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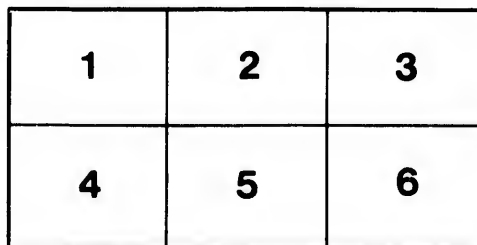
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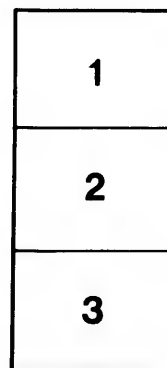
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SAN JUAN ISLAND.

SPEECH

OF

HON. JACOB M. HOWARD,

OF MICHIGAN,

DELIVERED

IN EXECUTIVE SESSION OF THE SENATE,

APRIL 16, 1869,

(THE INJUNCTION OF SECRECY HAVING BEEN REMOVED.)

Feb 1870

WASHINGTON:
F. & J. RIVES & GEO. A. BAILEY,
REPORTERS AND PRINTERS OF THE DEBATES OF CONGRESS.
1870.

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SAN JUAN ISLAND.

The Senate, being in executive session on the proposed treaty with Great Britain of January 14, 1869, for the settlement, by arbitration, of the water-boundary line between the United States and Great Britain in Puget sound, the injunction of secrecy having been removed February 4, 1870—

Mr. HOWARD said:

Mr. PRESIDENT: The island of San Juan is one of the numerous group of islands in Puget's sound, on the Pacific coast. On the west it is separated from Vancouver's Island by the channel known as the straits of Haro, and lies about fifteen miles from the southern extremity of Vancouver. It is about fifteen miles long and on an average six or seven miles broad. It has a good soil and a plenty of timber, as well as extensive quarries of limestone. By our countrymen this island has been claimed to belong to the United States, under the boundary treaty between us and Great Britain, of June 15th, 1846. It at first fell within the limits of Oregon Territory, and was embraced within one of its counties. Territorial taxes were levied and collected there upon property belonging to the Hudson Bay Company, as well as that of American settlers.

In 1859 a dispute arose as to the rightful jurisdiction of the United States over the island. A Scotchman had an unruly pig that got into the potato patch of a Yankee settler and did him damage. The Yankee remonstrated once and again with the Scotchman, but to no effect; and, losing his patience, as he should not have done, he took his rifle and shot the animal. A warrant was at once issued for his apprehension by a British magistrate at Victoria on Vancouver's Island; and a Mr. Dallas, son-in-law of Mr. Douglas, Governor of British Columbia, came over from Victoria to aid in making the arrest, threatening to take the defendant and carry him over to Victoria for trial.

The defendant denied the jurisdiction of the British authorities, and refused to be arrested; he protested that the island was American soil, on which British process could not be served, and stubbornly refused to be tried by a British court on Vancouver's Island. The controversy waxed warm. He was told he had shot his neighbor's pig. He admitted it, and offered to pay the owner twice the value of the pig, but as for being taken over to Vancouver for trial he would not, and told Mr. Dallas plainly that if he attempted to seize him for that purpose he would use the same rifle in shooting him and the officer holding the warrant.

The parley ended here. No attempt was made to seize him. But the event seems to have occasioned a sensation in Victoria as well as on the island. General Harney, commanding the department, ordered a company of American troops at Fort Bellingham to be posted on San Juan to protect the American settlers from such outrages, as well as from the depredations of marauding Indians from the north. The captain of this company was immediately warned off the island by the agent of the Hudson Bay Company. He of course disregarded the warning; and thereupon three British ships of war approached the island in a menacing manner. But this attempt to intimidate did not move Captain Picket. He still remained at his post on the island, within short range of the British guns. Governor Douglas thundered forth a proclamation that the "sovereignty of the island of San Juan and of the whole of the Haro Archipelago has always been undeviatingly claimed in the Crown of Great Britain," and that the "sovereignty thereof by right now is and always hath been in her Majesty Queen Victoria and her predecessors, kings of Great Britain." This was on the 2d of August, 1859.

In the midst of these troubles President

Buchanan dispatched General Scott to Puget sound. The General, without attempting to settle, or even to inquire into the merits of the question of jurisdiction, entered into an agreement with Governor Douglas for a joint military occupation of the island by the United States and Great Britain, to the exclusion of the civil authorities of either, temporarily, and until it would be settled by the two Governments. And such is its present status.

The question now presents itself, Who owns San Juan Island? And this is the main question before us.

The original claim of Great Britain, as put forth in the protocol of July 3, 1824, was the forty-ninth degree of north latitude extended to a point where that line cuts the Columbia river; thence down the middle of that river to the Pacific ocean, the navigation of the whole channel of the river to be free to both parties. (Senate Doc., No. 1, first session Twenty-Ninth Congress, p. 144, in note.)

This would have given to Great Britain almost the whole of Washington Territory, for the forty-ninth parallel strikes the Columbia at what is now known on the maps as Fort Shepard or New Colville; and also something more than four degrees of sea-coast on the Pacific now belonging to the United States, stretching from the mouth of the Columbia northwestwardly to the middle of the straits of Fuca, the length of this strip of coast being about three hundred miles.

On the 26th of August, 1844, at the conference held by Mr. Calhoun, then Secretary of State, and Mr. Pakenham, the British plenipotentiary, the latter so far modified this claim as to offer to make free to the United States any port or ports which the United States Government might desire, either on the main land or on Vancouver's Island, south of latitude forty-nine.

At another conference, held by the same ministers on the 2d September, 1844, Mr. Calhoun expressly declined this proposal of the British plenipotentiary.

Thus the matter stood till Mr. Polk became President of the United States, in March, 1845, no real progress having been made in the negotiation.

