being common to both parties, a larger extent of territory would be assigned to Great Britain than to the United States; and, in the end, that which was thus held in common, would probably be equally divided between the two parties, as the only equitable mode of separating it. Such a division would place the common boundary line south of the parallel of 49°, and would give us less territory on the Pacific, than if we were at once to agree to an equal division of the entire space between 42° and 54° 40′. If, which is not likely, Great Britain would consent to the exercise of exclusive sovereignty, on the part of the United States over the whole space from the mouth of Columbia, south, to the 42°, leaving the residue, from the mouth of the Columbia to 54° 40′, in common, as is provided for in the third article of the convention of 1818, we should be willing to agree to such a stipulation.

In respect to the duration of the renewed provision, the President prefers that it should be fixed for the same term of ten years, which is limited in the Convention of 1818. But if the article in regard to this subject should not be thrown into the shape of a separate Convention, but should be inserted in the same Convention which regulates

our commercial intercourse with the British European possessions, you are then authorized to agree that the whole Convention shall continue in force after the expiration of the term of ten years, and until one party shall have given to the other six months' written notice of his desire to put an end to the Convention."

Mr. Gallatin to Mr. Clay—No. 26.

Hon. HENRY CLAY,
Secretary of State, Washington.

LONDON, *November 16th*, 1826.

SIR: The pending negotiations, and the researches they render necessary, do not permit me to communicate more than a brief account of what it seems most important that you should know without delay.

The negotiations on the subject of the convention signed on the 13th instant, had been conducted in presence of Mr. Canning, and rather with him than with the British Plenipotentiaries. Yesterday, 15th, the first regular conference was held with these alone, when we agreed to take up, in the first place, the subject of the territorial claims west of the Stony Mountains. The British Plenipotentiaries stated, that the last proposal having come from Great Britain, and being one of those which, at the close of the negotiation of 1824, had been referred to Washington, they now expected our answer to that proposal, and that, if not acceded to, I would make any new one I might be authorized to offer. I answered, that, without reference to any point of form, I was prepared to say, that my Government could not agree to the boundary line proposed by Great Britain; but that, whilst insisting on the 49th parallel of latitude, I was authorized to modify Mr. Rush's proposal, by the addition of a condition calculated to remove the most important objection of Great Britain to the line we had proposed; and I accordingly offered the article, of which a copy is enclosed, and which has been taken for consideration till our next meeting. This, on account of the opening of Parliament, has been appointed for the 22d instant.

I had but little to add to the arguments used by Mr. Rush, in support of the right of the United States to the territory in question. Mr. Baylies' report supplied me with additional arguments in opposition to the pretended discoveries of Admiral Drake north of 40° or 42° of north latitude. I pointed out the discovery of Gray's Harbor, now improperly called "Whitby's," north of the Columbia River, by Captain Gray, referred to the line established in pursuance of the treaty of Utrecht, and made a short recapitulation of the whole. But what it imports you most to know, is the ground on which, as far as I could understand it, Great Britain founds her pretensions.

As relates to discoveries, they refer to Meares' and Dixon's voyages, to prove that the prior right, as respects the Straits of Fuca and Gulf of Georgia, is incontestibly theirs, several English vessels

having entered them before Captain Gray did; and they also attempt to lessen his discoveries of Gray's Harbor, and of the mouth of the Columbia river, by saying, that Captain Meeres had previously discovered and named Cape Shoalwater, south of Gray's Harbor, Cape Disappointment, the northern entrance of Columbia river, and Deception Bay, which was, in fact, just outside of the said entrance. I state the facts as the British Plenipotentiaries gave them, not having had time to verify them. The inference which I understood them to draw was, that, so far as the United States and British discoveries could constitute a title, we could establish none along the sea coast, north of the mouth of the Columbia—the whole coast having, without reference to Drake's or Cook's voyages, been explored by British navigators, from that river northwardly, prior to the date of any American discovery.

But the general ground assumed by the British Plenipotentiaries is, that the mere discovery, without occupancy, constitutes no title. They insist that the United States have not any right to the sovereignty of any part of the country; and I understood that they disclaimed any on the part of Great Britain; although, from the general tenor of their argument, I should infer, that they intend ultimately to claim such right of sovereignty, with respect to the settlements of their subjects, made prior to the convention of 1818.

The whole of this doctrine, which excludes titles derived from prior discovery, and substitutes occupancy, rests on the Nootka convention of 20th October, 1790, between Spain and Great Britain. By the third article of that instrument, it was agreed, "that the respective subjects of the two parties should not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean, or in the South Seas, or in landing on the coasts of those seas, *in places not already occupied*, for the purpose of carrying on their commerce with the natives of the country, or *of making settlements there*." This agreement is made subject to certain restrictions and provisions, the only one of which applicable to the present discussion is, that, "as well in the places which are to be restored to the British subjects, (Nootka Sound) as in all other parts of the northwestern coasts of North America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain; wherever the subjects of either of the two Powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade, without disturbance or molestation." From these provisions, the British Plenipotentiaries draw the following inferences:

1. The United States cannot claim, under their treaty with Spain, any greater right than Spain then had: and, as the Nootka convention has no reference to the discoveries of either party, and is unlimited in its duration, they cannot resort to any Spanish discovery in support of their presumed title to any parts of the country.

2. As, at the time of concluding the Nootka convention, Louisiana did belong to Spain, and she made no exception to the provisions of

that convention, on account of any presumed boundaries of that province having been established by former treaties with Great Britain, or of right extending to the Pacific, the United States cannot claim any Territory on that ocean, as owners of Louisiana, either as a natural extension of its boundaries westwardly, or as implied from the designation of the boundary line, (the 49th parallel of latitude) settled between Canada and Louisiana, on the one part, and the British possessions of Hudson's Bay, on the other part, by the commissioners appointed in pursuance of the treaty of Utrecht.

3. This convention (the Nootka) must be considered, generally, as having become an international law, at least for the Pacific, superseded the claims ascribed to mere prior discovery, set aside the exclusive pretensions of Spain to the northwest part of the American continent, and opened it to the commerce and settlements of all countries whatever, including the United States.

4. Actual occupancy, and regard to mutual convenience, are, therefore, the only basis of any arrangement for the establishment of a boundary for the partition, between the only Powers having settlements or laying claims thereto, of a country which was, heretofore, held in common.

As neither Meere's discoveries, nor the Nootka convention, had been mentioned in the negotiation of 1815, as that convention appeared to have been only alluded to in that of 1818; and as, in this last, the objection to the right derived from discoveries was not general, but applied only to the circumstance of those of the United States, having been made by private vessels, much of the argument was new to me. From some expressions in your instructions, I am led to infer that, at all events, it is, for the first time, brought forth in so distinct a shape, and have thought it important to lay it before you. It is my intention to invite the British Plenipotentiaries to commit it to writing, at least in an informal manner. The grounds which I took in answer, and on which I intend to enlarge at the next conference, will be communicated hereafter. There are, indeed, several facts, which must be previously investigated.

Mr. Huskisson, amongst the reasons for taking up that subject first, mentioned, that it had, for several sessions, occupied the attention of Congress, and that it was not possible to foresee the effect which the measures they might adopt would have on the question, and on the friendly relations of the two countries. In a subsequent part of the conversation, he said that the joint occupancy would cease in 1828, unless renewed, and the removal by the United States of any settlement made by British subjects, would be considered as an act of aggression. This having already been intimated, in the course of the negotiation of 1824, I asked whether he would consider as an act of aggression, the removal of such British subjects from Astoria, or such other of our settlements as were directed to be restored by the treaty of Ghent. To which it was answered, that those were considered as in our possession; and Mr. Addington added, that the British had removed from Astoria to the opposite side of the river, where, I understood, they had now a fort called "Vancouver."

Mr. Gallatin to Mr. Clay.—No. 29.

LONDON, *25th Nov.* 1826.

Hon. HENRY CLAY,
Secretary of State, Washington.

SIR: I have the honor to enclose a copy of the protocol of the first conference with the British Plenipotentiaries. They considered the refusal of Mr. Rush, at the 20th conference of 1824, to accede to their verbal proposal of making the Columbia river the boundary, as owing to his not being authorized by his instructions to agree to it, and the article which they had, at the 23d conference, given in writing, as one of the subjects referred to Washington, according to the 25th conference. As I was ready both to reject their article and to offer the new one, it appeared of no importance in what form this was done. Before this article A was attached to the protocol, I struck out the words *northwesternmost*, as descriptive of McGillivrey's river, as they appeared as inapplicable as those *northeasternmost*, used in the article P, proposed, in 1824, by the British Plenipotentiaries. This alteration must, therefore, be made in the copy of the article already forwarded.

At our second conference, of the 22d instant, the British Plenipotentiaries said that they had referred to their Government the article offered by me, and that they were not yet prepared to give an answer. A general desultory conversation ensued on the subject, in the course of which nearly all the grounds assumed, and objections raised on both sides, were brought forward, but not thoroughly discussed. I have already given the outlines of the arguments of the British Plenipotentiaries, and will now state mine.

1. The United States claimed a natural extension of their territory to the Pacific Ocean, on the ground of contiguity and population, which gave them a better right to the adjacent unoccupied land, than could be set up by any other nation. This was strengthened by the doctrine admitted to its fullest extent by Great Britain, as appeared by all her charters, extending from the Atlantic to the Pacific Ocean, to colonies established then only on the borders of the Atlantic. How much more natural and stronger the claim, when made by a nation whose population extended to the central parts of the Continent, and whose dominions were by all acknowledged to extend to the Stony Mountains? If the principle assumed by Great Britain from 1580 to 1732, as related to Atlantic Colonies, was correct, she could not deny its application to the United States, now owners of Louisiana. The boundary line agreed on by the Commissioners appointed in pursuance of the treaty of Utrecht, (the 49th parallel of latitude,) though falling short of what might be claimed by the United States on other grounds, was offered by them, and must, at all events, be binding on Great Britain. That line was indefinite; it had already been confirmed to the Stony Mountains; there was no reason why it should not be continued as far as the claims of both parties extended. In point of fact, the occupancy, on which Great Britain principally relied, was solely owing to that westwardly extension of their trading settlements of Hudson's bay and its waters.

2. In right of their own discoveries, viz: the mouth of Columbia river by Capt. Gray, and the complete exploration of the river, from its most westerly sources to its mouth, before any of its branches had been explored by the British, the United States had a right to claim against Great Britain, and every other nation, the whole territory drained by that river and its various branches, together with a certain portion of the coast north and south of the mouth of the river. In this, also, we were supported by the established usage amongst nations, and adopted by Great Britain in various instances, (and amongst others, in her charter to the Hudson Bay Company, which charter extends to all the territory watered by the rivers emptying into the bay.)

3. By virtue of their treaty with Spain, the United States claimed all which Spain might have lawfully claimed north of 42 degrees of latitude, either as derived from Spanish discoveries, or by virtue of rights of sovereignty acknowledged by other nations, and by Great Britain particularly. On the last subject, I did not dwell, having not yet sufficiently investigated the articles of the treaty of Utrecht, which may affect that question. As to discoveries, I gave to the British Plenipotentiaries a copy of the same extract from the official Spanish account published in 1802, which I had transmitted from Paris to the Department of State, in the despatch No. 235, dated 26th September, 1821. That Spanish work, which I could then only borrow, I have now found here and purchased. It was not merely, I said, by examining each of those grounds separately, that the claim of the United States could be justly appreciated. To each of them, taken by itself, objections might be made, tending to show that it did not constitute a complete right of sovereignty. Considered together, and supporting each other as they did, they appeared to us to establish our claim on the most solid foundation. But our never having refused to agree to a line of demarcation with Great Britain, was a sufficient proof that we admitted that she also had claims which deserved, and to which we paid due consideration. It was on that account that the United States had reduced the extent of their own to the boundary line they had offered, and had added to it the proposal of allowing to British subjects the free navigation of the Columbia river. Claiming themselves, by right of discovery and settlement, they allowed what was due to Great Britain on the same account, and all that she could justly claim under the Nootka Convention, according to its true construction. But they could not admit her pretensions to the extent now set up, or as impairing their claim within the boundary (at least) offered by them.

In the first place, the Nootka Convention, on which so much reliance was put, was a compact only between Spain and Great Britain. Whatever construction was given to that instrument, it could affect the United States so far only as they claimed under the Spanish title. Their claim, in their own right, and as derived from their own discoveries and subsequent settlement, could not, in the slightest degree, be affected by that compact.

But what was the true intent and meaning of the Nootka Conven-

tion: Though not limited in its duration by any express stipulation, it was necessarily so from its nature. Though the settlements which might be made by either party were not expressly qualified or restricted, it was evident that the sole object of the Convention was commerce, and commerce with the natives; and that it was for that, and for that object alone, that the country was left open to the subjects of the two contracting Powers. That the object of the Convention was not to settle the territorial claims of the parties; that it has no connexion with an ultimate partition of the country, or with its colonization for permanent purposes—was evident from the provisions of that instrument. It permitted promiscuous and intermixed settlements every where on the coast, to the subjects of both parties, and it even made every such settlement, made by either party, common to the other. This clearly excluded any possibility of distinct jurisdiction, territorial rights, or sovereignty. In all these respects, the Convention left the parties where it found them, and in possession of all such rights, either of discovery, or others, as might affect those questions, whenever that of permanent and separate possession came to be discussed and finally settled by the contracting Powers.

Supposing, even for the sake of argument, that the Convention was susceptible of the construction now put on it by Great Britain, was it now any longer in force? The war between her and Spain, which had been terminated by the treaty of 1809, had intervened. The treaties of commerce between the two countries had been renewed by the treaty of July, 1814. So far as the Nootka Convention was of a commercial nature, and the United States considered it as exclusively of that character, it was still in force. But, if its stipulations were, as contended for by Great Britain, of a different nature, the question would arise whether they were such as to be, according to the doctrine held by her on that subject, still binding, or whether they had been abrogated by the war?

To this exposition of the Nootka Convention, the British Plenipotentiaries did not agree. They considered its principles and provisions as permanent, and not abrogated by war; as only declaratory of what was already previously the natural law; as having established this, and made it, in an incontrovertible manner, the international law on that subject. Those vague claims of ancient discoveries, and of distant settlements, on which Spain had founded hers to the exclusive sovereignty of the whole western coast of America, had been set at rest by that Convention. In order to resist that claim, Great Britain had, in 1790, been willing to run the risk of a war. Not for her benefit only, but for that of all nations, she had contended for and established that principle of natural law, by which vacant land belongs to the first occupant. Under this, she did not claim exclusive rights of sovereignty; she only denied ours. In making a final arrangement with the United States, she considered the whole country as still open equally to both parties, and to be divided as such, and on that principle. Of this we had no right to complain, since she might plead claims derived from occupancy or discoveries to a much greater extent than ourselves.

I observed that this argument was less founded on the positive stipulations of the Nootka Convention, than on a recurrence to antecedent presumed principles of natural law. But the answer was the same in either case. As an abstract principle, that of first occupancy being the foundation of property and sovereignty between individuals and nations respectively, might be admitted. But it was not sufficient alone to preserve peace amongst them. The impossibility of reconciling the general right of promiscuous and intermixed settlement by different nations, with any correct notion of tranquil possession and distinct jurisdiction, had already been mentioned. It was on that account, in order to prevent otherwise unavoidable collision, for the purpose of assigning to each nation a distinct portion of vacant territory, that the right of prior discovery, that of contiguity to territory already occupied, that of extending the claim of a nation possessing the mouth of a river to the whole of its waters, if not previously occupied by others, had been recognized by nations in general, and enforced by Great Britain herself. As the arguments brought forward by each party on this subject were unsatisfactory to the other, we may be considered as at issue on that question.

I observed, as related to the settlements of the British in that quarter: 1st, That those made subsequent to the Convention of 1818, added nothing to the claims of the British—the rights of the parties having been expressly reserved by that Convention, which allowed of a joint occupancy. 2dly, That none certainly existed on the Columbia, even so late as at the time when that river was explored by Lewis and Clarke; and that there were none to our knowledge south of the 49th degree of latitude, when our settlement of Astoria was commenced. 3dly, That those British settlements were factories for commercial purposes, which gave no more permanent territorial rights than similar establishments made in a civilized country. No notice has as yet been taken of that observation. Some allusion was made to Indian purchases, on which I do not think that any reliance is placed.

The dates and nature of the respective discoveries, south of the 49th degree, underwent some discussion. In reply to the attempt made to lessen the merit of Captain Gray's discovery of the Columbia river, I said that the fact of the coast extending from 42° to 50° being once known, (as it had been ascertained by Cook, and several Spanish navigators—Perez, Maurelle, Martinez, Quadra, &c.) the sole object of discovery, for subsequent navigators, was the entrance of straits, or of a large river communicating with the interior of the country. It was what Meeres sought, and what he failed in, as had been the case with Maurelle and others of his predecessors, and as was also the case with Vancouver, who had in his journal recorded the fact. Meeres had given names indicative of his total failure—Cape Disappointment and Deception Bay. Under date of 28th April, 1792, Vancouver states from 42° to 48° there was no large river—nothing but small brooks. On the next day, he met Capt. Gray, of the Columbia, who informed him that he had discovered the mouth of a large river, into which the winds and currents had prevented him to enter. Persevering in his effort, Gray re-

turns southwardly, and, on the 11th May following, enters the river, and ascends it about 25 miles. On his return, he met again Vancouver, at Nootka, and, with that information, he (Vancouver) sent one of his lieutenants to survey the river. This duty was performed in October following by that officer, who ascended the river about 20 miles higher up than Gray. It was impossible to deny, with those facts, that the discovery was Gray's, and exclusively his own. The only other harbor on that coast, south of Fuca's straits, was also discovered by Gray, and bears his name in Vancouver's map, though since changed into Whitby's, by subsequent English map-makers, whom our own have copied with great servility. And here permit me to observe, that I cannot see the policy of substituting the fabulous name of Oregon to that of Columbia, which was that of Gray's ship, and perpetuates his discovery.

