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NORTH AMERICA. No. 5 (1873).

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(C.)

NORTH-WEST AMERICAN WATER BOUNDARY.

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SECOND AND DEFINITIVE

STATEMENT

ON BEHALF OF THE

GOVERNMENT OF HER BRITANNIC MAJESTY,

SUBMITTED TO

HIS MAJESTY THE EMPEROR OF GERMANY

UNDER THE TREATY OF WASHINGTON OF  
MAY 8, 1871.

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*Presented to both Houses of Parliament by Command of Her Majesty. •*  
1873.

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LONDON.

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# NORTH-WEST AMERICAN WATER BOUNDARY.

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## Second and Definitive Statement on behalf of the Government of Her Britannic Majesty.

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1. THE Government of Her Britannic Majesty, in pursuance of Article XXXVI of the Treaty of Washington of 1871, have drawn up and now lay before His Majesty the Emperor of Germany, as Arbitrator, this their second and definitive Statement, in reply to the Memorial or Case presented in the name of the United States' Government by Mr. Bancroft.

Statement.  
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2. The matter of Mr. Bancroft's Memorial (as far as it is of an argumentative character) may, for the purposes of the examination to which Her Majesty's Government propose here to subject it, be ranged in the following divisions:—

I. Mr. Bancroft assumes that at the date of the Treaty of 1846 the United States had a clear title to the whole Oregon district, up to the 49th parallel of latitude at least; represents the arrangement embodied in the Treaty as a pure concession on the part of the United States; and contends that the concession should consequently be confined within the narrowest limits.

II. He maintains that the object of the arrangement embodied in the Treaty was to secure to Her Majesty the whole of Vancouver's Island, and no more.

III. He adduces what he considers evidence to show that the construction now contended for by the United States was the admitted construction at the time of the making of the Treaty.

IV. He represents the Treaty as specially the work of Her Majesty's Government, and seems to suggest that they are consequently precluded from maintaining any construction of the Treaty not admitted by the other side.

V. He maintains that the language of the Treaty admits no interpretation but the American, and that it points to the Canal de Haro, and to that channel alone.

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3. An examination of the arguments on these points, to be intelligible, must be accompanied by an historical explanation of the circumstances attendant on the Treaty. For that purpose many documents must be set out at length. It is, therefore, more convenient to present the explanation in the form of a separate paper. It is accordingly subjoined to this Statement as an Historical Note; and Her Majesty's Government beg that the Note, with the other papers appended to this Statement, may be taken as part thereof.

Statement.

4. The Note shews the relative positions of the principal actors in the matter of the Treaty: in London, the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign Affairs, and Mr. MacLane, the United States' Minister Plenipotentiary; at Washington, Mr. Pakenham, Her Majesty's Minister Plenipotentiary, and Mr. Buchanan, the United States' Secretary of State.\* It is designed to bring out the facts which will be seen in the course of this Statement to be of cardinal importance, namely,—that the Treaty was formally negotiated at Washington between Mr. Pakenham and Mr. Buchanan; that it was on two distinct occasions discussed and approved by the Senate of the United States, in their capacity, under the Constitution, of a co-ordinate branch of the treaty-making power; that the project or draft of the Treaty was prepared in London by Lord Aberdeen, and sent to Mr. Pakenham, as embodying the proposal which Mr. Pakenham was instructed to make to the Government of the United States; that this project was, as regards the words now in discussion, identical with the Treaty as signed and ratified; and that, although Mr. MacLane was not formally empowered to conduct negotiations in the matter on behalf of his Government, yet Lord Aberdeen discussed with him the nature of the proposal which Her Majesty's Government contemplated making to the United States, and even shewed him the project of the Treaty before it was sent to Mr. Pakenham.†

## I.

5. Mr. Bancroft's assumption that the United States were clearly entitled to the whole Oregon district up to the 49th parallel is not warranted by the facts of the case. Territorial rights in the whole district were claimed by both parties with equal persistency, and their respective contentions were supported by arguments drawn from like sources, such as the history of discovery and the terms of international engagements. In the official documents on both sides the alternative of war was shadowed forth. In the end there was a compromise; each party yielded a portion of what it had contended in argument was its right.

6. When, on one occasion in the course of this long controversy between the two Governments, Mr. Cass, the United States' Secretary of State, had put forward an assumption like this of Mr. Bancroft, Lord John Russell, then Her Majesty's Principal Secretary of State for Foreign Affairs, said:—‡

“Undoubtedly, the title by which Great Britain now holds British Columbia and Vancouver's Island is the same as that by which the United States possess the Oregon State and Washington Territory, namely, the Treaty of 1846; but when General Cass asserts, that previously to that Treaty the title of the United States to the whole of the territory between the parallels 42° and 54° 40' had been clear and unquestionable, Her Majesty's Government can only reply that, in their opinion, it was the title of Great Britain to that territory which was clear and indisputable.”

It is plain that when this was written Her Majesty's Government had not adopted the notion that in 1846 the concession had been all on the side of the United States; nor have they ever changed their position.

7. Mr. Bancroft further assumes that the United States had, before the Treaty, the 49th parallel as an admitted boundary line on the Continent. Such an admission had never been made by Her Majesty's Government. That boundary would not (it is plain) have been conceded on the Continent without a concurrent arrangement satisfactory to Her Majesty's Government respecting Vancouver's Island and the navigation of the adjacent waters.

8. The passage in Mr. Bancroft's Memorial in which his assumptions under this head are most strongly put is the following (page 12):—

“Again, ‘where a right admits of different degrees, it is only the smallest degree which may be taken for granted’ (‘Ist ein Recht verschiedener Abstufungen fähig, so darf zunächst nur die geringste

\* For the convenience of the Arbitrator, there are appended to the Historical Note (1) a Chronological List, shewing the names and dates of appointment of the various Principal Secretaries of State for Foreign Affairs in Great Britain and British Ministers at Washington, and of the various Presidents and Secretaries of State of the United States and United States' Ministers at London, from 1818 to 1872; and (2) a Memorandum relative to the origin and privileges of the Hudson's Bay Company, a Corporation frequently named in this discussion.

† Historical Note, p. xv.

‡ Lord John Russell to Lord Lyons, December 16, 1859; read, and copy given, to United States' Secretary of State.

Stufe als zugestanden angenommen werden'). This rule of Heffter fits the present case so aptly, that it seems made for it. There being degrees in the departure from the parallel of 49°, it must be taken that only the smallest degree was conceded."

The rule cited from Dr. Heffter's work does not touch the present case. This is not the case of a party making a concession in derogation of a clear and admitted right. It is the case of one concession set off against another; of a give-and-take arrangement.\*

9. The preamble of the Treaty is express on this point. The two Powers (it says)—

"Deeming it desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the North-west coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties over the said territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement."

## II.

10. Closely connected in character with the arguments of Mr. Bancroft under the first head, and equally inconclusive, as Her Majesty's Government submit, are his arguments under the second.

11. Mr. Bancroft alleges in effect that the intention of the Contracting Parties was only to avoid cutting off the end of Vancouver's Island, and he infers that the line is to be strictly so drawn as to effect this object, and no more. Her Majesty's Government dispute both the allegation and the inference.

12. There is no evidence that the prevention of the severance of Vancouver's Island was the sole object of the arrangement. There is nothing to support the allegation, either in the preamble of the Treaty, or in the Article describing the boundary; nor can it be sustained on the ground of anything contained in any of the contemporaneous documents exchanged between the Contracting Parties. It is true that the severance of Vancouver's Island by a boundary line drawn continuously on the 49th parallel was the salient objection raised on the part of Her Majesty's Government to the United States' proposal for continuing the boundary on that parallel from the Rocky Mountains to the Pacific. That proposal disregarded the physical conditions of the tract through which the line would run. It is true also that a deflection of the line so as not to sever Vancouver's Island was made in effect a condition, *sine quâ non*, on the part of Her Majesty. It may even be admitted that the prevention of this severance was the motive for Article I of the Treaty. The nature of the motive is not necessarily a measure of the scope of the stipulation.

13. It is plain on the face of the Article that the Contracting Parties had further and other aims. If the sole object of the stipulation had been to keep Vancouver's Island one, a very simple provision would have sufficed. It would have been enough to say: the whole of Vancouver's Island shall belong to Her Britannic Majesty. The Article in effect says this. But it says more, in two respects. First, it in effect vests in Her Majesty, as against the United States, the whole territorial sovereignty and property over and in all land and sea adjacent to the island, on its eastern and southern sides, lying within the mid-channel line (wherever drawn), although lying beyond the ordinary territorial three-mile limit. Secondly, it secures to Her Majesty's subjects freedom of navigation throughout the whole extent of the boundary channel and of the Straits of Fuca. These two provisions in combination effect what was plainly one of Lord Aberdeen's main objects in the arrangement, namely, the preservation to Her Majesty's subjects of unquestionable and abundant facilities of access to the British coasts and harbours north of the 49th parallel. Had the boundary line been continued on the 49th parallel to the ocean, the navigation of the Gulf of Georgia from the southward would have been sealed to British subjects.

14. The Article speaks for itself. The preservation of the unity of Vancouver's Island was of the essence of the arrangement, but there were collateral arrangements. The difference now referred to arbitration presupposes the existence of such arrangements; the controversy is as to their extent.

\* Historical Note, p. vi.

15. Lord Aberdeen's instructions to Mr. Pakenham cannot be read so as to cut down the effect of the Treaty. They must be interpreted so as to correspond in scope with the project of the Treaty prepared and sent contemporaneously by Lord Aberdeen. The words quoted by Mr. Bancroft (page 7) from Lord Aberdeen's instructions are:—

*"Leaving the whole of Vancouver's Island with its ports and harbours in the possession of Great Britain."\**

The form of expression requires little explanation. Lord Aberdeen naturally dwelt on the most prominent part of the arrangement which Mr. Pakenham was to propose, namely, the securing the possession to this country of the whole of Vancouver's Island. He referred only to the broad geographical features, the mention of which was supposed to be sufficient for the matter under discussion. There is nothing in his words to exclude any additional advantage which the terms of the project of the Treaty would give to this country, and more (it is plain) the project did give.

16. Mr. Bancroft further cites (page 8) a passage from a report of a speech of Sir Robert Peel in the House of Commons:—

*"Those who remember the local conformation of that country will understand that that which we proposed is the continuation of the 49th parallel of latitude till it strikes the Straits of Fuca; that that parallel should not be continued as a boundary across Vancouver's Island, thus depriving us of a part of Vancouver's Island, but that the middle of the channel shall be the future boundary, thus leaving us in possession of the whole of Vancouver's Island, with equal right to the navigation of the Straits."*

It can scarcely be seriously contended that, because Sir Robert Peel, describing in a popular way the effect of the Treaty, spoke of it as leaving us in possession of the whole of Vancouver's Island, this amounts to a declaration by him that the effect of the Treaty is to exclude us from any possession other than Vancouver's Island, although lying within the future boundary, which he in the same breath specifies accurately as the middle of the channel.

17. In connection with the reference to Sir Robert Peel's speech, Mr. Bancroft (page 8) says:—

*"Sir Robert Peel quoted from a despatch which proved that he was aware of the three days' debate in the American Senate on the Treaty before its approval."*

Here, as in some other parts of Mr. Bancroft's Memorial, it is difficult to discover the object of statements made by him, but not put into an argumentative form. The object of this statement would seem, from the context, to be to suggest that Sir Robert Peel was at this time cognisant of the particulars of a speech of Mr. Benton, a Senator of the United States, made in the Senate (referred to just before by Mr. Bancroft and to be particularly considered hereafter in this Statement). If this is the suggestion meant, there are three answers to it:—

(i.) The deliberation of the Senate, reported in Mr. Pakenham's despatch, read in part by Sir Robert Peel, was not the debate in which Mr. Benton's speech was made. The despatch relates to the deliberation consequent on the preliminary Message of the President, asking the advice of the Senate, not to the debate on the ratification. It was the latter debate in the course of which Mr. Benton's speech was made.

(ii.) Even if Mr. Benton's speech had been spoken before Mr. Pakenham's despatch, and the fact had been mentioned therein, there would still be no force in Mr. Bancroft's suggestion, inasmuch as the debates in the Senate were secret, and the injunction of secrecy was not removed until after the date of the exchange of ratifications in London.†

(iii.) The despatch of Mr. Pakenham (of which the part relating to this matter is printed by Mr. Bancroft in the extract from Sir Robert Peel's speech in Appendix No. 46 to the Memorial) gives no information as to the name of any speaker, or the particulars of any speech, in the Senate. It simply says:—‡

\* In this passage the words in italics are in Mr. Bancroft's Memorial printed with widened spaces between the letters, the mode of printing used in German to show emphasis, corresponding to the use of italics in the printing of English. The like observation applies to other passages cited in this Statement from Mr. Bancroft's Memorial.

† Ratifications exchanged, July 17. Resolution of Senate removing injunction of secrecy, August 6. Earliest publication of Mr. Benton's speech known to Her Majesty's Government, August 29 (in Niles' National Register, a weekly newspaper published at Baltimore).

‡ Historical Note, p. xv.

"After a few hours' deliberation on each of the three days, Wednesday, Thursday, and Friday, the Senate, by a majority of 38 votes to 12, adopted yesterday evening a resolution advising the President to accept the terms proposed by Her Majesty's Government."

It is clear, therefore, that Sir Robert Peel had not at the time of speaking (if he ever had) any knowledge of what was said by Mr. Benton in the Senate. If this is not the point of Mr. Bancroft's reference to the debate in the Senate, Her Majesty's Government do not know why the reference is made.

### III.

18. The third division of Mr. Bancroft's arguments comprises his endeavours to shew that there is evidence, contemporaneous with the making of the Treaty, in support of the contention of the United States. Mr. Bancroft says (page 7):—

"With this knowledge of Mr. MacLane's character, and of the confidence reposed in him by Lord Aberdeen, I request the Imperial Arbitrator to take in hand the map of the Oregon Territory by Wilkes, which had been published in England as well as in America in 1845, and which was the latest, most authentic, and best map of the territory, as well as the only one recognized by the American Senate, and, with this map in hand, to read the following extract from Mr. MacLane's official report of the interview, made on the 18th of May, 1846:—

"I have now to state that instructions will be transmitted to Mr. Pakenham by the steamer of to-morrow to submit a new and further proposition on the part of this Government, for a partition of the territory in dispute.

"The proposition, most probably, will offer substantially:

"First. To divide the territory by the extension of the line on the parallel of forty-nine to the sea, that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Arro and Straits of Fuca to the ocean."

"Here follow other clauses, conceding to the Hudson's Bay Company a temporary use of the Oregon River for navigation, with other advantages, and protection to British subjects who would suddenly come under the jurisdiction of the United States. To these clauses the phrase 'most probably' applies, for they were not precisely ascertained; but not to the boundary: on that point the further statement of Mr. MacLane in the same despatch leaves no room for a doubt. His words are: 'During the preceding Administration of our Government, the extension of the line on the 49th parallel to the Straits of Fuca, as now proposed by Lord Aberdeen, was actually suggested by my immediate predecessor (Mr. Everett) as one he thought his Government might accept.'

"Now what the proposal of Mr. Everett had been we know from the citations which I have made from his despatches; and I have actually referred to the fact that he had drawn the line of demarcation upon the map, and specially directed the attention of Lord Aberdeen to it."

19. In this passage Mr. Bancroft puts forward prominently Mr. MacLane's letter, but he nowhere deduces distinctly the inference he wishes the Arbitrator to draw from it. In whatever light, however, the letter is regarded, it will appear that, when all the circumstances are candidly considered, the letter furnishes no ground for any inference favourable to the United States in the present discussion.

(i.) Mr. MacLane does not profess in his letter to report the words of the contemplated Treaty. He had seen the words, and knew that the Canal de Haro was not specified. He must then (it would seem) have considered the words he saw as amounting substantially (according to his own expression) to the proposal of a line by the Canal de Haro. He applied (whether accurately or not is not the question) his geographical information to the words shewn to him, and inferred, in his own mind, that a line such as he saw described would run through the Canal de Haro. Under this impression he wrote to his Government. If this is the true explanation of the facts (and no other explanation is apparent), his statement is of no weight on the question, what is the channel of the Treaty? That question, which is the question now under arbitration, remains unaffected by his letter.

(ii.) One circumstance in Mr. MacLane's letter tends to support this explanation, that is, his mention of Birch Bay (incorrectly called by him Birch's Bay), which he treats as being on the 49th parallel. This geographical error (which is peculiar in this controversy to Mr. MacLane) has been accounted for thus, by Mr. Archibald Campbell:—\*

\* Mr. Archibald Campbell was Commissioner on behalf of the United States, when Commissioners were appointed (as mentioned in the preamble of Article XXXIV of the Treaty of Washington of 1871) on behalf of the two Governments in 1856, to determine the water boundary under the Treaty of 1846. The document of Mr. Campbell's quoted or referred to here and elsewhere in this Statement is a report made by him to Mr. Cass, the United States' Secretary of State, dated 20th January, 1859.



## Statement.

"Mr. MacLane, in tracing on the map the 49th parallel 'to the sea, that is to say, *the arm of the sea* called Birch's Bay,' evidently supposed that the space between the Continent and Vancouver's Island at the 49th parallel was designated as Birch Bay. And from the conspicuous position given to the name of Birch Bay on Wilkes's map, and even on Vancouver's chart, such an error might very naturally occur. In reality, however, Birch Bay is only the small indentation on the mainland at the extreme right of the name, and is a few miles south of the 49th parallel. The name of the *Gulf of Georgia* is intended by Wilkes to extend from the parallel of 50° as far south as the northern extremity of the Canal de Haro, including the space supposed by Mr. MacLane to be Birch Bay."

This explanation is simple and reasonable. And it strongly confirms the suggestion of Her Majesty's Government that Mr. MacLane was merely interpreting, according to his own lights, the words of the project which Lord Aberdeen had shewn him, and was not reporting to his Government Lord Aberdeen's interpretation, or an agreed interpretation. There is no suggestion, and no ground for a suggestion, that Lord Aberdeen ever spoke of Birch Bay. If, then, it is probable that Mr. MacLane did not derive from Lord Aberdeen his mention of Birch Bay, in just the same degree is it probable that he did not derive from Lord Aberdeen his mention of the Canal de Haro.\*

(iii.) The use by Mr. MacLane of Wilkes's map (which is thus made almost certain) goes far to account for his mention of the Canal de Haro (or Arro, as it is written on Wilkes's map, and by Mr. MacLane): for that passage is so conspicuously marked on Wilkes's map as to seem to be the only direct channel between the Continent and Vancouver's Island leading into the Straits of Fuca. But however it is to be accounted for, there is no ground whatever for the suggestion that Mr. MacLane's mention of the Canal de Haro was authorized by anything said to him by Lord Aberdeen.

(iv.) In 1859, Lord Aberdeen, on being referred to by Lord John Russell, then Her Majesty's Principal Secretary of State for Foreign Affairs, informed Lord John Russell that he (Lord Aberdeen) distinctly remembered the general tenour of his conversations with Mr. MacLane on the subject of the Oregon boundary, and he had no recollection of any mention having been made, during the discussion, of the Canal de Haro, or, indeed, any other channel than those described in the Treaty itself.†

(v.) Mr. MacLane was not negotiating with Lord Aberdeen. His connection with the question was (as he himself says) "in a great degree informal."‡ The negotiations were being carried on at Washington by Mr. Pakenham (acting immediately under Lord Aberdeen's instructions) on the one hand, and Mr. Buchanan on the other hand.§ Lord Aberdeen was at liberty to inform Mr. MacLane of his views and intentions; he was at liberty to refrain from doing so. Anything that passed between Lord Aberdeen and Mr. MacLane was not negotiation in a proper sense; and no binding compact can be extracted from it, taken alone.

(vi.) Mr. MacLane perfectly understood this position. Lord Aberdeen's project of Treaty was so far from being the result of a bargain made between him and Mr. MacLane, that Mr. MacLane in reporting it to his Government disapproved of it, and (it would appear) tried to induce his Government to reject it.|| He says (among other things):—¶

"It is scarcely necessary for me to state that the proposition as now submitted has not received my countenance. Although it has been no easy task, under all the circumstances, to lead to a reopening of the negotiations by any proposition from this Government, and to induce it to adopt the parallel of 49 as the basis of a boundary, nevertheless I hoped it would have been in my power to give the present proposition a less objectionable shape, and I most deeply lament my inability to accomplish it. I have, therefore, felt it my duty to discourage any expectation that it would be accepted by the President; or, if submitted to that body, approved by the Senate."

(vii.) If Mr. MacLane had been in a position to enter into a contract with Lord Aberdeen it is plain he never would have used the qualification "most probably." Mr. Bancroft, seeing the force of this consideration, endeavours to get over the difficulty by alleging that the phrase "most probably" applies, not to the boundary, but to the

\* There is nothing in the explanation here given of Mr. MacLane's words inconsistent with the character of him drawn by Mr. Bancroft (page 7):—"Mr. MacLane was a calm and experienced statesman, trained in business, exact in his use of words, careful especially in reporting what was said by others."

† Lord John Russell to Lord Lyons, 24th August, 1859; read, and copy given, to United States' Secretary of State. Extract, Appendix, No. 1.