Mr. Buchanan then promptly took up the subject, and the correspondence between the two Governments became very active. War menaced the two countries, growing out of their disagreements touching the boundary line from the crest of the Rocky mountains to the Pacific ocean.

Our Government manifested a dignified but firm determination not to yield to the exorbitant demands of Great Britain, and were entirely ready, if Great Britain saw fit, to settle the controversy by the sword. This was clearly manifest to the British Government.

On the 18th of May, 1846, less than a month

before the signing of the treaty of June 15 of that year, Mr. McLane, our minister at London, wrote to Mr. Buchanan a very important dispatch. He says:

"I have now to acquaint you that after the receipt of your dispatches on the 15th instant, by the *Caladonia*, 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 forty-nine 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; 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."

The letter mentions two other propositions, to accompany the former, but as they do not relate to the line of boundary, but only to the rights of British subjects and American citizens on each side of the contemplated line, it is unnecessary further to mention them.

Mr. McLane must have derived this information directly from his conversation with Lord Aberdeen, held the day before—a conversation which he described as a "lengthened conference;" and he speaks of the proposal about to be made by the latter as having "formed the subject of a full and free conversation" with Lord Aberdeen; nay, it is fair to infer, from his subsequent language in the same dispatch, that he had actually seen Lord Aberdeen's treaty, for he says: "It is scarcely necessary for me to state that the proposition, as now submitted, has not received my countenance."

On the 6th of June a conference took place between Mr. Buchanan and Mr. Pakenham at the State Department, when the British minister submitted to him the draft of a convention, which, in the language of the protocol, signed the same day by them both, was the result of the motives that "had induced her Majesty's Government to instruct him to make another proposition to the Government of the United States for a solution of these long-existing difficulties."

On the 10th of June President Polk communicated this proposition to the Senate for their consideration. His message also inclosed the protocol of the 6th.

The first article of this proposed convention, drawn up by Lord Aberdeen in London, and thus made known to our minister, Mr. McLane, on the 17th of May, and transmitted on the 19th to Mr. Pakenham, is in exactly the same words as the first article of the treaty signed at Washington on the 15th of the following June; so that the interpretation of it ought to have refer-

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he proposed it.

But before I proceed to the discussion of this
intention, let me endeavor to show from the
provisions of the treaty itself that this claim
of the British Government is foreclosed and
concluded. The first article of the proposed
convention reads as follows, and, as I have
remarked, is identical in language with the first
article of the treaty:

"From the point on the forty-ninth parallel of
north latitude where the boundary laid down in ex-
isting treaties and conventions between Great Brit-
ain and the United States terminates, the line of
boundary between the territories of her Britannic
Majesty and those of the United States shall be con-
tinued westward along the said forty-ninth parallel
of north latitude to the middle of the channel which
separates the continent from Vancouver's Island;
and thence southerly, through the middle of the said
channel and of Fuca's straits, to the Pacific ocean;
Provided, however, That the navigation of the whole
of the said channel and straits south of the forty-
ninth parallel of north latitude remain free and open
to both parties."

The leading subject of this article is the
channel which separates the continent from
Vancouver's Island. It was then well known,
from charts and maps which were before Lord
Aberdeen, particularly Vancouver's map, that
east of Vancouver's Island, and between it
and the shore of the main continent, lay a
group of twelve or fifteen islands, forming an
extensive archipelago, which islands were sepa-
rated from each other by numerous channels
or straits, such as are common in the geog-
raphy of the world.

These islands lie, and were then known to
lie, between the eastern shore of Vancouver's
Island and the western shore of the continent,
which two shores are upon an average about
fifty miles apart, and the channels are of course
as numerous as the islands. Looking from
the north, and following down through these
numerous channels, they all seem to converge
and unite in the straits of Fuca, which lead
from the north, seeming to drain the various
channels out around the southern cape of Van-
couver's Island into the Pacific ocean, drawing
the waters, so to speak, from latitude 49° north,
southwardly, and then westwardly around the
south cape of Vancouver into the open sea
through those straits.

The first article prescribes that that "chan-
nel" shall be followed "which separates the
continent from Vancouver's Island."

Why was this expression used? The British
Government had all along through this
negotiation claimed not only the whole of this
archipelago, but also the whole region of
country to the south of it and north of the
Columbia river.

On this point the correspondence is perfectly
conclusive.

Why did Lord Aberdeen say the "middle
of the channel which separates the continent

from Vancouver's Island?" What other mo-
tive could he have had but to reassert and
keep up the claim to the whole of Vancouver's
Island? This was plainly his sole object. He
could not have intended to claim another
island in that archipelago, or any channel
which would have given him San Juan or any
other of those islands lying east of the middle
of the channel which gave him Vancouver,
because if such had been his intention, he
would have used an expression different from
the one he employed; he would have said the
channel which separates such and such islands
between the two shores from the continent.
Instead of this, he designates solely the chan-
nel which separates the continent from Van-
couver. Vancouver was the sole object to be
segregated from the territory his Government
had up to that moment claimed. This was
plainly his sole object.

If his object had been different, if it included
other islands than Vancouver and its proper
appendages, he would have used different lan-
guage; but his designation of Vancouver as a
part of the disputed territory to be left ex-
pressly in the possession of Great Britain is a
perfectly clear concession to the United States
of all other islands belonging to that archi-
pelago, and lying between the continent and
Vancouver.