The next most important discovery, and most intimately connected with the present controversy, is that of the Straits of Fuca. We cannot draw any argument in our favor from the supposed ancient discovery, (in 1592) by a man of that name, said to have been in the Spanish service. The whole story rests on the foundation of an Englishman named Locke, who is said to have met at Venice that Fuca, a Greek from Cephalonia, who gave him verbally that relation, which has been printed in ancient English collections.—(Purches, &c.) Not only the greater part of that relation is certainly fabulous, for it states that, in 30 days, he reached, by sea, Hudson's bay; but the Spanish account disclaims any knowledge either of Fuca, or of any such voyage, although it gives a short abstract of other voyages made in 1592 and 1603, by Vizcairo, who did not reach further than Cape Mendocino, and about 43° of north latitude. The facts well ascertained, are as followeth:

In 1778, Capt. Cook discovered Cape Flattery, the southern entrance of the straits, which he did not perceive.

In 1787, Captain Duncan, in the British ship Princess Royal, entered the Straits, and traded at the village of Classet, on the southern shore, and within two miles of the entrance.

In July, of the same year, Captain Meeres, in the Fellice, anchored at Barclay, in Barclay's Sound, and like him, sent his boat in the Straits, which he ascended about 30 miles, (not leagues as he says.)

In the same year, date unknown, but it is said subsequent to Meeres, the same Captain Gray, then commanding the Washington, entered the Straits with his vessel, and penetrated 50 miles up. He went in and traded with the natives several times afterwards. It must be observed that, respecting the mouth of the Columbia river, we know nothing of Gray's discoveries, but through British accounts. By those it appears, that he had also made some between 54° and 56° of north latitude.

In June, 1790, Capt. Quimper, of the Spanish navy, explored the Straits as far as Point Quadra—(Vancouver's Port of Discovery.)

In May, June, and July, 1791, Capt. Eliza, of the Spanish packet San Carlos, explored the Straits as far as the channel of San Rosario, between 49° and 50° of north latitude.

In May, 1792, Vancouver entered the Straits, and completed the exploration, partly in company with the Spanish vessels *Sutil* and *Mexicano*, with whom he re-entered the Ocean by the northern entrance of the Straits, and from whom he learned, with mortification, that one half had already been explored in the preceding years, by Quimper and Eliza.

You will perceive that all this makes a complex case. To the first discovery, made by Barclay, I have objected, that it was not properly an English one, as, in order to avoid the monopoly of the South Sea Company, his ship, though English property, was fitted at Ostend, and must, it is presumed, have sailed under the Austrian flag.

There was, in the course of the conversation, more susceptibility shown by the British Plenipotentiaries, than was called for by my observations. That the United States had no right to dispossess a single British subject, or in any way to exercise jurisdiction in any part of the territory in question, was again repeated, saying, however, that they claimed no such right on their side. I said that I thought it fair to state, that, although the United States would avoid any act tending to produce collision, yet, as from local position, the British traders were daily making new settlements, my Government would also take possession, and that they could not do it otherwise than by establishing military posts. This did not seem to me to appear objectionable, at least no objection was made to it. On the subject of jurisdiction, we must, if we do not agree to a boundary line, come to some understanding.

The latter part of our conversation was of a more conciliatory nature. Mr. Huskisson said, that it would be lamentable, that, in this age, two such nations as the United States and Great Britain, should be drawn to a rupture on such a subject as the uncultivated wilds of the Northwest Coast. But the honor and dignity of both countries must be respected, and the mutual convenience of both parties should also be consulted. He then objected to the straight line which we proposed, as having no regard to such convenience, and observed particularly, that its cutting off the southern portion of Quadra and Vancouver's Island, (that on which Nootka Sound was situated) was quite inadmissible. I told him that, taking only convenience into consideration, their proposal was far more objectionable. The survey of the Columbia River, which was on the table, had the soundings marked, from which it appeared, that, with the exception of a small harbor, of very little depth, the channel was for 15 or 20 miles exclusively close to the northern shore, so as to give to the British the whole command of the entrance and navigation of the river, if this had been made the boundary. I added, that, from the 42d parallel of latitude, to Fuca's Straits, there was not a single port of any consequence but the mouth of Columbia River; and that, on account of the breakers and bar, was of difficult access, and fitted only for commercial purposes. By allowing the free navigation of the river to the British, we gave them all the advantages attached to that port. On the other hand, from Fuca's Straits, inclusively, to the Russian boundary line, the coast abounded with ports of any depth, and fitted for naval stations. To agree to a

line that would leave all of these to them, would be giving them the exclusive naval command of the coast. It was impossible that we would agree to this; and we could have a share in that respect only, by a boundary line, that would give us a portion of the Straits.

Writing this letter in great haste, and not having time to correct, I may not have stated the arguments as clearly and forcibly as might have been done.

The British Plenipotentiaries insisted, that, according to the law of nations, as acknowledged by all, discovery without settlement gave no title, and that, in the ancient British charters, places already occupied by other civilized nations had always been excepted.

Whether there is a disposition to come to a reasonable agreement, is yet doubtful. If such disposition does exist, there will still be two difficulties. I think that the first, their insisting on a more convenient and natural line than the 49th parallel of latitude, may be obviated by their adhering to that line only as a basis; that is to say, by insisting on an equivalent north of the line, in compensation of what, for convenience sake, we may yield south of it.

The other difficulty relates to the restriction on the right of navigating the Columbia, by the insertion of the words "if found navigable," &c. The British will say they are useless, since the right cannot be enjoyed if the river is not navigable, and that they can therefore be used only to call their right in question, even though the river was navigable. But what is meant by "navigable?" It is well known that the navigation of the main Columbia river is interrupted by great falls, around which boats are generally, if not always, carried by land. As it was certain that the offer made by the Government of the United States, was not intended as nugatory, I took care to frame the article so that those falls should not be enclosed in the restriction. But there may be, for aught we know, falls and rapids in the branches of the Columbia, below the 49th degree, such as to render them not navigable for common boats. The whole navigation of the rivers of that country, above tide-water, except perhaps on the main river, is carried on by the British traders in bark canoes, to which such falls and rapids are a difficulty, but not an impediment. From Lake Superior to the Pacific, the intercourse is carried on in those canoes, which are carried around the portages. It is, indeed, to that mode of conveyance, that the British are exclusively indebted for the extension of their commerce to the Western Sea. They have all that is necessary for it—the species of birch which does not grow in more southern latitudes, and Canadians for canoe-men. They will, therefore, object to any restrictive words, that might impede what is the ordinary navigation of the country.

I have the honor to be, &c.

ALBERT GALLATIN.

27th.—Mr. Huskisson has requested that our next conference, which had been fixed for Tuesday, should be postponed to Friday, 1st December.

Mr. Gallatin to Mr. Clay.—No. 31.

LONDON, *2d December*, 1826.

Hon. HENRY CLAY,
Secretary of State, Washington.

SIR: There is no prospect of an agreement with the British Government, on the subject of a boundary line west of the Stony Mountains.

Our third conference took place yesterday. I opened it by some further observations on the true meaning and effect of the Nootka Convention. Considered, which it really is, as purely of a commercial nature, it was still in force and binding upon the United States, so far as they claimed in right of Spain. If, as seemed to be contended by Great Britain, its stipulations extended beyond a commercial arrangement, the question would arise, whether, since they had not been renewed, they were abrogated by war. This I was not prepared, and indeed did not think it necessary, to discuss. That the Convention had no other object but to recognise a freedom of commerce with the natives, was evident, both from its tenor and from the incident out of which it had grown. It was conceded, that the promiscuous settlements, common to both parties, which might be made in conformity with that instrument, were incompatible with any notion of distinct jurisdiction and of sovereignty; that a division line, a partition of the country, could not take place but by virtue of a new agreement. It necessarily followed, that the Convention had stipulated nothing in that respect, and that, whenever such agreement came under consideration, the parties might claim all that, according to the law and usages of nations, they had a right to claim, in the same manner as if the Convention had not taken place. To that law and usages, as not having in any manner been abrogated by the Convention, the United States did appeal, both in their own right and in the right of Spain. Whatever might be claimed, either as a natural extension of Louisiana, or under the arrangement made in pursuance of the treaty of Utrecht, or by virtue of the first discoveries of Spain, the United States had now as much right to claim as what they considered theirs by virtue of their own discoveries. These arguments were neither admitted nor refuted by the British Plenipotentiaries.

They spoke in general terms of the right of Great Britain to make settlements any where north of the 38th parallel of latitude, and to the navigation of all the rivers emptying into the Pacific, north of that latitude. And they took occasion to animadvert on the condition upon which, by the article I had proposed, the right to navigate the Columbia was made to depend; a condition which would be inadmissible, even if they were to receive the privilege as a grant, instead of its being a right already belonging to Great Britain.

In answer to that special objection, I said, that, if the right to navigate the river, contemplated by the article, had been confined to the navigation from the 49th degree of latitude to tide water, the condition would have been unnecessary, since the British actually navigating the river, would have been a complete proof that it was navigable.

But it was contemplated by the article, that they should have also the free navigation of the river from and to the sea. This was intended for the special and sole purpose of giving them an uninterrupted water communication between the upper branches of the river, north of the 49th parallel of latitude, and the sea. If the condition complained of was omitted, they would have an absolute right (and without any reciprocity within the British territories) to navigate the river in ships from tide water to the sea, and vice versa, although its upper branches, from the 49th degree downwards, should not be navigable, and the water communication above stated should not exist. It was not the intention of the United States that they should have that right in that case; and, therefore, the condition was annexed. If the expressions used in the article were susceptible of doubt, or liable to any well-founded objection, a different phraseology, consistent with the avowed object of the article, might be adopted. Although I anticipated, from the manner in which the subject was introduced, that this explanation would produce no effect, I deemed it necessary, in order to show how far the offer went, and that it was perfectly fair.

Mr. Huskisson then asked me, whether I was authorized to deviate from the 49th parallel of latitude as a boundary? I did not think that he had any right to ask the question; but as it was only from courtesy, and to avoid, at the opening of the negotiation, expressions at all savoring of harshness, that I had used the words "whilst insisting on the 49th degree," instead of the word "ultimatum," and, as in fact the United States had nothing to conceal, I answered the question: To the 49th parallel of latitude the United States would adhere as a basis. If, on account of the geographical features of the country, a deviation founded on mutual convenience was found expedient, a proposal to that effect might be entertained, provided it was consistent with that basis; that is to say, that any deviation in one place to the south of the 49th parallel, should be compensated by an equivalent in another place to the north of that parallel. * * * *
I added, that if, as I presumed from the question, the British Plenipotentiaries intended to make a new proposal, it was only after it was made that I could give a more specific answer, either accept it, refer it to my Government, or reject it at once.

After a short consultation between the British Plenipotentiaries, Mr. Huskisson said, that, when speaking of the line without reference to right, but only to convenience, I had observed that the boundary proposed by Great Britain, left to the United States but one seaport, and that of difficult access, and fitted only for commercial purposes; and that, thinking that remark entitled to consideration, the British Government was disposed to offer us a port in Fuca's Straits. Taking then Vancouver's map, he pointed out the line traced in the enclosed sketch, offering to the United States the *detached* territory, bounded on the west by the ocean, on the north by Fuca's Straits, on the east by the entrance of Admiralty Inlet, and then by the Peninsula between that and Hood's Inlet, and on the south by a line drawn thence to Gray's Harbor, on the ocean. And he dwelt on the excellence of

Port Discovery, defended by Protection Island, which would thus be secured to us. On my asking how he meant that the line should run in other respects, he answered that, with that exception, the British Government adhered to the boundary proposed in 1824, viz: the Columbia river; although it might, perhaps, be agreed that the northern shore, for some distance from the mouth of the river, should remain unoccupied by both parties. I said that this proposal did not admit even of discussion, as to its details, as the principle was inadmissible; that I rejected it at once, and would think it inconsistent with my instructions even to take it for reference to my Government.

The British Plenipotentiaries said, that, since it was evident that we could not agree to a boundary line, nothing remained but to continue the joint occupancy for another period of time. To this course I expressed my assent, and some general conversation ensued on the dangers arising from collisions between the traders or settlers of the two countries, or from acts of either Government assuming exclusive jurisdiction. I understood it to be the opinion of the British Plenipotentiaries, that there could be no objection to the establishment of military posts, or to a jurisdiction confined by each Power to his own citizens or subjects; and that any outrages committed by either such citizens or subjects on the subjects or citizens of the other nation, ought not to be considered as national acts of aggression, unless authorized by Government. They alluded to the attempt of the establishment of a Territorial Government which had been made in Congress, as contrary to the spirit of the existing agreement; although they declared that, if they established a colony any where, they must give it some form of Government. And they spoke of the necessity of modifying the article heretofore agreed on, and still in force, on the subject of that joint occupancy. It was concluded that they should prepare an article in conformity with their own view of the subject, which, if insisted upon, and substantially differing from the present one, must of course be referred to the President's decision. I think that it would be more eligible to continue simply the present article, leaving it to each Government to make, through the usual channels, such communications to the other as it may deem proper, on what would be consistent with, or infringing the agreement. But I can say nothing positive, until I have seen the article they mean to propose.

I have the honor, &c.

ALBERT GALLATIN.

[EXTRACT.]

Mr. Gallatin to Mr. Clay.

LONDON, *5th December*, 1826.

"SIR: I enclose the draft* of the Convention which the British Plenipotentiaries propose on the subject of a continued joint occupancy of

* See this draft following the protocol of 6th conference.

the territory west of the Stony Mountains. Mr. Addington sent it to me yesterday for inspection, prior to our conference, which takes place to-morrow, and the result of which cannot reach you by this packet. In returning it, I apprized, in a private note, Mr. Addington of the necessity under which I would be of referring the subject to my Government, if it was deemed necessary by the British Plenipotentiaries to insert new stipulations. I also gave him notice that I would object to their second proposed article.

"It must always be kept in mind that Great Britain insists that the whole country west of the Stony Mountains is a vacant territory, to which no nation has any exclusive right, which is open to all, and to which a title may be acquired, and can only be acquired, by actual occupancy and settlement. The second article in question is intended, not only to prevent the establishing of a Territorial Government by the United States, but also to establish the general doctrine that no exclusive sovereignty or dominion can be assumed or exercised over any part of the country, in its present situation, and, by implication, that a concurrent jurisdiction may be exercised sufficient to preserve order among the traders.

"With a view to prevent another inference of the same nature, I intend to propose that so much of the article now in force as relates to other foreign nations, should be struck out. In our view of the subject, that provision referred only to Spain and Russia, as the only nations which, besides Great Britain and the United States, could possibly have any claim to any part of the country; and the claims of both are now settled. According to the British doctrine, the article must stand as it is, since they declare that every nation has an equal right with ourselves to make settlements there. Still, as my instructions contemplate a simple renewal of the article, I will not insist on that amendment. For the same reason, and thinking it very difficult to find any general stipulation to which both parties would agree, beyond what is contained in the existing article, I will try to have it done in that way, leaving any subsequent arrangement to depend on Executive regulations. If it should be found impossible to renew the article without some additional stipulation, none has presented itself to my mind better calculated to preserve peace, and to enable us to acquire a good footing in the country, than the adoption of the second proposed article, but limited to the country contained between the forty-ninth parallel and the boundary insisted on by the British. This would be more favorable to us than any temporary line (beyond which settlements should not be made) to which the British would be likely to agree.

"I apprehend some difficulty in settling the protocol of our last conference. From the manner in which the offer of a detached Territory, south of Fuca's Strait, was made, I anticipated that it was intended as informal. I might have had it committed to writing, by pretending an intention to take it into consideration; but this was so inconsistent with the spirit of my instructions, and the proposal was so obviously inadmissable, that, as already stated, I declared that I could

not refer it to my Government. I, therefore, expected that it would not be inserted in the protocol; but, in a draft of this sent to me, by the British Plenipotentiaries, they propose that it should be stated that they had declined making any new proposal. To this I cannot assent, as there is a material difference between omitting to insert a fact, and a positive assertion in the protocol that no such fact had taken place."

[EXTRACT.]

Mr. Gallatin to Mr. Clay.

LONDON, *12th December*, 1826.