‡ Appendix No. 32 to Mr. Bancroft's Memorial.

§ Mr. Bancroft correctly says (page 5), with reference to the time just before the Treaty:—"Meantime the negotiation on the Oregon question had been transferred to the new British Minister at Washington." And again (page 5):—"Lord Aberdeen confessed that it now fell to him to propose a peaceful solution of the long controversy."

|| The character of the letter in this respect is brought out by Mr. Pakenham's comments in his despatch of the 29th July, 1846, Historical Note, p. xvi.

¶ Historical Note, p. xi.

other parts of Lord Aberdeen's proposal: for, he says, those other parts "were not precisely ascertained." Mr. MacLane's letter (as far as it relates to the Oregon question) is printed in the Historical Note, and is open to the judgment of the Arbitrator. It appears to Her Majesty's Government to afford no ground to justify this limited application of the phrase "most probably." This phrase is in immediate connection, grammatically, and in the arrangement of the matter, with the passage relating to the boundary. The three subjects—(1), boundary: (2), possessory rights of British subjects: (3), navigation of the Columbia,—are discussed throughout the letter on the same footing. The proposal on any one subject is treated in the letter as being quite as much settled and definitive as the proposal on any other. Moreover, in point of fact, the exact proposal was as much ascertained on any one point as on any other, and this must have been so in Mr. MacLane's apprehension, as Lord Aberdeen had shewn him the project of the Treaty.

(viii.) The boundary, however, it is argued by Mr. Bancroft, was precisely ascertained, because Mr. MacLane states that the line as proposed by Lord Aberdeen had been suggested by Mr. Everett, and what the proposal of Mr. Everett was (he says) is known from the citations in the Memorial from his (Mr. Everett's) despatches. The passage in Mr. Bancroft's Memorial, relating to Mr. Everett's suggestion, is as follows (page 4):—

"On the 29th of November, 1843, soon after Mr. Everett's full powers had arrived, he and Lord Aberdeen had a very long and important conversation on the Oregon question; and the concessions of Lord Aberdeen appearing to invite an expression of the extremest modification which the United States could admit to their former proposal, Mr. Everett reports that he said: 'I thought the President might be induced so far to depart from the 49th parallel as to leave the whole of Quadra and Vancouver's Island to England, whereas that line of latitude would give us the southern extremity of that island, and consequently the command of the Straits of Fuca on both sides. I then *pointed out on a map the extent of this concession*; and Lord Aberdeen said he would take it into consideration.'

"The next day Mr. Everett more formally referred to the subject in a note to the British Secretary:—

"My dear Lord Aberdeen,

"46, Grosvenor Place, 30th November, 1843.

"It appears from Mr. Gallatin's correspondence that . . . Mr. Huskisson had especially objected to the extension of the 49th degree to the Pacific, on the ground that it would cut off the southern extremity of Quadra and Vancouver's Island. My suggestion yesterday would obviate this objection. . . . *A glance at the map shows its importance* as a modification of the 49th degree. . . .

'EDWARD EVERETT.'

"On the 2nd of February and on the 1st of April, 1844, Mr. Everett reports that he continuously insisted with Lord Aberdeen that the only modification which the United States could, in his opinion, be brought to agree to, was that they should waive their claim to the southern extremity of Vancouver's Island, and that Lord Aberdeen uniformly answered 'he did not think there would be much difficulty in settling the question.'

"During the following months Mr. Everett and Lord Aberdeen, both wishing sincerely to settle the controversy, had further frequent conversations, and, as the result of them all, Mr. Everett reported that England would not accept the naked parallel of 49° to the ocean, but would consent to the line of the 49th degree, provided it could be so modified as to leave to Great Britain the southern extremity of Vancouver Island. 'I have spared no pains,' wrote Mr. Everett on the 28th of February, 1845, 'to impress upon Lord Aberdeen's mind the persuasion that the utmost which the United States can concede is the 49th parallel with the modification suggested, taking always care to add that I had no authority for saying that even that modification would be agreed to.'

"To one fact I particularly invoke the attention of the Imperial Arbitrator; not the least room for doubt was left by Mr. Everett with regard to the extent of the modification proposed. *He had pointed it out to Lord Aberdeen on the map*, and had so often and so carefully directed his attention to it, that there could be no misapprehension on the limit of the proposed concession."

It is difficult to see the force of this reference from the letter of Mr. MacLane to the writings and acts of Mr. Everett. It seems to Her Majesty's Government to be a process of ascertaining a thing uncertain in itself by means of something still more uncertain. It does not appear that Mr. Everett pointed out on a map, or referred in any manner to, the Canal de Haro; yet this is the whole question. The fair inference from Mr. Everett's statements is that he did not speak of the water boundary at all, but only pointed out on a map how much of Vancouver's Island would be cut off by the 49th parallel. Mr. Bancroft appears to overstrain Mr. Everett's words. Mr. Everett says he "pointed out on a map the extent of the concession," as regards the southern extremity of Vancouver's Island; Mr. Bancroft says (page 7) Mr. Everett "had drawn the line of demarcation upon the map," which seems to be a very different thing. If this had been stated by Mr. Everett, and if it also appeared that the line of demarcation drawn by him on the map passed down the Canal de Haro, then Mr. Bancroft's inference that Lord Aberdeen was proposing a line through the Canal de Haro, from the fact that

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Mr. MacLane says that the line proposed by Lord Aberdeen had been suggested by Mr. Everett, would not be so remote or so weak as it is.

(ix.) The statements of Mr. MacLane to his own Government can in no way bind Her Majesty's Government. Mr. MacLane does not say that he did, and there is no evidence that he did, ever specify any channel in his conversations with Lord Aberdeen. There is no evidence that he ever told Lord Aberdeen what he was going to report to his Government. The presumption to be drawn from Lord Aberdeen's despatch of 29 June 1846, to Mr. Pakenham, is to the contrary.\* Mr. MacLane's letter was not published even in the United States until after the exchange of ratifications in London.\* It could not, therefore, have reached Lord Aberdeen's knowledge before the transaction was closed.

(x.) Nor is there anything to affect Her Majesty's Government through Mr. Pakenham. There is no suggestion that Mr. Buchanan communicated to Mr. Pakenham Mr. MacLane's letter. On the contrary, it is evident, from Mr. Pakenham's despatch of the 29th July, 1846, that the letter was unknown to him till its unauthorized publication, as mentioned in that despatch.\* Nor did Mr. Buchanan in any manner inform Mr. Pakenham of Mr. MacLane's view. In a Memorandum,† written in 1858, Sir Richard (formerly Mr.) Pakenham, states that Mr. Buchanan on the occasion of the Treaty "made no mention whatever of the Canal de Haro as that through which the line of boundary should run, as understood by the United States' Government." If, indeed, Mr. Buchanan had done so, that mere fact would be of no importance as against Her Majesty's Government. Mr. Pakenham was acting under strict instructions. If Mr. Buchanan had indicated the Canal de Haro as the boundary channel, Mr. Pakenham could only have answered as he did on the question of the effect of Article II, namely,—the Article speaks for itself.‡ He had no power to modify the project of Treaty in substance, and no power to bind his Government by assenting to or acquiescing in an interpretation which would have been equivalent to a serious modification.

20. It appears to Her Majesty's Government that this examination of Mr. MacLane's letter justifies them in submitting to the Arbitrator that the letter affords no support to the contention of the United States.

21. In addition to Mr. MacLane's letter, Mr. Bancroft refers to the speech of Mr. Benton in the Senate before mentioned. The passage in Mr. Bancroft's Memorial is as follows (page 7):—

"A suspicion of ambiguity could not lurk in the mind of any one. Mr. Benton found the language so clear that he adopted it as his own. In his Speech in the Senate on the day of the ratification of the Treaty, he said:—

"The first Article of the Treaty is *in the very words* which I myself would have used if the two Governments had left it to me to draw the boundary line between them

"The line established by the first Article follows the parallel of 49° to the sea, with a slight deflection through the Straits of Fuca to avoid cutting off the south end of Vancouver's Island . . . . . When the line reaches the channel which separates Vancouver's Island from the Continent, it proceeds to the middle of the channel, and thence turning south through the Channel de Haro (wrongly written Arro on the maps) to the Straits of Fuca, and then west through the middle of that Strait to the sea. This gives us . . . . . the cluster of islands between de Haro's Channel and the Continent."

22. Her Majesty's Government submit that the speech of Mr. Benton is even of less value, as evidence in support of the contention of the United States, than is Mr. MacLane's letter.

(i.) It seems probable that Mr. Benton founded his exposition of the draft Treaty on Mr. MacLane's letter,§ extracts from which had been communicated by the President of the United States to the Senate. If so, Mr. Benton's interpretation is only a reflection of Mr. MacLane's.

(ii.) Mr. Benton may indeed have formed his opinion not directly on Mr. MacLane's letter, but on the same sort of ground on which it would appear Mr. MacLane's statement was made, namely, a knowledge (whether complete, or accurate, or not) of the local

\* Historical Note, p. xvi.

† Inclosed in Lord John Russell's despatch to Lord Lyons, 24th August, 1859; read, and copy given, to United States' Secretary of State. Appendix, No. 1.

‡ Historical Note, p. xvi.

§ This was Sir Richard Pakenham's view, as expressed in his Memorandum, Appendix, No. 1

conditions.\* In that case his statement would amount to no more than a declaration of his opinion that, on the true construction of the words of the Treaty, the line described would run down the Canal de Haro. But Mr. Benton's opinion on this question of construction is not alleged to be of any special value, and its authority in the present discussion is not admitted. The question whether or not the line runs down the Canal de Haro, according to the construction of the Treaty, is the question before the Arbitrator.

(iii.) But whatever was the foundation of Mr. Benton's observations, and whatever title they have to consideration, Her Majesty's Government cannot be affected either through Mr. Pakenham or through Lord Aberdeen by anything that was said on this occasion in the Senate. The debates in the Senate were in Secret Session. No publication of them was permitted or made until after the time when the ratifications had been exchanged in London.†

23. Mr. Bancroft adduces no further evidence whatever on this point, yet he goes so far as to say (page 8):—

“The language of the Treaty seemed perfectly clear to the Senate, to the President, to his Secretary of State, and to every one of his constitutional advisers, as departing from the line of the parallel of 49° only so far as to yield the southern extremity of Vancouver's Island, and no more.”

With respect to the view of the language of the Treaty formed at the time by the Senate (as a body), or by the President, or by any one of the President's constitutional advisers other than his Secretary of State, Mr. Buchanan, Her Majesty's Government have no information, either from Mr. Bancroft's Memorial or otherwise. The exception of Mr. Buchanan is here made, not on account of anything in Mr. Bancroft's Memorial, but because in the course of the controversy between the two Governments, a statement respecting Mr. Buchanan's opinion has been made on behalf of the United States. It has been said‡ that, in a letter to Mr. MacLane, dated 6th June, 1846, the day on which the draft Treaty was presented to Mr. Buchanan by Mr. Pakenham, Mr. Buchanan mentions the Canal de Haro as the channel intended by the Treaty. This letter has not been seen by Her Majesty's Government. It may be supposed that it is simply (so to speak) an echo of Mr. MacLane's conjectures as to what would be found to be the substantial effect of Lord Aberdeen's proposal, when it came to be worked out. But whether that is so or not, statements passing between Mr. Buchanan and Mr. MacLane, not communicated to Mr. Pakenham or to Lord Aberdeen, are not admissible as against Her Majesty's Government. Sir Richard Pakenham, in his Memorandum before cited, says:—

“It is certain that Mr. Buchanan signed the Treaty with Mr. MacLane's despatch before him, and yet that he made no mention whatever of the Canal de Haro as that through which the line of boundary should run, as understood by the United States' Government.”

And this, after Mr. Buchanan had had read to him by Mr. Pakenham such an extract from Lord Aberdeen's instructions as comprised the paragraph containing the description of the line of demarcation to be proposed, and had himself read over the extract again in Mr. Pakenham's presence;§ which two readings must have shown Mr. Buchanan the erroneousness of any expectation that the Canal de Haro would be specified.

25. The examination has now been completed of everything that can reasonably be regarded as contemporaneous evidence in favour of the United States of the intention of their Government in concluding the Treaty. Her Majesty's Government submit to the Arbitrator that it is of little, if any, weight. All that it amounts to is this, that some of the persons concerned on the part of the United States on the occasion of the Treaty anticipated that the Treaty, couched in the words proposed on one side and adopted on the other, would have a certain effect. These anticipations were not communicated at the time to Her Majesty's Government, or to any representative of that Government, and are, therefore, in no degree binding on them to their detriment.

25. But, before parting from this branch of the subject, Her Majesty's Government

\* Mr. Cass describes Mr. Benton as being “better acquainted, perhaps, than any other member [of the Senate] with the geography of the region in dispute.”—To Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

† Page 4, above, and note \* there.

‡ Mr. Cass to Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

§ Historical Note, p. xiii.

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will advert to two other pieces of evidence which have been in the course of the controversy adduced as "personal testimony contemporaneous with the Treaty,"\* and which it is possible may be brought up again as such in the present discussion.

(1.) It is stated\* that, on 28th December, 1846, Mr. Bancroft (who was then the United States' Minister at London) having written to Mr. Buchanan on the subject from London, Mr. Buchanan inclosed, in a letter to Mr. Bancroft, a traced copy of Wilkes' chart of the Straits of Arro (that is, the Canal de Haro), and added :—

"It is not probable, however, that any claim of this character will be seriously preferred by Her Majesty's Government to any island lying to the eastward of the Canal de Arro, as marked in Captain Wilkes' map of the Oregon Territory."

The correspondence at this time between Mr. Bancroft and Mr. Buchanan, as far as the same is known to Her Majesty's Government, is set forth in the Appendix to this Statement.† Her Majesty's Government submit to the Arbitrator that if this correspondence is proposed to be used on the present occasion as evidence on behalf of the United States, it ought to be rejected. First, it was from its nature entirely unknown at its dates to Her Majesty's Government; secondly, any declarations it contains were made *post litem motam*. Even if admitted, it would be of little value, as it cannot carry the case further than it is carried by Mr. MacLane's letter, on which Mr. Buchanan's statements in this correspondence explicitly rest. Mr. Buchanan does not use a word that can fairly be considered as conveying his personal testimony as to the intention of himself or his Government at the time of the making of the Treaty. Finally, if this correspondence is admitted as evidence, then Her Majesty's Government would ask that there be taken into consideration along with it the report of Mr. Buchanan's views in 1848, made by Mr. Crampton, Her Majesty's Minister at Washington, and the subsequent communication thereon made to the United States' Government.‡

(2.) The other piece of evidence referred to by Her Majesty's Government as having been adduced on behalf of the United States is the following :—§

"Mr. Bancroft, who was a member of President Polk's Cabinet when the Treaty was concluded, wrote repeatedly to Lord Palmerston after receiving this chart [the traced copy of Wilkes' chart above mentioned], and uniformly described the Straits of Arro 'as the channel through the middle of which the boundary is to be continued.'"

The communications between Mr. Bancroft and Viscount Palmerston here referred to were in July and November 1848. The letters are set forth in the Appendix,|| together with the published extract of a letter from Mr. Bancroft to Mr. Buchanan, describing a conversation which he (Mr. Bancroft) had had with Lord Palmerston. No statement of Mr. Bancroft made more than two years after the exchange of ratifications can be reasonably regarded as "personal testimony contemporaneous with the Treaty," in which category it is placed in the paper of Mr. Cass adducing it. The only use to which these documents could now be fairly applied would be to shew that Lord Palmerston had then made to Mr. Bancroft admissions now binding on Her Majesty's Government. But the documents afford no ground for such a suggestion.¶ The course taken by Lord Palmerston on Mr. Bancroft's second letter (in which he for the second time intimated his view that the boundary was to pass through the Canal de Haro) is conclusive as to Lord Palmerston's view of the position. It is plain, on the face of Lord Palmerston's answer to that letter, that the answer was deliberately framed so as not to amount to an admission of the claim put forward by Mr. Bancroft. If there could be any doubt of this, on the words of the letter, the doubt would be put an end to by a reference to the minutes on Mr. Bancroft's letter which preceded the preparation of the draft of Lord Palmerston's answer. On Mr. Bancroft's letter the Under-Secretary of State made the following minute for Lord Palmerston :—

\* Mr. Cass to Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

† Appendix, No. 2.

‡ Appendix, No. 3.

§ Mr. Cass to Mr. Dallas, 20th October, 1859; read, and copy given, to Her Majesty's Secretary of State for Foreign Affairs.

|| Appendix, No. 4.

¶ "If I notice General Cass' allusion to the letters which he says Mr. Bancroft repeatedly wrote to Lord Palmerston in 1848 it is only for the purpose of placing on record what, no doubt, Mr. Bancroft duly reported to his Government at the time, namely, that Lord Palmerston gave Mr. Bancroft distinctly to understand that the British Government did not acquiesce in the pretensions of the United States that the boundary line should be run down the Haro Channel."—Lord John Russell to Lord Lyons, 16th December, 1859; read, and copy given, to United States' Secretary of State.

"Shall this letter be acknowledged and Mr. Bancroft be thanked for it?"

"And if so, shall the underlined assumption of Mr. Bancroft be passed over without observation?"

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The underlined words were:—"through the middle of which our boundary line passes." Lord Palmerston's minute in answer was as follows:—

"Thank him, and say that the information contained in these charts as to soundings will no doubt be of great service to the Commissioners to be appointed, by assisting them in determining where the line of boundary described by the Treaty ought to run."\*

#### IV.

26. The next class of Mr. Bancroft's arguments is to be found in those passages in which he contends, in effect, that Her Majesty's Government are precluded from disputing the interpretation put on the Treaty by the United States, on the ground that the framing of the Treaty was (as he represents) the work of Her Majesty's Government.

27. He says (page 8):—

"The draft of the Treaty was made entirely, even to the minutest word, by the British Ministry, and was signed by both parties without change. The British Government cannot, therefore, take advantage of an ambiguity of their own, otherwise the draft of the Treaty would have been a snare. Such is the principle of natural right, such the established law of nations. Hugo Grotius lays down the rule that the interpretation must be made against the party which drafted the conditions: 'ut contra eum fiat interpretatio, qui conditiones elocutus est.' But no one has expressed this more clearly than Vattel, who writes"

28. Her Majesty's Government submit that the fact that the project of the Treaty emanated from them can be in no way used to their disadvantage. The Treaty, as it comes before the Arbitrator, must be regarded as the work of both parties. It was in the power of the President or of the Senate of the United States to insist on any alteration of the terms. They had abundant opportunity for considering the terms. The project was delivered by Mr. Pakenham to Mr. Buchanan, and considered by them in conference, on the 6th of June. It was sent by the President to the Senate on the 10th of June. It was considered by the Senate on the 10th, 11th, and 12th of June. The Treaty was signed on the 15th of June. It was sent to the Senate for ratification on the 16th of June. The Treaty, with various incidental motions, was before the Senate on the 16th, 17th, and 18th of June. Mr. Buchanan intimated to Mr. Pakenham that the President's Message sending the project to the Senate might, and probably would, suggest some modifications in it. An entire counter-proposal was made and divided on in the Senate; in the preliminary deliberation a formal motion was divided on for adding a proviso to Article II; and Mr. Buchanan made representations to Mr. Pakenham respecting the effect of that Article.† Some of the reasons that prevailed with the Senate to induce them to adopt the project as it stood may be gathered from Mr. Benton's speech. He objected to any alteration (first) on the ground of the delay that would be caused, which would be injurious to the interests, particularly the commercial interests, of the United States; and (secondly) because of the importance to the United States of closing the question, as they were then engaged in war with the Republic of Mexico. In all these circumstances, the words of the Treaty must be taken to be, as they in fact are, the words not of Lord Aberdeen and Mr. Pakenham only, but the words also of Mr. Buchanan and of the President and Senate of the United States.

29. The words cited by Mr. Bancroft from Grotius' book are not applicable to the present case. The passage from which they are extracted relates to the case of dictation of conditions of peace. The whole chapter to which they belong is on that and cognate subjects. The sentence from which Mr. Bancroft's citation is taken reads in a more complete form thus:—

"In dubio autem sensu magis est ut contra eum fiat interpretatio, qui conditiones elocutus est, quod esse solet potentioris: est ejus qui dat non qui petit conditiones pacis dare [dicere], ait Annibal"

\* These observations may not be thought too minute when it is stated that Lord Palmerston's letter has been treated by Mr. Archibald Campbell as a virtual admission of the Canal de Haro as the Treaty channel.

† Appendix No. 5, and Historical Note, p. xv.

The passage produced by Mr. Bancroft from Vattel's work appears to Her Majesty's Government to be as capable of an application favourable to them as of one unfavourable to them.

30. In another place (page 12) Mr. Bancroft says :—

"A party offering the draft of a Treaty is bound by the interpretation which it knew at the time that the other party gave it. Lord Aberdeen cannot have doubted how the Treaty was understood by Mr. MacLane, by Mr. Buchanan, and by the Senate of the United States. 'Where the terms of promise,' writes Paley, whose work was long a text-book at Oxford, 'admit of more senses than one, the promise is to be performed in the sense in which the promiser apprehended at the time that the promisee received it. This will not differ from the actual intention of the promiser, where the promise is given without collusion or reserve; but we put the rule in the above form to exclude evasion, wherever the promiser attempts to make his escape through some ambiguity in the expressions which he used.'"