The channel here mentioned is the one
which "separates the continent from Van-
couver." The great object is to keep Vancouver,
and to exclude it from the concession about to
be made to the United States. No other chan-
nel but that of De Haro can with any propriety
be said to do this. No channel lying east of
it and east of other islands can be said to sepa-
rate the continent from Vancouver. The
language would be wholly inappropriate. The
channel next east of San Juan is "President's
passage;" next east of which is a group of
half a dozen islands irregularly located; and
next east of these is Rosario strait, so called,
running round east of that group, forming a
sort of semicircle, commencing at the north,
where it forms a part of the Gulf of Georgia,
and stretching around near to the mainland
to the straits of Fuca, but containing many
small islands within itself, and leaving still
more islands between its eastern rim and the
mainland, or continent proper. To speak of
this Rosario strait as separating the conti-
nent from Vancouver's Island is equally ab-
surd; for precisely the same thing may be
said of half a dozen other channels among the
numerous islands.

The treaty channel has a "middle," and is
connected expressly and by direct terms in the
article with Fuca straits and the Pacific ocean.
The language is, "the middle of said channel
and of Fuca straits;" showing that this "mid-
dle" is one line, though running through two
geographical water communications, the de-

scription of that line, owing to its position, requiring two forms of expression.

The possession of Vancouver had been a subject of negotiation between the two Powers for some time; but it is to be observed that no other island east of it had been a subject of controversy or negotiation at all; indeed not one word had been said during the whole negotiation respecting any other island, and it is too plain for debate, having reference to the correspondence and to this article of the treaty, that Vancouver was the sole and only territorial possession to which Great Britain then sought to adhere south of the forty-ninth degree.

The channel, then, mentioned in this article must upon every principle of interpretation be held to be the channel which separates and segregates to Great Britain Vancouver's Island. This channel was at that time well known as the Canal de Haro, a designation perfectly well known to navigators and commercial men, as noted upon the maps and charts of the period. This channel is but a communication between the Gulf of Georgia, lying on the northeast side of Vancouver and leading down south and southwest into the eastern end of the straits of Fuca, which lead out into the ocean.

That I am correct in this is demonstrated by the indubitable fact that in Lord Aberdeen's dispatch to Mr. Pakenham of the 18th of May, 1846, transmitting his proposed treaty, he says that the latter is authorized—

"To propose as a boundary line the forty-ninth parallel to the sea-coast; thence in a southerly direction through the center of King George's sound and the straits of Fuca to the ocean, thus giving to Great Britain the whole of Vancouver's Island and its harbors."

I should add here that the fact of this dispatch containing the particular language here recited having been sent by Lord Aberdeen is proved by the statement contained in the letter of Mr. Campbell, the American commissioner, to General Cass, Secretary of State, dated January 20, 1859, in which the commissioner observes that in his then recent personal interview with Lord Napier, the British minister at Washington, the latter submitted it to his perusal, though he declined to furnish him a copy.

The joint commission carefully explored the several channels in this archipelago and took the soundings. While doing this they acted together and in concert. When, however, they discovered that it was impossible for them to agree, each furnished to his Government a map of the fruits of their operations. The one furnished by our commissioner, Mr. Campbell, is now before us in Executive Document No. 29 of the second session of the Fortieth Congress; a document of the greatest importance, containing the latest expression of opinion by our own Government on this subject, particularly the able and patriotic dispatch of General

Cass to Mr. Dallas, our minister to London, of the 20th October, 1859.

Now, by looking upon this map it will be easily seen that the straits of Haro unite the Gulf of Georgia with the straits of Fuca, through the narrow passage that lies between the little promontory on the east end of Java Island, known as East Point, and Potos Island, which is about five miles directly to the east of East Point. In this narrow passage the water is deeper than at any spot north or east of it, and there it is absorbed into and joins the straits of Haro, which grow deeper and deeper as you pass down southwesterly into the straits of Fuca, the depth in this narrow passage being from one hundred and five to one hundred and fifteen fathoms. The head of Rosario straits, or as anciently known Vancouver's straits or channel, is properly and geographically directly east of this narrow passage; and the fact is an important one for the ascertainment of the true channel called for by the treaty, that at this head of Rosario straits the water is only eighty-eight or ninety fathoms deep, and grows more and more shoal southwardly from that point and very soon dwindles to a depth of only sixty and fifty. This shows that the main channel is that which passes from the Gulf of Georgia through that narrow passage into Haro straits, leaving San Juan to the east of it.

Again, the depth of water in fathoms, according to actual soundings, from the point where the British or Rosario line of channel cuts the forty-ninth degree of latitude, southeasterly along that line to a point directly east of Potos Island, is as follows: 118, 102, 82, 60, 71, 72, 80, 115, 105, 116, 107, 90, 96, 100, 97, 87, 87, 99; which give an average depth along this part of the Rosario line of ninety-three fathoms.

But the depth of water, according to like soundings, from the point where the forty-ninth degree cuts the line of deepest channel in the Gulf of Georgia, (which point is about five miles west from where the Rosario line cuts the parallel of forty-nine degrees,) down to the east and west line, passing from East Point across to Potos Island, is as follows: 187, 168, 148, 133, 112, 100, 106, 94, 87, 116, 99, 108, 108, 108, 129, 115, 105, 116, which gives an average depth to the American line, lying as it does about five miles from the Rosario line, of one hundred and eighteen fathoms, the difference between the depth of this line and the Rosario line being twenty-five fathoms on an average in our favor. This greater depth of the American line, following as it does the bottom of the main channel, proves beyond all rational dispute that the American line, from its northern point down to the center of this narrow channel, is the "middle of the channel" referred to in the treaty.

It is not only deeper than the Rosario channel by twenty-five fathoms, but it is the deepest channel in the whole of the archipelago except

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the canal De Haro, with which it unites by means of this narrow channel.

Now, let us compare the depth of the remaining portion of the Rosario line, commencing east of Potos Island with that of the strait De Haro, running from the same narrow channel down round the west side of San Juan and between it and Vancouver's into the straits of Fuca, to a parallel of latitude which gives us San Juan with other islands of the archipelago, and on which parallel the canal de Haro and the Rosario straits meet and form the straits of Fuca. I say let us compare the depth of water on these two competing lines of channel.