"SIR: We have had two conferences, (the 4th and 5th) on the 6th and 11th instant, respectively. The British Plenipotentiaries having concluded to insert in the protocol of the third conference, the offer they had made of a detached Territory south of Fuca's Straits, that protocol, though agreed on yesterday, is not yet signed. Our fourth conference was principally employed in a discussion of the manner in which the joint occupancy must be understood. The article informally proposed, and of which I sent you a copy, has received some modifications originating with the British Plenipotentiaries; and they would have been ready to deliver it yesterday, but said they wished it to be accompanied by an exposition of their claim, and view of the subject. This they expect to be prepared to annex to the protocol of our next conference, on the 16th instant, which will, I hope, enable me to send you by the packet of the 24th, all the protocols, and whatever relates to the Territory west of the Stony Mountains. You know already that the negotiation for a permanent boundary, has terminated without our being able to agree. The questions which will be referred for the President's decision, relate, exclusively, to the joint occupancy; whether it shall be continued, and, if continued, whether any, and, if any, what, explanatory or new provisions may be necessary. The proposals will come exclusively from the British Plenipotentiaries, as I declared that I was not authorized to make any. I suggested, in the course of the conversation, as coming from myself, which was true, whether each Power might not be allowed to exercise exclusive sovereignty over a certain extent of Territory, leaving between them a kind of border or debatable ground, where promiscuous settlements might be continued until a permanent boundary was agreed on. But the suggestion was not entertained by the British Plenipotentiaries."

Mr. Gallatin to Mr. Clay.

LONDON, *20th December*, 1826.

SIR: The protocol of the first conference with the British Plenipotentiaries, and the proposed article annexed to it, have been already transmitted. I have now the honor to enclose the protocols of the six

following conferences; the projet of a Convention for the continuance of the joint occupancy of the territory west of the Stony Mountains, presented by the British Plenipotentiaries, and annexed to the sixth protocol; their statement of the claims and views of the British Government annexed to the same protocol, and my counter-statement annexed to the seventh.

The negotiation for agreeing to a definite boundary line in that quarter has, for the present, failed, and may be considered as terminated. What relates to it, is included in the first, second, third, and seventh protocols, so much of the sixth as refers to the statement annexed to it, the American article annexed to the first, and the statements annexed to the sixth and seventh, respectively.

The arguments used on both sides being embodied in those two statements, I beg leave to refer to them, and, for the progress of the negotiation, to the protocols and to my former despatches. You will be pleased to observe that there is a difference between the boundaries of the detached territory offered by the British Plenipotentiaries at the third conference, as delineated in the rough sketch already transmitted, and those described in the protocol.

The negotiation for a continuance of the joint occupancy is not yet terminated, and its progress may be traced in the fourth and part of the sixth protocol. I would not have insisted on the amendment proposed by me at the fourth conference to the article now in force, as I would have thought it sufficient to enter on the protocol that the article was agreed to, with the understanding that it was not to be construed as an admission, on the part of the United States, that any other foreign country had now a right to any part of the territory in question. But I could not agree to any additional or explanatory article without the previous approbation of my Government; and you will see, by my declaration in the fourth protocol, that the whole subject is referred to the President.

The first question is, therefore, whether there is any advantage in a renewal and continuance of the joint occupancy; and, if so, for what term? The British Plenipotentiaries propose fifteen, would prefer twenty, and will agree to ten years. The next question relates to the additional conditions, which they consider as explanatory of, and in conformity with, the original agreement; only they observed, that, as we had no settlements, the last condition was to our advantage. It is doubtful to me, whether it is proposed in order to prevent any inference being drawn in support of our claim to exclusive sovereignty from the former settlement at Astoria, or whether to establish clearly, and to impress on their subjects, that Great Britain neither now nor hereafter means to claim such exclusive sovereignty. Mr. Huskisson, in the course of the discussion, several times repeated that there was no intention on the part of Great Britain to colonize the country. They have certainly no other immediate object than that of protecting the Northwest Company in her fur trade. * * * * * * * * * * * * You will decide whether this last condition is, on the whole, for our interest or not. Although I cannot speak

positively, I do not think that it would be adhered to on the part of Great Britain, if you object to it.

With respect to the first condition, the British Plenipotentiaries hesitated whether the word "exclusive" should remain or not. As they appeared indifferent or doubtful about it, I advised that it should remain for your consideration. The first question is, what is meant thereby?

The right of exercising sovereignty, provided it is not exclusive, will remain with each party, and by that it is intended that each should have jurisdiction over its own citizens or subjects, and have a right to punish offences committed by them. The establishment of military posts, provided they do not command exclusively the mouth of the Columbia, is not objected to. Any impediment to the free navigation of harbors and rivers, the laying of duties, or establishment of any custom-house, the removing or disturbing of any British settlement, and the exercise of any jurisdiction over British subjects, would be considered as infractions of the condition. But it must be observed, that they would be equally considered as infractions of the existing article, without the additional condition, and as acts of aggression, if the joint occupancy is not continued by a Convention. And it is in that sense that you must understand the words that "Great Britain will give protection," &c. in the latter part of the statement of her claims and views. It was also to those expressions, thus understood, that I alluded in the counter statement, in saying that there were certain parts of the statement on which I would make no remarks, and which I must refer to my Government. The establishment of a distinct Territorial Government on the west of the Stony Mountains, would also be objected to, as an attempt to exercise exclusive sovereignty. I observed, that, although the Northwest Company might, from its being incorporated, from the habits of the men they employed, and from having a monopoly with respect to trade, so far as British subjects were concerned, carry on a species of government, without the assistance of that of Great Britain. It was otherwise with us. Our population there would consist of several independent companies and individuals. We had always been in the habit, in our most remote settlements, of carrying laws, courts, and justices of the peace with us. There was an absolute necessity, on our part, to have some species of government. Without it, the kind of sovereignty, or rather jurisdiction, which it was intended to admit, could not be exercised on our part. It was suggested, and seemed to be acquiesced in, that the difficulty might be obviated, provided the erection of a new Territory was not confined exclusively to the territory west of the mountains; that it should be defined as embracing all the possessions of the United States west of a line that should be at some distance from, and east of, the Stony Mountains.

It appears, from all that has passed during the discussion, that the important point is to agree on the acts which may or may not be done during the joint occupancy. All those which have been thought of as likely to occur, are stated in this letter, and to those I beg leave to call

your attention. What are those in which you agree with the British Plenipotentiaries? What are those you object to, decidedly? When agreed on those points, the expressions which may be used, and which, after all, must always be general, become less important. The questions respecting those acts must, at all events, be decided; as in the event, either of a simple renewal of the existing article, or of no agreement whatever being made on the subject, they will still occur whenever our citizens or troops cross the mountains. I beg that the instructions may be comprehensive and explicit, so as not to render it necessary to make another reference.

Although the suggestion mentioned in a former despatch, of lines defining exclusive sovereignty, and leaving between them debatable ground of joint occupancy and sovereignty, was not favorably received by the British Plenipotentiaries, I would wish to have the President's opinion upon it. It is possible that, as a last alternative, it may be recurred to; and, in that case, I should know not only whether the principle is admissible, but how the lines should be defined.

I have the honor to be, &c.

ALBERT GALLATIN.

Hon. HENRY CLAY,
Secretary of State, Washington.

[EXTRACT.]

Mr. Gallatin to Mr. Clay.

LONDON, *May* 29, 1827.

"SIR: Our eighth conference took place on the 24th instant. The protocol is not yet agreed on.

"I made the declaration reserving to my Government the right of contending for the full extent of the claims of the United States to the territory west of the Stony Mountains; on which, Mr. Huskisson said that they would, on their part, enter on the record a protest against those claims.

"I then stated that the President could not agree to the provisions of the second article of the projet of the Convention for the joint occupancy of the territories in question; and that, after a deliberate examination of the subject, he was still of opinion that a simple renewal of the former agreement for a limited term of years was sufficient, and the most eligible course to be adopted, for the present; it being of course understood, that, during that period, the two Governments would, according to the former suggestion of the British Plenipotentiaries, unite their endeavors to adjust their differences by the establishment of a permanent boundary in that quarter. This was taken ad referendum; Mr. Huskisson saying that he must consult his colleagues on that subject."

"P. S. I did not omit, in respect to the western territory, to remind the British Plenipotentiaries of the act of Parliament by which

Great Britain had actually extended her jurisdiction over it, and to say that it was a matter of surprise, that any objection could have been made to the supposed intention of the United States to pursue the same course. All that could be said in answer by Mr. Huskisson was, that it was to the intention of establishing a custom-house and exacting duties, that he had objected, as contrary to the third article of the Convention of 1818. So far he may be right."

[EXTRACT.]

Mr. Gallatin to Mr. Clay.

LONDON, *June* 20, 1827.

"SIR: Cabinet councils having been held on Saturday and Monday last, our conference did not take place till yesterday. The British Plenipotentiaries expressed their assent to a renewal for ten years of the third article of the Convention of 1818, but with a declaration on the part of Great Britain, to be entered in the protocol, that, according to her understanding of the article, neither party could exercise exclusive jurisdiction in the territory in question.

"I replied, with respect to the declaration, that, if entered on the protocol without a counter declaration on my part, it would be tantamount to an express article to the same effect, which I had explicitly stated could not be agreed to by the United States; and that supposing I could frame such a counter declaration, satisfactory to myself, it appeared to me that an agreement, accompanied by two such contradictory assertions of its true meaning and intention, would be nugatory and useless."

Mr. Gallatin to Mr. Clay.

LONDON, *June* 23, 1827.

SIR: I received from Mr. Addington, on the 21st instant, the draft of protocol of our next preceding conference, of which a copy is enclosed. The mention made in it of the intended British declaration, to be annexed to the renewal of the 3d article of the Convention of 1818, would have had the same effect as the declaration itself. I said as much at our conference of yesterday; and that, if the British Plenipotentiaries insisted on having the protocol expressed in that manner, I would decline altogether agreeing to the renewal. They agreed that the drawing of the protocol should be suspended until we had disposed of the subject.

I then stated at large, my objections both to the declaration and to the proposed additional article of the Commercial Convention. And, in order that these might be duly considered and correctly communi-

cated by Mr. Huskisson to his colleagues, I put in the hands of the Plenipotentiaries two papers, containing the substance of those objections; of which copies are also enclosed. They have to[illegible] these for consideration, and apparently with the intention of giving a definitive answer on both subjects, at our next conference, which is to take place on Tuesday next, 26th instant.

We afterwards took up the subject of the northeast boundary, and made some progress.

I have the honor, &c.

ALBERT GALLATIN.

Hon. HENRY CLAY,
Secretary of State, Washington.

I have just received your despatches, of 12th and 15th May, Nos. 28 and 29. The number 24 is still missing.

Observations on the project of declaration, to be annexed to the renewal of the Convention respecting the Territory west of the Stony Mountains:

The American Plenipotentiary explicitly stated, at the 8th conference, that his Government had taken into serious consideration the project of Convention, which had been offered, at the sixth conference, by the British Plenipotentiares, and that they could not agree to the provisions of the second article of that projet.

One of those provisions was, that neither of the contracting parties should, during the term agreed on for the continuance of the former agreement, assume or exercise any right of exclusive sovereignty or dominion over any part of the country west of the Stony Mountains.

By the proposed declaration, his Britannic Majesty would declare that his Majesty considers himself, and in like manner holds that the United States are equally precluded, by the provisions of the third article of the Convention of 1818, now intended to be renewed, from exercising, or assuming to exercise, any exclusive sovereignty or jurisdiction over the territory in question.

To acquiesce in such declaration, whether annexed in the Convention or inserted in the protocol, would be tantamount to the insertion, in the Convention, of the same provision, to which, as part of the second article of the projet offered at the sixth conference, the United States have already declared their inability to accede.

The American Plenipotentiary is not prepared to annex to the renewal a declaration on the part of the United States; and, indeed, with two such contradictory instruments, it would seem preposterous to make any agreement whatever.

He must, therefore, declare his inability to agree to a renewal of the third article of the Convention of 1818, if accompanied with a declaration such as has been proposed, or such as is inserted in the draft of protocol for the last conference.

Any act, of either party, that would impede or impair the rights secured, by the said third article, to the vessels, citizens, and subjects, of the two Powers, would be in contravention of the article; in other respects it is silent on the subject of sovereignty and jurisdiction; and the inconveniences against which it may have been the object of the proposed declaration to provide, are only apprehended, but have not yet been experienced.

By the act of Parliament of the 2d July, 1821, (1 and 2, Geo. IV. cap. 66,) entitled "An act for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America," Great Britain has assumed such jurisdiction as suited her own purposes, leaving to a powerful company the general government of the country.

That act, taken literally and in the abstract, may be liable to objections on the part of the United States. It has not been critically examined with that view, because no practical inconvenience has been felt from it, and in full confidence that it was not intended, and would not be executed, so as to contravene the compact between the two countries.

The United States, on their part, have not assumed or exercised any sovereignty or jurisdiction over the country. Whenever this may become necessary, they have the same right to do it, in the manner most suitable to their institutions, and to the pursuits of their subjects. The same reliance may be placed on their violating no existing agreement. It is also their wish to avoid, as far as practicable, any measures that might produce collisions.

That so long as no permanent boundary shall have been agreed on, the subject will be attended with difficulties, cannot be concealed. The United States have not believed that these would be removed by provisions expressed in such general terms as that proposed by Great Britain. Neither Government appears, at this moment, to be prepared for more specific conditions. It is submitted, whether, as preparatory to a more definitive arrangement, and in order to obviate the objections to which the renewal for as long a term as had been contemplated, may be liable, the best course might not be to renew the former agreement for only four years, and thenceforth until one party shall have given the other one year's notice of his desire to put an end to it.

[EXTRACT.]

Mr. Gallatin to Mr. Clay.

LONDON, *27th June*, 1827.

"SIR: A new suggestion was also made respecting the renewal of the agreement for the joint occupancy of the territory west of the Stony Mountains. The British Plenipotentiaries had it in contemplation to

insert in the protocol a declaration purporting, either that, according to their understanding of the agreement, neither party had a right to take military possession of the country, or that, if the United States did establish any military posts in the country, Great Britain would do the same. They preferred the first mode, as the other might be construed by the United States as having the appearance of a threat. Great Britain, they said, had no wish to establish such posts, and would do it only in self-defence. But she could not acquiesce in acts on the part of the United States, which would give sanction to their claim of absolute and exclusive sovereignty, and calculated also to produce collisions having a national character. Occasional disturbances between the traders of the two countries might be overlooked; but any question connected with the flag of either Power would be of a serious nature, and might commit them in a most inconvenient and dangerous manner.

"I replied, that I could not agree to the renewal of the agreement, if accompanied with the insertion in the protocol of any declaration purporting to attach any construction or interpretation whatever to the agreement. As to a declaration, not pretending to give such construction, but stating what the British Government intended to do in the event of a certain contingency, I would take it into consideration when made, and see whether it should or should not preclude me from agreeing to the renewal. But I would observe, that the proper place of a declaration of this nature, was not in the protocol. If it was the intention of the British Government to signify their determination of establishing military posts in that country, in case it was done by the United States, such communication was equally necessary whether there was or was not a renewal of the agreement. And the most proper mode of making it, was through the ordinary channels of diplomatic communications, through the British Minister at Washington; or, if done here, by a note from the British Secretary State to the American Minister. It did not appear to me to have any thing to do with our negotiations for a renewal of the agreement.

"The contemplated renewal itself would be attended with no peculiar advantages to the United States. It was altogether a matter of mutual concern. There was no other object for it than that of preserving peace, until a permanent boundary could be agreed on. As it now stood, it provided only for one thing—that the traders of either party should not impede those of the other party. There was but one condition in the agreement, and that related exclusively to a free trade. Other conditions might be found necessary for the preservation of harmony. The Government of the United States was not at this time prepared to make a new agreement, embracing such additional stipulations. The same observation seemed to apply to the British Government, since they had not been able to propose any thing more than a clause expressed in such general terms as not at all to prevent collisions on the subject. From the exposition which Great Britain had now made of her claim, I was personally inclined to think that a more specific agreement, calculated to preserve peace

in every respect, was not impracticable, and would be rather advantageous to the United States.

It appeared from that exposition, that Great Britain denied, indeed, their exclusive right to any part of the territory in question, but made no exclusive claim herself, and considered it as open to the first occupant. Although the United States asserted, and would not abandon their exclusive right, in fact, the country must necessarily become ultimately theirs, even according to the British doctrine. In that view of the subject, all that the United States might want, was the very object which Great Britain declared to be hers, viz. the preservation of peace, until (if no arrangement for a permanent boundary should take place) the whole country was occupied: and I had myself no doubt that it would be entirely occupied and settled by the citizens of the United States.

"Difficulties would certainly occur in adjusting the stipulations necessary to preserve peace. I had already, in a former discussion, mentioned one relating to military occupancy. This was not wanted by Great Britain. The servants of her great fur company were numerous enough, and so organized as to afford sufficient protection to persons and property against Indian aggressions, and, at the same time, under such restraints as prevented them from provoking such aggressions. It was otherwise with the United States, and experience had shown that a military force was necessary and sufficient to preserve peace with the Indians.

"But, however difficult in its details, and though not prepared at this moment to discuss them, the object in view was certainly of great importance to both parties. I was inclined to think that a simple renewal of the agreement, and nothing more was practicable at present, was best calculated to keep the two Powers in a situation favorable to the success of a negotiation for that purpose. With the same object in view, if Great Britain thought it more eligible to have in the meanwhile no agreement whatever on that subject, it was left entirely at her option so to decide.

"The British Plenipotentiaries said, that there was such an avowed intention, on the part of the United States, to establish a military post, that they thought that they could not agree to a renewal of the former agreement, without making, at the same time, some declaration on that point; but that they would again consider the subject, before they came to a definitive determination."

Mr. Gallatin to Mr. Clay.

LONDON, *7th August*, 1827.

The Hon. HENRY CLAY,
Secretary of State.