Her Majesty's Government are not here concerned to dispute the general proposition that a party offering to another the draft of a Treaty is bound by the interpretation which it (the party offering) knew at the time the other party gave to the draft. But they do dispute, and submit they have disproved, Mr. Bancroft's particular proposition. Lord Aberdeen (he says) cannot have doubted how the Treaty was understood by Mr. MacLane, by Mr. Buchanan, and by the Senate of the United States. Her Majesty's Government have proved that Lord Aberdeen did not know until after the exchange of ratifications (if personally he ever knew) of Mr. MacLane's letter to Mr. Buchanan, of Mr. Buchanan's letter to Mr. MacLane,\* or of Mr. Benton's speech (the views expressed in which Mr. Bancroft seems to ascribe to the Senate, as a body).

31. The doctrine contained in the passage cited by Mr. Bancroft from Dr. Paley's treatise on Moral and Political Philosophy appears to Her Majesty's Government generally true,† but here irrelevant. That doctrine applies to a promise in the ordinary sense, a unilateral promise, or an engagement taken by one party, wholly or mainly. It is not appropriate to the case of a contract, which the same treatise defines as a mutual promise. A few pages further in that treatise, the following is stated as "a rule which governs the construction of all contracts":—

"Whatever is expected by one side, and known to be so expected by the other, is to be deemed a part or condition of the contract."

This rule Her Majesty's Government submit to be judged by. Even if it were admitted (as it is not) that Mr. Bancroft has shewn what amounts (in the phraseology of Dr. Paley) to an expectation on the side of the United States, he has entirely failed to shew on the other side (that of Her Majesty's Government) a knowledge of the existence of that expectation. On the contrary, Her Majesty's Government have demonstrated their necessary ignorance on the point.

32. Sir Richard Pakenham (in his Memorandum before cited) says (he is writing some twelve years after the Treaty, and he speaks therefore in guarded phrase, but his testimony is clear) :—

"I think I can safely assert that the Treaty of 15th June, 1846, was signed and ratified without any intimation to us whatever on the part of the United States' Government as to the particular direction to be given to the line of boundary contemplated by Article I of that Treaty."

## V.

33. It remains to examine the arguments by which Mr. Bancroft endeavours to shew that the language of the Treaty points to the Canal de Haro and to that channel alone.

(i.) Mr. Bancroft refers (page 9) to the concise form of expression by which, he says, in both countries the line was described as the line of the "49th parallel and Fuca's Straits." Two observations occur: (1) Many persons, including Mr. Greenhow, used the name Fuca's Straits to embrace the waters, or at least the southern waters, of the Gulf of

\* Above, paragraph 23.

† It is, however, not altogether unimpeachable, as will appear from the criticisms of another English author, Austin, Lectures on Jurisprudence, vol. ii, p. 122.



Georgia: (2) If, in this phrase, the name is not so understood, then the use of this expression (the 49th parallel and Fuca's Straits) is of no weight in favour of Mr. Bancroft's argument; for the whole question is where the line is to run, which is required to form a connecting link between the 49th parallel and Fuca's Straits (that name being used in the modern sense).

(ii.) Mr. Bancroft says (page 10):—

“When the Treaty speaks of ‘the channel,’ for that part south and west of Birch's Bay, it must mean the Channel of Haro, for no other ‘channel’ was known to the negotiators.”

And he proceeds to instance maps on which the Canal de Haro and no other channel is named. This argument assumes that the reference in the Treaty is necessarily to some named channel. Her Majesty's Government, on the contrary, have submitted that the absence of any name in the Treaty is strong evidence in favour of their contention. The fact that the Rosario Straits had no name specially fits that passage to be the nameless channel of the Treaty. The Canal de Haro was conspicuously named on Vancouver's chart and Wilkes's map. If it had been intended to be the channel of the Treaty, it would have been obvious and easy to name it. Mr. Bancroft can scarcely mean to contend that the Rosario Straits are not a channel, because they do not bear a name of which the word channel is part.

(iii.) Mr. Bancroft proceeds (page 10):—

“Again, the word ‘channel,’ when employed in Treaties, means a deep and navigable channel, and when there are two navigable channels, by the rule of international law, preference is to be given to the largest column of water.”

That the word channel means a navigable channel in Treaties generally, and in the Treaty under consideration in particular, is maintained also by Her Majesty's Government. But they do not admit the existence of such a rule as is here alleged. If navigability is of the essence of a channel, then as between two channels preference should be given to the one which is the better fitted for navigation. Now, at the time when the Treaty was made, at which time it must be read as speaking, the Canal de Haro was almost unknown to and unused by practical navigators. It can scarcely, in the true sense of language, regarded as used at that day, be called a navigable channel. Even at the present day when thoroughly explored and surveyed, it is found to be of difficult and dangerous navigation, especially for sailing-vessels, and only one steamer had penetrated into those waters at the date of the Treaty.\*

(iv.) Then Mr. Bancroft says (page 26):—

“Now, compared with any other channel through which a ship could pass from the sea at the 49th parallel, to the Straits of Fuca, the Channel of Haro is the broadest and the deepest, the shortest and the best. . . . With regard to depth, the contrast is still more striking.”

But, although depth of channel may be an advantage in river navigation, and may therefore well weigh in the choice of one channel as a boundary in preference to one or another less deep, yet depth beyond a certain limit—a limit perhaps never reached in river navigation—becomes a disadvantage in navigation of every kind, as it lessens the facilities for anchoring, and thus increases the dangers of navigation. The Canal de Haro is an instance. Its depth is so great, that there are but few anchorages in it, and there are none in the main channel; and with this defect, and its rapid and variable currents, it becomes an unsafe passage for sailing-vessels. The Rosario Straits, on the other hand, while they are deep enough for vessels of the very largest class, have many anchorages, conveniently and securely situated; and at the same time the regularity of the currents in them makes them comparatively easy of navigation.

(v.) Mr. Bancroft further says (page 26) that the Canal de Haro is “the shortest and most direct way between the parallel of 49° and Fuca Straits.” But there is nothing in the Treaty to show that the line between the 49th parallel and the Straits of Fuca is to be run by what may now be held to be the shortest and most direct way. The line is to be drawn by the channel of the day, the ordinary and frequented navigable channel.

(vi.) Mr. Bancroft, in favour of the Canal de Haro, says (page 10) “Duflot de Mofras describes it as notoriously the best.” From this and other references in the Memorial to this writer, it might be supposed that he was entitled to high respect as an authority on the hydrography and navigation of the region. The fact is, he was attached to a European Legation in Mexico in 1840-42, and was sent thence to report on the Oregon

\* On these points Her Majesty's Government refer to the evidence in the Appendix to their Case, presented to the Arbitrator in December 1871.



district and neighbouring countries. In his account he says, with regard to the difficulty of navigation of these waters, that the Canal de Haro is "le passage le plus facile." He was not a naval officer, and appears to have been employed solely in a civil capacity. Mr. Archibald Campbell, after quoting the passage in which the observation referred to by Mr. Bancroft is made, says:—

"And this opinion he [Duflot de Mofras] must have derived from the general report of those engaged in the navigation of these waters, as his own explorations are considered very superficial."

It is plain that he has no personal authority on a question of navigation.

(vii.) Mr. Bancroft contends (pages 10 and 11), that the Canal de Haro is the only channel which separates the Continent from Vancouver's Island; that there are other passages which divide islands from islands, but none other separates the Continent from Vancouver's Island; and that the Rosario Straits touch neither the Continent nor Vancouver's Island. But Her Majesty's Government submit that, even if the present state of knowledge is to be taken into account, the distinctions here attempted are not tenable, as the map attached to Mr. Bancroft's Memorial shews. The Rosario Straits are, by the evidence of that map, in the respects here mentioned, as much entitled as the Canal de Haro to be regarded as the dividing channel between the Continent and the Island. But the question must be referred back to the time of the Treaty, and then the Rosario Straits will be the dividing channel, as being the ordinary track of vessels passing up and down on the waters lying between the island and the main land.

(viii.) Mr. Bancroft (page 11) founds an argument on the word southerly; but as to this expression, there seems little room for discussion. It is evidently used in a large and loose sense, as contrasted with a line carried westwards to the Pacific, or deflected northwards up the Gulf of Georgia. This is the more evident when it is observed that, on a strict construction, the word is applied to the continuation of the line through the Straits of Fuca, where its direction would in fact be westerly, or even in part north-westerly.

(ix.) Mr. Bancroft further says (page 11):—

"The Treaty contemplates a continuous channel to the Pacific; the channel of Haro and Fuca's Straits form such a continuous channel, and a glance at the map will show that no other channel can pretend to do so."

Mr. Bancroft's map speaks for itself; it is difficult to see on it a higher degree of continuity in the Canal de Haro than in Rosario Straits. In fact, the waters passing southerly through the Rosario Straits are derived from the Gulf of Georgia alone and uninterruptedly, while the Canal de Haro is in the southerly direction supplied only partly and indirectly by the waters from the southern termination of the Gulf of Georgia, and partly and more directly from the waters flowing through the passages between Vancouver's Island and the archipelago off its eastern coast. This is obvious on the map, and is confirmed by observation. The flow of an uninterrupted body of water from the Gulf of Georgia through the Rosario Straits causes a marked regularity of current in that passage; while in the Canal de Haro, on the contrary, the currents are irregular, the waters flowing into it being broken and dispersed by the islands in and near its northern entrance.

(x.) Mr. Bancroft labours the point (page 11) that the name Rosario Straits was not given till of late to the channel through which Vancouver sailed. Her Majesty's Government are not concerned to dispute this. But they have not invented the name of Rosario Straits (as Mr. Bancroft seems to think) for the purposes of the present discussion. Mr. Archibald Campbell gives a history of the names borne at different times by the channel, ending thus:—"It is now [1859] universally called Rosario Straits." It is, in fact, called so over and over again in United States' official documents, and it had been named Rosario Strait on the map of the United States' Coast Survey (by Licut. Alden, U.S.N.), published in 1854.

(xi.) Lastly, Mr. Bancroft says (page 11):—

"Now the so-called straits of Rosario lead only to a Sound, which Spanish voyagers called the bay of Santa Rosa; they do not connect with Fuca's straits, which cease at the south-eastern promontory of Vancouver island."

Her Majesty's Government submit that it is plain that Fuca's Straits, even in the more modern and restricted sense of that name, extend to the western coast of Whidbey Island. Formerly, they used to be considered, at least by many persons, including Mr. Greenhow, as sweeping round to the north and north-west, through the archipelago which lies between the Canal de Haro and Rosario Straits, and as including in their waters both those passages. On Quimper's map, indeed, the easternmost part of the Straits is marked Seno de Santa Rosa. But that map (the earliest extant) is a very

imperfect representation of the land and water of the district, and the name of the Bay of Santa Rosa never appears again on any map known to Her Majesty's Government.

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34. In connection with this branch of the subject Her Majesty's Government desire to guard against an error that might be caused by the map attached to Mr. Bancroft's Memorial (which may be taken as a sample of the most modern maps). This map represents a state of geographical and hydrographical knowledge, very different from that which existed at the date of the Treaty. In one respect this consideration is of great importance. The islands shewn on this map, forming a chain along the eastern coast of Vancouver's Island, named Galiano Island, Mayne Island, Samuel Island, and Saturna Island, were at the date of the Treaty supposed by both the Contracting Parties to be parts of Vancouver's Island. A comparison of maps of the date of the Treaty with maps of the present day will shew this conclusively. Her Majesty's Government adopt the words of Mr. Archibald Campbell:—

"None of the maps extant at that day [the date of the Treaty] present a perfectly correct idea of the space between the continent and Vancouver's Island, at, and immediately south of, the 49th parallel. The Straits of Fuca and the Archipelago east of the Canal de Haro are fairly enough represented; but between the Haro Archipelago and the 49th parallel, the space is inaccurately represented as free from islands, and, consequently, with but a single channel between the continent and Vancouver's Island. The surveys made subsequently to the conclusion of the Treaty shew that what was laid down by the early Spanish navigators, by Vancouver, and by Wilkes, as the eastern coast of Vancouver's Island, is in fact the coast of an extensive archipelago skirting the shore of the main island between latitude 48° 47' and 49° 10'."

Now Her Majesty's Government submit it to the Arbitrator as a clear proposition that the Treaty is to be interpreted according to the common knowledge and understanding of the Contracting Parties at the time.\* Therefore, in prolonging the 49th parallel to the middle of the channel between the Continent and Vancouver's Island, and in drawing the mid-channel line southerly therefrom to Fuca's Straits, the Arbitrator will have to consider the channel, at and immediately to the southward of the 49th parallel, as bounded on the west, not by the eastern coast of Vancouver's Island, as now ascertained, but by the broken line of coast, which is in fact formed by the eastern shores of Galiano Island and the other islands of that chain.

35. With reference to maps, another distinction requires notice. The map spoken of as Wilkes's Map of the Oregon Territory (an extract of which is Mr. Bancroft's Map F) is merely a map, in the ordinary sense, and is not a chart with soundings marked or otherwise adapted for purposes of navigation.†

36. Mr. Bancroft speaks (page 11) of the place of a particular name "*on every map used by the negotiators.*" Who are meant by the negotiators does not appear. In the ordinary sense, the negotiators were Mr. Pakenham and Mr. Buchanan. There is no evidence known to Her Majesty's Government of any particular map, or of any map, having been used for the purposes of the negotiations which issued immediately in the Treaty. There was a map before Mr. Everett and Lord Aberdeen in one of their conversations,‡ but what map does not appear. Mr. MacLane, it would seem, used Wilkes's map,§ but there is no evidence that he and Lord Aberdeen together referred to that or any other map. As regards Lord Aberdeen himself, he probably used Vancouver's chart, but it would rather seem that he did not give much attention to a map in the matter. In his instructions to Mr. Pakenham,|| he makes a slip in using the name of King George's Sound, an obsolete name for Nootka Sound, instead of the Gulf of Georgia;¶

\* Mr. Bancroft says (page 2):—"Since the intention of the negotiators must rest on the knowledge in their possession at the time when the Treaty was made, I shall use the charts and explorations which have advanced, or profess to have advanced, our knowledge of the country in question, and which are anterior to that date."

† There was no chart issued with the Narrative of the United States' Exploring Expedition, under Lieutenant Wilkes, as part of the atlas connected with it, or otherwise. Indeed, no chart shewing the surveys of that Expedition in the Oregon region appears to have been published up to the time of the correspondence between Mr. Bancroft and Lord Palmerston in July to November 1848, Appendix No. 4.

‡ Above, paragraph 19 (viii), p. 7.

§ Above, paragraph 19 (ii), p. 5.

|| Historical Note, p. ix.

¶ Mr. Archibald Campbell remarks on this point:—"Lord Aberdeen in tracing the boundary line follows the 49th parallel to the sea coast and deflects thence in a southerly direction through the centre of *King George's Sound* and the Straits of Fuca to the ocean." On either of the accompanying tracings, and indeed upon any map of the north-west coast, we may look in vain for 'King George's Sound' between the Continent and Vancouver's Island. This mistake is not so readily accounted for as Mr. MacLane's in regard to Birch Bay,

Statement.

and, in his statement to Lord John Russell in 1859,\* he says it was the intention of the Treaty to adopt the mid-channel of the straits as the line of demarcation, without any reference to islands, the position and, indeed, the very existence of which (he adds) had hardly at that time been accurately ascertained.

37. Finally, it should be noted that the fact that the Canal de Haro has long borne a proper name on the maps is no evidence of the superiority of that passage for purposes of navigation. It would seem to have been accidentally distinguished by a name, before and at the date of the Treaty, from the circumstance that it obtained a name (Canal de Lopez de Haro) on the Spanish map of Quimper's observations of the Straits of Fuca in 1790.† But it was little known except by name at the date of the Treaty and for some time after.

38. Her Majesty's Government have now finished their examination of Mr. Bancroft's Memorial. They do not trouble the Arbitrator with any remarks on such parts of it as refer to the Lecture or Pamphlet of Mr. Sturgis, the observations of Mr. Bates, the articles in the Quarterly Review and the Examiner, and other matters which seem to them to have little (if any) bearing on the question to be decided. The interpretation of the Treaty cannot be affected by the public discussions which preceded it, nor can any amount of unofficial declarations as to what ought to be done be evidence of what the Governments of the two countries intended by the Treaty to do.

39. Nor have Her Majesty's Government thought it necessary to examine in detail the passage in the Memorial (page 9) which is headed "Plea for the integrity of Sir Robert Peel's Ministry," or the corresponding passage (page 12) which forms the concluding paragraph of the Memorial. Her Majesty's Government see no necessity for any such plea, and no ground for the suggestions in the passage last referred to. The characters of Sir Robert Peel and Lord Aberdeen place them beyond suspicion of having acted with insincerity or duplicity in any part of this transaction. Moreover, the frankness with which Lord Aberdeen communicated to Mr. MacLane the project of Treaty, in which no mention is made of the Canal de Haro as the channel through which the boundary should run, sufficiently shews that Mr. MacLane had no sure ground for his surmise that the Canal de Haro was contemplated by Lord Aberdeen as the boundary channel, or, at all events, was so at the time when Lord Aberdeen framed the project of Treaty.

40. The Arbitrator will not fail to observe that the explanation given in this Statement of the mention by Mr. MacLane and Mr. Benton of the Canal de Haro, far from involving any dishonouring imputation, is entirely consistent with the view, which Her Majesty's Government sincerely entertain, that Mr. MacLane, and all those who in any degree represented the United States on the occasion of the Treaty, acted with perfect good faith. Mr. MacLane, it seems almost certain, misled himself by a misapplication of Wilkes's map, and Mr. Benton was misled either by Mr. MacLane's letter, or by a misapplication of his own geographical knowledge, or by both.

41. Her Majesty's Government then submit to His Majesty the Arbitrator, on the whole case, that, whether he looks at the general position of the two nations with reference to their claims to the Oregon district, or at the circumstances attending the particular transaction which issued in the Treaty, or at the language of the Treaty, he will be led to adopt the conclusions of Her Majesty's Government.

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as the name is nowhere to be found on Vancouver's chart, which is said to have been used by the British Government in reference to the water boundary. 'King George's Sound' is the name that was given in 1778, by Captain Cook, to Nootka Sound, on the western coast of Vancouver's Island, between latitude 49° and 50°. The name was never much in vogue, except to distinguish a mercantile association formed soon after the discovery of Nootka, called the 'King George's Sound Company.' There is, however, no need of conjecture as to Lord Aberdeen's actual meaning. He simply miscalled the Gulf of Georgia."

\* Appendix, No. 1.

† A copy of this map was not in the possession of Her Majesty's Government at the time of the preparation of their Case presented to the Arbitrator in December 1871. The map, which seems to be the result of mere eye-sketches, is of small value in itself. It describes itself as made by Quimper's "primer piloto" (first mate, or master), Don Gonzalo Lopez de Haro. This fact may account for the prominence given to the channel bearing the name of Haro. But little more than the southern mouth of the channel is shewn. The southern entrance of Rosario Straits is indistinctly shewn as Boca de Fidalgo.

42. His Majesty the Arbitrator has been pleased to take on himself to ascertain the channel of the Treaty, on the failure of the Commissioners appointed by the two Governments to agree. In the execution of this task, he has to look at the state of things as they existed at the time of the Treaty. He has to determine through which of the two channels, the Rosario Straits or the Canal de Haro, the line ought to have been drawn by Commissioners appointed for the purpose the day after the exchange of the ratifications.

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43. The considerations, connected with the hydrography of the region and with the history and existing conditions of the navigation of its waters, on which, as Her Majesty's Government submit, this determination cannot fail to be in accordance with their conclusions, are fully set forth in the Case presented by them to the Arbitrator in December 1871. The channel of the Treaty is that one of the two channels in question which was the main navigable channel, as known and used at the date of the Treaty. That channel is the Rosario Straits.

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**HISTORICAL NOTE.**

**(1818 to 1846.)**

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## Historical Note.\*

(1818 to 1846.)

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### 1818.

IN 1818 an agreement was come to between the Government of His Britannic Majesty and that of the United States respecting the boundary line between the British and United States territories in North-Western America.

It was agreed in substance that for the space extending from the Lake of the Woods westward to the Rocky (then called the Stony) Mountains, the boundary line should be the 49th parallel of north latitude.

With respect to any country that might be claimed by either party on the north-west coast, westward of the Rocky Mountains, it was agreed that for ten years the same with its harbours and the navigation of its rivers should be free and open to the vessels, citizens, and subjects of the two Powers; with a proviso that the agreement was not to prejudice any claim which either party might have to any part of that country.

This agreement was embodied in a Treaty made at London, 20th October, 1818.

The district between the Rocky Mountains and the Pacific, or part of it, came to be known as Oregon or the Oregon Territory or district, the name being taken from the Oregon River, now usually called the Columbia.

The northern boundary of this district, as it was in question between the two Governments, was the parallel of 54° 40' north latitude, being the southern boundary of the Russian territory, as recognized by Treaty. The southern boundary was the parallel of 42° north latitude, being the northern boundary of the Spanish territory, as recognized by Treaty.