We have the following results: the soundings along the American or De Haro line are as follows: 80, 84, 87, 94, 100, 96, 123, 93, 118, 120, 76, 33, 85, 70, 83, 105, 182, 170, 105, 100, 121, 143, 178, 94, 113, 173, 95, 108, 120, 91, 157, 149, 155, 141, 140, 165, 150, 153, 95, 122, 116, 85, 109, 97, 115, 89, 109, 92, 97, 75, 96, 97, 108, 89, 29, 91, 96, 97; presenting an average depth on this De Haro line of one hundred and ten and a half fathoms.

On the Rosario line we have the following soundings: 89, 82, 74, 66, 70, 63, 64, 59, 67, 34, 34, 47, 63, 62, 53, 40, 46, 40, 49, 66, 36, 41, 56, 45, 54, 29, 30, 34, 29, 34, 25, 29, 38, 60, 37, 55, 25, 60, 21, 53, 23, 26, 42, 30, 28, 43, 48, 60, 38, 42, 36, 40, 40, 44, 43, 40; presenting an average depth on the Rosario line of sixty-five and a half fathoms, the difference in favor of the De Haro channel being fifty-five fathoms or a distance of about fifty miles on each line, or, to speak more intelligibly, from the southeast end of the Gulf of Georgia to the head of the straits of Fuca, so that along the northern portion of these two lines there are twenty-five fathoms of water in our favor, and on the southern portion fifty-five fathoms.

I have said there are various channels passing among these islands between the line of De Haro and that of Rosario, one of which, running on the east side of San Juan Island, known as President's passage, was proposed by the British commissioner to the American commissioner as a compromise between the De Haro and the Rosario lines.

This compromise line was very properly rejected by the American commissioner. It has none of the features of "the channel" mentioned in the treaty. Its average depth falls short even of the Rosario channel, and it is evident that the offer was a mere makeshift on the part of the British commissioner to grasp San Juan Island.

It is indubitable, for it is expressed in the first article of the treaty in clear terms, that the boundary "shall be continued westward along the forty-ninth parallel of north latitude to the middle of the channel," &c.

Here, in the clearest language, the treaty recognizes a channel "in the middle" of which

this forty-ninth degree boundary is to terminate. And from this point of intersection the boundary is to be deflected, and is to run "through the middle of said channel and of Fuca straits to the Pacific ocean."

This language implies, as I have remarked, that "the channel" and "Fuca straits" form one continuous water-course from the point of beginning on the forty-ninth degree around into the ocean; and this language was perfectly consistent with the notorious fact, well understood by navigators and geographers, that there was exactly such a channel.

The negotiators of the treaty on both sides well understood this, and no dispute or denial of its existence ever arose; and it was equally well known that Vancouver's Island lay to the west of this water-course. The first article recognizes this channel and strait as such water-course, for it provides in express terms—

"That the navigation of the whole of said channel and straits south of the forty-ninth degree of north latitude shall remain free and open to both parties."

Here, then, is the water-course described in the first article as the channel "through the middle of which and of Fuca straits" the boundary runs to the Pacific ocean. I say the middle of the channel and the middle of Fuca straits, that channel and those straits being contemplated as one and the same continuous water-course, and having, in the words of the treaty, a "middle;" that is, a line or *filum* in the "middle" of the water-course.

This "middle" is the boundary as established by the treaty.

Now, what is the "middle" of a stream or water-course, used as a boundary between nations, in the sense of the law of nations?

I do not refer to the rule of the English common law touching riparian rights where lands are bounded on a stream not navigable. In such cases the grant extends to the middle of the stream. Each opposite owner holds the bed of the river to the middle of the bed; that is, to a line running along on the bottom and corresponding exactly with a surface line on the water equidistant, or equidistant upon an average, from the respective shores; this surface line cutting in two all the islands that lie on it and giving moities of them to the opposite proprietors or grantees. This principle of the common law, sound in itself but having relation only to the interests of private parties, is inapplicable to the water boundaries of nations. The principle, it is to be observed, applies, as the English books all say, only to grants of land bounded "on a river," or "by a river," or "on" or "along" the "shore," or "bank," or "margin" of a "river or stream." No such descriptive words are used in the treaty. Between the mainland of the continent and that of Vancouver the whole space is covered with water,

except as its surface is pierced by islands; and if the treaty is to be interpreted and applied according to the narrow rule of the common law, then the line of boundary must be "averaged;" that is, must be drawn from the middle of the water space on the forty-ninth parallel southwardly literally through the center of this whole sheet of water between the two main shores to the middle of Fuca straits, bisecting several islands, and among them, in all probability, San Juan itself, and giving parcels of each to the contesting parties.

Such a mangling of the islands and islets would indeed be ludicrous; so ludicrous that it has never been at all suggested by the greedy advocate of the British claim. Nobody has thought of applying the common law rule of private riparian proprietorship to these islands. Even Governor Douglas, of British Columbia, the originator of the claim to San Juan, has maintained a discreet silence in this regard.

Again, Great Britain is already by her own former acts estopped and concluded from asserting that this middle surface-line through the archipelago is the true line. By the treaty of 1783, fixing the first boundaries between the United States and Great Britain, the water-line on our northern frontier runs expressly to "the middle of the river St. Lawrence; thence along the middle of said river to Lake Ontario; thence along the middle of the said lake to the water communication between that lake and Lake Erie; thence through the middle of said lake to the water communication between it and Lake St. Clair; (i. e. through the middle of the Detroit river, which has numerous islands;) thence through the middle of Lake St. Clair to the water communication between it and Lake Huron; thence through the middle of said lake to the water communication between it and Lake Superior; thence through the middle of Lake Superior," &c.