SIR: I have the honor to enclose a Convention, concluded yesterday with the British Plenipotentiaries, renewing indefinitely, but liable to be annulled at the will of either party, the third article of the Convention of 1818.

The negotiation for establishing a permanent boundary between the United States and Great Britain west of the Rocky Mountains, failed altogether. The protocols of the three first conferences exhibit the proposals made on both sides; and the arguments urged by each party, are embodied in the exposition of their claims, as annexed by each, respectively, to the sixth and seventh protocols.

The renewal of the temporary agreement contained in the 3d article of the Convention of 1818, was then discussed; and the British Plenipotentiaries offered, at the sixth conference (of 16th Dec. 1826,) a projet of Convention, proposing a renewal of the said article for fifteen years, but with the condition, amongst others, that neither party should, during that term, exercise any right of exclusive sovereignty or dominion over any part of the country in question.

This project having been referred to my Government, your answer, declining the proposed condition, was received before the month of April. But the negotiations, which it had been intended to resume in February, had been suspended, on account of Mr. Huskisson's state of health; and the unsettled situation of the British cabinet prevented a renewal of the conferences till the 24th of May.

After it had been declared, on my part, that the United States could not accede to the restrictive condition proposed by the British Plenipotentiaries, they intimated an intention of agreeing to the renewal of the former agreement without condition, but of inserting in the protocol a declaration that they considered both parties, according to the true intent of that agreement, to be restricted, during its continuance, from exercising any exclusive sovereignty or jurisdiction over the territory in question.

I stated that, considering an acquiescence to such declaration as tantamount to an acceptance of the same article which the United States had thought inadmissible, I could not agree to the renewal of the agreement, if accompanied by the insertion in the protocol of the suggested declaration, or of any purporting to explain the intent or meaning of the article intended to be continued in force.

Various other proposals were suggested, though not presented in an official shape, having the same object in view: such as that neither Power should establish any military post in the territory in question, and that the citizens and subjects of either country should, for any offences or acts done in that territory, be amenable only to the tribunals of their own country. To all these, I gave, as a general answer, that I could not entertain any such proposals; their object being, in my opinion, to preclude, in another form, the exercise of exclusive sovereignty, a provision which I was not authorized to admit, and to which the United States were not prepared to accede.

The reasons assigned by the British Plenipotentiaries for this provision were, that, according to their view of the subject, it was the true intent or object of the former agreement, to keep in abeyance, during its continuance, all conflicting rights to the territory to which it related; that the Government of the United States had manifested an intention to enforce the rights they claimed, by assuming exclusive sovereignty, as appeared by a bill which had passed one of the

branches of the Legislature, for extending to that territory legislative, executive, and judicial jurisdiction, and, by the recommendation of the President, to establish there a military post; and that it would be utterly impossible to prevent collisions of a national character, if the two parties should proceed to such acts of absolute sovereignty.

It was denied, on my part, that any thing more was meant or intended by the former agreement than what appeared on the face of it; and that all that was provided for by that compact, was to leave the country open to the commerce of the citizens or subjects of both parties, without hinderance either from the Government or from the subjects or citizens of either party.

I observed, that, whatever might be the presumed intentions of the American Government, they had not, as yet, done a single act assuming jurisdiction of any kind over the territory west of the Rocky Mountains; and that it was rather singular that the mere apprehension of such acts should have brought forth the proposal which had been made by the British Plenipotentiaries, at the very time when Great Britain had herself assumed that jurisdiction which she considered dangerous to the peace of the two countries.

The act of Parliament (1 and 2 George iv. ch. 66) of 2d July, 1821, entitled "An act for regulating the fur trade, and establishing a criminal and civil jurisdiction within certain parts of North America," authorized the King to grant to any company, or persons, the exclusive privilege of trading with the Indians, in all parts of North America, not being part of the territories of the Hudson's Bay Company, of His Majesty's Provinces in North America, or of any lands or territories belonging to the United States of America. But a special exception was made by the fourth section of the act, expressly founded on the Convention between Great Britain and the United States, and declaring, that nothing in the act contained should be construed to authorize any such persons or company to exercise such exclusive trade to the prejudice or exclusion of any citizens of the United States, who might be engaged in the said trade.

No such exception was made in relation to the provisions of the act establishing jurisdiction. The courts of Upper Canada were, by those provisions, declared to have the same civil jurisdiction, in all respects, within the parts of America not within the limits of Lower or Upper Canada, or of any civil government of the United States, as they had within the limits of Upper Canada. The King was authorized to appoint persons to act as justices of the peace within the aforesaid parts of America, and to constitute courts, composed of such justices, and having an inferior civil and criminal jurisdiction. All capital and other high offences, and all civil suits above a certain amount, were to be tried in the courts of Upper Canada. No provision was inserted, excepting citizens of the United States from that jurisdiction. And this extended precisely to the country in question, to the whole territory west of the Stony Mountains, since the territories of the Hudson's Bay Company did not reach beyond those mountains, and the British Government denied that any part of the said territory was within the limits of the United States.

It was therefore evident that Great Britain had given to the temporary agreement of 1818, the same construction for which I contended; that she considered it as securing the citizens and subjects of the two countries in the enjoyment of a free trade within the limits of the territory in question, but not as imposing any other restrictions on either Government.

The United States might indeed have a right to complain of some of the provisions of the act of Parliament, not as being a breach of the compact, but generally as an infraction of the right of sovereignty claimed by them over a considerable part of the territory. If no such complaint had been made, it was probably because the act had not been literally executed. But Great Britain having assumed in fact as much jurisdiction as was necessary for the protection of her subjects, and for the maintenance of order in the country, so far as she was concerned, could not, at all events, complain, if the United States should, on their part, adopt such measures as were necessary for the same object; even if these were not precisely the same which had been deemed sufficient by Great Britain.

A powerful incorporated company, to the exclusion of private British traders, was, in itself, a territorial Government. Even the extensive and populous regions of the East, had, for a long period, been governed through the same means. In the American territories, inhabited by the native tribes, experience had shown that, whenever private British traders had been admitted, or even when the competition was only between two companies, intestine contentions and bloodshed could not be prevented. But when there was but one exclusive company, its agents were the governors, all the other British subjects in the territory were the servants of that company; they might be, and were kept under perfect subordination, restrained from committing any outrages on the Indians, and forming a force sufficient for protection against them. Peace and order had, through those means, been effectually preserved. Nothing was wanting to complete the system, but the establishment of proper tribunals for deciding civil suits and trying offences. This was precisely what had been done by the act of Parliament, of 1821. Taking all its provisions together, it answered every purpose which Great Britain had in view. But, in order to attain the same object, the United States would be obliged to resort to different means.

The establishment of an exclusive company appeared incompatible with their habits and institutions. They could not govern the country and preserve peace through that medium. So far as related to the administration of justice, Great Britain could not deny their right of doing what she had done herself, of establishing proper tribunals; and it was immaterial whether the Superior Courts sat within or without the limits of the territory. But the executive authority, as it could not be vested in the agents of a company, must be exercised by officers of the United States. And again, not having the numerous servants of a company under their control, they had no other means to preserve peace but a military force. This was indeed altogether un-

necessary, and never resorted to for that purpose in the interior parts of the United States. But experience had also proved, that, in what was called Indian territories, and along their borders, such a force was necessary, and a small one was sufficient to protect the white inhabitants against Indian depredations, and the Indians themselves against the aggressions of lawless individuals. Peace had thus for a number of years been preserved with the Indians and amongst the Indians. It had been found impracticable to do it without such means.

I admitted, at the same time, that there was, if not imminent, at least ultimate danger of collisions, as long as no permanent boundary was agreed on in that quarter; and that it was extremely desirable that some arrangement might be made, which should in the meanwhile prevent any serious differences arising from that cause between the two countries.

This object would not be attained by simply agreeing to a condition expressed in terms so general and vague, as that which had been proposed on the part of Great Britain, and which, if acceded to, would, without providing for what she had in view, give occasion to new discussions respecting its true meaning. Thus, for instance, she was desirous that neither party should establish any military post in the country; and, if both should happen to do it, the act could not, on either side, be considered as one of exclusive sovereignty. The only agreement that could answer the end proposed, must be one containing specific provisions, enumerating the acts which each party might do, and those from which each must abstain, during its continuance. But this subject had not yet been taken into consideration by my Government. Both the utility and the difficulty of such an arrangement had, for the first time, been brought distinctly into view in the course of this negotiation. The various proposals or suggestions of the British Plenipotentiaries, not always according with each other in principle, showed that the views of neither party were yet matured. I had no doubt that my Government would be disposed to enter into an agreement calculated to prevent disputes, provided this was found practicable; that they would entertain any proposals having that object in view, and which should neither affect the rights claimed by the United States, nor impede the pursuits of their citizens and the progress of their settlements in the territory west of the Rocky Mountains. But this must be the subject of a subsequent negotiation. There was no pressing immediate necessity for such an agreement. At all events, I was not authorized to conclude, or, indeed, the subject being quite new, to discuss its details. I could only agree to a simple renewal of the third article. The United States had no particular interest in its continuance. It was a matter of mutual concern. If there was any advantage in not suffering that agreement to expire, it was common to both parties. Without attaching a very great importance to it, the Government of the United States, seeing no inconvenience in its renewal for a term not exceeding ten years, had instructed me to that effect, because the country being as yet used only for the purpose of trading with the natives, there appeared a mutual advantage

that the subjects and citizens of neither party should be disturbed in that pursuit by those of the other party. The course which the discussion had taken, suggested another reason in favor of the renewal. The dissolution of the existing agreement, whilst the boundary remained unsettled, would have an unfavorable moral effect on the relations between the two countries. They would be left in almost an hostile attitude in that quarter. A temporary renewal would give time to mature measures of a more permanent nature, and leave both parties in a better temper to enter into the discussion of those measures. All these were general considerations, not more applicable to the United States than to Great Britain, and it was now for her to decide; but it was the only option left, whether she would agree to a temporary renewal, without any additional condition or explanatory declaration.

The British Plenipotentiaries did not admit that the act of Parliament of July, 1821, was susceptible of the strict literal construction I had put upon it. They declared, explicitly, that it had no other object but the maintenance of order amongst British subjects, and had never been intended to apply to citizens of the United States. That such was not the intention of Great Britain, was evident from the various proposals now made on her part, having all for their object to prevent both parties from assuming an exclusive jurisdiction.

They expressed their regret that I was not authorized or even prepared to enter into a discussion of the measures necessary to prevent most serious differences taking place. An arrangement to that effect, though attended with difficulties, did not appear to them impracticable. There was no intention on the part of Great Britain to colonize the country, or to impede the progress of our settlements. They would be disposed, if such an arrangement as they contemplated could be effected, to assign to it a longer duration than had been at first mentioned, (perhaps 25 years,) and to leave the further occupation and settlement of a country, which they considered as equally open to all, to take its own course. But Great Britain owed protection to her subjects in that quarter, and could not admit that they should, so long as the permanent boundary was not settled, be liable to a foreign jurisdiction. Nor would her interest, or a due regard to national character, permit her to acquiesce in an exclusive military occupation of the country, on the part of the United States. The necessary consequence of such an occupation on their part, would be the establishment, also, of military posts on the part of Great Britain. There was a great difference between the national flag and that of a private company: and they apprehend that the erection of the first, by either party, would render the final adjustment of the boundary line more difficult, and the preservation of peace more precarious.

The British Plenipotentiaries added, that, considering the nature of the claim to the country, as set up by each party, Great Britain would hardly be placed on equal terms, if the agreement was renewed, without inserting in it, in some shape, the condition they had suggested—the United States asserting a claim of absolute sovereignty, and

a latitude for the construction of that compact, which Great Britain denied to herself. They could not, therefore, agree to a simple renewal for a fixed term of years; but they would not object to a temporary continuance, with the intention of preventing collisions, while measures were maturing for a more permanent arrangement.

To this overture I acceded without hesitation, and proposed, as had been done by the British Plenipotentiaries, in relation to the commercial Convention, that each party should be at liberty to rescind the agreement, on giving twelve months' notice to the other party. This, indeed, appeared to me, upon the whole, a more eligible mode than that of a renewal for ten years; it being quite as probable that the United States may find it expedient to annul the compact before the expiration of that term, as that it will suit the convenience of Great Britain to do it.

I beg leave here to observe, that some of the most cogent motives for having made the agreement in 1818, have now ceased to operate. The country is still now, as it was then, almost exclusively occupied by the British traders. But the claim of the United States had not, at that time, been strengthened by the acquisition of that of Spain. The British Plenipotentiaries, unable, for that very reason, to sustain the British claim against the United States, by the Nootka Convention, did then assert a right of absolute sovereignty, founded, as they said, on prior discoveries and Indian purchases, but which is no longer affirmed. They had also declared, that the order given by the British Government, but not yet carried into effect, for the restitution of Astoria, had issued under an erroneous impression that that establishment had been captured, instead of having been, as they asserted, voluntarily transferred. For all those reasons, it appeared necessary, that, in a Convention which established the 49th parallel of latitude as the boundary between the two countries as far as the Stony Mountains, some provision should be inserted, recognizing the existence of the claims of the United States to the territory west of those mountains. As there was no apparent reason why that boundary should not, as the northern limit of Louisiana, have been extended to the Pacific Ocean, absolute silence with respect to that territory, might, under all the circumstances of the case, have had a tendency to weaken the claim of the United States.

A renewal of the agreement is no longer necessary for that object. But, in addition to the reasons that were assigned in the course of the negotiation, in favor of continuing it in force, there is still one peculiar to the United States. They claim exclusive sovereignty over a Territory, a considerable portion of which is occupied by British traders, whom they could not dispossess without engaging in a war; whom, from their distance and other causes, they are not at this time prepared to remove. It is certainly more eligible that those persons should remain on the territory of the United States, by virtue of a compact, and with their consent, than in defiance of their authority. Although the prospect of paving the way for a more complete and satisfactory agreement, has been one of the motives for concluding this

Convention, no commitment has taken place in that respect. And the further observations which I have to submit on that topic, having no immediate connexion with the temporary continuance of the existing agreement, will be the subject of a separate despatch.

I have the honor to be,
Respectfully, sir,
Your most obedient servant,
ALBERT GALLATIN.

PROTOCOL of the first Conference of the American and British Plenipotentiaries, held at the Foreign Office, on the 15th of November, 1826.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

After the communication of the respective full powers, it was agreed that the negotiations should be conducted, as in 1824, by conference and protocol, each party being at liberty to annex to the protocol any written statement which he might think expedient. The Plenipotentiaries then agreed to take up, in the first place, the subject of territorial claims west of the Rocky Mountains.

After some general discussion, the British Plenipotentiaries observed, that a proposal of settlement, on that subject, having been offered on the part of Great Britain, during the course of the negotiations of 1824, which proposal had been taken by the American Plenipotentiary for reference to his Government, they presumed that Mr. Gallatin was prepared to give an answer to that, or to offer some new proposal.

The American Plenipotentiary stated that the Government of the United States could not accede to the boundary line which had been offered by Great Britain, but that, whilst insisting on the forty-ninth parallel of latitude, he was authorized to substitute for the proposal made by Mr. Rush, in 1824, which must be considered withdrawn, another, with a new condition, which would evince the earnest desire of the United States to arrange the subject of difference; and he accordingly offered the annexed article A.

This article the British Plenipotentiaries took, without further observation, for reference to their Government.

Adjourned to Wednesday, the 22d instant, at two o'clock.

A true copy.
W. B. LAWRENCE, *Sec'y of Legation.*

ARTICLE A.—*Offered by the American Plenipotentiary.*

It is agreed that the boundary line, between the territories claimed by the United States, and those claimed by his Britannic Majesty, west of the Stony Mountains, shall be drawn due west from the said

mountains, where the boundary line agreed on by the second article of the Convention of London, of 20th of October, 1818, terminates, along the forty-ninth parallel of north latitude, to the Pacific ocean. If the said line shall cross the great northwesternmost branch of the Columbia river, marked in the maps as McGillivray's river, or any of the other branches of the Columbia river, at a place or places from which the said McGillivray's river, or any such other branch of the Columbia river, is navigable to the main last mentioned river, the navigation of the said McGillivray's river, and of any such other branch or branches, to the Columbia river, and of the Columbia river itself, to the ocean, shall be perpetually free to the subjects of Great Britain, in common with the citizens of the United States. The high contracting parties shall adopt measures in concert to have the said boundary line ascertained, within fifteen years from the date of the signature of this Convention, and the right of navigation shall, in the mean time, be enjoyed; but, if it shall be found that neither the said McGillivray's river, nor any of the other branches of the Columbia river, is navigable by boats, from where the boundary line crosses them to the main Columbia river, the navigation of the said main river, and of its branches, within the limits of the United States, shall cease to be free to the subjects of Great Britain. It is further specially agreed, that neither of the high contracting Powers, their respective citizens or subjects, shall, henceforward, form any settlements within the limits assigned by the boundary line aforesaid to the other; it being, at the same time, understood, that any such settlement, already formed by the citizens or subjects of either party, within the limits of the other, shall continue to be occupied and enjoyed, at the pleasure of the present occupants, without let or hindrance of any kind, until the expiration of the term of ten years from the date hereof, and no longer. The provisions of the third article of the Convention of London, of the 20th of October, 1818, shall, in every other respect, continue in force for the said term of ten years; at the end of which term, the citizens and subjects of the two parties shall, in trading with the natives, and in the pursuit of game and fur, be restricted to the side of the boundary line of their respective countries.