The British Plenipotentiaries who negotiated the Treaty of 1818 acceded to the arrangement relating to the country west of the Rocky Mountains in the hope that by thus leaving that country open to the trade of both nations, they substantially secured every present advantage, while removing all prospect of immediate collision, without precluding any further discussion for a definite settlement. In their judgment the American Plenipotentiaries were not authorized to admit any territorial claim of Great Britain in that quarter to the southward of the Straits of Fuca, although they would have consented to leave those straits and the waters connected with them in the possession of Great Britain.

### 1824.

In 1824 negotiations were resumed for the settlement of questions between the two nations, including the question of the boundary west of the Rocky Mountains.

The British Plenipotentiaries contended for the right of British subjects to make settlements in the disputed territory, a right which they maintained was derived not only from discovery, but also from use, occupancy, and settlement. They proposed that Article III of the Treaty of London of 1818 should cease to have effect, and that the boundary line west of the Rocky Mountains should be drawn due west to the point where the 49th parallel strikes the great north-easternmost branch of the Oregon or Columbia River marked on the maps as McGillivray's River, thence down along the middle of that river, and down along the middle of the Oregon or Columbia to its junction with the Pacific Ocean.

The proposal of the United States' Plenipotentiaries was to the effect that the term of ten years limited in Article III of the Treaty of 1818 should be extended to ten years

Historical Note.  
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1818-1824.

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\* Referred to in the Statement, page 1, par. 3.

Historical Note.

1824-1843.

from the date of a new Treaty, but that the rights of settlement and other rights should be restricted during the new term, so that the citizens of the United States should form no settlements to the north of the 49th parallel, and that British subjects should form no settlements to the south of that parallel, or to the north of the 54th.

Terms were not agreed on, and the Conference came to an end in July 1824.

### 1826, 1827.

In November 1826 negotiations were again resumed.

The United States' proposal was, that if the 49th parallel should be found to intersect the Oregon or McGillivray's River at a navigable point, the whole course of that river thence to the ocean should be made perpetually free to British vessels and subjects.

The British Plenipotentiaries were authorized to offer that if the United States would consent to the Columbia being the southern British frontier, the United States should have the harbour in De Fuca Strait, called by Vancouver, Port Discovery, with land five miles in breadth encircling it.

Should this offer not fully satisfy the United States, the British Plenipotentiaries were then authorized to extend the proposition, so as to include the cession by Great Britain to the United States of the whole peninsula comprised within lines described by the Pacific to the west, De Fuca's Inlet to the north, Hood's Canal (so called in Vancouver's charts) to the east, and a line drawn from the southern point of Hood's Canal to a point ten miles south of Gray's Harbour to the south, by which arrangement the United States would possess that peninsula in exclusive sovereignty, and would divide the possession of Admiralty Inlet with Great Britain, the entrance being free to both parties.

The negotiations ended in a Convention dated 6th August, 1827. This Convention continued Article III of the Treaty of 1818 indefinitely, but with power to either party to put an end to it on twelve months' notice (after 20th October, 1828).

The Convention also contained a saving for the claims of either party to any part of the country west of the Rocky Mountains.

### 1827-1842.

Negotiations on the Oregon question remained in abeyance until the special mission of Lord Ashburton to the United States in 1842, when he received the following instructions on this subject:—

"Your Lordship may, therefore, propose to the Government of the United States, as a fair and equitable adjustment of their [the two Governments] respective claims, a line of boundary commencing at the mouth of the Columbia River; thence by a line drawn along the middle of that river to its point of confluence with the Great Snake River; thence by a line carried due east of the Rocky or Stony Mountains; and thence by a line drawn in a northerly direction along the said mountains until it strikes the 49th parallel of north latitude. The southern bank of the Columbia River would thus be left to the Americans and the northern bank to the English, the navigation of the river being free to both, it being understood that neither party should form any new settlement within the limits assigned to each on the north or south side of the river respectively.

"Should your Lordship find it impracticable to obtain the line of boundary above described, Her Majesty's Government would not refuse their assent to a line of boundary commencing at the Rocky or Stony Mountains at the point where the 49th parallel of north latitude strikes those mountains; thence along that parallel to the point where it strikes the great north-easternmost branch of the Columbia River, marked in the map as McGillivray's River; thence down the middle of that river and down the middle of the Columbia River to its junction with the ocean. But your Lordship will reject the proposal formerly made by the American Government, in case it should be repeated, of following the 49th parallel of latitude from the Rocky Mountains to the Ocean, as the boundary of the territory of the two States.

"If the Government of the United States should refuse the proposed compromise, and should nevertheless determine to annul the Convention of 1827, the rights of the British Government to the whole of the territory in dispute must be considered as unimpaired."

This mission resulted in the Treaty of Washington of 9th August, 1842, which contained no arrangement respecting Oregon. The main reason that induced Lord Ashburton to abstain from proposing to carry on the discussion on this subject was the apprehension that thereby the settlement of the far more important matter of the North-Eastern boundary might be impeded or exposed to the hazard of failure.

### 1843.

In August 1843, Mr. Fox, Her Majesty's Minister at Washington, was asked whether the United States' Government were taking any steps in furtherance of the Oregon

Boundary negotiation, and to state that Her Majesty's Government were willing to transfer the negotiation to Washington should the United States' Government object to London.

Historical Note.  
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1843, 1844.

In October instructions were sent to Mr. Everett, the United States' Minister in London, to treat with Her Majesty's Government for the adjustment of the Boundary. In the meantime Mr. Pakenham had been appointed Her Majesty's Minister to the United States in succession to Mr. Fox. Before his appointment had been gazetted, Mr. Everett informed Lord Aberdeen orally that he had received powers to negotiate the Oregon question in London. Lord Aberdeen, however, stated to him that a new Minister had already been appointed by Her Majesty to negotiate at Washington.

In consequence of this arrangement the negotiations were removed to Washington, and Mr. Everett stated in a despatch to his Government\* that he would use his best efforts to produce such an impression on Lord Aberdeen's mind as to the prominent points of the question as might have a favourable influence in the preparation of the instructions to be given to Mr. Pakenham.

In an interview with Lord Aberdeen, Mr. Everett urged that the boundary should be carried along the 49th parallel to the sea. Lord Aberdeen said that this proposal had been made in 1824 and 1826 and rejected, and that there was no reason for believing that this country, more than the United States, would then agree to terms which had been previously declined, and that consequently there must be concession on both sides, on which principle Lord Aberdeen expressed himself willing to act.

In December Mr. Pakenham was authorized to re-open negotiations at Washington on the Oregon question. He was directed to make substantially the same proposals for the settlement of the boundary as had been made by Great Britain in 1826.

He was authorized to add, should that proposition be found to be unacceptable, that Her Majesty's Government would be willing to convert into a free port any harbour, either on the mainland or on Vancouver's Island, south of the 49th parallel, which the United States' Government might desire.

Further, if he should think that the extension of the privilege would lead to the final adjustment of the question, he was authorized to declare that Her Majesty's Government would be willing to make all the ports within De Fuca's Inlet and south of the 49th parallel, free ports.

Should these proposals be rejected, he was then to propose that the whole question should be referred to the arbitration of a friendly Sovereign State.

In the event of the United States' Government refusing to agree to arbitration, he was then to propose that the Treaty of 1818-27 should be renewed for a further period of ten years.

In the event of negotiations being broken off, he was then to declare to the United States' Government that Her Majesty's Government still asserted and would maintain an equal right with the United States to the occupation of the whole of the territory in dispute, and that as Her Majesty's Government would carefully and scrupulously abstain and cause Her Majesty's subjects to abstain from any act which might be justly considered as an encroachment on the rights of the United States, so they expected that the Government of the United States would exhibit and enforce on their part an equal forbearance with respect to the rights of Great Britain, which rights, believing them to be just, Great Britain would be prepared to defend.

## 1844.

In February, 1844, Mr. Pakenham addressed a note to the United States' Secretary of State proposing a renewal of the negotiations, which proposal was favourably received by him.

On 22nd August, Mr. Pakenham received a notification from Mr. Calhoun, then the Secretary of State, that he was prepared to proceed with the negotiation.

At a conference on the 26th, Mr. Pakenham laid before Mr. Calhoun the proposal authorized by his instructions relative to a free port either on the mainland or on Vancouver's Island, south of the 49th parallel.

This proposal was declined by Mr. Calhoun. He afterwards presented a paper (dated September 3) stating his reasons. The paper began thus:—

"The Undersigned American Plenipotentiary declines the proposal of the British Plenipotentiary, on the ground that it would have the effect of restricting the possessions of the United States to limits far

\* Appendix No. 19 to Mr. Bancroft's Memorial.



Historical Note.

1844.

more circumscribed than their claims clearly entitle them to. It proposes to limit their northern boundary by a line drawn from the Rocky Mountains along the 49th parallel of latitude to the north-easternmost branch of the Columbia River, and thence down the middle of that river to the sea, giving to Great Britain all the country north, and to the United States all south, of that line, except a detached territory extending on the Pacific and the Straits of Fuca, from Bullfinch's Harbour to Hood's Canal. To which it is proposed in addition to make free to the United States any port which the United States' Government might desire, either on the mainland or on Vancouver's Island south of latitude 49°.

"By turning to the map hereto annexed, and on which the proposed boundary is marked in pencil, it will be seen that it assigns to Great Britain almost the entire region on its north side drained by the Columbia River, and lying on its northern bank. It is not deemed necessary to state at large the claims of the United States to this territory, and the grounds on which they rest, in order to make good the assertion that it restricts the possessions of the United States within narrower bounds than they are clearly entitled to. It will be sufficient for this purpose to show that they are fairly entitled to the entire region drained by the river; and to the establishment of this point, the Undersigned proposes accordingly to limit his remarks at present."

The paper proceeded with arguments, and ended thus:—

"Such are our claims to that portion of the territory, and the grounds on which they rest. The Undersigned believes them to be well founded, and trusts that the British Plenipotentiary will see in them sufficient reasons why he should decline his proposal.

"The Undersigned Plenipotentiary abstains, for the present, from presenting the claims which the United States may have to other portions of the territory.

"The Undersigned, &c."

In answer to this statement Mr. Pakenham delivered a paper (marked D, and dated September 12) of which it is sufficient for the present purpose to state the concluding passages:—

"In fine, the present state of the question between the two Governments appears to be this:— Great Britain possesses and exercises, in common with the United States, a right of joint occupancy in the Oregon Territory, of which right she can be divested, with respect to any part of that territory, only by an equitable partition of the whole between the two Powers.

"It is, for obvious reasons, desirable that such a partition should take place as soon as possible, and the difficulty appears to be in devising a line of demarcation which shall leave to each party that precise portion of the territory best suited to its interest and convenience.

"The British Government entertained the hope that by the proposal lately submitted for the consideration of the American Government, that object would have been accomplished. According to the arrangements therein contemplated, the Northern Boundary of the United States west of the Rocky Mountains would, for a considerable distance, be carried along the same parallel of latitude which forms their Northern boundary on the eastern side of those mountains, thus uniting the present Eastern Boundary of the Oregon Territory with the Western Boundary of the United States, from the 49th parallel downwards. From the point where the 49° of latitude intersects the north-eastern branch of the Columbia River, called in that part of its course McGillivray's River, the proposed line of boundary would be along the middle of that river till it joins the Columbia, then along the middle of the Columbia to the ocean, the navigation of the river remaining perpetually free to both parties.

"In addition Great Britain offers a separate territory on the Pacific, possessing an excellent harbour, with a further understanding that any port or ports, whether on Vancouver's Island or on the Continent, south of the 49th parallel, to which the United States might desire to have access, shall be made free ports.

"It is believed that by this arrangement, ample justice would be done to the claims of the United States, on whatever ground advanced, with relation to the Oregon Territory. As regards extent of territory they would obtain, acre for acre, nearly half of the entire territory to be divided. As relates to the navigation of the principal river, they would enjoy a perfect equality of right with Great Britain; and, with respect to harbours, it will be seen that Great Britain shows every disposition to consult their convenience in that particular.

"On the other hand, were Great Britain to abandon the line of the Columbia as a frontier, and to surrender her right to the navigation of that river, the prejudice occasioned to her by such an arrangement would, beyond all proportion, exceed the advantage accruing to the United States from the possession of a few more square miles of territory. It must be obvious to every impartial investigator of the subject that, in adhering to the line of the Columbia, Great Britain is not influenced by motives of ambition with reference to extent of territory, but by considerations of utility, not to say necessity, which cannot be lost sight of, and for which allowance ought to be made in an arrangement professing to be based on considerations of mutual convenience and advantage.

"The Undersigned believes that he has now noticed all the arguments advanced by the American Plenipotentiary in order to show that the United States are fairly entitled to the entire region drained by the Columbia River. He sincerely regrets that their views on this subject should differ in so many essential respects.

"It remains for him to request that, as the American Plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is on the part of the United States prepared to propose for an equitable adjustment of the question; and more especially, that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory, to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to part of the territory in dispute, while a claim is reserved to any portion of the remainder.

"The Undersigned, &c."

Mr. Calhoun then presented a paper (dated September 20), in which he said he had read with attention the counter-statement of the British Plenipotentiary, but without weakening his confidence in the validity of the title of the United States, and, after arguments, concluded thus:—

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1844, 1845.

“The Undersigned cannot consent to the conclusion to which, on a review of the whole ground, the counter-statement arrives, that the present state of the question is, that Great Britain possesses and exercises, in common with the United States, a right of joint occupancy in the Oregon Territory, of which she can be divested only by an equitable partition of the whole between the two Powers. He claims, and he thinks he has shown a clear title on the part of the United States, to the whole region drained by the Columbia, with the right of being reinstated and considered the party in possession while treating of the title, in which character he must insist on their being considered in conformity with positive Treaty stipulations. He cannot, therefore, consent that they shall be regarded, during the negotiation, merely as occupants in common with Great Britain, nor can he, while thus regarding their rights, present a counter-proposal based on the supposition of a joint occupancy, merely until the question of title to the territory is fully discussed. It is, in his opinion, only after a discussion which shall fully present the titles of the parties respectively to the territory, that their claims to it can be fairly and satisfactorily adjusted. The United States desire only what they may deem themselves justly entitled to, and are unwilling to take less. With their present opinion of their title, the British Plenipotentiary must see that the proposal which he made at the second Conference, and which he more fully sets forth in his counter-statement, falls far short of what they believe themselves justly entitled to.

“In reply to the request of the British Plenipotentiary that the Undersigned should define the nature and extent of the claims which the United States have to the other portions of the territory, and to which allusion is made in the concluding part of Statement A, he has the honour to inform him in general terms that they are derived from Spain by the Florida Treaty, and are founded on the discoveries and exploration of her navigators, and which they must regard as giving them a right to the extent to which they can be established, unless a better can be opposed.”

In various informal conversations between Mr. Pakenham and Mr. Calhoun, when Mr. Calhoun insisted on the parallel of 49° as the very lowest terms which the United States would accept, Mr. Pakenham told him that, if he wished Her Majesty's Government even to take into consideration a proposal founded on that basis, it must be accompanied by some indications of a desire on the part of the United States' Government to make some corresponding sacrifice to accommodate the interest and convenience of Great Britain; that Her Majesty's Government had already gone very far in the way of concession, while the United States' Government had as yet shown no disposition to recede from their original proposal. To which Mr. Calhoun replied, on one occasion, that for his part he should have no objection to give up absolutely the free navigation of the Columbia, which had before been offered only conditionally; on another occasion, he said that if Great Britain would consent to the parallel of 49° on the Continent, perhaps the United States might be willing to leave to Great Britain the entire possession of Vancouver's Island, Fuca's Inlet and the passage northwards from it to the Pacific remaining an open sea to both countries; but he never said that he would be ready to yield both these points. In fact, he said that he was not authorized to make any proposal of the kind, nor should he until he had ascertained that such an arrangement would find favour with the Senate.

## 1845.

In January 1845, in answer to a proposal, made by Mr. Pakenham, to submit the question to arbitration, Mr. Calhoun said that, while the President united with Her Majesty's Government in the desire to see the question settled as early as might be practicable, he could not accede to the offer; adding this:—

“Waiving all other reasons for declining it, it is sufficient to state, that he continues to entertain the hope that the question may be settled by the negotiation now pending between the two countries; and that he is of opinion it would be unadvisable to entertain a proposal to resort to any other mode, so long as there is hope of arriving at a satisfactory settlement by negotiation; and especially to one which might rather retard than expedite its final adjustment.”

On the 3rd of April, Lord Aberdeen addressed to Mr. Pakenham the following despatch, the tone and contents of which shew the seriousness of the position in which the controversy then was, and the determination of Her Majesty's Government to maintain their claims:—

“Sir,

“April 3, 1845.

“The inaugural speech of President Polk has impressed a very serious character on our actual relations with the United States; and the manner in which he has referred to the Oregon question, so different from the language of his predecessor, leaves little reason to hope for any favourable result of the existing negotiation.

“I presume that you will have acted upon my instruction of the 3rd of March, and have repeated

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to the new Secretary of State the proposal of an arbitration, which you were directed to make to his predecessor. If this should be declined by Mr. Polk's Government in the same manner and for the same reason as assigned by Mr. Tyler, namely, the hope that the matter might yet be favourably terminated by negotiation, such a mode of refusal would at least display a friendly spirit, and would not close the door against all further attempts to arrive at such a conclusion. On the other hand, if the proposal should be simply rejected, and the rejection should not be accompanied by any specific proposition on the part of the Government of the United States, we must consider the negotiation as entirely at an end. Indeed, we could scarcely, under such circumstances, take any further step with a due regard to our honour and consistency.

"In the event of arbitration being rejected, and the failure of every endeavour to effect a partition of the territory on a principle of mutual concession, you were directed in my despatch of the 18th of November, to propose the further extension for a fixed term of years of the existing Convention. This, it is true, would have been an imperfect and unsatisfactory arrangement; but it might have been tolerated in the hope that the prevalence of friendly feelings, and the admitted interest of both parties, would in due time have led to a permanent settlement of an amicable description. The recent declarations of Mr. Polk forbid any such hope; and there is too much reason to believe that the extension of the Convention for a fixed period would be employed in active preparation for future hostility.

"You will, therefore, consider this portion of my instructions, to which I have now referred, as cancelled.

"Judging from the language of Mr. Polk, I presume we must expect that the American Government will renounce the Treaty without delay. In this case, unless the question be speedily settled, a local collision will be liable to take place, which may involve the countries in serious difficulty, and not improbably lead to war itself.

"At all events, whatever may be the course of the United States' Government, the time is come when we must be prepared for every contingency. Our naval force in the Pacific is amply sufficient to maintain our supremacy in that sea; and Sir George Seymour has been instructed to repair without delay to the coasts of the Oregon Territory.

"You will hold a temperate, but firm, language to the members of the Government and to all those with whom you may converse. We are still ready to adhere to the principle of an equitable compromise; but we are perfectly determined to concede nothing to force or menace, and are fully prepared to maintain our rights. This is the spirit in which Her Majesty's Government have declared themselves in Parliament, and to this they will adhere.

"I thought it so important that our intentions should be clearly known and understood in the United States without delay, that I detained the last American mail, in order that a correct report of the proceedings in Parliament on the Oregon question might reach Washington as early as possible.

"Nothing can be more encouraging and satisfactory than the spirit which has been exhibited on this occasion, both in Parliament and in the country generally; and it is evident that Her Majesty's Government will be warmly supported in whatever measures may be considered really just and necessary.

" I am, &c.  
(Signed) " ABERDEEN."

Before this despatch reached Mr. Pakenham, Mr. Buchanan had been appointed Mr. Calhoun's successor in the office of Secretary of State. Mr. Pakenham informed Mr. Buchanan of the instructions which he had received, again to press on the Government of the United States the expediency of arbitration. But Mr. Buchanan said on one occasion that he did not despair of effecting a settlement by negotiation, by adopting (to use his own words) the principle of giving and taking; and on another occasion that settlement by arbitration did not meet with the concurrence of the President and his Cabinet, that they all entertained objections to that course of proceeding, and that they preferred negotiation, hoping, as they did hope, that by negotiation a satisfactory result would at last be attained.

On 16th July, Mr. Buchanan delivered to Mr. Pakenham a paper (marked J. B.) containing his proposal for settlement. It began thus:—

"The Undersigned, &c., now proceeds to resume the negotiation on the Oregon question at the point where it was left by his predecessor.

"The British Plenipotentiary, in his note to Mr. Calhoun of the 12th September last, requests that as the American Plenipotentiary declines the proposal offered on the part of Great Britain, he will have the goodness to state what arrangement he is, on the part of the United States, prepared to propose for an equitable adjustment of the question, and more especially, that he will have the goodness to define the nature and extent of the claims which the United States may have to other portions of the territory to which allusion is made in the concluding part of his statement, as it is obvious that no arrangement can be made with respect to a part of the territory in dispute, while a claim is reserved to any portion of the remainder."

"The Secretary of State will now proceed (reversing the order in which these requests have been made), in the first place, to present the title of the United States to the territory north of the valley of the Columbia; and will then propose on the part of the President the terms upon which, in his opinion, this long-pending controversy may be justly and equitably terminated between the parties."