Now, the commissioners appointed by the respective Governments to survey and mark this long line of water boundary, not less than fifteen hundred miles long, invariably and by a formal written agreement followed, as their triangulated maps now in the Department of State show, the center line of the surface of the water when that line did not strike islands; and where it did they followed the deepest channel, giving the whole island to the party holding on the opposite or shallower side. A striking instance of this is found in Belle Isle—once known as Hog Island—nearly opposite Detroit. The center surface-line would have cut the island in nearly equal parts, and yet the boundary line was laid down on the east side of it and along the deeper and more navigable channel, thus giving the whole island to the United States. And other similar instances might be cited. So that the commissioners acted no longer upon the common-law principle of the centre of the surface when an island

was met with, but abandoned it and followed the *thalweg* or deeper channel; that is, they followed the gutter or lowest part of the water-bed. The importance of this document will, I know, justify me in laying it before the Senate. It is still on file in the Department of State, under the hands of the commissioners of the respective Governments, Messrs. Porter and Ogilvy, and reads as follows:

"1. The boundary shall universally be a water-line, so as never to divide an island.

"2. Where there are several channels or passages, and but one of them navigable, the navigable channel shall indicate the line.

"3. Where there are two channels, and each affords a good navigation, the line shall follow the largest column of water.

"4. When there are more than two channels the line shall follow the one nearest the center, provided it leaves a good navigation to each party."

Both Governments adopted and acted upon this principle under that ancient treaty, conched in the same terms, meaning the same thing, and neither party has ever complained of this time-honored, practical interpretation and use of these terms, nor attempted to depart from it until in 1859 Governor Douglas and the Hudson Bay Company discovered that it would lose them San Juan Island; and then they began to wriggle about the interpretation of the treaty. The doughty Governor actually brought out a British fleet with two hundred and fifty guns on board to drive Captain Pickett, who fortunately was sent there in the nick of time by General Harney, from this island. But he did not quite dare open his broadsides upon Pickett's handful of men. The presence of the spirit's Harney seems to have been a discouragement.

But again to the point. The boundary here is not declared to be at or on or along the channel, or by the channel, or by or on the margin, shore, or coast of the channel, but from a given point in the middle of the channel, and thence southerly through the middle of said channel and through the middle of the straits of Fuca, the line of boundary being thus expressly defined instead of being left to conjecture and to be made out or guessed out by "averaging" the width of the surface of the whole channel, a thing which, from the very nature of the case, owing to the fact that the surface is half land and half water, an intermixture of islands and channels and shoals, it was and is utterly impossible to do.

And this was well and perfectly known to Lord Aberdeen, who proposed not only the boundary but the whole treaty. Such a thing as a boundary line cutting into two equal portions the whole space between the continent proper and Vancouver, land and water, island, and all, never occurred to him, because upon Vancouver's map, which Lord John Russell says was then before Lord Aberdeen, the Harney channel by name, as well as others not named, was distinctly laid down.

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I have by the surface-waters because treaty of abstain account together line through the middle line are by the one and naturally not be u geograph of the of first, bec applied in the c because ually ab idea; an ically im of the tre one, by r other wo middle of Fuca. I given, th the very or retract is the sarnels, Geo in point they form de." I ascertain I have it cannot must be l tion of th Halleck internatio produced "But wh terminous tion, the th of separati which the general rul n, althou aries into t H-fner "If a riv each exten the bed, ca as the thalw as in the tra Sweden."

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What, then, is the middle of this channel, and how is it to be ascertained?

I have shown that it cannot be ascertained by the common-law rule of running a center surface-line through the whole expanse of waters and islands lying between the two shores, because both Powers have construed differently from that an identical expression in the treaty of 1783, and because both have all along abstained from even suggesting such a line, on account of the impossibility of bringing together the two lines, namely, the "middle" line through the Gulf of Georgia and the middle line through Fuca straits, which two lines are by the treaty contemplated as forming but one and the same line, by running into and naturally uniting with each other, which could not be unless the middle of one channel was geographically and in point of fact the middle of the other. I say, for these three reasons: first, because the two Governments have not applied the common-law rule to islands lying in the center of the water surface; second, because both have throughout the dispute actually abstained from putting forth such an idea; and third, that such a line is geographically impossible, having in view the language of the treaty, which really makes the two lines one, by running the one into the other, or, in other words, welding them so as to form one middle of the two channels, Georgia and De Fuca. In construing the language the datum given, the point conceded by both parties by the very language itself, and not to be denied or retracted by either, is that this middle line is the same line and runs through both channels, Georgia and Fuca; and, of course, that in point of fact, as admitted by both parties, they form but one channel, having this "middle." How then, I ask again, is it to be ascertained?

I have shown that in reference to the islands it cannot be by the common-law rule. Resort must be had to some other to get at the intention of the parties.

Halleck, one of the most careful thinkers on international law that the United States have produced, says, (page 138:)

"But where the river not only separates the continuous States, but also their territorial jurisdiction, the *thalweg*, or middle channel, forms the line of separation through the bays or estuaries through which the waters of a river flow into the sea. As a general rule this line runs through the deepest channel, although it may divide the river and its estuaries into two very unequal parts."

Hilfner (section sixty-six) says:

"If a river separates two States the dominion of each extends to the middle of the river, sometimes the bed, called the *thalweg*, serves as the boundary, as the *thalweg* of the Rhine. This mode was adopted in the treaty concluded in 1809 between Russia and Sweden."

The *thalweg* is the "valley way" or lowest part of the bed of the stream, the line most followed by boatmen in going down stream.

Klüber, speaking of the frontiers of the territories of a State, (section one hundred and thirty-three,) says:

"As to rivers and lakes as frontiers by which the opposite banks are equally occupied, the middle, comprising in this the islands traversed by the line of the middle, ordinarily separates the territories. Instead of this line nations have recently chosen for frontier the *thalweg*; that is to say, the variable way taken by boatmen when they go down stream, or rather the middle of this way or road."