A true copy.

W. B. LAWRENCE, *Sec'y of Legation.*

***PROTOCOL** of the second Conference of the American and British Plenipotentiaries, held at the Board of Trade, on the 22d of November, 1826.*

Present:—Mr. GALLATIN,
Mr. ADDINGTON,
Mr. HUSKISSON.

The protocol of the preceding conference was read over and signed.

The subject of the territorial claims on the coast of America west of the Rocky Mountains, was resumed; and, after some general dis-

cussion, in which the arguments respectively employed at the preceding conference were further developed on both sides, the further consideration of the subject was postponed, by mutual agreement, to the next meeting of the Plenipotentiaries.

Adjourned to Friday, the 1st of December.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy.

W. B. LAWRENCE,
Secretary of Legation.

PROTOCOL of the third Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 1st December, 1826.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The British Plenipotentiaries took up the subject of the article of settlement annexed by the American Plenipotentiary to the protocol of the first conference, and declared that, since, in that article, the 49th parallel of north latitude was still insisted on by the United States as the boundary line, the said article was accordingly declined on the part of Great Britain.

Notwithstanding a declaration on the part of the American Plenipotentiary, that he had no authority to depart from the basis of the 49th parallel of latitude, as abovementioned, yet as it had been stated by him, in the course of the discussion, that the line proposed by Great Britain, viewed without regard to the question of right, and merely as a boundary, founded on convenience, would be inadmissible, since it left no port, fitted for large ships, to the United States, whilst the whole northern coast of the territory was amply supplied with such; and the United States could never agree to a line which would not give them a share in such ports—the British Plenipotentiaries, in order to evince the earnest desire of their Government to afford every facility to the final adjustment of the question of boundary, submitted the following terms of accommodation, with a view to their reference to the American Government:

"That, considering that the possession of a safe and commodious port on the Northwest Coast of America, fitted for the reception of large ships, might be an object of great interest and importance to the United States, and that no such port was to be found between the 42d degree of latitude and the Columbia river, Great Britain, in still adhering to that river as a basis, was willing so far to modify her former proposal, as to concede, as far as she was concerned, to the

United States, the possession of Port Discovery, a most valuable harbor on the southern coast of De Fuca's Inlet; and to annex thereto all that tract of country comprised within a line to be drawn from Cape Flattery, along the southern shore of De Fuca's inlet, to Point Wilson, at the northwestern extremity of Admiralty Inlet; from thence, along the western shore of that inlet, across the entrance of Hood's Inlet, to the point of land forming the northeastern extremity of the said inlet; from thence, along the eastern shore of that inlet, to the southern extremity of the same; from thence, direct, to the southern point of Gray's Harbor; from thence, along the shore of the Pacific, to Cape Flattery, as beforementioned.

"They were further willing to stipulate, that no works should, at any time, be erected at the entrance of the river Columbia, or upon the banks of the same, that might be calculated to impede or hinder the free navigation thereof by the vessels or boats of either party."

The American Plenipotentiary, considering this proposal as totally inadequate, and having declined even referring it to his Government, the British Plenipotentiaries, at the same time that they left the said proposal on the protocol, protested against the offer of concession so made, being ever taken in any way to prejudice the claims of Great Britain, included in her proposal of 1824; and declared that the offer now made, was considered by the British Government, as not called for by any just comparison of the grounds of those claims, and of the counter claim of the United States; but rather as a sacrifice which the British Government had consented to make with a view to obviate all evils of future difference in respect to the territory west of the Rocky Mountains.

The proposition having, however, failed, they informed the American Plenipotentiary that, at a subsequent conference, they should be prepared to submit a proposal for the renewal, for a fresh term of years, and in a separate form, of the provision relative to the territory in question, contained in the third article of the Convention of 1818.

The American Plenipotentiary observed, that the proposal contained in the article presented by him at the first conference, and declined on the part of Great Britain, had also been made solely with a view to terminate, by an amicable agreement, all differences on that subject; and that he likewise protested against that proposal being ever taken in any way to prejudice the claims of the United States, as heretofore stated.

Adjourned to Wednesday, the 6th of December.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy.

W. B. LAWRENCE,
Secretary of Legation.

PROTOCOL of the fourth Conference of the American and British Plenipotentiaries, held at the Board of Trade, on the 6th of December, 1826.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The protocol of the preceding conference was read over and signed.

The subject of a renewal of the article of the Convention of 1818, which provides for a joint occupancy of the territory west of the Stony Mountains, was resumed; and, after some general discussion, the American Plenipotentiary observed, that he had been authorized by his instructions, in case no permanent boundary line could be agreed on, to agree to the renewal of the article in question, for a term not exceeding ten years; proposing only to omit so much of the article as related to the claims of other nations to that territory, as the United States did not admit that any other nation besides the two contracting Powers had any such claim at this time—those of Spain and Russia having been settled since the year 1818.

But, as from the discussion which had taken place, it might be apprehended that the two Governments did not perhaps altogether agree on the true meaning of that article, and on the extent of the obligations imposed by it on both parties, he thought it essential that no agreement should be concluded without a previous clear and mutual understanding in that respect. He therefore believed it necessary that he should refer the whole subject to his Government, with such new or explanatory provisions as the British Plenipotentiaries might deem it proper to propose. He could not himself offer any new proposal for consideration, and would only say, that any that was calculated to prevent collision, and to preserve perfect harmony in that quarter, would be favorably entertained by the Government of the United States, provided it did not impair or affect their rights, nor prevent or impede their making settlements, and enjoying all the benefits of the joint occupancy.

The British Plenipotentiaries stated, in reply, that it had never been their intention to propose any arrangement which should not place the citizens of the United States upon an equal footing with the subjects of Great Britain, in respect to the territory in question, so long as it continued open to the exercise of those rights which were incident to a state of joint occupancy.

The sole object of any additional stipulation which they might have to suggest for the consideration of the American Plenipotentiary, would be to guard against possible misunderstanding in respect to the nature and consequences of any acts that might be done in that territory by either party, whilst liable to be so occupied.

The British Plenipotentiaries added, that they should certainly feel no objection to furnish the American Plenipotentiary with a full and explicit statement of the claims which Great Britain makes, and of the obligations by which she considers herself bound in respect to that territory.

The British Plenipotentiaries submitted to the American Plenipotentiary, whether, in renewing the third article of the Convention of 1818, it might not be desirable to extend that renewal to a longer term than ten years. They suggested twenty, or at least fifteen years, subject to the understanding that the two Governments should use their best endeavors within that period to adjust their present differences in respect to the boundary to be drawn between them in the territories in question.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy:
W. B. LAWRENCE,
Secretary of Legation.

PROTOCOL of the fifth Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 11th of December, 1826.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The protocol of the preceding conference was read over and signed.

Circumstances having prevented the British Plenipotentiaries from submitting, as they had proposed, at this conference, a project of Convention for the renewal of the provision of the Convention of 1818, relative to the country west of the Rocky Mountains, as alluded to in the preceding protocol, the subject of adjustment of boundary, under the fifth article of the treaty of Ghent, was entered upon by the Plenipotentiaries.

After some general conversation respecting the expediency of referring to foreign arbitration, as provided by that treaty, the differences which had arisen on that subject, as well as the mode of regulating that reference, it was agreed to postpone the further consideration of this matter to a future conference, in order to give time for further investigation of several points connected with it.

The American Plenipotentiary announced his having received authority from his Government to treat concerning the renewal, for a further term of ten years, of the Commercial Convention of 1815, concluded between the United States and Great Britain.

Adjourned to Saturday, 16th of December.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy.
W. B. LAWRENCE,
Secretary of Legation.

PROTOCOL of the sixth Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 16th of December, 1826.

Present—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The protocol of the preceding conference was read over and signed.

The British Plenipotentiaries submitted, and annexed to the protocol, the project of a convention, (A) as alluded to in their preceding conferences, for the renewal, for a fresh term of fifteen years, from the date thereof, of the provision relative to the country west of the Rocky Mountains, which was contained in the Convention of London of 1818. This project they accompanied with a statement (B) also annexed to the protocol of the claims and views of Great Britain relative to that country.

The American Plenipotentiary took both the abovementioned papers for reference to his Government, and intimated his intention of annexing to the protocol of the next conference, a counter-statement of the claims and views of the United States relative to the same country.

Adjourned.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy.
W. B. LAWRENCE,
Secretary of Legation.

Draft of Convention between Great Britain and the United States, proposed by the British Plenipotentiaries.

Whereas, by the third article of the Convention concluded in London, on the thirtieth of October, eighteen hundred and eighteen, between his Britannic Majesty and the United States of America, it was provided that any country that might be claimed by either of the contracting parties, on the Northwest Coast of America, should be free and open, for the term of ten years from the date of the signature of that Convention, to the subjects and citizens of the two Powers, any territorial claim which either party might have to any part of such country being mutually reserved: His Britannic Majesty and the United States, considering that the term for which the above provision was to remain in force, is now not far from its expiration, and being equally desirous to preclude all danger of misunderstanding between themselves, with respect to the said country, have determined to renew the said provision; for which purpose, they have respectively named Plenipotentiaries to treat and agree respecting the same; that

is to say—His Britannic Majesty, the right honorable William Huskisson, &c. &c. &c. and Henry Unwin Addington, Esq., and the United States, Albert Gallatin, who have agreed to and concluded the following articles :

ARTICLE I.

It is agreed, that any country which may be claimed by either of the contracting parties, on the Northwest Coast of America, westward of the Rocky Mountains, shall, together with its harbors, bays, creeks, and rivers, be free and open for the term of fifteen years, from the date of the ratification of the present Convention, to the vessels, subjects, and citizens, of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties, in concluding this Convention, being to prevent disputes and differences between themselves.

ARTICLE II.

For the more effectual prevention of such disputes and differences, it is further agreed, that, during the said term of fifteen years, neither of the contracting parties shall assume or exercise any right of exclusive sovereignty or dominion over any part of the said country; nor shall any settlement which may now exist, or which may be hereafter formed therein, by either party, during the said term of fifteen years, be, at any time, adduced in support, or furtherance of any claim to such sovereignty or dominion.

British Statement annexed to the Protocol of the Sixth Conference.

The Government of Great Britain, in proposing to renew, for a further term of years, the third article of the Convention of 1818, respecting the territory on the Northwest Coast of America, west of the Rocky Mountains, regrets that it has been found impossible, in the present negotiation, to agree upon a line of boundary, which should separate those parts of that territory, which might henceforward be occupied or settled by the subjects of Great Britain, from the parts which would remain open to occupancy and settlement by the United States.

To establish such a boundary must be the ultimate object of both countries. With this object in contemplation, and from a persuasion that a part of the difficulties which have hitherto prevented its attainment, is to be attributed to a misconception, on the part of the United States, of the claims and views of Great Britain, in regard to the territory in question, the British Plenipotentiaries deem it advisable

to bring under the notice of the American Plenipotentiary a full and explicit exposition of those claims and views.

As preliminary to this discussion, it is highly desirable to mark, distinctly, the broad difference between the nature of the rights claimed by Great Britain, and those asserted by the United States, in respect to the territory in question.

Over a large portion of that territory, namely, from the forty-second degree to the forty-ninth degree of north latitude, the United States claim full and exclusive sovereignty.

Great Britain *claims no exclusive sovereignty over any portion of that territory.* Her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy, in common with other States, leaving the right of exclusive dominion in abeyance.

In other words, the pretensions of the United States tend to the ejection of all other nations, and, among the rest, of Great Britain, from all right of settlement in the district claimed by the United States.

The pretensions of Great Britain, on the contrary, tend to the mere maintenance of her own rights, in resistance to the exclusive character of the pretensions of the United States.

Having thus stated the nature of the respective claims of the two parties, the British Plenipotentiaries will now examine the grounds on which those claims are founded.

The claims of the United States are urged upon three grounds:

1st. As resulting from their own *proper* right.

2dly. As resulting from a right derived to them from Spain; that Power having, by the treaty of Florida, concluded with the United States in 1819, ceded to the latter all their rights and claims on the western coast of America north of forty-second degree.

3dly. As resulting from a right derived to them from France, to whom the United States succeeded, by treaty, in possession of the province of Lousiana.

The first right, or right *proper* of the United States, is founded on the alleged discovery of the Columbia river, by Mr. Gray, of Boston, who, in 1792, entered that river, and explored it to some distance from its mouth.

To this are added the first exploration by Lewis and Clarke, of a main branch of the same river from its source downwards: and, also, the alleged priority of settlement, by citizens of the United States, of the country in the vicinity of the same river.

The second right, or right derived from Spain, is founded on the alleged prior discovery of the region in dispute by Spanish navigators, of whom the chief were, 1st, Cabrillo, who, in 1543, visited that coast as far as 44° north latitude. 2d, De Fuca, who, as it is affirmed, in 1598, entered the Straits known by his name, in latitude 49°. 3d. Guelli, who, in 1582, is said to have pushed his researches as high as 57° north latitude. 4th, Perez, and others, who, between the years 1774 and 1792, visited Nootka Sound and the adjacent coasts.

The third right derived from the cession of Louisiana to the United

States, is founded on the assumption that that province, its boundaries never having been exactly defined *longitudinally*, may fairly be asserted to extend westward across the Rocky mountains, to the shore of the Pacific.

Before the merits of these respective claims are considered, it is necessary to observe that one only out of the three can be valid.

They are, in fact, claims obviously incompatible the one with the other. If, for example, the title of Spain by first discovery, or the title of France, as the original possessor of Louisiana, be valid, then must one or the other of those kingdoms have been the lawful possessor of that territory, at the moment when the United States claim to have discovered it. If, on the other hand, the Americans were the first discoverers, there is necessarily an end of the Spanish claim; and if priority of discovery constitutes the title, that of France falls equally to the ground.

Upon the question, how far prior discovery constitutes a legal claim to sovereignty, the law of nations is somewhat vague and undefined. It is, however, admitted by the most approved writers, that mere accidental discovery, unattended by exploration—by formally taking possession in the name of the discoverer's sovereign—by occupation and settlement, more or less permanent—by purchase of the territory—or receiving the sovereignty from the natives—constitutes the lowest degree of title, and that it is only in proportion as first discovery is followed by any or all of these acts, that such title is strengthened and confirmed.

The rights conferred by discovery, therefore, must be discussed on their own merits.

But before the British Plenipotentiaries proceed to compare the relative claims of Great Britain and the United States, in this respect, it will be advisable to dispose of the two other grounds of right, put forward by the United States.

The second ground of claim, advanced by the United States, is the cession made by Spain to the United States, by the treaty of Florida, in 1819.

If the conflicting claims of Great Britain and Spain, in respect to all that part of the coast of North America, had not been finally adjusted by the convention of Nootka, in the year 1790, and if all the arguments and pretensions, whether resting on priority of discovery, or derived from any other consideration, had not been definitively set at rest, by the signature of that convention, nothing would be more easy than to demonstrate that the claims of Great Britain to that country, as opposed to those of Spain, were so far from visionary, or arbitarily assumed, that they established more than a parity of title to the possession of the country in question, either as against Spain, or any other nation.

Whatever that title may have been, however, either on the part of Great Britain, or on the part of Spain, prior to the convention of 1790, it was from thenceforward no longer to be traced in vague narratives of discoveries, several of them admitted to be apocryphal, but in the text and stipulations of that convention itself.

By that convention it was agreed that all parts of the Northwestern Coast of America, not already occupied at that time by either of the contracting parties, should thenceforward be equally open to the subjects of both, for all purposes of commerce and settlement; the sovereignty remaining in abeyance.

In this stipulation, as it has been already stated, all tracts of country claimed by Spain and Great Britain, or accruing to either, in whatever manner, were included.

The rights of Spain on that coast were, by the treaty of Florida, in 1819, conveyed by Spain to the United States. With those rights the United States necessarily succeeded to the limitations by which they were defined, and the obligations under which they were to be exercised. From those obligations and limitations, as contracted towards Great Britain, Great Britain cannot be expected gratuitously to release those countries, merely because the rights of the party originally bound, have been transferred to a third Power.

The third ground of claim, of the United States, rests on the right supposed to be derived from the cession to them of Louisiana by France.

In arguing this branch of the question, it will not be necessary to examine in detail the very dubious point of the assumed extent of that province, since, by the treaty between France and Spain, of 1763, the whole of that territory, defined or undefined, real or ideal, was ceded by France to Spain, and, consequently, belonged to Spain, not only in 1790, when the convention of Nootka was signed between Great Britain and Spain, but, also, subsequently, in 1792, the period of Gray's discovery of the mouth of the Columbia. If, then, Louisiana embraced the country west of the Rocky mountains, to the south of the 49th parallel of latitude, it must have embraced the Columbia itself, which that parallel intersects: and, consequently, Gray's discovery must have been made in a country avowedly already appropriated to Spain; and, if so appropriated, necessarily included, with all other Spanish possessions and claims in that quarter, in the stipulations of the Nootka convention.

Even if it could be shown, therefore, that the district west of the Rocky Mountains, was within the boundaries of Louisiana, that circumstance would, in no way, assist the claim of the United States.

It may, nevertheless, be worth while to expose, in a few words, the futility of the attempt to include that district within those boundaries.