The paper (after a lengthened argument) ended thus:—

"Such being the opinion of the President in regard to the title of the United States, he would not have consented to yield any portion of the Oregon Territory, had he not found himself embarrassed,

if not committed, by the acts of his predecessors. They had uniformly proceeded upon the principle of compromise in all their negotiations. Indeed, the first question presented to him, after entering upon the duties of his office was, whether he should abruptly terminate the negotiation which had been commenced and conducted between Mr. Calhoun and Mr. Pakenham on the principle avowed in the first Protocol, not of contending for the whole territory in dispute, but of treating of the respective claims of the Parties, 'with the view to establish a permanent boundary between the two countries, westward of the Rocky Mountains.'

"In view of these facts, the President has determined to pursue the present negotiation to its conclusion, upon the principle of compromise in which it commenced, and to make one more effort to adjust this long-pending controversy. In this determination he trusts that the British Government will recognize his sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that he is actuated by a spirit of moderation. He has, therefore, instructed the Undersigned again to propose to the Government of Great Britain that the Oregon Territory shall be divided between the two countries by the 49th parallel of north latitude from the Rocky Mountains to the Pacific Ocean; offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island, south of this parallel, which the British Government may desire. He trusts that Great Britain may receive this proposition in the friendly spirit in which it was dictated, and that it may prove the stable foundation of lasting peace and harmony between the two countries. The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific, along the same parallel of latitude which divides them east of the Rocky Mountains, and it will secure to each a sufficient number of commodious harbours on the north-west coast of America.

"The Undersigned, &c."

Thereupon Mr. Pakenham presented a paper, dated 29th July, beginning thus:—

"Notwithstanding the prolix discussion which the subject has already undergone, the Undersigned, &c., feels obliged to place on record a few observations in reply to the statement marked J. B., which he had the honour to receive on the 16th of this month from the hands of the Secretary of State of the United States, terminating with a proposition on the part of the United States for the settlement of the Oregon question."

Mr. Pakenham ended this paper as follows:—

"After this exposition of the views entertained by the British Government, respecting the relative value and importance of the British and American claims, the American Plenipotentiary will not be surprised to hear that the Undersigned does not feel at liberty to accept the proposal offered by the American Plenipotentiary for the settlement of the question.

"This proposal, in fact, offers less than that tendered by the American Plenipotentiaries in the Negotiation of 1826, and declined by the British Government.

"On that occasion it was proposed that the navigation of the Columbia should be made free to both parties. On this point nothing is said in the proposal to which the Undersigned has now the honour to reply. While with respect to the proposed freedom of the ports on Vancouver's Island, south of latitude 49°, the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole island, would seem to deprive such proposal of any value.

"The Undersigned therefore trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government, as defined in the statement marked D, which the Undersigned had the honour to present to the American Plenipotentiary at the early part of the present negotiation.

"The Undersigned, &c."

Mr. Pakenham had thus declined to accept the proposal of the United States' Government. Mr. Buchanan thereupon delivered another paper, dated 30th August, in which, after further arguments, he withdrew that proposal. The concluding passages of this paper were as follows:—

"Upon the whole, from the most careful and ample examination which the Undersigned has been able to bestow upon the subject, he is satisfied that the Spanish-American title now held by the United States, embracing the whole territory between the parallels of 42° and 54° 40', is the best in existence to this entire region, and that the claim of Great Britain to any portion of it has no sufficient foundation.

"Notwithstanding that such was, and still is, the opinion of the President, yet, in the spirit of compromise and concession, and in deference to the action of his predecessors, the Undersigned, in obedience to his instructions, proposed to the British Plenipotentiary to settle the controversy by dividing the territory in dispute by the 49th parallel of latitude, offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island, south of this latitude, which the British Government might desire. The British Plenipotentiary has correctly suggested that the free navigation of the Columbia River was not embraced in this proposal to Great Britain, but, on the other hand, the use of free ports on the southern extremity of this island had not been included in former offers.

"Such a proposition as that which has been made, never would have been authorized by the President, had this been a new question.

"Upon his accession to office he found the present negotiation pending. It had been instituted in the spirit and upon the principle of compromise. Its object was, as avowed by the negotiators, not to demand the whole territory in dispute for either country; but, in the language of the first Protocol, to treat of the respective claims of the two countries to the Oregon Territory, with the view to establish a permanent boundary between them, westward of the Rocky Mountains to the Pacific Ocean.'

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"Placed in this position, and considering that Presidents Monroe and Adams had, on former occasions, offered to divide the territory in dispute by extending the 49th parallel of latitude to the Pacific Ocean, he felt it to be his duty not abruptly to arrest the negotiation, but so far to yield his own opinion as once more to make a similar offer.

"Not only respect for the conduct of his predecessors, but a sincere and anxious desire to promote peace and harmony between the two countries influenced him to pursue this course. The Oregon question presents the only cloud which intercepts the prospect of a long career of mutual friendship and beneficial commerce between the two nations, and this cloud he desired to remove.

"These are the reasons which actuated the President to offer a proposition so liberal to Great Britain.

"And how has the proposition been received by the British Plenipotentiary? It has been rejected without even a reference to his own Government. Nay, more, the British Plenipotentiary, to use his own language, 'trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government.'

"Under such circumstances the Undersigned is instructed by the President to say, that he owes it to his own country, and a just appreciation of her title to the Oregon Territory, to withdraw this proposition to the British Government which had been made under his direction, and it is hereby accordingly withdrawn.

"In taking this necessary step, the President still cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace or interrupt the harmony now so happily subsisting between the two countries.

"The Undersigned, &c."

## 1846.

On 9th February, 1846, the House of Representatives, and on 17th April, the Senate, of the United States passed a joint resolution, authorizing the President to give the requisite year's notice to put an end to the Convention of 1827. The notice was dated the 28th of April; it reached the United States' Minister at London on the 15th of May, and was by him sent to Lord Aberdeen on the 20th.

Meantime, on the 18th of May, Lord Aberdeen addressed the following instructions to Mr. Pakenham:—

(No. 18.)

"Sir,

"May 18, 1846.

"In the critical state of the negotiation for the settlement of the Oregon Boundary, it has become my duty carefully to review the whole course of our proceedings, and to consider what further steps in the present juncture it may be proper to take with the view of removing existing difficulties, and of promoting, if possible, an amicable termination of the question.

"I willingly abstain from renewing a discussion, the matter for which is already exhausted, and from repeating arguments with which you have long been familiar; but I think it is not too much to assert that, to any observer looking impartially at the different stages of this negotiation, it will appear that the conduct of Great Britain has throughout been moderate, conciliatory, and just. Can it truly be said that the Government of the United States have advanced to meet us in the path of mutual concession?

"The terms of settlement proposed by the British Plenipotentiaries to Mr. Gallatin in the year 1826 were much more advantageous to the United States than those which had been offered to Mr. Rush in the previous negotiation of 1824; and on your own departure from this country you were authorized still further to augment these advantageous conditions. The United States, on the other hand, have not only recently made, through Mr. Buchanan, a proposal less favourable to Great Britain than that formerly offered by Mr. Gallatin, but, when this was rejected by you, they withdrew it altogether.

"In truth, the pretensions of the United States have gradually increased during the progress of these negotiations. Acting in manifest violation of the spirit of the Conventions of 1818 and 1827, it is now formally and officially asserted that the right of the United States to the whole territory in dispute is 'clear and unquestionable.' The principle, however, of these Conventions plainly recognized the claims of both parties, as indeed was fully admitted by the American Plenipotentiary himself; and it was only on failure of the attempt to effect an equitable partition of the territory that the joint occupancy was established.

"Such pretensions, whatever may have been their effect in the United States, cannot in any manner invalidate or diminish our own just claims. With respect to these we have never varied. We have always maintained that we possess the right to establish ourselves in any part of the country not previously occupied; but we have fully acknowledged in the United States the existence of the same right; and we have also at all times been ready, by an equitable compromise and partition, to put an end to a species of occupation which is but too likely to lead to disputes and collision.

"Despairing of arriving at any agreement by means of direct negotiation, we have been urgent in pressing the reference of the whole matter to an arbitration. We have been willing to submit, either the abstract title of the two parties, or the equitable division of the territory, to the judgment of any Tribunal which could justly inspire confidence, and which might prove agreeable to the United States. All this, however, has been peremptorily refused; the progress of the negotiation has been entirely arrested, and, in fact, it now remains without any admitted or intelligible basis whatever.

"The United States have recently expressed their determination to put an end to the Convention which, for the last thirty years, has regulated the mode of occupation of Oregon by the subjects of both countries; but, as this power was reserved to each party by the terms of the Convention, the decision

cannot reasonably be questioned. Neither is there anything necessarily unfriendly in the act itself ; but, as both parties would thus be replaced in their former position, each retaining all its claims and asserting all its rights, which each would freely exercise, it is obvious that, in proportion as the country became settled, local differences would arise which must speedily lead to the most serious consequences.

"In this state of affairs it is matter of some anxiety and doubt what step, with a view to an amicable settlement of the question, may be most consistent with the dignity and the interests of Great Britain. After all the efforts we have made, and the course we have pursued, we might perhaps most naturally pause, and leave to the United States the office of renewing a negotiation which had been interrupted under such circumstances. But Her Majesty's Government would feel themselves to be criminal if they permitted considerations of diplomatic punctilio or etiquette to prevent them from making every proper exertion to avert the danger of calamities which they are unwilling to contemplate, but the magnitude of which scarcely admits of exaggeration.

"I think that an opportunity has now arisen when we may reasonably lay aside those formal considerations by which, under ordinary circumstances, we might have been precluded from making any fresh overture or demonstration on this subject.

"In complying with the recommendation of the President to terminate the Convention under which the Oregon Territory is at present occupied, the Legislature of the United States have accompanied their decision by resolutions of a pacific and conciliatory character ; and have clearly signified to the Executive Government their desire that this step should not lead to the rupture of amicable negotiations for the settlement of the question. I can scarcely doubt that the Government of the United States will be duly influenced by the desire thus unequivocally expressed by Congress ; and it is in this hope and belief that I now proceed to instruct you to make another, and, I trust, final proposition to the American Secretary of State, for the solution of these long-existing difficulties.

"I avail myself of this opportunity the more readily, because, although Her Majesty's Government have strongly pressed a reference of the whole subject to arbitration, they are by no means insensible to the inconvenience attending such a mode of proceeding, and would willingly avoid it if possible. Nothing, indeed, but the apprehension that an amicable settlement by means of direct negotiation was entirely hopeless, would have led them so decidedly to adopt this course ; and they are still of opinion that, with such a prospect of failure before them, it would be their duty to adhere as earnestly as ever to this recommendation. Nor can they believe that any Christian Government could ultimately persevere in rejecting a proposal of this nature, whatever might be their objections to its adoption, and in the face of the civilized world deliberately recur to the dreadful alternative of war.

"The boundary having been fixed by the Convention of 1818, between the possessions of Great Britain and the United States, and the line of demarcation having been carried along the 49th parallel of latitude for a distance of 800 or 1,000 miles through an unfrequented and unknown country, from the Lake of the Woods to the Rocky Mountains, it appeared to the Government of the United States that it was a natural and reasonable suggestion that this line should be continued along the same parallel, for about half that distance, and through a country as little known or frequented, from the Rocky Mountains to the sea. And, indeed, with reference to such a country, the extension of any line of boundary already fixed might equally have been suggested, whether it had been carried along the 49th or any other parallel of latitude.

"On the other hand, however, it may justly be observed that any division of territory in which both parties possess equal rights ought to proceed on a principle of mutual convenience, rather than on the adherence to an imaginary geographical line ; and in this respect it must be confessed that the boundary thus proposed would be manifestly defective. It would exclude us from every commodious and accessible harbour on the coast ; it would deprive us of our long-established means of water-communication with the interior for the prosecution of our trade ; and it would interfere with the possessions of British colonists resident in a district in which it is believed that scarcely an American citizen, as a settler, has ever set his foot.

"If, therefore, the 49th parallel of latitude be adopted as the basis of an agreement, it will be incumbent upon us to obviate these objections, which, I trust in great measure, may be successfully accomplished.

"You will accordingly propose to the American Secretary of State that the line of demarcation should be continued along the 49th parallel from the Rocky Mountains to the sea coast ; and from thence in a southerly direction through the centre of King George's Sound and the Straits of Juan de Fuca, to the Pacific Ocean, leaving the whole of Vancouver's Island, with its ports and harbours, in the possession of Great Britain.

"You will also stipulate that from the point at which the 49th parallel of latitude shall intersect the principal northern branch of the Columbia River, called Macgillivray's River in the maps, the navigation shall be free and open to the Hudson's Bay Company, and to the subjects of Great Britain trading with the said Company, until its junction with the Columbia, and from thence to the mouth of the river, with free access into and through the same ; British subjects, with their goods, merchandize, and produce, to be dealt with as citizens of the United States ; it being always understood, however, that nothing shall interfere to prevent the American Government from making any regulations respecting the navigation of the river, not inconsistent with the terms of the proposed Convention.

"In the future appropriation of land, the possessory rights of all British settlers will of course be respected. The Hudson's Bay Company should be confirmed in the occupation of Fort Vancouver, and the adjacent lands of which the Company have been in possession for many years. They would also retain such other stations as were necessary for the convenient transit of their commerce along the line of the Columbia ; but all other stations, or trading posts, connected with their present exclusive rights of hunting and of traffic with the natives, within the territory south of the 49th degree of latitude, would in all probability forthwith be abandoned.

"The Puget Sound Agricultural Company have expended considerable sums of money in the cultivation and improvement of land on the north of the Columbia River. They occupy two extensive



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farms, on which they possess large stocks of cattle and sheep. These parties would also be entitled to be confirmed in the quiet enjoyment of their land; but if the situation of the farms should be of public and political importance, and it should be desired by the Government of the United States, the whole property might be transferred to them at a fair valuation.

"I think that these proposals for an adjustment of the whole question at issue would be honourable and advantageous to both parties. It can scarcely be expected that either of them should now acquiesce in conditions less favourable than had been previously offered; and it may reasonably be presumed that each will at the present moment be prepared to make larger concessions than heretofore for the sake of peace. By this settlement, in addition to the terms proposed to us by Mr. Gallatin in 1826, we should obtain the harbours necessary for our commerce, as well as an increased security for our settlers and their possessions; and in lieu of the detached district, with its single harbour, offered by the British Plenipotentiaries on that occasion, the United States would acquire the whole coast with its various harbours, and all the territory north of the Columbia, as far as the 49th degree of latitude.

"I am not disposed to weigh very minutely the precise amount of compensation or equivalent which may be received by either party in the course of this negotiation, but am content to leave such estimate to be made by a reference to higher considerations than the mere balance of territorial loss or gain. We have sought peace in the spirit of peace, and we have acted in the persuasion that it would be cheaply purchased by both countries at the expense of any sacrifice which should not tarnish the honour or affect the essential interests of either.

"I have now, therefore, only to instruct you to inform the American Secretary of State that you have been authorized and are prepared to conclude a Convention, without delay, founded on the conditions set forth in this despatch.

"I am, &c.  
(Signed) "ABERDEEN."

On the same day the following despatch was also addressed to Mr. Pakenham by Lord Aberdeen, inclosing the draft or project of the Treaty:—

(No. 19.)

"Sir,

"May 18, 1846.

"With reference to my despatch No. 18 of this date, I transmit to you herewith the draft or project of a Treaty, such, at least in its essential parts, as Her Majesty's Government are prepared to conclude with the United States for the final settlement of the Oregon question.

"That project may be understood to embody all the conditions which are considered by us as indispensable. The wording of the Articles may be altered as may be deemed expedient, but their substance must be preserved, nor can any essential departure from that substance be admitted on the part of Great Britain.

"The preamble may be considered as open to any alteration which may be proposed, and which you may think expedient. In the project which I have sent you the definition of the territory adopted in the Convention of 1827 has been adhered to. That definition appears to be the most suitable and open to the least objection.

"If the United States' Government should agree to our terms, such or nearly such as they are now proposed, you will do well to hasten as much as possible the conclusion of the Treaty, since the present constitution of the Senate appears to offer a greater chance of acquiescence of that important body in those conditions than might be presented at any future period.

"If, on the other hand, the President should decline to accept those terms, and should make any counter-proposition essentially at variance with their substance, you will express regret that you possess no power to admit any such modification, and, without absolutely rejecting whatever proposal may be submitted on the part of the United States, you will refer the whole matter to your Government.

"I am, &c.  
(Signed) "ABERDEEN."

The draft or project was, as regards the description of the boundary now in question, identical with the Treaty as ultimately ratified.

On the same day, also, Mr. MacLane, who had before this time succeeded Mr. Everett as the United States' Minister at London, addressed a letter to Mr. Buchanan as follows:—

"Sir,

"London, May 18, 1846.

"I received, late in the day, on the 15th instant (Friday), your despatch No. 27, dated the 28th of April, 1846, transmitting a notice for the abrogation of the Convention of the 6th of August, 1827, between the United States and Great Britain, in accordance with the terms prescribed in the II<sup>nd</sup> Article, instructing me to deliver the notice to her Britannic Majesty in person, or to Her Majesty's Principal Secretary of State for Foreign Affairs, as will be most agreeable to Her Majesty's wishes, and at the same time leaving the mode of the delivery of the notice entirely at my own discretion.

"I will of course execute your instructions at the earliest practicable moment. As, however, I could only ascertain Her Majesty's wishes, which I am directed to consult, through the Principal Secretary of State for Foreign Affairs, sufficient time has not yet been afforded for that purpose; and, in the midst of the preparation of my despatches for the steamer of to-morrow, and of my engagements at the Foreign Office connected with one of the topics of this letter, it has not been in my power to give to a subject of so much importance that deliberation which I am sensible a proper exercise of the discretion confided to me requires. To-morrow, however, I propose to seek an interview with Lord Aberdeen for the purpose, and without loss of time finally to execute your instructions in the mode that may be deemed most effectual. I may add, that although it is altogether probable that the presentation of the notice to Her Majesty in person will not be admissible, and that where a Treaty may be annulled

upon notice by one party, the mode of delivering the notice need not be dependent upon the assent of the other; yet, in the present instance, I do not apprehend there will be any difficulty in giving and receiving the notice in a mode mutually satisfactory, and in conformity with usage in such cases.

"In my last despatch (No. 43) dated on the 3rd instant, after an interview with Lord Aberdeen I informed you that, as soon as he received official intelligence of the Senate's vote upon the resolution of notice, he would proceed finally to consider the subject of Oregon, and direct Mr. Pakenham to submit a further proposition upon the part of this Government, and also that it was understood that he would not be prevented from taking this course by any disagreement between the two Houses as to the form of the notice.

"I have now to acquaint you that, after the receipt of your despatches on the 15th instant by the 'Caledonia,' I had a lengthened conference with Lord Aberdeen; on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose, formed the subject of a full and free conversation.

"I have now to state that instructions will be transmitted to Mr. Pakenham by the steamer of to-morrow, to submit a new and further proposition on the part of this Government, for a partition of the territory in dispute.

"The proposition, most probably, will offer substantially:

"First—To divide the territory by the extension of the line on the parallel of 49 to the sea; that is to say to the arm of the sea called, Birch's Bay, thence by the Canal de Arro and Straits of Fuca to the Ocean, and confirming to the United States, what indeed they would possess without any special confirmation, the right freely to use and navigate the Strait throughout its extent.

"Second: To secure to the British subjects occupying lands, forts, and stations anywhere in the region north of the Columbia and south of the 49th parallel, a perpetual title to all their lands and stations of which they may be in actual occupation; liable, however, in all respects, as I understand, to the jurisdiction and sovereignty of the United States as citizens of the United States. Similar privileges will be offered to be extended to citizens of the United States who may have settlements north of the 49th parallel; though I presume it is pretty well understood that there are no settlements upon which this nominal mutuality could operate, I have no means of accurately ascertaining the extent of the present British settlements between the Columbia and the 49th parallel. They are not believed by Lord Aberdeen to be numerous, however; consisting, as he supposes, of a few private farms and two or three forts and stations. I have already, in a previous despatch, taken the liberty to remind you that by their Charter the Hudson's Bay Company are prohibited from acquiring title to lands, and that the occupations to be affected by this reservation have been made either by the squatters of that Company, or by the Puget's Sound Land Company, for the purpose of evading the prohibition of the Hudson's Bay Charter.

"They are, in point of fact also, according to Captain Wilkes' account, cultivated and used chiefly by the persons employed in the service of the former Company, and as auxiliary to their general business of hunting and trapping, rather than with a view, as it has been generally supposed, of colonizing or of permanent settlement.

"Lastly. The proposition will demand for the Hudson's Bay Company the right of freely navigating the Columbia River.

"It will, however, as I understand, disclaim the idea of sovereignty or of the right of exercising any jurisdiction or police whatever on the part of this Government or of the Company, and will contemplate only the right of navigating the river upon the same footing and according to the same regulations as may be applicable to the citizens of the United States.

"I have already acquainted you that Lord Aberdeen has very positively and explicitly declined to treat of the navigation of the St. Lawrence in connection with that of the Columbia; and that even if it were desirable to us to propose to offer one for the other, he would on no account enter into any negotiation in regard to the St. Lawrence.