The author adds in a note:

"In the treaty concluded between the grand duchy of Baden and the canton of Argovia, September 18, 1808, the parties took for their limit the *thalweg* of the Rhine, but by this is understood the deepest places of the river, and as to the bridges their middle."

Webster defines "channel" as the deeper part of a strait, bay, or harbor, where the principal current flows, either of tide or fresh water, or which is the most convenient for the track of a ship.

Worcester defines the word as the bed of a stream of water, especially the deeper part of a river or bay, where the main current flows; a strait or narrow sea between two portions of land, as the British channel.

Wheaton says:

"Where a navigable river forms the boundary of continuous States, the middle of the channel, or *thalweg*, is generally taken as the line of separation between the two States, the presumption of law being that the right of navigation is common to both."

The author here manifestly treats the expressions "middle of the channel" and "*thalweg*" as equivalent, that is, the lowest bottom of the channel.

Thus it appears that in its geographical and hydrographical sense the word "channel" is the equivalent of "*thalweg*," with this only difference in popular use that "*thalweg*" implies a downstream motion, and is therefore more generally applied to rivers or flowing masses of water, while "channel" applies alike to water flowing and non-flowing. When either of these terms relates to the earthy bed of the river it means the lowest part or gutter of that bed. Speaking of this bed, and on and along this bed is the boundary line, a child will tell you that the middle of the channel is the deepest and lowest portion of the passage "channeled" out through the earth. "Through the middle of the channel" means, in the popular understanding, through the lowest bottom of the space hollowed out, whether on land lying under water or not, because the mind at once measures the depth of the channel by, so to speak, a vertical radius or diameter in order to estimate the size and capacity of the channel.

The true boundary, then, according to the text of the treaty, is this line running from where the forty-ninth parallel strikes the line of deepest water in the whole channel, thence southwardly along this deepest line in the straits of Georgia and the line of deepest water through

the straits of Haro to those of Fuca, into the ocean. This line is easily found. It has been ascertained by actual surveys and soundings executed by the joint commission of the two Governments. It gives the United States San Juan Island, the most valuable in the group, both in reference to navigation and military defense. The description in the treaty itself settles the question; the line has been ascertained in perfect accordance with the terms of the treaty, giving those terms the meaning and effect required by the law of nations and the action and consent of the British Government itself under precisely like circumstances on the river and lake frontier described by the treaty of 1783. Why arbitrate when your legal rights are clear and indubitable? Were it a doubtful question in fact, there might be propriety in settling it by arbitration, for a submission to arbitration always implies some doubt of the legality of your claim, and is, in ninety-nine cases out of a hundred, practically an invitation to split the difference between the parties. But in this case there is so little uncertainty, such an absence of all ground of doubt, that it seems ridiculous for us to undergo the humiliation of putting our rights and interests to hazard. The step will inevitably lose us San Juan. I predict it here. The British Government have set their heart upon this island. There has been already as much contest, trouble, and negotiation about it as there was about the northeastern boundary. On each side the sword has been sharpened for the final contest; and no longer ago than August, 1859, Lord John Russell announced to our Government in a solemn dispatch to Lord Lyons, the resident British minister here, that—

"Her Majesty's Government must, under any circumstances, maintain the right of the British Crown to the island of San Juan. The interests at stake in connection with the retention of that island are too important to admit of compromise."

And adds these haughty terms:

"And your lordship will consequently bear in mind that whatever arrangement of the boundary line is finally arrived at, no settlement of the question will be accepted by her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown."

Is not this a sufficient intimation of the purpose of England and of the value of the island? No settlement will be accepted which does not give her that island! It is her *sine qua non*; and this, notwithstanding Lord Aberdeen, his predecessor, had in the very dispatch (of May 18, 1846) which carried to Washington his proposal that afterward became the treaty, expressly renounced all the islands except only Vancouver. The language of this dispatch is:

"The forty-ninth parallel to the sea-coast, thence in a southerly direction through the center of King George's sound and the straits of Fuca to the ocean; thus giving to Great Britain the whole of Vancouver's Island and its harbors."

And notwithstanding Lord Aberdeen had in conversation with our minister, Mr. McLane, only three days before, assured him that his proposal of a treaty would run the line through the "canal De Haro and straits of Fuca," thus in express words adopting the De Haro channel for which we now contend, and which I have shown to be the legal boundary called for by the treaty.

Are we now, with such facts before us; with the contemporary admissions and statements of the party proposing the treaty, the party against whom in law and in morals it is to be most strongly taken; with the treaty itself calling for that line; with the declaration that that line ran through the Haro channel; with the admission that "Vancouver and its harbors" were all that the proposer sought to retain—are we to be told now that the De Haro line was not intended; that no arrangement is to be accepted which does not give San Juan to the proposer of the treaty? Are we to be thus cajoled and then coaxed into an arbitration? Sir, the honor of this nation forbids it. Let us not fall into such a snare.

I am aware that this peremptory language of Lord John Russell in his dispatch of August 24, 1859, was afterward the subject of discussion between the two Governments. Its effect upon the American Secretary of State, General Cass, was to incline him to break off the negotiation; and it is interesting to observe the diplomatic machinery, not to say artifice, used to keep it on foot and to avoid an armed collision.

Lord Russell, in his dispatch to Lord Lyons of that date, expresses the purpose of his Government in distinct and unequivocal terms. Giving his language its obvious, I should perhaps say its only construction, General Cass, in his dispatch to Mr. Dallas, our minister to England, of the 20th of October, says:

"If this declaration is to be insisted upon, it must terminate the negotiation at its very threshold, because this Government can permit itself to enter into no discussion with that of Great Britain or any other Power except upon terms of perfect equality. And when her Majesty's Government declares that it will never yield its right to the island of San Juan, this Government has only to declare a similar determination on the part of the United States, in order to render any further discussion of the subject entirely fruitless."