For this purpose, it is only necessary to refer to the original grant of Louisiana, made to De Crozat, by Louis XIV, shortly after its discovery by La Salle. That province is therein expressly described as "the country drained by the waters entering, directly or indirectly, into the Mississippi." Now, unless it can be shown, that any of the tributaries of the Mississippi cross the Rocky Mountains from west to east, it is difficult to conceive how any part of Louisiana can be found to the west of that ridge.

There remains to be considered the first ground of claim advanced by the United States to the territory in question, namely, that founded on their own proper right, as first discoverers, and occupiers of that territory.

If the discovery of the country in question, or rather the mere entrance into the mouth of the Columbia, by a private American citizen, be, as the United States assert, (although Great Britain is far from admitting the correctness of the assertion,) a valid ground of national and exclusive claim to all the country situated between the 42d and 49th parallels of latitude, then must any preceding discovery of the same country, by an individual of any other nation, invest such nation with a more valid, because a prior claim to that country.

Now, to set aside, for the present, Drake, Cook, and Vancouver, who all of them either took possession of, or touched at, various points of the coast in question, Great Britain can show, that, in 1788, that is four years before Gray entered the mouth of the Columbia river, Mr. Meares, a Lieutenant of the Royal Navy, who had been sent by the East India Company on a trading expedition to the Northwest Coast of America, had already minutely explored that coast, from the 49° to the 45° north latitude; had taken formal possession of the Straits of De Fuca, in the name of his sovereign; had *purchased land*, trafficked, and *formed treaties* with the natives; and had *actually entered the Bay of the Columbia*, to the northern headland of which he gave the name of *Cape Disappointment*, a name which it bears to this day.

Dixon, Scott, Duncan, Strange, and other private British traders, had also visited these shores and countries several years before Gray; but the single example of Meares suffices to quash Gray's claim to prior discovery. To the other navigators abovementioned, therefore, it is unnecessary to refer more particularly.

It may be worth while, however, to observe, with regard to Meares, that his account of his voyages was *published in London in August*, 1790; that is, two years before Gray is even pretended to have entered the Columbia.

To that account are appended, first, extracts from his log book; secondly, maps of the coasts and harbors which he visited, in which every part of the coast in question, *including the bay of the Columbia*, (*into which the log expressly states that Meares entered,*) is minutely laid down, its delineation tallying, in almost every particular, with Vancouver's subsequent survey, and with the description found in all the best maps of that part of the world, adopted at this moment; thirdly, the account in question actually contains an engraving, dated in August, 1790, of the entrance of De Fuca's Straits, executed after a design taken *in June*, 1788, by Meares himself.

With these physical evidences of authenticity, it is as needless to contend for, as it is impossible to controvert, the truth of Meares' statement.

It was only on the *17th of September*, 1788, that the Washington, commanded by Mr. Gray, first made her appearance at Nootka.

If, therefore, any claim to these countries, as between Great Britain and the United States, is to be deduced from priority of the discovery, the above exposition of dates and facts suffices to establish that claim in favor of Great Britain, on a basis too firm to be shaken.

It must, indeed, be admitted, that Mr. Gray, finding himself in the bay formed by the discharge of the waters of the Columbia into the Pacific, was the first to ascertain that this bay formed the outlet of a great river, a discovery which had escaped Lieutenant Meares, when, in 1788, four years before, he entered the same bay.

But can it be seriously urged that this single step in the progress of discovery, not only wholly supersedes the prior discoveries, both of the bay and the coast by Lieutenant Meares, but equally absorbs the subsequent exploration of the river by Captain Vancovver, for near a hundred miles above the point to which Mr. Gray's ship had proceeded, the formal taking possession of it by that British navigator, in the name of his Sovereign, and also all the other discoveries, explorations, and temporary possession and occupation of the ports and harbors on the coast, as well of the Pacific as within the Straits of De Fuca, up to the 49th parallel of latitude?

This pretension, however, extraordinary as it is, does not embrace the whole of the claim which the United States build upon the limited discovery of Mr. Gray, namely, that the bay of which Cape Disappointment is the northernmost headland, is, in fact, the embouchure of a river. That mere ascertainment, it is asserted, confers on the United States a title, in exclusive sovereignty, to the whole extent of country drained by such river, and by all its tributary streams.

In support of this very extraordinary pretension, the United States allege the precedent of grants and charters accorded in former times to companies and individuals, by various European sovereigns, over several parts of the American continent. Amongst other instances are adduced the charters granted by Elizabeth, James 1st, Charles 2d, and George 2d, to sundry British subjects and associations, as also the grant made by Louis 14th to De Crozat over the tract of country watered by the Mississippi and its tributaries.

But can such charters be considered an acknowledged part of the Law of Nations? Were they any thing more, in fact, than a cession to the grantee or grantees, of whatever rights the grantor might suppose himself to possess, to the exclusion of other subjects of the same sovereign? Charters binding and restraining those only who were within the jurisdiction of the grantor, and of no force or validity against the subjects of other States, until recognized by treaty, and thereby becoming a part of international law.

Had the United States thought proper to issue, in 1790, by virtue of their national authority, a charter granting to Mr. Gray the whole extent of country watered, directly or indirectly, by the river Columbia, such a charter would, no doubt, have been valid in Mr. Gray's favor, as against all other citizens of the United States. But can it be supposed, that it would have been acquiesced in by either of the Powers—Great Britain and Spain—which, in that same year, were preparing to contest by arms the possession of the very country which would have been the subject of such a grant?

If the right of sovereignty over the territory in question, accrues to the United States by Mr. Gray's discovery, how happens it that

they never protested against the violence done to that right by the two Powers, who, by the convention of 1790, regulated their respective rights, in and over a district so belonging, as it is now asserted, to the United States?

This claim of the United States to the territory drained by the Columbia, and its tributary streams, on the ground of one of their citizens having been the first to discover the entrance of that river, has been here so far entered into, not because it is considered to be necessarily entitled to notice, since the whole country watered by the Columbia falls within the provisions of the convention of 1790, but because the doctrine above alluded to has been put forward so broadly, and with such confidence by the United States, that Great Britain considered it equally due to herself and to other Powers to enter her protest against it.

The United States further pretend, that their claim to the country in question is strengthened and confirmed by the discovery of the sources of the Columbia, and by the exploration of its course to the sea by Lewis and Clarke, in 1805–6.

In reply to this allegation, Great Britain affirms, and can distinctly prove, that, if not before, at least in the same and subsequent years, her Northwestern Trading Company had, by means of their agent, Mr. Thomson, already established their posts among the Flat Head and Kootanie tribes, on the head waters of the northern or main branch of the Columbia, and were gradually extending them down the principal stream of that river; thus giving to Great Britain, in this particular, again, as in the discovery of the mouth of the river, a title to parity at least, if not priority of discovery, as opposed to the United States. It was from those posts, that having heard of the American establishment forming in 1811, at the mouth of the river, Mr. Thomson hastened thither, descending the river. to ascertain the nature of that establishment.

Some stress having been laid by the United States, on the restitution to them of Fort George by the British, after the termination of the last war, which restitution they represent as conveying a virtual acknowledgment by Great Britain of the title of the United States to the country in which that post was situated; it is desirable to state, somewhat in detail, the circumstances attending that restitution.

In the year 1815, a demand for the restoration of Fort George was first made to Great Britain, by the American Government, on the plea that the first article of the Treaty of Ghent stipulated the restitution to the United States of all posts and places whatsoever, taken from them by the British during the war, in which description Fort George (Astoria) was included.

For some time the British Government demurred to comply with the demand of the United States, because they entertained doubts how far it could be sustained by the construction of the treaty.

In the first place, the trading post, called Fort Astoria, (or Fort George,) was not a national possession; in the second place it was not a military post; and thirdly, it was never captured from the Americans by the British.

It was, in fact, conveyed in regular commercial transfer, and accompanied by a bill of sale for a sum of money, to the British company who purchased it, by the American company, who sold it of *their own free will.*

It is true, that a British sloop of war had, about that time, been sent to take possession of that post, but she arrived subsequently to the transaction abovementioned, between the two companies, and found the British company *already in legal occupation of their self-acquired property.*

In consequence, however, of that ship having been sent out with hostile views, although those views were not carried into effect, and in order that not even the shadow of a reflection might be cast upon the good faith of the British Government, the latter determined to give the most liberal extension to the terms of the Treaty of Ghent, and, in 1818, the purchase which the British company had made in 1813, was restored to the United States.

Particular care, however, was taken on this occasion, to prevent any misapprehension as to the extent of the concession made by Great Britain.

Viscount Castlereagh, in directing the British Minister at Washington to intimate the intention of the British Government to Mr. Adams, then Secretary of State, uses these expressions, in a despatch dated 4th of February, 1818.

"You will observe, that, whilst this Government is not disposed to contest, with the American Government, the point of possession as it stood in the Columbia river at the moment of the rupture, *they are not prepared to admit the validity of the title of the Government of the United States to this settlement.*

"In signifying, therefore, to Mr. Adams, the full acquiescence of "your Government in the re-occupation *of the limited position,* which "the United States held in that river at the breaking out of the "war, *you will, at the same time, assert, in suitable terms, the claim* "of Great Britain to that territory, upon which the American settle-"ment must be considered as an encroachment."

This instruction was executed verbally by the person to whom it was addressed.

The following is a transcript of the act by which the Fort was delivered up by the British, into the hands of Mr. Prevost, the American agent.

"In obedience to the command of H. R. H. the Prince Regent, "*signified in a despatch from the Right Honorable the Earl Bathurst,* "addressed to the partners or agents of the Northwest Company, "bearing date the 27th of January, 1818, and in obedience to a sub-"sequent order, dated the 26th July, from W. H. Sheriff, Esq. Cap-"tain of H. M. ship Andromache: We, the undersigned, do, in con-"formity to the first article of the treaty of Ghent, restore to the "Government of the United States, through its agent, J. P. Pre-"vost, Esq. the settlement of Fort George on the Columbia river.

"Given under our hands in triplicate, at Fort George, (Columbia "River,) this 6th day of October, 1818.

"F. HICKEY,
"*Captain H. M. Ship Blossom.*
"J. KEITH,
"*Of the N. W. Co.*"

The following is the despatch from Earl Bathurst to the partners of the North West Company, referred to in the above act of cession:

"DOWNING STREET, *27th January*, 1818.

"Intelligence having been received that the United States' sloop of "war *Ontario* has been sent by the American Government to esta- "blish a settlement on the Columbia River, which was held by that "State, on the breaking out of the last war, I am to acquaint you, "that it is the Prince Regent's pleasure, (*without however admitting "the right of that Government to the possession in question*) that, "in pursuance of the first article of the treaty of Ghent, due facility "should be given to the re-occupation of the said settlement by the "officers of the United States; and I am to desire, that you would "contribute as much as lies in your power to the execution of His "Royal Highness's commands.

"I have, &c. &c.
"BATHURST."

"To the partners or agents of the Northwest Company, residing on the Columbia River."

The above documents put the case of the restoration of Fort Astoria in too clear a light to require further observation.

The case, then, of Great Britain, in respect to the country west of the Rocky Mountains, is shortly this:

Admitting that the United States have acquired all the rights which Spain possessed, up to the treaty of Florida, either in virtue of discovery, or, as is pretended, in right of Louisiana, Great Britain maintains that the nature and extent of those rights, as well as of the rights of Great Britain, are fixed and defined by the Convention of Nootka; that these rights are equal for both parties; and that, in succeeding to the rights of Spain, under that Convention, the United States must also have succeeded to the obligations which it imposed.

Admitting, further, the discovery of Mr. Gray to the extent already stated, Great Britain, taking the whole line of the coast in question, with its straits, harbors, and bays, has stronger claims, on the ground of prior discovery, attended with acts of occupancy and settlement, than the United States.

Whether, therefore, the United States rest their claims upon the title of Spain, or upon that of prior discovery, or upon both, Great Britain is entitled to place her claims at least upon a parity with those of the United States.

It is a fact, admitted by the United States, that, with the exception of the Columbia river, there is no river which opens far into the *interior*, on the whole western coast of the Pacific Ocean.

In the *interior* of the territory in question, the subjects of Great Britain have had, for many years, numerous settlements and trading posts; several of these posts on the tributary streams of the Columbia, several upon the Columbia itself, some to the northward, and others to the southward, of that river; and they navigate the Columbia as the sole channel for the conveyance of their produce to the British stations nearest the sea, and for the shipment of it from thence to Great Britain. It is also by the Columbia, and its tributary streams, that these posts and settlements receive their annual supplies from Great Britain.

In the whole of the territory in question, the citizens of the United States have not a single settlement or trading post. They do not use that river, either for the purpose of transmitting or receiving any produce of their own, to or from other parts of the world.

In this state of the relative rights of the two countries, and of the relative exercise of those rights, the United States claim the exclusive possession of both banks of the Columbia, and, consequently, that of the river itself; offering, it is true, to concede to British subjects a conditional participation in that navigation, but subject, in any case, to the exclusive jurisdiction and sovereignty of the United States.

Great Britain, on her part, offers to make the river the boundary; each country retaining the bank of the river contiguous to its own territories; and the navigation of it remaining for ever free, and upon a footing of perfect equality to both nations.

To carry into effect this proposal, on our part, Great Britain would have to give up posts and settlements south of the Columbia. On the part of the United States, there could be no reciprocal withdrawing from actual occupation, as there is not, and never has been, a single American citizen settled north of the Columbia.

The United States decline to accede to this proposal, even when Great Britain has added to it the further offer of a most excellent harbor, and an extensive tract of country on the Straits of De Fuca—a sacrifice tendered in the spirit of accommodation, and for the sake of a final adjustment of all differences, but which, having been made in this spirit, is not to be considered as in any degree recognizing a claim on the part of the United States, or as at all impairing the existing right of Great Britain over the post and territory in question.

Such being the result of the recent negotiation, it only remains for Great Britain to maintain and uphold the qualified rights which she now possesses over the whole of the territory in question. These rights are recorded and defined in the Convention of Nootka. They embrace the right to navigate the waters of those countries, the right to settle in and over any part of them, and the right freely to trade with the inhabitants and occupiers of the same.

These rights have been peaceably exercised ever since the date of that Convention; that is, for a period of near forty years. Under that

Convention, valuable British interests have grown up in those countries. It is fully admitted that the United States possess the same rights, although they have been exercised by them only in a single instance, and have not, since the year 1818, been exercised at all. But beyond these rights they possess none.

To the interests and establishments which British industry and enterprise have created, Great Britain owes protection. That protection will be given, both as regards settlement and freedom of trade and navigation, with every attention not to infringe the co-ordinate rights of the United States—it being the earnest desire of the British Government, so long as the joint occupancy continues, to regulate its own obligations by the same rule which governs the obligations of any other occupying party.

Fully sensible, at the same time, of the desirableness of a more definite settlement, as between Great Britain and the United States, the British Government will be ready, at any time, to terminate the present state of joint occupancy by an agreement of delimitation; but such arrangement only can be admitted as shall not derogate from the rights of Great Britain, as acknowledged by treaty, nor prejudice the advantages which British subjects, under the same sanction, now enjoy in that part of the world.

PROTOCOL of the seventh Conference of the American and British Plenipotentiaries, held at the Board of Trade, on the 19th December, 1826.

Present—Mr. GALLATIN,
Mr. ADDINGTON.

The American Plenipotentiary delivered and annexed to the protocol the counter-statement of the claims and views of the United States relative to the country west of the Rocky or Stony Mountains.

Adjourned.

ALBERT GALLATIN,
H. U. ADDINGTON.

A true copy.
W. B. LAWRENCE,
Secretary of Legation.

American Counter-statement annexed to the Protocol of the seventh Conference.

The American Plenipotentiary has read with attention the exposition of the claims and views of Great Britain, in regard to the territory west of the Rocky or Stony Mountains, annexed by the British Plenipotentiaries to the protocol of the last conference; and assures them that it will receive from his Government all the consideration to which it is so justly entitled.

He will not make any observations on that part of the exposition, which, as explanatory of the views of the British Government in reference to a continued joint occupancy, he can only refer to his Government. The remarks he will now offer, are necessarily limited to the respective claims of the two countries, and to the proposals for a definitive arrangement which have been made by each party.

Great Britain claims no exclusive sovereignty over any portion of the territory in question. Her claim extends to the whole, but is limited to a right of joint occupancy in common with other States, leaving the right of *exclusive dominion in abeyance.* She insists that her's and Spain's conflicting claims were finally adjusted by the convention of Nootka, in 1790; that all the *arguments* and *pretensions,* whether resting upon priority of discovery, or derived from any other consideration, were *definitively set at rest* by that convention; that, from its date, it was only in its text and stipulations that the *title,* either on her part or on that of Spain, was to be traced; and that it was agreed by that convention, that all the parts of the North-west Coast of America, not previously occupied by either party, should thenceforward be equally open to the subjects of both, for all purposes of commerce and settlement—*the sovereignty remaining in abeyance.*

It is then declared, that, in reference either to the rights derived to the United States from Spain, by virtue of the treaty of 1819, or to that supposed to be derived from the acquisition of Louisiana, which province did, in the year 1790, belong to Spain, the United States have, with these rights, necessarily succeeded to the limitations by which they were defined, and the obligations under which they were to be exercised, in conformity to the stipulations of the Nootka Convention. Whence it is generally inferred, that, whilst it is fully admitted that the United States possess the same rights as Great Britain, over the country in question, namely: to navigate its waters, to settle in any part of it, and freely to trade with the inhabitants and occupiers of the same; beyond these rights, the United States possessed none, and that they cannot therefore claim exclusive sovereignty over any part of the said territory.