"From the date of a private letter to the President in August, I have seen no cause to change the opinion that, in any attempt to divide the Oregon territory, the obligation felt by this Government to protect the rights of their subjects which may have been acquired or have grown up during the joint occupation, would most probably interpose the greatest difficulty in the way of an amicable adjustment. And it is now obvious that the proposed reservation of the right to the Hudson's Bay Company of freely navigating the Columbia, and that in favour of the British occupants north of the river, proceed from this source; although it is probable that more or less pride may be felt at giving up now, without what they may deem an adequate equivalent, what has been hitherto tendered by our negotiators.

"In fact, except in the surrender to the United States of the title of the lands not occupied by British subjects between the Columbia and the forty-ninth parallel, and also the surrender of the jurisdiction over the river and the country within the same limits, I am afraid it may, with some plausibility, be contended that there is no very material difference between the present proposition and that offered to Mr. Gallatin by Messrs. Addington and Huskisson, the British negotiators in 1827.

"It is scarcely necessary for me to state that the proposition, as now submitted, has not received my countenance. Although it has been no easy task, under all the circumstances, to lead to a reopening of the negotiation by any proposition from this Government, and to induce it to adopt the parallel of 49 as the basis of a boundary, nevertheless I hoped it would have been in my power to give the present proposition a less objectionable shape, and I most deeply lament my inability to accomplish it. I have, therefore, felt it my duty to discourage any expectation that it would be accepted by the President; or, if submitted to that body, approved by the Senate.

"I do not think there can be much doubt, however, that an impression has been produced here that the Senate would accept the proposition now offered, at least without any material modification, and that the President would not take the responsibility of rejecting it without consulting the Senate. If



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there be any reasonable ground to entertain such an impression, however erroneous, an offer less objectionable, in the first instance at least, could hardly be expected.

"It may be considered certain, also, in my opinion, that the offer now to be made is not to be submitted as an ultimatum, and is not intended as such; though I have reason to know that Mr. Pakenham will not be authorized to accept or reject any modification that may be proposed on our part; but that he will, in such case, be instructed to refer the modification to his Government.

"It is not to be disguised that, since the President's annual Message, and the public discussion that has subsequently taken place in the Senate, it will be difficult, if not impossible, to conduct the negotiation in its future stages, without reference to the opinion of Senators, or free from speculation as to the degree of control they may exercise over the result. Whatever, therefore, might be prudent and regular in the ordinary course of things, I think it of the utmost importance, upon the present occasion, if the President should think proper to propose any modification of the offer to be made by Mr. Pakenham, that the modification should be understood as possessing the concurrence of the co-ordinate branch of the Treaty Power.

"It is not easy to conjecture, with any certainty, the extent to which this Government might be induced to modify the proposition, even if they should be assured that the Senate, no less than the President, demanded it. It must not escape observation that, during the preceding administration of our Government, the extension of the line on the forty-ninth parallel to the Strait of Fuca, as now proposed by Lord Aberdeen, was actually suggested by my immediate predecessor as one he thought his Government might accept; and that, in regard to those English subjects who would be left within American jurisdiction by adopting that boundary, he considered that the provisions of Article II of Jay's Treaty as a precedent for a convenient mode of dealing with them. By Article II of Jay's Treaty, however, British subjects would not only be secured in the absolute title to all their lands and effects as fully as by Lord Aberdeen's proposition, but would be allowed the option to continue as British subjects, and without any allegiance to the Government of the United States; which, according to Lord Aberdeen's offer, as I understand it, they would not possess. In point of fact, therefore, the substantial points of the present offer, and those which may be expected to be regarded as most objectionable, are little more than the embodiment of the various offers or suggestions which, at different times, have, in some form or other, proceeded from our own negotiators.

"I have myself always believed, if the extension of the line of boundary on the forty-ninth parallel by the Strait of Fuca to the sea would be acceptable to our Government, that the demand of a right freely to navigate the Columbia River would be compromised upon a point of time, by conceding it for such period as might be necessary for the trade of the Hudson's Bay Company north or south of the forty-ninth parallel. Entertaining great confidence in that opinion, and deeming it only reasonable, I confess that, from an early period, I have used every argument and persuasion in my power to reconcile Lord Aberdeen to such a limitation, and, although I am quite aware that, with a portion of the British public, an importance it by no means deserves is attached to the navigation of the Columbia River, and in that of others it is undeservedly regarded as a point of pride, I have been disappointed by the pertinacity with which it has been, at so much risk, insisted upon. Feeling very sure, however, that the present offer is not made or intended as an ultimatum, I think it only reasonable to infer an expectation on the part of those who are offering it, not only that modifications may be suggested, but that they may be reasonably required. And therefore I still entertain the opinion, that although, from a variety of causes—in part, perhaps, from an expectation that in the United States this point may not be absolutely insisted upon, and in part from deference to interests and impressions at home—they could not be induced in the first instance to make an offer with such a qualification; yet, if the adjustment of the question should be found to depend upon this point only, they would yield the demand to the permanent navigation of the river, and be content to accept it for such a number of years as would afford all the substantial advantages to those interests they have particularly in view that could be reasonably desired. If the only question upon which the adjustment of the Oregon question depended should be whether the navigation of the Columbia River should be granted for a period sufficient to subserve all the purposes of British subjects within the disputed territory, or whether the right should be extended indefinitely to a particular class of British subjects, I must believe that no English statesman, in the face of his denial of a similar privilege to American citizens in regard to the St. Lawrence, would take the hazard upon this point alone of disturbing the peace of the world. Indeed, if the same Ministry from whom the present offer proceeds should continue masters of their own proposition by remaining in office until the qualification I am adverting to would have to be dealt with, I should feel entire confidence in the belief I have now expressed.

"I regret to say, however, that I have not the least expectation that a less reservation than is proposed in favour of the occupants of land between the Columbia and the forty-ninth parallel would be assented to. I may repeat my conviction, founded upon all the discussions in which I have been engaged here, that in making partition of the Oregon Territory, the protection of those interests which have grown up during the joint occupation is regarded as an indispensable obligation on the score of honour, and as impossible to be neglected. I am quite sure that it was at one time in contemplation to insist upon the free navigation of the Columbia River for British subjects and British commerce generally, and that it has been ultimately confined to the Hudson's Bay Company, after great resistance, and, in the end, most reluctantly. Being so confined, however, it would be only reasonable to limit the enjoyment of the right to a period beyond which the company might have no great object to use the river for the purposes of their trade. But the interests of the British subjects who have settled upon, and are occupying lands north of the forty-ninth, are considered as permanent, and entitled, when passing under a new jurisdiction, to have their possession secured. This, at least, is the view taken of the subject by this Government, and not at all likely, in my opinion, to be changed.

"I may add, too, that I have not the least reason to suppose it would be possible to obtain the extension of the 49th parallel to the sea, so as to give the southern cape of Vancouver's Island to the United States.

"It may not be amiss, before leaving this subject, to call your attention to the position of the present Ministry. The success of their measures respecting the proposed commercial relaxations is quite certain; and the Corn Bill, having now finally passed the House of Commons, may be expected, at no remote day, to pass the Lords by a majority no less decisive. From that time, however, the tie which has hitherto kept the Whig party in support of Sir Robert Peel will be dissolved; and the determination of the Protectionist party, who suppose themselves to have been betrayed, to drive him from office, has lost none of its vigour or power. Indeed, it is confidently reported, in quarters entitled to great respect, that they have even offered to the leader of the Whig party to select his own time, and that, when he is ready, they will be no less prepared to force Ministers to resign,

"I have reason to know that, at present, Ministers themselves believe a change to be inevitable, and are considering only the mode and the time in which it will be most likely to happen. It will not be long, after the success of the measures for the repeal of the Corn Laws, before opportunities enough for the accomplishment of the object will occur. The Factory Bill, regulating the hours of labour, will afford one, and most probably that on which the change will take place. With a knowledge that the change, sooner or later, must be unavoidable, and that the offer has been made to the probable head of a new Ministry to select his own time, may it not be expected that, instead of waiting quietly to allow the Whig leader to select the time of coming in, the present Premier will rather select his own time and mode of going out, and, with his usual sagacity, so regulate his retirement as to leave as few obstacles as possible to his restoration to power? In that case it is not very unlikely he would prefer going out upon the Factory Bill, before taking ground upon more important measures; and, if so, it will not surprise me to witness the coming in of a new Ministry by the end of June, or earlier. With a knowledge of the proposition now to be made, I am not prepared to say that one more objectionable might have been apprehended from a Whig Ministry; unless, indeed, the present Government may be supposed to be prepared to accept qualifications, when proposed by the President, which it was unwilling at first to offer. Upon that supposition, it might be desirable that the modifications should be offered before the coming in of a new Minister, who, finding only the acts of his predecessor, without a knowledge of his intentions, might not be so ready to take the responsibility of assenting to a change.

"I have, &c.

(Signed) "LOUIS MACLANE."

The following was Mr. Pakenham's report after receiving Lord Aberdeen's despatches of 18th May:—

(No. 68.)

"My Lord,

"Washington, June 7, 1846.

"Her Majesty's Government will necessarily be anxious to hear as soon as possible the result of my first communications with the United States' Government, in pursuance with your Lordship's instructions of the 18th of May, on the subject of Oregon.

"I accordingly take advantage of the departure of the 'Great Britain' steam-ship to acquaint your Lordship that I had yesterday morning a conference, by appointment, with Mr. Buchanan, when the negotiation for the settlement of the Oregon question was formally resumed.

"As the best explanation which I could offer of the motives which had induced Her Majesty's Government to instruct me to make a fresh, and as your Lordship hoped, a final, proposition for the solution of these long-existing difficulties, I read to Mr. Buchanan an extract from your Lordship's despatch No. 18, beginning with the words, 'In this state of affairs, it is a matter of some anxiety and doubt what steps, &c., to the end of the despatch. It seemed to me that there was nothing in the observations contained in this part of your Lordship's instructions which might not be advantageously made known to the American Government.

"Your Lordship's language appeared to make a good deal of impression upon Mr. Buchanan. After I read to him the extract which I had prepared from the despatch, he requested to be allowed to read it over himself, in my presence, with which request I of course complied. I thought it best not to leave a copy of it in his hands, having in view the possible, although not probable, failure of the negotiation which might render it desirable to deliver to him a copy at length of the despatch, with a view to its ultimate publication.

"I then laid before him a copy of the draft of a Convention which accompanied your Lordship's despatch No. 19, which Mr. Buchanan said he would immediately submit to the President for his consideration. A minute of what passed between us was then drawn up and signed, with the draft of the proposed Convention formally annexed to it.

"Mr. Buchanan frankly told me that, in his opinion, the only part of the proposed arrangement likely to occasion any serious difficulty, was that relating to the navigation of the Columbia, for he said, that the strongest objection existed to granting the perpetual freedom of the navigation of that river. I did not fail to point out to him the great difference which existed between a perpetual and general freedom of navigation, and the qualified right of navigation contemplated by your Lordship's proposition. He admitted the force of my observations in this sense, but I collect, from what fell from him on this point, that an attempt will be made to limit the proposed concession to the duration of the existing charter of the Hudson's Bay Company.

"At 4 o'clock yesterday evening I again met Mr. Buchanan by appointment, when he told me that the President had come to the determination to submit our whole proposition to the Senate for their advice, and that it would accordingly be sent to the Senate at an early day with a Message, which

† The last three paragraphs of this letter are omitted here. They have no relation to the question before the Arbitrator, and they have not (as far as Her Majesty's Government know) been published by the United States' Government.

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Message might, and probably would, suggest some modifications of it. What these modifications might be, Mr. Buchanan said, had not yet been determined; but I imagine that they will not involve anything essentially hostile to the adoption of the proposed arrangement, or which may not be overcome by friendly negotiation and explanation between the two Governments.

"As relates to the Senate, my Lord, when we consider the moderate and conciliatory spirit in which the entire question of Oregon has been treated by a large majority of that body since the opening of the present Session of Congress, I think it may be fairly expected that their advice to the President on the reference which is about to be made to them will rather favour than impede an early and satisfactory termination of the Oregon difficulties.

"I should add that, in addition to what Mr. Buchanan said about the navigation of the Columbia, he gave it as his opinion that it would be necessary, and even advisable, with the view to avoid future misunderstanding, to define, or to provide for the early definition of, the limits of the farms and lands now in the occupation of the Puget Sound Agricultural Company, and which it is proposed shall be confirmed to the Association in perpetuity. To such a proviso, if conceived in a spirit of liberality and fairness, I imagine that Her Majesty's Government will have no objection. But upon this point, as well as what relates to the navigation of the Columbia, I will act with due caution, and, to the best of my humble judgment and ability, in conformity with the spirit and intention of your Lordship's instructions, as set forth in your Lordship's despatch No. 19.

"I have, &c.  
(Signed) "R. PAKENHAM."

On the 10th of June, the President of the United States sent this Message to the Senate:—

"I lay before the Senate a proposal, in the form of a Convention, presented to the Secretary of State on the 6th instant, by the Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, for the adjustment of the Oregon question, together with a protocol of this proceeding. I submit this proposal to the consideration of the Senate, and request their advice as to the action which, in their judgment, it may be proper to take in reference to it.

"In the early periods of the Government, the opinion and advice of the Senate were often taken in advance upon important questions of our foreign policy. General Washington repeatedly consulted the Senate, and asked their previous advice upon pending negotiations with foreign Powers; and the Senate in every instance responded to this call by giving their advice, to which he always conformed his action. This practice, though rarely resorted to in latter times, was, in my judgment, eminently wise, and may, on occasions of great importance, be properly revived. The Senate are a branch of the Treaty-making Power; and by consulting them in advance of his own action upon important measures of foreign policy which may ultimately come before them for their consideration, the President secures harmony of action between that body and himself. The Senate are, moreover, a branch of the war-making Power, and it may be eminently proper for the Executive to take the opinion and advice of that body in advance upon any great question which may involve in its decision the issue of peace or war. On the present occasion, the magnitude of the subject would induce me under any circumstances to desire the previous advice of the Senate; and that desire is increased by the recent debates and proceedings in Congress, which render it, in my judgment, not only respectful to the Senate, but necessary and proper, if not indispensable, to insure harmonious action between that body and the Executive. In conferring on the Executive the authority to give the notice for the abrogation of the Convention of 1827, the Senate acted publicly so large a part, that a decision on the proposal now made by the British Government, without a definite knowledge of the views of that body in reference to it, might render the question still more complicated and difficult of adjustment. For these reasons I invite the consideration of the Senate to the proposal of the British Government for the settlement of the Oregon question, and ask their advice on the subject.

"My opinions and my action on the Oregon question were fully made known to Congress in my annual Message of the 2nd of December last; and the opinions therein expressed remain unchanged.

"Should the Senate, by the constitutional majority required for the ratification of Treaties, advise the acceptance of this proposition, or advise it with such modifications as they may, upon full deliberation, deem proper, I shall conform my action to their advice. Should the Senate, however, decline by such constitutional majority to give such advice, or to express an opinion on the subject, I shall consider it my duty to reject the offer.

"I also communicate herewith an extract from a despatch of the Secretary of State to the Minister of the United States at London, under date of the 28th of April last, directing him, in accordance with the joint resolution of Congress 'concerning the Oregon Territory,' to deliver the notice to the British Government for the abrogation of the Convention of the 6th of August, 1827; and also a copy of the notice transmitted to him for that purpose, together with extracts from a despatch of that Minister to the Secretary of State, bearing date on the 18th day of May last.

(Signed) "JAMES K. POLK."

"Washington, June 10, 1846."

On the same day the President's Message was considered, and a motion that the Message and documents communicated therewith be referred to the Committee on Foreign Relations was negatived, as was also a motion to postpone the further consideration thereof until 15th June.

On the two next following days the consideration of the Message was continued, and an amendment proposing the addition of a proviso to Article II was moved;\* but

\* Appendix, No. 5.

ultimately it was resolved on a division, by 38 votes to 12, that the President should be advised to accept the proposal of the British Government.

On 13th June Mr. Pakenham reported to his Government as follows:—

(No. 77.)

“My Lord,

“Washington, June 13, 1846.

“In conformity with what I had the honour to state in my despatch No. 68 of the 7th instant, the President sent a Message on Wednesday last to the Senate submitting for the opinion of that body the draft of a Convention for the settlement of the Oregon question, which I was instructed by your Lordship’s despatch No. 19 of the 18th of May to propose for the acceptance of the United States.

“After a few hours’ deliberation on each of the three days, Wednesday, Thursday, and Friday, the Senate, by a majority of 38 votes to 12, adopted, yesterday evening, a resolution advising the President to accept the terms proposed by Her Majesty’s Government. The President did not hesitate to act on this advice, and Mr. Buchanan accordingly sent for me this morning and informed me that the conditions offered by Her Majesty’s Government were accepted by the Government of the United States, without the addition or alteration of a single word.

“At the beginning of our conversation Mr. Buchanan observed to me that the privilege of navigating the Columbia River which, by the second Article of the Convention, is secured to the Hudson’s Bay Company, and to British subjects trading with the same, was understood by the Senate to be limited to the duration of the licence under which the Company now carry on their operations in the country west of the Rocky Mountains; to which I replied, that the Article proposed by Her Majesty’s Government spoke for itself; that any alteration from the precise wording of that Article which the United States’ Government might wish to introduce would involve the necessity of a reference to England, and consequently, to say the least of it, some delay in the termination of the business. This, he seemed to think, under all the circumstances of the case, had better be avoided, and it was finally agreed that fair copies of the Convention should be prepared, and the signature take place on Monday next.\*

“On Tuesday, probably, the Convention will be submitted to the Senate, where its approval may now be considered as a matter of course, so that the Treaty, with the President’s ratification, may be forwarded to England by the ‘Great Western’ steam-packet, appointed to sail from New York on the 25th of this month.

“I have, &c.  
(Signed) “R. PAKENHAM.”

On 16th June a further Message was sent by the President to the Senate, stating that, in accordance with the resolution of the Senate, a Convention was concluded and signed on 15th June, and that Convention he then laid before the Senate for their consideration, with a view to its ratification.

On the same day and the two next following days the Message was before the Senate. Mr. Benton’s speech was made on the 18th. Ultimately, on a division, by a majority of 41 votes to 14, it was resolved that the Senate advised and consented to the ratification of the Treaty.

Mr. Pakenham then further reported as follows:—

(No. 79.)

“My Lord,

“Washington, June 23, 1846.

“I have the honour herewith to transmit a Convention for the settlement of the Oregon Boundary, which was signed by the United States’ Secretary of State and myself, on Monday, the 15th of this month. The terms of this Convention, it will be seen, are in the strictest conformity with your Lordship’s late instructions.

“On Tuesday, the 16th, the Convention was communicated to the Senate, and on Thursday, the 18th, it received the approval of that body by a vote of 41 to 14.

“The American counterpart of the Convention, with the President’s ratification of it, is forwarded to London by a special messenger, to whose care, with Mr. Buchanan’s permission, I commit the present despatch.

“I have, &c.  
(Signed) “R. PAKENHAM.”

Lord Aberdeen’s despatch in answer to Mr. Pakenham’s of 13th June was as follows. It is the document which proves that Mr. MacLane had seen the project of the Treaty:—

(No. 30.)

“Sir,

“Foreign Office, June 29, 1846.

(P.S.—July 1, 1846.)

“Her Majesty’s Government have received this day, with the greatest satisfaction, your despatch No. 77 of the 13th instant, in which you announce the acceptance by the Senate of the draft of Treaty for the settlement of the Oregon question, which was conveyed to you in my despatch No. 19 of the 18th of May, and also the intention of the President to proceed forthwith to the completion of the proposed Convention.

“In your despatch you state that Mr. Buchanan had observed to you that the privilege of

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navigating the Columbia River, which, by the second Article of the Convention, is secured to the Hudson's Bay Company and to British subjects trading with the same, was understood by the Senate to be limited to the duration of the licence under which the Company now carry on their operations in the country west of the Rocky Mountains; to which observation you very properly replied that the Article proposed by Her Majesty's Government spoke for itself.

"Nothing in fact can well be clearer than the language of that Article. In drawing it up I had not the smallest intention of restricting the British right to navigate the Columbia in the manner supposed, nor can I comprehend how such a supposition could have been entertained by the Senate, for I have reason to know that Mr. MacLane fully and faithfully reported to his Government all that passed between himself and me respecting the navigation of the Columbia. In every conversation that we held on the subject of the proposed Treaty, I not only declared to Mr. MacLane that we must insist on the permanent right being secured to us to navigate the Columbia, but I even shewed him the project of the Treaty, and, on his expressing an apprehension that the provision contained in the second Article would not be accepted unless the right of navigation were limited to a term of years, I positively declined to accede to this suggestion.

"I think it right to state these facts, in order to obviate any misapprehension which might possibly hereafter be raised on the construction of the second Article of the Oregon Treaty.

"I am, &c.  
(Signed) "ABERDEEN.

"P.S. July 1.—Since writing this despatch, I have held a conversation with Mr. MacLane, in which he has freely and fully confirmed all that I have stated above with reference to his own understanding of the intent of the second Article of the Oregon Treaty.

(Signed) "A."