On receiving a copy of this dispatch, Lord Russell seems put to his wits for an explanation. In his dispatch to Lord Lyons, of the 29th November, he says:

"That declaration, which was to the effect that no settlement of the question will be accepted by her Majesty's Government which does not provide for the island of San Juan being reserved to the British Crown, appears to have given rise to some misconception. When the meaning of a treaty is, in the opinion of one of the parties, clearly in favor of the interpretation it has adopted, but the interests at stake are unimportant, the point in dispute may be willingly yielded for the sake of peace and good neighborhood; but when the meaning is, in the opin-

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ion of one of the parties, clearly in their favor, and the interests at stake are at the same time highly important, a concession which would involve both an evident right and a valuable interest could hardly be expected. Such was the sense in which I wrote that we could not accept a settlement which would deprive the British Crown of the island of San Juan."

So that his former declaration that his Government would accept of no compromise and no settlement, under any circumstances, that should not give it that island, is made to stand as a mere appreciation, an estimate of the great value of the island; but in his dispatch he is careful not to retract his former language, nor to vary its obvious and unmistakable meaning and intention.

Again, in his subsequent dispatch to Lord Lyons of the 16th of December, he repeats that—

"Her Majesty's Government were merely insisting upon the retention of an island which, from the peculiarity of its situation, it was impossible for her Majesty's Government to cede without compromising interests of the gravest importance."

On receiving this dispatch, General Cass was still unsatisfied to go on with the negotiation. In his dispatch to Mr. Dallas of the 4th February, 1860, he says:

"But I am prevented from pursuing these considerations, because, as I have already stated, the discussion has been practically foreclosed by the declaration of Lord John Russell, that it can, under no circumstances, affect the British claim."

Thus the dilemma produced by Lord John Russell's peremptory declaration still remained. In his dispatch to Lord Lyons of March 9, 1860, speaking of it, he says:

"That explanation was offered by her Majesty's Government in all sincerity and candor, and your lordship will, I doubt not, share the disappointment of her Majesty's Government that it has not been accepted as satisfactory. I can only now repent, and your lordship will earnestly impress this upon General Cass, that the United States Government has entirely misconceived the purport of my declaration."

And this diplomatic *mensonge*, this averment that General Cass had "misconceived" the import of a statement made in plain English, which every plow-boy and every milk-maid in the land understands at once, is accepted as such a retraction of the offensive expression, such a retreat from the aggressive position of Great Britain on this question, that the business of negotiation again proceeds. Our Secretary, in his dispatch to Mr. Dallas of April 23, accepts it—for he could do no less—as a statement that the declaration of August 24 was "not intended to convey the meaning which this Government had attached to it."

But that such an intention did exist, and was plainly expressed in that declaration, no one can for a moment doubt; that it was not misconceived by our Government, is equally certain. And even if left to stand upon Lord Russell's explanation of November 29, the purpose of the British Government is not less clear. It

is expressed in language almost as peremptory. It is that—

"A concession which involves both an evident right and a valuable interest can hardly be expected."

But the door being thus opened, General Cass, in his note to Lord Lyons of June 25, 1860, expressed his readiness—

"To receive and fairly consider any proposition which the British Government may be disposed to make for a mutually acceptable adjustment, with an earnest hope that a satisfactory arrangement will speedily put an end to all danger of the recurrence of those grave questions which have more than once threatened to interrupt the good understanding which both countries have so many powerful motives to maintain."

Meanwhile the joint military occupation of San Juan, agreed to by General Scott in 1859, was recognized by both the Governments; an arrangement which, not resting upon any law or constitutional provision, has been and still is resisted by the civil authorities of Washington Territory, who are in turn punished, or sought to be punished, for attempting to execute the laws of the Territory, by the military authorities of their own country, who in turn are again held amenable to the civil authorities of the same country, presenting, as Major General Halleck says, in his letter of November 18, 1867, "an anomalous condition of affairs on that frontier."

But the negotiation respecting San Juan and the water boundary took another step, in the form of a letter from Lord Lyons to General Cass, of December 10, 1861, proposing an arbitration, and, curious enough, naming the king of the Netherlands, the king of Sweden, and the president of the Federal Council of Switzerland as the persons from whom the arbiter should be selected.

I am not aware that this letter was ever answered, except by selecting the president of that Council, as Secretary Seward did in the concoction of this treaty. Strange to say, he passed by our old friends the emperor of Russia, the king of Prussia, the emperor of Brazil, the president of the republic of Mexico, (a very able and competent man,) and proposed no name himself in this serious matter involving the limits of the Republic as well as commercial interests of great magnitude.

Mr. President, I confess I am not strongly attached to the policy of settling by arbitration any question arising out of the foreign relations of the United States, and would not encourage it. I do not think that in the long run that mode of composing differences will be found conducive to our harmony with other nations or to the confidence of our own people in their Government. In both cases the best arbitrator of our claims is found in that cultivated and well-observed sense of justice which has hitherto marked and ought ever to mark our course; in that disposition to do right so eloquently inculcated in Washington's Farewell

Address—a justice that inspires respect at home and abroad; and in our power as a Government to redress national wrongs.

Such a policy inevitably tends to impair that high sense of honor and of national responsibility before the world for acts done to us and of acts done by us, without which we should soon lose our standing in the family of nations. It tends to belittle the national dignity. It encourages both aggression and subserviency at the same time, by the expectation it creates that the difference will be easily settled by arbitration, and invites the nation, whether the occasion be great or small, to become a party litigant, begging the justice and protection of some emperor, king, prince, or president; wrangling, squabbling in foreign courts to maintain its rights or to evade a just responsibility. It is the policy of litigation, voluntary litigation, and is demoralizing, because in every case there is an implied confession that after all we may be in the wrong. It impairs the confidence of the people in the good sense and good judgment of their own Government, teaches them to doubt whether their own country is right or wrong, and thus dampens the national spirit and saps the foundation of patriotism; and what is the worst of all, it takes from the constituted authorities of the nation the duty of protecting the honor, the rights, and the interests of the whole people, and commits them to other hands, reducing those constituted authorities to the humble character of mere solicitors for justice before a foreign master, instead of requiring them to demand and enforce that justice, upon the responsibility of the people they represent.