It will, in the first place, be observed, that, admitting that convention to be still in force, and of whatever construction it may be susceptible, this compact between Spain and Great Britain could only bind the parties to it, and can affect the claim of the United States so far only as it is derived from Spain. If, therefore, they have a claim in right of their own discoveries, explorations, and settlements, as this cannot be impaired by the Nootka Convention, it becomes indispensably necessary, in order to defeat such claim, to show a better prior title on the part of Great Britain, derived from some other consideration than the stipulations of that Convention. But, on examining that instrument, it will be found to be apparently merely of a commercial nature, and in no shape to affect the question of distinct jurisdiction and exclusive sovereignty.

It was agreed by that Convention, "that the respective subjects of

"the two parties should not be disturbed or molested, either in navi-
"gating on carrying on their fisheries in the Pacific Ocean, or in the
"South Seas, or in landing on the coast of those seas, in places not
"already occupied, for the purpose of carrying on their commerce
"with the natives of the country, or of making settlements there." And further, "that in all places ——, wherever the subjects of either shall "have made settlements since the month of April, 1789, or shall "hereafter make any, the subjects of the other shall have free access, "and shall carry on their trade without any disturbance or moles-"tation.

It is difficult to believe, on reading those provisions, and recollecting in what cause the Convention originated, that any other settlements could have been contemplated than such as were connected with the commerce to be carried on with the natives. Indeed, it is as being only of a commercial nature, that the Nootka Convention may be positively asserted to be now in force; the commercial treaties between Great Britain and Spain having, subsequent to the war which had intervened, been alone renewed by the treaty of July, 1814.

Admitting, however, that the word "settlement," was meant in its most unlimited sense, it is evident that the stipulations had not for object to settle the territorial claims of the parties, and had no connexion with an ultimate partition of the country, for the purpose of permanent colonization.

Those stipulations permitted promiscuous and intermixed settlements every where, and over the whole face of the country, to the subjects of both parties; and even declared every such settlement, made by either party, in a degree common to the other. Such a state of things is clearly incompatible with distinct jurisdiction and sovereignty. The Convention, therefore, could have had no such object in view, as to fix the relations of the contracting Powers in that respect. On that subject it established or changed nothing, but left the parties where it found them, and in possession of all such rights, whether derived from discovery, or from any other consideration, as belonged to each, to be urged by each, whenever the question of permanent and separate possession and sovereignty came to be discussed between them.

It is, indeed, expressly admitted that the Convention provided for commerce and settlements, leaving the *sovereignty in abeyance*. And Great Britain, at this time, claims only a right of joint occupancy, in common with other nations, leaving the right of *exclusive dominion in abeyance*. It is not perceived how it can, at the same time, be asserted that the arguments and pretensions of both parties were definitively set at rest by the Convention, and that it is only in its text and stipulations that the *title* on either side is now to be traced.

Commerce and settlements might, indeed, be made by either party, during the joint occupancy, without regard to their respective pretension or title, from whatever consideration derived. But since the sovereignty, since the right of exclusive dominion, has been left in abeyance, that right over any part of the country, to whichever party

belonging, has not been extinguished, but only suspended, and must revive to its full extent whenever that joint occupancy may cease.

Whenever, therefore, a final line of demarcation becomes the subject of discussion, the United States have a right, notwithstanding, and in conformity to the Nootka Convention, to appeal, in support of their claims, not only to their own discoveries, but to all the rights derived from the acquisition of Louisiana, and from their treaty of 1819 with Spain, in the same manner as if that Convention had never been made. The question to be examined is, whether those claims are supported by the laws and usages of nations.

It may be admitted as an abstract principle, that, in the origin of society, first occupancy and cultivation were the foundation of the rights of private property and of national sovereignty. But that principle, on which principally, if not exclusively, it would seem that the British Government wishes to rely, could be permitted, in either case, to operate alone and without restriction, so long only as the extent of vacant territory was such, in proportion to population, that there was ample room for every individual, and for every distinct community, or nation, without danger of collision with others. As in every society, it had soon become necessary to make laws, regulating the manner in which its members should be permitted to occupy and to acquire vacant land within its acknowledged boundaries; so, also, nations found it indispensable for the preservation of peace, and for the exercise of distinct jurisdiction, to adopt, particularly after the discovery of America, some general rules, which should determine the important previous question, "who had a right to occupy?"

The two rules generally, perhaps universally, recognised and consecrated by the usage of nations, have flowed from the nature of the subject.

By virtue of the first, prior discovery gave a right to occupy, provided that occupancy took place within a reasonable time, and was ultimately followed by permanent settlements, and by the cultivation of the soil.

In conformity with the second, the right derived from prior discovery and settlement, was not confined to the spot so discovered or first settled. The extent of territory which would attach to such first discovery or settlement might not, in every case, be precisely determined. But that the first discovery, and subsequent settlement within a reasonable time, of the mouth of a river, particularly if none of its branches had been explored prior to such discovery, gave the right of occupancy, and, ultimately, of sovereignty, to the whole country drained by such river and its several branches, has been generally admitted. And in a question between the United States and Great Britain, her acts have, with propriety, been appealed to, as showing that the principles on which they rely, accord with her own.

It is, however, now contended that the British charters, extending, in most cases, from the Atlantic Ocean to the South Seas, must be considered as cessions of the sovereign to certain grantees, to the ex-

clusion only of his other subjects, and as of no validity against the subjects of other States. This construction does not appear either to have been that intended at the time by the grantors, nor to have governed the subsequent conduct of Great Britain.

By excepting from the grants, as was generally the case, such lands as were already occupied by the subjects of other civilized nations, it was clearly implied that no other exception was contemplated, and that the grants were intended to include all the unoccupied lands within their respective boundaries, to the exclusion of all other persons or nations whatsoever. In point of fact, the whole country drained by the several rivers emptying into the Atlantic Ocean, the mouths of which were within those charters, has, from Hudson's Bay to Florida, and, it is believed, without exception, been occupied and held by virtue of those charters. Not only has this principle been fully confirmed, but it has been notoriously enforced, much beyond the sources of the rivers on which the settlements were formed. The priority of the French settlements on the rivers flowing westwardly from the Alleghany Mountains into the Mississippi, was altogether disregarded; and the rights of the Atlantic Colonies to extend beyond those mountains, as growing out of the contiguity of territory, and as asserted in the earliest charters, was effectually and successfully enforced.

It is true, that the two general rules which have been mentioned might often conflict with each other. Thus, in the instance just alluded to, the discovery of the main branch of the Mississippi including the mouth of that river, and the occupation of the intervening Province of Louisiana by another nation, gave rise at last to a compromise of those conflicting claims, and induced Great Britain to restrain hers within narrower limits than those originally designated.

But it is the peculiar character of the claim of the United States, that it is founded on both principles, which in this case unite both in its support, and convert it into an incontestible right. It is in vain that, in order to avert that conclusion, an attempt is made to consider the several grounds on which that right is urged, as incompatible one with the other, as if the United States were obliged to select only one and to abandon the others. In different hands the several claims would conflict one with the other: Now united in the same Power, they support each other. The possessors of Louisiana might have contended, on the ground of contiguity, for the adjacent territory on the Pacific Ocean, with the discoveries of the coast and of its main rivers. The several discoveries of the Spanish and American navigators might separately have been considered as so many *steps* in *the progress of discovery*, and giving only imperfect claims to each party. All these various claims, from whatever consideration derived, are now brought united against the pretensions of any other nation.

1st. The actual possession and populous settlements of the valley of the Mississippi, including Louisiana, and now under one sovereignty, constitute a strong claim to the westwardly extension of that Province, over the contiguous vacant territory, and to the occupation and sovereignty of the country as far as the Pacific Ocean. If some trading

factories on the shores of Hudson's Bay, have been considered by Great Britain as giving an exclusive right of occupancy, as far as the Rocky Mountains; if the infant settlements on the more Southern Atlantic shores, justified a claim thence to the South Seas, and which was actually enforced to the Mississippi; that of the millions already within reach of those seas, cannot consistently be resisted. For it will not be denied that the extent of contiguous territory, to which an actual settlement gives a prior right, must depend, in a considerable degree, on the magnitude and population of that settlement, and on the facility with which the vacant adjacent land may, within a short time, be occupied, settled, and cultivated, by such population, as compared with the probability of its being thus occupied and settled from any other quarter.

It has been objected that, in the grant of Louisiana to Crozat, by Louis XIV, that Province is described as "the country drained by the waters emptying, directly or indirectly, into the Mississippi," excluding thereby, by implication, the country drained by the waters emptying into the Pacific.

Crozat's grant was not for the whole of the Province of Louisiana, as it was afterwards extended by France herself, and as it is now held by the United States. It was bounded in that grant of 1712, by Carolina to the east, by New Mexico to the west, and on the north by the Illinois, which were then part of Canada. The most northerly branches of the Mississippi embraced in the grant, were the Ohio, at that time called Wabash, by the French, and the Missouri, the true course of which was not known at that time, and the sources of which were not supposed to extend north of the 42d parallel of latitude. No territory on the west of the Mississippi was intended to be included in the grant north of that parallel; and as New Mexico, which bounded it on the west, was understood to extend even farther north, it was impossible that any territory should have been included west of the sources of the rivers emptying into the Mississippi.

All the territory north of the 42d parallel of latitude, claimed by France, was included at that time, not in Louisiana, but in the government of New France, as Canada was then called. And by referring to the most authentic French maps, it will be seen that New France was made to extend over the territory drained, or supposed to be drained, by rivers entering into the South Seas. The claim to a westwardly extension to those seas, was thus early asserted as part, not of Louisiana, but of New France. The King had reserved to himself, in Crozat's grant, the right of enlarging the government of Louisiana. This was done by an ordonnance dated in the year 1717, which annexed the Illinois to it; and, from that time, the province extended as far as the most northern limit of the French possessions in North America, and thereby west of Canada or New France. The settlement of that northern limit, still further strengthens the claim of the United States to the territory west of the Rocky Mountains.

The limits between the northerly possessions of Great Britain, in North America, and those of France, in the same quarter, namely,

Canada and Louisiana, were determined by commissioners, appointed in pursuance of the Treaty of Utrecht. From the coast of Labrador to a certain point north of Lake Superior, those limits were fixed according to certain metes and bounds, and from that point the line of demarcation was agreed to extend indefinitely due west, along the forty-ninth parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana. It has been, accordingly, thus settled, as far as the Stony Mountains, by the Convention of 1818, between the United States and Great Britain; and no adequate reason can be given why the same boundary should not be continued as far as the claims of the United States do extend; that is to say, as far as the Pacific Ocean. This argument is not weakened by the fact that the British settlements west of the Stony Mountains are solely due to the extension of those previously formed on the waters emptying into Hudson's Bay; and it is from respect to a demarcation, considered as binding on the parties, that the United States had consented to confine their claim to the forty-ninth parallel of latitude, namely, to a territory of the same breadth as Louisiana east of the Stony Mountains, although, as founded on prior discoveries, that claim would have extended much further north.

2dly. The United States have an undoubted right to claim by virtue both of the Spanish discoveries and of their own. Setting aside all those which are not supported by authentic evidence, some of the most important were made by Spanish navigators prior to Cook's voyage. In 1774, Perez, in the Spanish corvette Santiago, discovered Nootka Sound in latitude 49° 30′, and sailed to the fifty-fifth degree, discovering Lougara Island and Perez (now called Dixon's) Entrance, north of Queen Charlotte Island. In 1775, Quadra, in the Spanish schooner Felicidad, of which Maurelle was pilot, discovered various ports between the fifty-fifth and fifty-eighth degree, and explored the coast from 42° to 54°, landing at several places, imposing names to some, and not being, at any time, hardly more than ten leagues from the shore.

In other Spanish voyages of a subsequent date, those of Arteaga and Quadra in 1779, and of Martinez and Haro in 1786, various other parts of the Northwest Coast were explored, as far north as the sixtieth degree of north latitude.

The Straits of Fuca were discovered, or again found in 1787, by captain Barclay, of the Imperial Eagle, a vessel fitted out at Ostend. The entrance was, in 1788, again visited by the English Captains Meares and Duncan. In the same year, Captain Gray, of the American sloop Washington, (who arrived at Nootka in September, coming from the south, where he had landed,) penetrated fifty miles up the straits. They were explored in 1791, by the Spanish Captains Quimpa and Eliza, beyond the 50th degree of latitude. Their complete survey, and the discovery of the northern outlet, in 1792, are due principally to Captain Vancouver, who sailed through them in company with the Spanish vessels Sutil and Mexicana.

The discovery, which belongs exclusively to the United States, and in their own right, is that of the river Columbia.

The continuity of the coast from the 42d to the 48th degree of latitude, had been ascertained by the voyage of Quadra, in 1775, and confirmed by that of Captain Cook in 1778. The object of discovery thenceforth, was that of a large river, which should open a communication with the interior of the country. This had escaped Quadra, who had sailed in sight of the entrance afterwards discovered. Meares failed likewise in his attempt in the year 1788 to make the discovery. Captain Vancouver was not more fortunate. After having also sailed along the coast from south to north, to the 48th degree, he recorded in his journal of the 29th of April, 1792, which he had too much probity afterwards to alter, his opinion, that there was no large river south of 48°, but only small creeks. On the ensuing day, he met at sea with Captain Gray, then commanding the American ship "Columbia," who informed him of the existence of the river, at the mouth of which, he (Gray) had been for several days without being able to enter it.

Captain Vancouver proceeded to Fuca's Straits, and Captain Gray returned to the south, where he completed his discovery, having, on the 11th May, entered the river which bears the name of his ship, and ascended it upwards of twenty miles. He then, having also discovered Gray's harbor, went to Nootka Sound, where he again met with captain Vancouver, to whom he communicated his discoveries, and gave him a rough chart of the river. With this information one of captain Vancouver's officers was sent to take a survey of Gray's harbor, and another that of the Columbia river, which he ascended about eight miles higher up than Gray.

Yet in order to found a claim derived from a share in the discovery, that of Captain Gray, is called only a *step* in the progress of discovery; and it is attempted to divide its merit between him, Meares, and Captain Vancouver's officer.

It must again be repeated, that the sole object of discovery was "the river," and, coming from sea, the mouth of the river. Meares only followed Quadra's track. Had he suggested or suspected the existence of a river, when he was near its entrance, it would have been a step in the progress of discovery. So far from it, that, in his map, he has laid the presumed mouth of the great river of the west, of the traditional Oregon, of the real Columbia, in the Straits of Fuca. The very names which he imposed, Cape Disappointment and Deception Bay, attest his failure.

Captain Vancouver having completed his survey of that part of the coast, with a conviction that no large river emptied there into the ocean, would not have explored it again had he not received the information from Captain Gray, of his discoveries; and, in fact, in his second visit to that quarter, he surveyed, or caused to be surveyed, only the harbor and the river which had been indicated by him. The Lieutenant sent to the Columbia, and who never would have gone there had it not been for Captain Gray's information, performed, no

doubt, with fidelity, the mechanical duty of taking the soundings one hundred miles up its course. In that consists his sole merit; in the discovery he had not the slightest share. The important services rendered to navigation and to science, by that officer, and by Captain Vancouver, are fully acknowledged; and their well-earned reputation cannot be increased by ascribing to them what exclusively belongs to another.

Louisiana having been acquired by the United States in 1803, an expedition was immediately ordered by Government to examine its western districts. In the course of this, Captains Lewis and Clarke ascended the Missouri to its source, crossed the Rocky Mountains, and explored the course of the Columbia, from its most eastern sources to its mouth, where they arrived on the 6th of November, 1805. There they erected the works called Fort Clatsop, and wintered in 1805–1806. And thus was the discovery of the river commenced and completed by the United States, before, as it is firmly believed, any settlement had been made on it, or any of its branches been explored by any other nation.

This is corroborated by the statement of the British Plenipotentiaries. After having given, as the date of Lewis and Clarke's exploration, not the year 1805, but the years 1805–1806, they assert that, if not before, at least *in the same and subsequent years*, Mr. Thomson had already established a post on the head waters of the northern or main branch of the Columbia. Had that post been established in 1805, before Lewis and Clarke's exploration, another and more distinct mode of expression would have been adopted. But it cannot be seriously contended that, if Mr. Thomson had, in that year, reached one of the sources of the Columbia, north of the 50th degree of latitude; this, compared with the complete American exploration, would give to Great Britain "a title to parity, at least, if not priority of discovery, as opposed to the United States."

In the year 1810, Mr. Astor, a citizen of the United States, fitted out two expeditions for the mouth of the Columbia; one by sea, and the other by land, from the Missouri. In March, 1811, the establishment of Astoria was accordingly commenced near the mouth of the river, before any British settlement had been made south of the 49th parallel of latitude. From that principal post, several other settlements were formed; one of them, contrary to the opinion entertained by the British Plenipotentiaries, at the mouth of the Wanahata, several hundred miles up, and on the right bank of the Columbia.

These establishments fell into the hands of the British during the war; and that of Astoria has since been formally restored in conformity with the Treaty of Ghent. On the circumstances of that restitution, it is sufficient to observe, that, with the various despatches from and to the officers of the British Government, the United States have no concern; that it is not stated how the verbal communications of the British Minister at Washington were received, nor whether the American Government consented to accept the restitution, with the reservation, as expressed in the despatches to that Minister from his

Government; and that the only written document affecting the restoration, known to be in possession of that of the United States, is the act of restoration itself, which contains no exception, reservation, or protest, whatever.