Two subsequent despatches of Mr. Pakenham to Viscount Palmerston (who had succeeded Lord Aberdeen as Her Majesty's Principal Secretary of State for Foreign Affairs) are as follows:—

(No. 100.)

"My Lord,

"Washington, July 29, 1846.

"Owing to one of those irregularities which are not unfrequently witnessed in this country, the President's Message to the Senate, submitting, for the advice and opinion of that body, the proposition lately made by Her Majesty's Government for the settlement of the Oregon question, and various other papers connected with that transaction, have found their way into the public papers, notwithstanding that the injunction of secrecy has not yet been removed.

"Amongst other papers thus published, a collection of which I have the honour to inclose,\* will be found a despatch from Mr. MacLane to his Government, reporting what had passed between the Earl of Aberdeen and himself with relation to the proposition which Lord Aberdeen was about to make to this Government, for the partition of the Oregon Territory.

"It would appear from this despatch that Mr. MacLane had no expectation that the terms proposed by Her Majesty's Government would be accepted here; that he discouraged any such expectation on the part of Her Majesty's Government, considering as 'erroneous' an impression, which he found had been produced in England, 'that the Senate would accept the proposition now offered, at least without any material modification, and that the President would not take the responsibility of rejecting it without consulting the Senate;' and, finally, that he gave it as his opinion to the American Government that the offer then made was not submitted as an 'ultimatum,' nor intended as such; in short, that some modification of its terms would, without much difficulty, be acceded to by England.

"It is most providential, my Lord, that Mr. MacLane's suggestions did not succeed either in England in deterring Lord Aberdeen from making his offer, according to his original intention, or here, in inducing the American Government to stand out for some modification of that offer when it was made; for, in either case, all would have been spoiled.

"The President's Message, transmitting the proposition of Her Majesty's Government for the consideration of the Senate is very guarded,—upon the whole, rather deprecating than encouraging the acceptance of the offer; but in this course the President ran no risk and incurred no responsibility whatever, for every one in Washington, at all acquainted with the disposition of the Senate, knew that such a proposition would be accepted by that body, by a large majority.

"I have, &c.  
(Signed) "R. PAKENHAM."

(No. 106.)

"My Lord,

"Washington, August 13, 1846.

"The injunction of secrecy having been removed by a Resolution of the Senate, I have the honour herewith to transmit three numbers of the 'Union' official newspaper, containing, in an authentic form ('Union' of 7th August), the papers relative to the conclusion of the Oregon negotiation which I had the honour to transmit in an unauthorized form with my despatch No. 100, and also ('Unions' of 8th and 10th August) two Messages from the President to the Senate, the first communicating for approval the Treaty signed here on the 15th of June, the second communicating documents not before communicated to the Senate relative to the Oregon Territory in answer to a Resolution of the Senate of the 17th June last.

"Amongst the papers thus made public, the one which I should most particularly recommend to your Lordship's attention, is a despatch from Mr. Buchanan to Mr. MacLane dated the 12th of July, 1845

\* There was inclosed in the despatch a copy of the Baltimore Sun newspaper of 23rd July, 1846.

('Union' of 8th August), setting forth the terms on which the President was willing, at that time, to settle the Oregon question, but evidently with little or no expectation that those terms would be accepted by Great Britain, I might almost say with an expectation scarcely concealed that they would be rejected, when, to use Mr. Buchanan's own words, the President would 'be relieved from the embarrassment in which he has been involved by the acts, offers, and declarations of his predecessors' and be justified in going to war for the whole territory.

"The remarkable thing in this despatch is the confidence which it betrays that, in the course which the President had made up his mind to follow with reference to the Oregon question, he would receive the countenance and support of the Senate and the country, even to the extremity of a war with England. The result has shown that, in this expectation, he did not do justice either to the wisdom and integrity of the Senate, or to the intelligence and good sense of the American people.

"Within a few days after the opening of the late Session of Congress it became evident that Mr. Polk's policy respecting Oregon was viewed with no favour by a large majority of the Senate, nor was the war-cry raised by the more ardent partisans of the Administration responded to in any part of the country.

"In process of time this conclusion forced itself on the mind of the President and his advisers, and hence your Lordship will find in the ulterior despatches of Mr. Buchanan to Mr. MacLane a far more moderate and subdued tone, until at last they exhibit a positive and conciliatory desire to settle the question by compromise, the title of the United States to 'the whole of Oregon' having apparently been forgotten.

"If further proof were wanted of the anxiety of this Government to be extricated from the mistaken position in which they had placed themselves, it would be found in the alacrity in which the terms last proposed by Her Majesty's Government for the settlement of the controversy were accepted.

"Sufficient time has now elapsed since the promulgation of the Treaty to enable us to judge of the light in which the transaction has been viewed throughout the country, and it is gratifying to say that it has been everywhere received with satisfaction and applause.

"No evidence whatever of a contrary feeling has come within my observation, except it be among the disappointed advocates of a war policy, who had staked their political fortune upon the adoption of extreme measures, and even in these quarters, I am bound in truth to say that the irritation is rather against the President and his Ministers for having, as they say, deceived and betrayed them, than from any express condemnation of the Treaty itself.

"I have, &c.  
(Signed) "R. PAKENHAM."

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CHRONOLOGICAL LIST, showing the Names and Dates of Appointment of the various Principal Secretaries of State for Foreign Affairs in Great Britain, and British Ministers at Washington, and of the various Presidents and Secretaries of State of the United States, and United States' Ministers at London, from 1818 to 1872.\*

Chronological  
List.

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\* Referred to in the Statement, page 2, note \*.

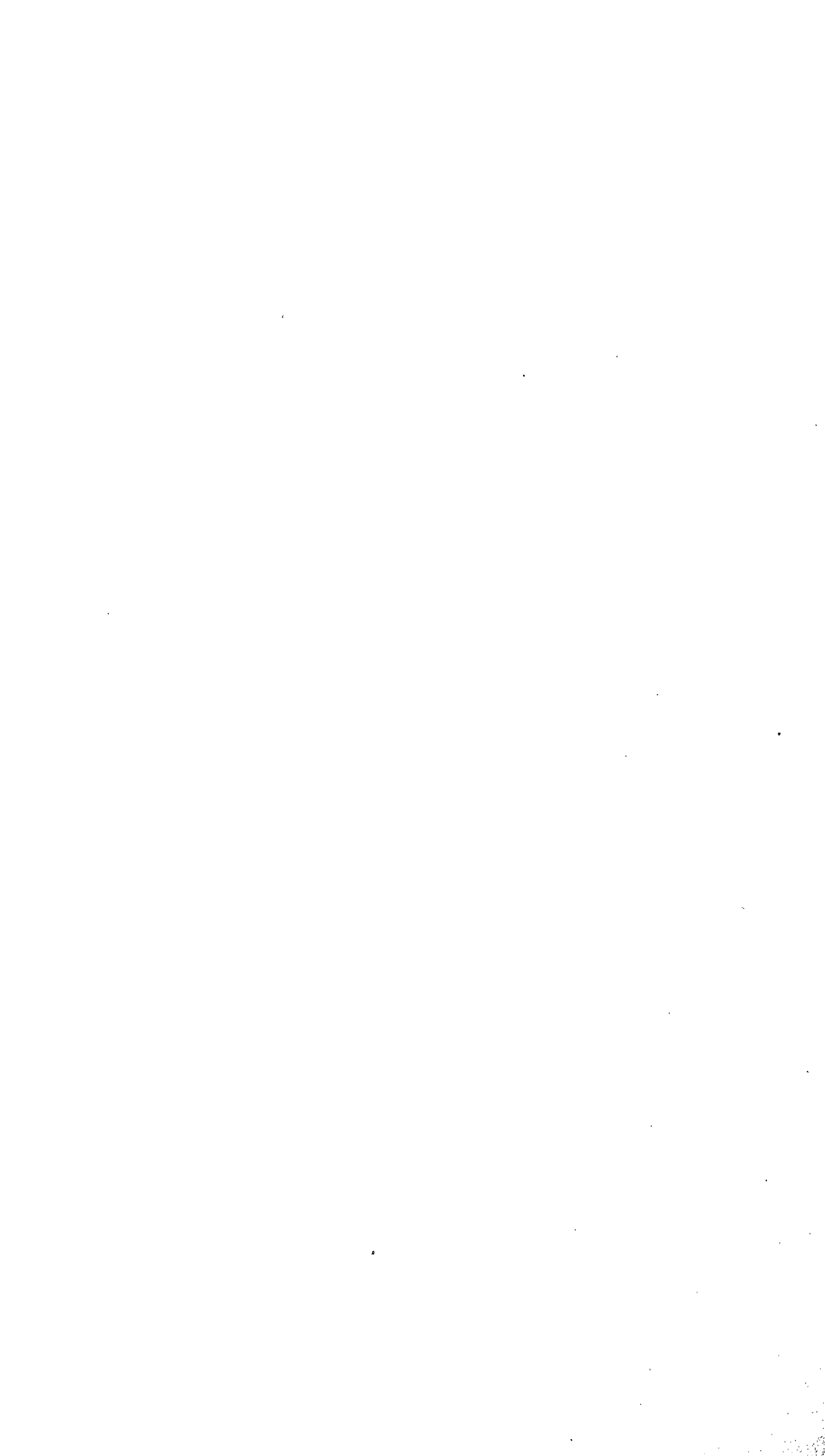


GREAT BRITAIN.

British Foreign Secretaries of State.	Period of Office.	British Ministers at Washington.	Dates of Appointment.
Viscount Castlereagh ..	{Mar. 4, 1812, to Sept. 16, 1822}	Hon. C. Bagot .. .. Sir S. Canning .. ..	July 31, 1815 July 18, 1820
Mr. Canning .. ..	{Sept. 16, 1822, to April 30, 1827}	Sir S. Canning .. .. C. R. Vaughan .. ..	May 21, 1825
Viscount Dudley and Ward	{April 30, 1827, to June 2, 1828}	C. R. Vaughan	
Earl of Aberdeen ..	{June 2, 1828, to Nov. 22, 1830}	C. R. Vaughan	
Viscount Palmerston ..	{Nov. 22, 1830, to Nov. 15, 1834}	C. R. Vaughan	
Duke of Wellington ..	{Nov. 15, 1834, to April 18, 1835}	C. R. Vaughan	
Viscount Palmerston ..	{April 18, 1835, to Sept. 2, 1841}	H. S. Fox .. ..	Oct. 2, 1835
Earl of Aberdeen ..	{Sept. 2, 1841, to July 6, 1846}	H. S. Fox Lord Ashburton (Special Mission) R. Pakenham .. ..	Jan. 18, 1842 Dec. 14, 1843
Viscount Palmerston ..	{July 6, 1846, to Dec. 27, 1851}	R. Pakenham Sir H. Bulwer .. ..	April 27, 1849
Earl Granville .. ..	{Dec. 27, 1851, to Feb. 28, 1852}	Sir H. Bulwer J. F. Crampton .. ..	Jan. 19, 1852
Earl of Malmesbury ..	{Feb. 28 to Dec. 28, 1852}	J. F. Crampton	
Lord John Russell ..	{Dec. 28, 1852, to Feb. 21, 1853}	J. F. Crampton	
Earl of Clarendon ..	{Feb. 21, 1853, to Feb. 26, 1858}	J. F. Crampton Earl of Elgin (Special Mission) Vacant .. .. Lord Napier .. ..	May, 1854 May 28, 1856 Jan. 20, 1857
Earl of Malmesbury ..	{Feb. 26, 1858, to June 18, 1859}	Lord Lyons .. ..	Dec. 13, 1858
Lord John Russell ..	{June 18, 1859, to Nov. 3, 1865}	Lord Lyons Sir F. Bruce .. ..	Mar. 1, 1865
Earl of Clarendon ..	{Nov. 3, 1865, to July 6, 1866}	Sir F. Bruce	
Lord Stanley .. ..	{July 6, 1866, to Dec. 9, 1868}	Sir F. Bruce Sir E. Thornton .. ..	Dec. 6, 1867
Earl of Clarendon ..	{Dec. 9, 1868, to July 6, 1870}	Sir E. Thornton	
Earl Granville .. ..	{July 6, 1870, to}	Sir E. Thornton	

UNITED STATES.

Presidents of the United States.	Period of office.	United States' Secretaries of State.	Period of office.	United States' Ministers in London.	Period of appointment.
James Monroe ..	{Mar. 4, 1817, to Mar. 4, 1825}	John Q. Adams	{Mar. 3, 1817, to Mar. 8, 1825}	J. Q. Adams .. R. Rush ..	{Dec. 22, 1817, to April, 1825}
John Q. Adams..	{Mar. 4, 1825, to Mar. 4, 1829}	Henry Clay ..	{Mar. 8, 1825, to Mar. 6, 1829}	R. Rush R. King .. A. Gallatin .. W. B. Lawrence (Chargé d'Aff.) J. Barbour ..	{Aug. 1825, to June, 1826 Aug. 1826, to Oct. 1827 Dec. 1827 July, 1828, to Sept. 1829}
Andrew Jackson	{Mar. 4, 1829, to Mar. 4, 1837}	M. Van Buren E. Livingston .. Louis MacLane John Forsyth..	{Mar. 6, 1829, to 1831 1831 to Mar. 7, 1833 Mar. 7, 1833, to June 27, 1834 June 27, 1834, to Mar. 5, 1841}	J. Barbour L. MacLane .. M. Van Buren A. Vail .. A. Stevenson ..	{Sept. 21, 1829, to June 9, 1831 Sept. 1831 to Mar. 1832 Mar. 1832, to April, 1836 April, 1836, to Oct. 1841}
Martin Van Buren	{Mar. 4, 1837, to Mar. 4, 1841}	John Forsyth ..	.. ..	A. Stevenson	
W. H. Harrison..	{Mar. 4 to April 4, 1841}	Daniel Webster	{Mar. 5, 1841, to May 9, 1843}	A. Stevenson	
J. Tyler ..	{April 4, 1841, to Mar. 4, 1845}	Daniel Webster Hugh S. Legare Abel P. Upshur John Nelson (Acting) John C. Calhoun	{May 9 to June 24, 1843 June 24, 1843, to Feb. 29, 1844 Feb. 29 to Mar. 6, 1844 Mar. 6, 1844, to Mar. 5, 1845}	E. Everett ..	{Nov. 1841, to Aug. 4, 1845}
J. K. Polk ..	{Mar. 4, 1845, to Mar. 4, 1849}	James Buchanan	{Mar. 5, 1845, to Mar. 7, 1849}	L. MacLane .. G. Bancroft ..	{Aug. 5, 1845, to Aug. 15, 1846 Nov. 2, 1846, to Aug. 31, 1849}
E. Taylor ..	{Mar. 4, 1849, to July 9, 1850}	John M. Clayton	{Mar. 7, 1849, to July 20, 1850}	G. Bancroft A. Lawrence ..	{Oct. 10, 1849, to Sept. 25, 1852}
Millard Fillmore	{July 9, 1850, to Mar. 4, 1853}	Daniel Webster Edward Everett	{July 20, 1850, to 1852 1852, to Mar. 5, 1853}	A. Lawrence J. R. Ingersoll	{Oct. 4, 1852, to Aug. 20, 1853}
F. Pierce ..	{Mar. 4, 1853, to Mar. 4, 1857}	W. L. Marcy..	{Mar. 5, 1853, to Mar. 4, 1857}	J. R. Ingersoll J. Buchanan ..	{Aug. 22, 1853, to Mar. 14, 1856 Mar. 17, 1856, to May 13, 1861 with vacancy from May 1856, to Jan. 1857.
J. Buchanan ..	{Mar. 4, 1857, to Mar. 4, 1861}	Lewis Cass .. S. Black ..	{Mar. 4, 1857, to Dec. 18, 1860 Dec. 18, 1860, to Mar. 4, 1861}	G. M. Dallas G. M. Dallas	
A. Lincoln ..	{Mar. 4, 1861, to April 15, 1865}	W. H. Seward	{Mar. 4, 1861, to Mar. 4, 1869}	C. F. Adams ..	{May 14, 1861, to May 9, 1868}
Andrew Johnson	{April 15, 1865, to Mar. 4, 1869}	W. H. Seward	.. ..	C. F. Adams R. Johnson ..	{Aug. 18, 1868, May 12, 186
General Grant ..	{Mar. 4, 1869 to}	H. Fish ..	Mar. 4, 1869	R. Johnson J. L. Motley .. R. C. Schenck	{May 13, 1869, to June 1871 June 22, 1871}



## Memorandum relative to the Origin and Privileges of the Hudson's Bay Company.\*

IN 1669, certain British subjects formed themselves into a Company, for the purpose of undertaking an expedition to Hudson's Bay. Memorandum on  
Hudson's Bay  
Company.

The object of this expedition was two-fold:—

1. To discover a passage through those parts to the Pacific Ocean, or, as it was then oftener called, the South Sea; and
2. To establish a trade in furs, minerals, and other things.

For the encouragement of this enterprise a Royal Charter was granted to the Company on the 2nd May, 1669. By the terms of this Charter, the Company obtained a Royal Grant of the sole trade and commerce of all the seas, streights, bays, rivers, lakes, creeks, and sounds, in whatsoever latitude they should be, lying within the streights commonly called Hudson's Streights, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, &c., aforesaid, that were not already actually possessed by the subjects of any other Christian Prince or State. The territory thus acquired was to be thenceforth reckoned and reputed as one of the British Plantations or Colonies in America, to be called Rupert's Land.

For nearly a century after the formation of the Company, they confined their posts to the ample territory which had been granted to them by the Charter of Charles II, and left the task of procuring furs to the enterprise of native hunters, who brought the produce of their hunting to the established marts of the Company.

The Company continued to enjoy, until 1784, the monopoly of the trade in these territories, when a rival Company was established, called the North-West Company, which had their head-quarters at Montreal. The North-West Company, instead of following the system of trade adopted by the Hudson's Bay Company, dispatched their servants into the very recesses of the wilderness to bargain with the native hunters at their homes. As the nearer hunting-grounds became exhausted, the North-West Company advanced their stations westwardly into regions previously unexplored; and, in 1806, they pushed forward a post across the Rocky Mountains, and formed a trading establishment on a lake now called Fraser's Lake, situated in 54° north latitude. This would appear to be the first settlement made by civilized men west of the Rocky Mountains.

Other posts were soon after formed amongst the Flat-head and Kootanic tribes on the head waters or main branch of the Columbia; and Mr. David Thomson, the astronomer of the North-West Company, descended with a party to the mouth of the Columbia in 1811. Mr. Thomson and his followers were, according to Mr. Greenhow, the first white persons who navigated the northern branch of the Columbia, or traversed any part of the country drained by it.

In consequence of the rivalry existing between the Hudson's Bay and North-West Companies, which led to frequent conflicts between their respective followers, more particularly with reference to certain settlements formed in the Oregon district by Lord Selkirk, the affairs of the Companies were brought to the notice of Parliament in 1819, and their proceedings were minutely investigated. The Government finally interposed its mediation, and a compromise was effected, by which the North-West Company became merged in the Hudson's Bay Company. Subsequently, and in connection with this arrangement, an "Act for regulating the fur trade and establishing a criminal and civil jurisdiction in

\* Referred to in the Statement, page 2, note \*.

certain parts of North America" was passed in Parliament,\* containing every provision required to give stability to the Hudson's Bay Company, and efficiency to its operations.

By this Act, which was passed in 1821, the Courts of Judicature of Upper Canada were empowered to take cognizance of all causes, civil or criminal, arising in any of the above-mentioned territories, including those previously granted to the Hudson's Bay Company, and in "other parts of America not within the limits of either of the provinces of Upper or Lower Canada, or of any civil Government of the United States."

Shortly before the passing of this Act, the Hudson's Bay and North-West Companies were united; and, on the 6th December, 1821, a grant was made by the King to the Company "of the exclusive trade with the Indians of North America."

By this grant the officers in the service of the Company were commissioned as Justices of the Peace for those countries; and the jurisdiction of the Courts of Upper Canada was rendered effective as far as the shores of the Pacific, the only exception made in that respect being with regard to any territory embraced in the grant, situated "within the limits of any civil Government of the United States." This grant was made for twenty-one years, but before the termination of that period, a further grant was received from the Crown by the Company.

In the grant of 1821 the following reservations were made in favour of the rights of the Crown, and also of those of subjects of foreign States:—

"But we do hereby declare that nothing in this our grant contained shall be deemed or construed to authorize the said Governor and Company, or their successors, or any persons in their employ, to claim or exercise any trade with the Indians on the north-west coast of America, to the westward of the Stony Mountains, to the prejudice or exclusion of any of the subjects of any foreign States who, under or by the force of any Convention for the time being between us and such foreign States respectively, may be entitled to or shall be engaged in the same trade. Provided, nevertheless, and we do hereby declare our pleasure to be, that nothing herein contained shall extend or be construed to prevent the establishment by us, our heirs or successors, within the territories aforesaid, or any of them, of any colony or colonies, province or provinces, or from annexing any part of the aforesaid territories to any existing colony or colonies to us in right of our Imperial Crown belonging, or for constituting any such form of civil government, as to us may seem meet, within any such colony or colonies or provinces."