It has thus been established, that the Columbia river was first discovered by the United States; that that first discovery was attended by a complete exploration of the river, from its most easterly source to the north, before any such exploration had been made by any other nation; by a simultaneous actual occupation and possession, and by subsequent establishments and settlements made within a reasonable time, and which have been interrupted only by the casualties of war.

This, it is contended, gives, according to the acknowledged law and usages of nations, a right to the whole country drained by that river and by its tributary streams, which could have been opposed only by the conflicting claim derived from the possession of Louisiana. Both united and strengthened by the other Spanish and American discoveries along the coast, (and, without reference to the cession of the pretensions of Spain, derived from other considerations,) establish, it is firmly believed, a stronger title to the country above described, and along the coast as far north, at least, as the 49th parallel of latitude, than has ever, at any former time, been asserted by any nation to vacant territory.

Before the subject is dismissed, it may be proper to observe, that the United States had no motive, in the year 1790, to protest against the Nootka Convention, since their exclusive right to the territory on the Pacific originated in Gray's discovery, which took place only in 1792. The acquisition of Louisiana, and their last treaty with Spain, are still posterior.

On the formality called "taking possession," though no actual possession of the country is taken, and on the validity of sales of land and surrender of sovereignty by Indians, who are for the first time brought into contact with civilized men; who have no notion of what they mean by either soverignty or property in land; who do not even know what cultivation is; with whom it is difficult to communicate, even upon visible objects; the American Plenipotentiary thinks that he may abstain from making any remarks.

Whilst supporting their claim by arguments, which they think conclusive, the United States have not been inattentive to the counter claims of Great Britain.

They, indeed, deny that the trading posts of the Northwest Company give any title to the territory claimed by America, not only because no such post was established within the limits claimed, when the first American settlement was made, but because the title of the United States is considered as having been complete, before any of those traders had appeared on the waters of the Columbia. It is also believed, that mere factories, established solely for the purpose of trafficking with the natives, and without any view to cultivation and permanent settlement, cannot, of themselves, and unsupported by any other consideration, give any better title to dominion and abso-

lute sovereignty, than similar establishments made in a civilized country.

But the United States have paid due regard to the discoveries by which the British navigators have so eminently distinguished themselves, to those, perhaps not less remarkable, made by land from the upper lakes of the Pacific, and to the contiguity of the possessions of Great Britain, on the waters of Hudson's Bay, to the territory bordering on that Ocean. Above all, they have been earnestly desirous to preserve and cherish, not only the peaceful, but the friendly relations which happily subsist between the two countries. And, with that object in view, their offer of a permanant line of demarcation has been made, under a perfect conviction that it was attended with the sacrifice of a portion of what they might justly claim.

Viewed as a matter of mutual convenience, and with equal desire, on both sides, to avert, by a definitive line of delimitation, any possible cause of collision in that quarter, every consideration connected with the subject may be allowed its due weight.

If the present state of occupancy is urged, on the part of Great Britain, the probability of the manner in which the territory west of the Rocky Mountains must be settled, belongs also essentially to the subject. Under whatever nominal sovereignty that country may be placed, and whatever its ultimate destinies may be, it is nearly reduced to a certainty, that it will be almost exclusively peopled by the surplus population of the United States. The distance from Great Britain, and the expense incident to emigration, forbid the expectation of any being practicable, from that quarter, but on a comparatively small scale. Allowing the rate of increase to be the same in the United States, and in the North American British possessions, the difference in the actual population of both is such, that the progressive rate which would, within forty years, add three millions to these, would, within the same time, give a positive increase of more than twenty millions to the United States. And if circumstances, arising from localities and habits, have given superior facilities to British subjects, of extending their commerce with the natives, and to that expansion which has the appearance, and the appearance only, of occupancy; the slower but sure progress and extension of an agricultural population, will be regulated by distance, by natural obstacles, and by its own amount. The primitive right of acquiring property and sovereignty by occupancy alone, admitting it to be unlimited in theory, cannot extend beyond the capacity of occupying and cultivating the soil.

It may also be observed, that, in reality, there were but three nations which had both the right and the power to colonize the territory in question: Great Britain, the United States, and Spain, or now the new American States. These are now excluded, in consequence of the treaty of 1819. The United States, who have purchased their right for a valuable consideration, stand now in their place, and, on that ground, in the view entertained of the subject by the British Government, are, on a final partition of the country, fairly entitled to two shares.

Under all the circumstances of the case, as stated on both sides, the United States offer a line, which leaves to Great Britain by far the best portion of the fur trade, the only object, at this time, of the pursuits of her subjects in that quarter, and a much greater than her proportionate share of the country, with a view to its permanent settlement, if the relative geographical situation and means of colonizing of both parties are taken into consideration. From the 42d degree of north latitude to the Observatory Inlet, in about 55° 30′, there is a front on the Pacific of almost fourteen degrees of latitude, which the 49th parallel divides into two nearly equal parts. The mouth of the Columbia river, if accepted as a boundary, would leave less than one-third to the United States.

The offer of the free navigation of that river, when the whole territory, drained by all its tributary streams, including the northernmost branches, might have been justly claimed, would have also given to Great Britain, in time of peace, all the commercial advantages which it can afford to the Americans.

In the case of a war, (which God forbid,) whatever might be the result on shore, the line proposed by Great Britain, even with the addition of the detached and defenceless territory she offered, would leave the sea border at her mercy, and the United States without a single port: whilst the boundary proposed by them might, during that period, deprive Great Britain only of the use of the port at the mouth of the Columbia, and would leave in the secure possession of numerous seaports, perhaps less convenient, but still affording ample means of communication with the interior. That line, indeed, with such slight reciprocal modifications as the topography of the country may indicate, would establish the most natural and mutually defensible boundary that can be found, and for that reason the least liable to collision, and the best calculated to perpetuate peace and harmony between the two Powers.

PROTOCOL of the eighth Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 24th of May, 1827.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The American Plenipotentiary stated, that, having submitted to his Government the protocols of the preceding conferences, on the subject of the country west of the Stony Mountains, he was instructed to express the regret of the President of the United States, that the proposal of the boundary line in that quarter, which had been offered on their part, should have been declined, and, at the same time, to repeat,

in the name of his Government, the declaration, which he had already made in substance, that the American Government does not hold itself bound hereafter, in consequence of any proposal which it has heretofore made, to agree to the line which has been so proposed and rejected, but will consider itself at liberty to contend for the full extent of the claims of the United States.

The American Plenipotentiary further stated, that the projet of Convention for the renewal, for a fresh term of years, of the provision relative to the said country, contained in the Convention of 1818, which had been offered at the sixth conference by the British Plenipotentiaries, had been taken into serious consideration by his Government; that, though animated by the same motives which had suggested the offer, they could not agree to the provisions of the second article of the projet; and that, after a deliberate examination of the subject, unable to propose any satisfactory modification, and persuaded that both Governments might confidently rely on the faithful execution of the former agreement, they still believed that, upon the whole, a simple renewal of the third article of the Convention of 1818, for a limited term of years, as stated by the American Plenipotentiary, at the fourth conference, was, for the present, the most eligible measure that could be adopted. This renewed agreement would, as intimated by the British Plenipotentiaries at the close of the fourth conference, be subject to the understanding, that the two Governments should unite their endeavors, within the period assigned for its duration, to make a definitive settlement of the boundary to be drawn between them in the territories in question.

The British Plenipotentiaries took the communication of the American Plenipotentiary for reference to their Government, but declared that, since the American Plenipotentiary had reasserted, in the name of his Government, claims of an undefined extent to the Northwest Coast of America, they, equally, on the part of Great Britain, hereby renewed the protest relative to the claims of Great Britain over that same territory, which they had inserted in the protocol of their third conference.

The question of boundary, under the fifth article of the treaty of Ghent, was then entered upon, and, after some general conversation, postponed for further consideration to a future conference.

Adjourned.

ALBERT GALLATIN,
W. HUSKISSON,
H. U. ADDINGTON.

A true copy.

W. B. LAWRENCE,
Secretary of Legation.

Extract from the Protocol of the ninth Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 19th June, 1827.

Present:—Mr. GALLATIN,
Mr. HUSKISSON,
Mr. ADDINGTON.

The protocol of the preceding conference was read over and signed.

The British Plenipotentiaries, in expressing their regret at the communication made to them by the American Plenipotentiary at the preceding conference, that his Government had declined acceding to the additional article of the projet of convention presented by them at the sixth conference, for the renewal, for a fresh term of years, of the provision respecting the territory on the Northwest Coast of America west of the Rocky Mountains, which was contained in the Convention of the 20th October, 1818, declared themselves disposed to withdraw that project, and to acquiesce in the proposition submitted by the American Plenipotentiary, for the simple renewal of the third article of the Convention of 1818.

In so doing, however, the British Plenipotentiaries intimated that they would find it expedient to insert in the protocol a declaration explanatory of what they considered to be the true intent of that article, namely, that both parties were thereby equally restricted, during its continuance in force, from exercising or assuming the right to exercise, any exclusive sovereignty or jurisdiction over the territory in question.

The British Plenipotentiaries added, that, at an early opportunity, they would be prepared to submit a project of convention and declaration, drawn up in the above sense.

The American Plenipotentiary expressed himself ready to pay every attention to any proposition which might come from the British Plenipotentiaries, but doubted whether he would be able to sign any convention, if accompanied by a declaration of the nature abovementioned.

The American Plenipotentiary said that he would take also that subject for consideration.

Draft of Protocol of 9th Conference, as first proposed by the British Plenipotentiaries.

Protocol of the 9th conference held at the Board of Trade, 19th June, 1827.

The protocol of the preceding conference was read over and signed.

The British Plenipotentiaries informed the American Plenipotentiary that they had taken into consideration the proposition made by him at the preceding conference, for the simple renewal, during a further term of ten years, of the 3d article of the Convention of 1818,

including the additional article submitted by the British Plenipotentiaries, at the sixth conference, to the admission of which the American Plenipotentiary had declared that his Government objected.

The British Plenipotentiaries stated that they were willing to desist from pressing for the insertion of that article in the Convention which it was now proposed to renew, and that they would consent to a simple renewal of the third article of the Convention of 1818. In so doing, however, they would find it expedient to enter on the protocol a declaration explanatory of what they considered to be the true intent of that article, namely, that both parties were thereby restricted, during its continuance in force, from exercising, or assuming to themselves the right to exercise, any exclusive sovereignty or jurisdiction over the territory mentioned in that article.

The British Plenipotentiaries intimated, that, at an early opportunity, they would put formally into the hands of the American Plenipotentiary a projet of Convention drawn up in the above sense, as well as of a declaration of the nature above described.

Extracts from the Protocol of the tenth Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 22d of June, 1827.

Present—Mr. Gallatin,
Mr. Huskisson,
Mr. Addington.

The protocol of the preceding conference was read over and signed.

In reference to the intimation at the preceding conference, by the British Plenipotentiaries, of the declaration which they expressed their intention to insert in the protocol, on renewing the third article of the Convention of 1818, relative to the territory west of the Rocky Mountains, the American Plenipotentiary observed, that the said article having only provided that the territory in question should be free and open to the vessels, citizens, and subjects, of the two Powers, he could not admit that, according to its true meaning and intent, any other act of either party was thereby forbidden, but such as, in contravention of the article, would impede or impair the rights secured by it.

To acquiesce in the declaration which the British Plenipotentiaries had expressed their intention to insert in the protocol, appeared to him tantamount to the insertion in the Convention of the same provision, to which, as part of the second article of the projet, offered at the sixth conference, the United States had already declared that they could not accede.

He must, therefore, declare his inability to agree to a renewal of the Convention of 1818, if accompanied by a declaration, such as had been intimated, or purporting to explain the meaning or intent of the article.

PROTOCOL of the 12th Conference between the American and British Plenipotentiaries, held at the Board of Trade, on the 21st July, 1827.

Present—Mr. GALLATIN,
Mr. GRANT,
Mr. ADDINGTON.

The protocols of the two preceding conferences were read over and signed.

In consequence of the retirement from the commission of one of the former British Plenipotentiaries, and the appointment of a successor in his place, the Plenipotentiaries again examined and exchanged their full powers.

In reference to the observations and declaration made at the tenth conference, by the American Plenipotentiary, with respect to the renewal of the third article of the Convention of 1818, if accompanied by the declaration proposed at the 9th conference by the British Plenipotentiaries, the latter stated that they conceived that the main benefit resulting from that article was, that it kept in abeyance, during the term of its existence, all conflicting rights to the territory to which it related. That benefit, however, considering the difference of opinion which prevailed on the true intent of that article, the British Plenipotentiaries apprehended could no longer be expected to result from its renewal.

Since, therefore, the American Plenipotentiary had declared his inability to agree to such a declaration as that proposed by the British Plenipotentiaries, the latter were compelled to decline accepting the proposal of the American Plenipotentiary for renewing, for a further fixed term of years, the third article of the Convention of 1818.

In case, however, the American Plenipotentiary should so far modify that proposal as to offer the renewal of that article, merely as a temporary act, intended to prevent collision between the parties, while measures were maturing for effecting a more permanent settlement of their respective claims, the British Plenipotentiaries would, in that case, be ready to take such a proposition into consideration.

They however expressly stated, that, in agreeing to such a proposal, Great Britain in no wise receded from any claim previously urged on her part to the territory west of the Rocky Mountains, or admitted any claim advanced by the United States with respect to the same territory.

PROTOCOL of the thirteenth Conference between the American and British Plenipotentiaries, held at the Board of Trade, the 26th July, 1827.

Present—Mr. GALLATIN,
Mr. GRANT,
Mr. ADDINGTON.

The protocol of the last conference was read over and signed.

The American Plenipotentiary stated, that he had conceived the principal advantage resulting from the third article of the Convention

of 1818, to consist in that it prevented collisions and disputes between the citizens and subjects of the two parties; but he coincided entirely in the opinion of the British Plenipotentiaries, that, in whatever shape renewed, it must be with a mutual understanding, that neither party thereby in any wise receded from any claim previously urged on its part, or admitted any claim advanced by the other party to the territory west of the Rocky Mountains.

With that understanding, and believing, also, that a temporary renewal was necessary, and would be sufficient to afford time to mature measures having for their object a more definite settlement of the claims of each party to the said territory, the American Plenipotentiary would modify his former proposal, and submit a renewal of the article for an indefinite time, but liable to be rescinded at the will of either party.

He accordingly submitted the project of Convention, hereto annexed, which was taken by the British Plenipotentiaries for consideration.

ALBERT GALLATIN,
CHA. GRANT.
H. U. ADDINGTON.

True copy.
W. B. LAWRENCE,
Secretary of Legation.

PROJECT of Convention relative to the Northwest Boundary.

The United States of America and his Majesty the King of the United Kingdom of Great Britain and Ireland, being equally desirous to prevent, as far as possible, all hazard of misunderstanding between the two nations, with respect to the territory on the Northwest Coast of America, west of the Stony or Rocky Mountains, after the expiration of the third article of the Convention concluded between them on the twentieth of October, 1818, and also with a view to give further time for maturing measures which shall have for their object a more definite settlement of the claims of each party to the said territory, have respectively named their Plenipotentiaries to treat and agree concerning a temporary renewal of the said article; that is to say:

The President of the United States of America, ALBERT GALLATIN, their Envoy Extraordinary and Minister Plenipotentiary to his Britannic Majesty:

And his Majesty the King of the United Kingdom of Great Britain and Ireland, the right honorable CHARLES GRANT, a member of his said Majesty's most honorable Privy Council, a member of Parliament, and Vice President of the Committee of Privy Council for Affairs of Trade and Foreign Plantations, and HENRY UNWIN ADDINGTON, Esq., who, after having communicated to each other their respective full powers, found to be in due and proper form, have agreed upon and concluded the following articles:

ARTICLE I.

All the provisions of the third article of the Convention concluded between the United States of America, and his Majesty the King of the United Kingdom of Great Britain and Ireland, on the twentieth of October, 1818, shall be, and they are hereby, further indefinitely extended and continued in force, in the same manner as if all the provisions of the said article were herein specifically recited.

ARTICLE II.

It shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the twentieth of October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this Convention: and it shall, in such case, be accordingly entirely annulled and abrogated after the expiration of the said term of notice.

ARTICLE III.

Nothing contained in this Convention, or in the third article of the Convention of the twentieth of October, 1818, hereby continued in force, shall be construed to impair, or in any manner affect the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains.

ARTICLE IV.

The present convention shall be ratified, and the ratification, shall be exchanged in nine months, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at London, the ——— day of ——— in the year of our Lord 1827.

DECLARATION proposed to be annexed to the renewal of the Convention respecting Northwestern Boundary.

In renewing the third article of the Convention of 1818, relative to the territory on the Northwest Coast of America, westward of the Rocky Mountains, his Britannic Majesty hereby declares that, as his Majesty considers himself precluded by the provisions of that article, now renewed, from exercising, or assuming to himself the right to exercise, any exclusive sovereignty or jurisdiction over the territory mentioned in that article, so, his Majesty, in like manner, holds that the United States are equally bound, on their part also, to abstain from exercising, or assuming to themselves the right to exercise, any exclusive sovereignty or jurisdiction over the said territory, during the continuance in force of the present Convention.