Such were the provisions made by the British Government for the proper government of the territories situated beyond the Rocky Mountains and on the coasts of the Pacific Ocean. The successful result of these measures for extending the trade of the Hudson's Bay Company, and for forming settlements in these territories by Great Britain, is given in the following extract from Mr. Greenhow's History of Oregon and California, in which he says (page 344):—

"The relative positions of the two parties (Great Britain and the United States) as to the occupancy and actual possession of the countries in question had been materially changed since the conclusion of the former Convention (1818) between them. The union of the rival British Companies, and the extension of the jurisdiction of the Courts of Upper Canada over the territories west of the Rocky Mountains had already proved most advantageous to the Hudson's Bay Company, which had at the same time received the privilege of trading in that country, to the exclusion of all other British subjects. Great efforts were made and vast expenses were incurred by this Company in its efforts to found Settlements on the Columbia River, and to acquire influence over the natives of the surrounding country; and so successful have been those efforts that the citizens of the United States were obliged not only to renounce all ideas of renewing their establishments in that part of America, but even to withdraw their vessels from its coasts. Indeed, for more than ten years after the capture of Astoria by the British, scarcely a single American citizen was to be seen in those countries. Trading expeditions were subsequently made from Missouri to the head-waters of the Platte and the Colorado, within the limits of California, and one or two hundred hunters and trappers from the United States were generally roving through that region; but the Americans had no Settlement of any kind, and their Government exercised no jurisdiction whatsoever west of the Rocky Mountains.

"Under such favourable circumstances, the Hudson's Bay Company could not fail to prosper. Its resources were no longer wasted in disputes with rivals; its operations were conducted with dispatch and certainty; its posts were extended, and its means of communication were increased, under the assurance that the honour of the British Government and nation was thereby more strongly interested in its behalf. The agents of the Company were seen in every part of the Continent—north and north-west of the United States and Canada, from the Atlantic to the Pacific—hunting, trapping, and trading with the aborigines. Its boats were met on every stream and lake, conveying British goods into the interior, or furs to the great depositories on each ocean, to ship to England in British vessels; and the utmost order and regularity were maintained throughout by the supremacy of British laws. Of the trading-posts many were fortified, and could be defended by their inmates—men inured to hardships and dangers—against all attacks which might be apprehended; and the whole vast expanse of territory

\* Act 1 & 2 Geo. IV, cap. 66; July 2, 1821.

above described, including the regions drained by the Columbia, was, in fact, occupied by British forces and governed by British laws, though there was not a single British soldier, technically speaking, within its limits." Memorandum on  
Hudson's Bay  
Company.

The Hudson's Bay-Company possessed, in 1844, twenty-two forts or establishments west of the Rocky Mountains, of which several were situated on the coasts.

On the River Columbia were Fort Vancouver, Fort Walla-walla, Fort Okinagan, Fort Colville; on the River Saptin or Lewis, a branch of the Columbia, were Fort Boisé and Fort Hall.

To the south of the Columbia River were Fort George, which occupied the site of the former settlement of Astoria, and Fort Umqua, near the mouth of the Umqua River, which enters the Pacific about 180 miles south of the Columbia.

At Puget Sound was Fort Nasqually, near which place also the Company had a large agricultural establishment.

At the entrance of Fraser's River was Fort Langley, and further north were Fort Alexandria, and Fort M'Laughlin on the coast.

In 1849, a grant of Vancouver's Island was made to the Company by the Crown, but, in 1859, the island was resumed by the Crown, and was made a Colony.

In 1868, the Company surrendered their remaining territorial rights to the Crown, and the territory over which those rights extended, under the title of Rupert's Land, was subsequently admitted into and became part of the Dominion of Canada.

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**APPENDIX.**

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## APPENDIX.

Appendix.

## No. 1.

## EXTRACT SHIEWING VIEWS OF EARL OF ABERDEEN AND SIR RICHARD PAKENHAM.

*Lord John Russell to Lord Lyons, 24th August, 1859; read, and copy given, to United States' Secretary of State.*

(Extract.)

I have to state to you that the Earl of Aberdeen, to whom I have referred, informs me that he distinctly remembers the general tenour of his conversations with Mr. MacLane on the subject of the Oregon Boundary, and is certain that it was the intention of the Treaty to adopt the mid-channel of the Straits as the line of demarcation, without reference to islands, the position, and indeed the very existence, of which had hardly at that time been accurately ascertained; and he has no recollection of any mention having been made, during the discussion, of the Canal de Haro, or, indeed, any other channel than those described in the Treaty itself.

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

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Inclosure in foregoing despatch.

*Memorandum by Sir R. Pakenham on the Water Boundary under the Oregon Treaty of 1846.*

I have examined the papers put into my hand by Mr. Hammond, relating to the line of boundary to be established between the British and United States' possessions on the north-west coast of America, and I have endeavoured to call to mind any circumstance which might have occurred at the time when the Oregon Treaty was concluded (June 15, 1846), of a nature either to strengthen or to invalidate the pretension now put forward by the United States' Commissioner, to the effect that the boundary contemplated by the Treaty, would be a line passing down the middle of the channel called Canal de Haro, and not, as suggested on the part of Great Britain, along the middle of the channel called Vancouver's or Rosario Strait; neither of which two lines would, as I humbly conceive, exactly fulfil the conditions of the Treaty, which, according to their literal tenour, would require the line to be traced along the middle of the channel (meaning, I presume, the whole intervening space), which separates the Continent from Vancouver's Island. And I think I can safely assert that the Treaty of June 15, 1846, was signed and ratified without any intimation to us whatever on the part of the United States' Government, as to the particular direction to be given to the line of boundary contemplated by Article I of that Treaty.

All that we knew about it was, that it was to run "through the middle of the channel which separates the Continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca's Straits, to the Pacific Ocean."

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

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

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

It is my belief that neither Lord Aberdeen, nor Mr. MacLane, nor Mr. Buchanan, possessed at that time a sufficiently accurate knowledge of the geography or hydrography of the region in question, to enable them to define more accurately what was the intended line of boundary than is expressed in

Appendix.

the words of the Treaty, and it is certain that Mr. Buchanan signed the Treaty with Mr. MacLane's despatch before him, and yet that he made no mention whatever of the "Canal de Haro as that through which the line of boundary should run, as understood by the United States' Government."

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

## No. 2.

## CORRESPONDENCE BETWEEN MR. BANCROFT AND MR. BUCHANAN.

*Mr. Bancroft to Mr. Buchanan.†*

Sir,

London, November 3, 1846.

While in the Navy Department I caused a traced copy of Wilkes' chart of the Straits of Haro to be made. If not needed in the Navy Department, I request that the President will direct it to be sent to this Legation. It is intimated to me that questions may arise with regard to the islands east of that Strait. I ask your authority to meet any such claim at the threshold by the assertion of the central channel of the Straits of Haro as the main channel intended by the recent Treaty of Washington. Some of the islands I am well informed are of value.

Very respectfully, &c.  
(Signed) GEORGE BANCROFT.

Hon. James Buchanan,  
Secretary of State.

*Mr. Buchanan to Mr. Bancroft.†*

Sir,

Department of State, Washington, December 28, 1846.

I have obtained from the Navy Department, and now transmit to you, in accordance with the request contained in your despatch No. 1 (November 3), the traced copy of Wilkes' chart of the Straits of Haro. This will enable you to act understandingly upon any question which may hereafter arise between the two Governments in respect to the sovereignty of the islands situate between the Continent and Vancouver's Island. It is not probable, however, that any claim of this character will be seriously preferred on the part of Her Britannic Majesty's Government to any island lying to the eastward of the Canal of Arro, as marked in Captain Wilkes' Map of the Oregon Territory. This, I have no doubt, is the channel which Lord Aberdeen had in view when, in a conversation with Mr. MacLane about the middle of May last, on the subject of the resumption of the negotiation for an amicable settlement of the Oregon question, his Lordship explained the character of the proposition he intended to submit through Mr. Pakenham. As understood by Mr. MacLane, and by him communicated to this Department in his despatch of the 18th of the same month, it was—"First, to divide the territory by the extension of the line on the parallel of 49° to the sea; that is to say, to the arm of the sea called Birch's Bay, thence by the *Canal de Haro* and Straits of Fuca to the ocean," &c.

George Bancroft, Esq.,  
&c., &c., &c.

I am, &c.  
(Signed) JAMES BUCHANAN.

[Inclosure: Chart of the Straits of Juan de Fuca, Puget Sound, &c. By the United States' Ex. Ex., 1841.]

## No. 3.

## LETTERS OF MR. CRAMPTON SHEWING MR. BUCHANAN'S OPINIONS.

*Mr. Crampton to Viscount Palmerston.*

(No. 2.)

My Lord,

Washington, January, 13, 1848.

On the receipt of your Lordship's despatch No. 21 of the 17th ultimo, by which I am instructed to communicate with the United States' Government with a view to the adoption of early measures for laying down such parts of the line of boundary between the British and United States' territory in North America, described in the Convention of the 15th June, 1846, as the two Governments may, upon mutual consultation, deem it advisable to determine, I waited upon Mr. Buchanan for the purpose of putting him in possession of the views of Her Majesty's Government upon the subject.

After having read to him your Lordship's despatch, together with the Draft of Instructions to the two Commissioners to be appointed in case the views of Her Majesty's Government were coincided in by the Government of the United States, I proceeded to inquire of Mr. Buchanan whether the manner suggested by your Lordship of bringing the matter under the consideration of the President of the United States, by reading to him your Lordship's despatch and presenting to him a copy of the proposed Draft of Instructions, would be admissible.

To this course Mr. Buchanan objected, as being informal, and contrary to the practice of the United States' Government, which coincided, he added, in that respect, with that of the Government of Great Britain, and he requested me, in case your Lordship's instructions did not preclude me from so doing, to communicate to him in writing the present proposal of Her Majesty's Government, together with the considerations upon which it is founded, as explained in your Lordship's despatch. He might otherwise, he said, find it difficult to convey to the President and to his colleagues in the Cabinet as clear an exposition as he could wish of the views of Her Majesty's Government upon the subject, adding that these appeared to him to be so fair and unobjectionable that he could conceive no possible case in which any inconvenience to either Government would result from an unreserved communication of them in writing.

I trust that your Lordship will not disapprove of my having, under these circumstances, so far departed from the course pointed out by your Lordship's instructions as to comply with Mr. Buchanan's request by addressing to him the note of which I have the honour to enclose a copy, and in which I have embodied the substance of your Lordship's despatch.

With respect to the expediency of laying down that part of the boundary line suggested by your Lordship's despatch, Mr. Buchanan said that he coincided in opinion with Her Majesty's Government, but he added that it was his own "impression," although he had not examined the subject with sufficient attention to enable him yet to say that it was his "opinion," that it would be desirable to go further, and to proceed to mark out on the ground, without unnecessary delay, the boundary line from the point where the 49th parallel of latitude meets the shore of the Gulf of Georgia, eastward to where it strikes the Columbia River (the portions for which an estimate is made in the 3rd section of Colonel Estcourt's Memorandum), and this appeared to him to be advisable from the reports he had lately received of the rapid manner in which colonists from the United States are spreading in that direction.

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

The subject, Mr. Buchanan assured me, should receive the immediate attention of the United States' Government, with every disposition to avoid delay or difficulty in the accomplishment of an object which he felt to be extremely desirable for both Governments.

I have, &c.  
(Signed) JOHN F. CRAMPTON.

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*Mr. Crampton to Mr. Marcy.*

Sir,

*Washington, February 9, 1856.*

I have been instructed by Her Majesty's Government to call the serious attention of the Government of the United States to the unsatisfactory and hazardous state of things which continues to exist on the boundary which divides the Territory of Washington from the British Possessions occupied by the Hudson's Bay Company; and Her Majesty's Government direct me to express their regret that their repeated remonstrances have not led to any measures which seem to have succeeded in restraining the acts of the authorities of that Territory.

I have already had the honour of addressing your Department (in a note to Mr. Hunter on the 27th July last), respecting the depredations upon the property of the Hudson's Bay Company on the Island of San Juan, by Mr. Ellis Barnes, Sheriff of Watcom County, of the Territory of Washington, in virtue of an alleged claim for taxes due to the authorities of the Territory; and I have now the honour to enclose the copy of a further letter from the Governor of the Hudson's Bay Company, together with its accompanying documents, in regard to the same matter, from which it appears that no reparation whatever has been made to the Company for the very heavy losses which they incurred on that occasion.

You will at once perceive, Sir, that the occurrence in question has arisen out of the conflicting claims of the authorities of Vancouver's Island and of Washington Territory to the jurisdiction of the Island of San Juan, as appertaining, under the provisions of the Treaty between Great Britain and the United States of 1846, to the dominions of their respective Governments.

San Juan is one of the small islands lying in the Gulf of Georgia, between Vancouver's Island and the mainland; and the question which has arisen between the parties regards the position of the channel through the middle of which, by the provision of the Treaty of 1846, the boundary line is to be run.

In the early part of the year 1848, I had the honour, by the instruction of Her Majesty's Government, to propose to the Government of the United States to name a Joint Commission for the purpose of marking out the north-west boundary; and more particularly that part of it in the neighbourhood of Vancouver's Island, in regard to which, as you will perceive from a reference to my note of the 13th January of that year to the Honourable James Buchanan, the Secretary of State of the United States, Her Majesty's Government already foresaw the possibility of the occurrence of misunder-

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standing between the settlers of the respective nations: and Her Majesty's Government, moreover, then proposed, in order at once to preclude such misunderstandings, that before instructing their respective Commissioners, the two Governments should agree to adopt as the "channel" designated by the Treaty, that marked by Vancouver in his charts as the navigable channel, and laid down with soundings by that navigator.

Mr. Buchanan entirely concurring in the expediency of losing no time in determining the position of the boundary line, nevertheless felt some objection to adopting the channel marked by Vancouver as the "channel" designated by the Treaty, in the absence of more accurate geographical information, and he suggested that the Joint Commissioners, when appointed, should be in the first place instructed to survey the region in question, for the purpose of ascertaining whether the channel marked by Vancouver, or some other channel, as yet unexplored, between the numerous islands of the Gulf of Georgia, should be adopted as the channel designated by the Treaty, or, in other words, should be found to be the main channel, through the middle of which, according to the generally admitted principle, the boundary line should be run.

To this suggestion Her Majesty's Government, in the hope that immediate measures would be taken by the Government of the United States to name Commissioners to proceed to the spot with those already designated by the British Government, made no objection.

It has been a subject of regret to Her Majesty's Government that, from causes upon which it is unnecessary to dwell, no appointment of Commissioners has, up to the present time, been made by the Government of the United States; and I am now instructed again to press this matter on their earnest attention.

Should it appear possible, however, that this proposal cannot be met by the Government of the United States without further difficulty or delay, I would again suggest the expediency of the adoption by both Governments of the channel marked as the only known navigable channel by Vancouver, as that designated by the Treaty. It is true that the Island of San Juan, and perhaps some others of the group of small islands by which the Gulf of Georgia is studded, would thus be included within British territory; on the other hand, it is to be considered that the islands in question are of very small value, and that the existence of another navigable channel, broader and deeper than that laid down by Vancouver, by the adoption of which some of those islands might possibly fall within the jurisdiction of the United States, is, according to the reports of the most recent navigation, extremely improbable; while, on the other hand, the continued existence of a question of doubtful jurisdiction in a country so situated as Washington Territory and Vancouver's Island, is likely to give rise to a recurrence of acts of a similar nature to those to which I have had the honour of calling your attention, and which I have no doubt would not be less deplored by the Government of the United States than by that of Great Britain.

I am, &c.  
(Signed) JOHN F. CRAMPTON.

## No. 4.

## CONVERSATION AND CORRESPONDENCE BETWEEN MR. BANCROFT AND VISCOUNT PALMERSTON.

*Mr. Bancroft to Mr. Buchanan.†*

Sir,

*United States' Legation, London, August 4, 1843.*

\* \* \* \* \*

The Hudson's Bay Company have been trying to get a grant of Vancouver's Island. I inquired, from mere curiosity, about it. Lord Palmerston replied that it was an affair that belonged exclusively to the Colonial Office, and he did not know the intentions of Lord Grey. He then told me what I had not known before, that he had made a proposition at Washington for marking the boundaries in the north-west by setting up a landmark on the point of land where the 49th parallel touches the sea, and for ascertaining the division line in the channel, by noting the bearings of certain objects. I observed that on the mainland a few simple astronomical observations were all that were requisite; that the water in the Channel of Haro did not require to be divided, since the navigation was free to both parties; though, of course, the islands east of the centre of the Channel of Haro were ours. He had no good chart of the Oregon waters, and asked me to let him see the traced copy of Wilkes' chart. He spoke of the propriety of settling definitively the ownership of the several islands, in order that settlements might not be begun by one party on what properly belongs to the other. On returning home I sent him my traced copy of Wilkes' chart, with the note, of which I inclose a copy.

I am, &c.  
(Signed) GEORGE BANCROFT.

*Mr. Bancroft to Viscount Palmerston.§*

My dear Lord,

90, Eaton Square, July 31, 1843.

As your Lordship desired, I send for your inspection the traced copy, made for me at the Navy Department, of Wilkes' Chart of the Straits of Juan de Fuca, Puget's Sound, &c. &c. Unluckily, this copy does not extend quite so far north as the parallel of 49°; though it contains the wide entrance into the Straits of Arro, the channel through the middle of which the Boundary is to be continued.

The upper part of the Straits of Arro is laid down, though not on a large scale, in Wilkes' map of

† As officially printed in the United States.

§ Inclosure in last foregoing letter.

the Oregon Territory, of which I am sorry to say I have not a copy, but which may be found in the Atlas to the Narrative of the United States' Exploring Expedition.

Appendix.

I remain, &c.  
(Signed) GEORGE BANCROFT.

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*Viscount Palmerston to Mr. Bancroft.*

*Foreign Office, August 24, 1848.*

Viscount Palmerston presents his compliments to Mr. Bancroft, and has the honour to return to him herewith, with his best thanks, the traced copy of Wilkes' Chart of the Straits of Juan de Fuca, &c., which Mr. Bancroft so obligingly sent to Lord Palmerston on the 31st ultimo.

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*Mr. Bancroft to Viscount Palmerston.*

My Lord,

108, Eaton Square November 3, 1848.

I did not forget your Lordship's desire to see the United States' surveys of the waters of Puget's Sound, and those dividing Vancouver's Island from our territory.

These surveys have been reduced, and have just been published in three parts; and I transmit, for your Lordship's acceptance, the first copy which I have received.

The surveys extend to the line of 49°; and by combining two of the charts, your Lordship will readily trace the whole course of the channel of Arro, through the middle of which our boundary line passes. I think you will esteem the work done in a manner very creditable to the young navy officers concerned in it.

I have, &c.  
(Signed) GEORGE BANCROFT.

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*Viscount Palmerston to Mr. Bancroft.*

Sir,

*Foreign Office, November 7, 1848.*

I beg leave to return you my best thanks for the surveys of Puget's Sound, and of the Gulf of Georgia, which accompanied your letter of the 3rd instant.

The information as to soundings contained in these charts will, no doubt, be of great service to the Commissioners who are to be appointed under the Treaty of the 15th of June, 1846, by assisting them in determining where the line of boundary described in the 1st Article of that Treaty ought to run.

I have, &c.  
(Signed) PALMERSTON.

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No. 5.

PROPOSED AMENDMENT OF ARTICLE II OF TREATY.

The following was moved in the Senate of the United States, on 12th June, 1846, as an addition to the Resolution advising the President to accept the proposal:—

“With the following proviso at the end of the II<sup>nd</sup> Article of the proposed Convention, to wit:

“Provided, That the right of navigating the Columbia River secured to the Hudson's Bay Company, and to all British subjects trading with the same, be limited to the year A.D. 1863, when it shall cease and determine.”

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*Mr. Buchanan to Mr. MacLane.*

(No. 34.)

Sir,

*Department of State, Washington, June 13, 1846.*

The President communicated to the Senate, on the 10th instant, a confidential Message, of which I transmit you a copy, asking their previous advice in regard to the Project of a Convention for the adjustment of the Oregon question delivered to me by Mr. Pakenham on the 6th instant.

On yesterday the Senate adopted the following resolution:—

“Resolved, (two-thirds of the Senators present concurring), That the President of the United States be, and he is hereby advised to accept the proposal of the British Government accompanying his Message to the Senate dated 10th June, 1846, for a Convention to settle boundaries, &c., between the United States and Great Britain, west of the Rocky or Stony Mountains.”

The vote of the Senate stood 37\* to 12.

I have learned from the best sources that the Senate gave this advice under the conviction that, by

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\* So, in the letter as officially printed in the United States.

Appendix.  
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the true construction of the second Article of the Projet, the right of the Hudson's Bay Company to navigate the Columbia would expire with the termination of their present licence to trade with the Indians, &c., on the north-west coast of America on the 30th May, 1859. In a conversation with Mr. Pakenham to-day I communicated this fact to him, and requested him to state it in his despatch to Lord Aberdeen.

The Treaty will be signed and sent to the Senate on Monday next; and it is more than probable that they will, in some form or other, place upon their records their understanding of its true construction in this particular.

I have, &c.  
(Signed) JAMES BUCHANAN

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