Least of all should a question of territorial limits be referred to arbitration. I know of no precedent of the kind in our own history or that of other countries. Such a mode of settlement, although not perhaps prohibited by the Constitution of the United States, is yet open to great objection. It disturbs and disappoints the American citizen who has become a settler and has invested his means on the faith of the Government, and who is unwilling to renounce his allegiance to his country and to be transferred to another. This island began to be settled by our people as early as 1850 or 1851. In 1852 it was, by the laws of Oregon Territory, included in one of its counties. Territorial taxes were levied and collected there. It was after this occupancy by our citizens that the Hudson Bay Company intruded upon the island and inaugurated this dispute while our people were settling upon it.

These settlers or their representatives are still there, subject to General Scott's "joint military occupation." Their families, their homes, their property are there; a fact well known to the American negotiator of this treaty. And yet the treaty contains not one word relating to their persons or property, grants them no

protection, no right to sell and remove from the island, but turns them over like serfs and slaves to their new masters, should the President of the Swiss Confederation so will, subjecting them to be expelled by force from their possessions, their houses and lands. To what authority, to what law can they appeal? None! They must flee when warned, though their "flight be in the winter or on the Sabbath day," and be agonized by the presence of "them that be with child and them that give suck." This may come of referring this question of boundary to arbitration, an utter abandonment of the duty of protecting our own citizens and a heartless transfer of their destinies to the Power whose dragooning and whose arts may have finally prevailed!

We have but a moment ago rejected the Alabama claims treaty, because, in the language of the chairman of the Committee on Foreign Relations, [Mr. SUMNER,] it was "a snare." This treaty is a worse one. It places our important territorial rights—rights which Mr. Polk and Mr. Buchanan refused and properly refused to submit to arbitration in this same northwestern region—in the keeping of the "President of the Swiss Confederation," the temporary head of a feeble State without permanent official position or responsibility, possessing in small measure the dignity of head of a State; a man without known eminence as a jurist, a man unfamiliar with our language and institutions, representing a small nation: it places in his feeble hands both the honor of our country and its indubitable territorial rights; and invites him, if he can be induced so to do, to tarnish that honor and to transfer those rights.

Sir, I will consent to no such thing. I cannot agree that because we have rejected the Alabama claims treaty we are called upon to relieve British mortification at that act by gracefully letting England have her way in Puget's sound. My reading and observation have made me too well acquainted with the great historic truth of her diplomacy, that she is more practiced in evading treaties than any other civilized nation. I cannot forget that after the settlement of the northeastern boundary question it turned out from maps and other evidence in her own possession but never made known to us, that her whole claim was groundless and her whole conduct little better than bluster.

I cannot forget the open breach of treaty and violation of the duty of neutrality, when by the misconduct and culpable neglect of her Government during the late rebellion her own subjects were permitted to launch upon our unarmed commerce on the seas the rebel pirate crafts that lighted up the midnight skies with our burning steamers, brigs, and schooners; nor, that when our minister, presenting the facts, remonstrated against the fitting out and departure of these rebel corsairs which finally

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escaped, he was coolly told that they had escaped in consequence of the sickness and inability of the law officer of the Crown to examine into the facts—a mere shuffle to cover up and hide from the world the fact of the connivance of the Government itself with the rebels.

In short, sir, it is folly to affect ignorance of the truth—the gigantic, overshadowing truth, that the governing and commercial classes of England yearned for the destruction of our Government; hungered and thirsted to see the American Government, that Government whose fundamental principle is that all political power resides in the people, utterly destroyed. This Government was and is a standing scoff, flung in the teeth of legitimacy and aristocracy everywhere. It is the Government of popular rule, the Government of liberty, in antagonism to privilege. It was natural they should wish to see it extinguished. Such a result would have been a verification of their teachings. It would have proved, for the time being at least, that the theory that the mass of the people can govern themselves was a delusion, as they had taught all along. And it would have done more; it would have utterly destroyed a commercial rival on this side of the Atlantic. Deprived of power as a nation the United States would have presented two or three score of disunited, feeble States, without consideration or influence among the nations of the earth, without nationality, without power to resist injustice, but presenting the best market in the world for the sale of the products of the workshops of England. This was the prospect presented. Was ever temptation such as this held out to

the mind of man—the overthrow of popular government, and boundless wealth flowing into the pockets of the commercial and manufacturing classes? And to attain these ends they were willing to forswear all their vows against human slavery, all their professions of friendship for a "kindred people having a common religion and language," all their solemn treaties of peace, amity, and commerce with us, and to make war upon us under the deceitful form of conceding belligerent rights to the rebels. Sir, do not ask me to respect the sensibilities of such a Government. If it can gain by over-reaching it does so, and sneers at the equality of man whenever man is weighed against the dollar.

It is time, sir, that that Government should understand that the people of the United States are no longer to be trifled with; that treaties made with that people are not to be broken but kept; that we are able, willing, determined, that the faith of England given to us in her treaties shall be kept. I say it without boasting, but she knows and we know that we have it in our power easily to compel her to do justice. Why, then, omit to warn her to surcease her usurped occupation of this island? Why permit the "joint occupation" agreed upon by General Scott in 1859 to endure longer? It may be replied, it will be followed by war. I do not believe it. But should she choose war, should she lift her weapon in attempting to enforce her claim, we must accept the issue. We must then reckon with her hilt to hilt; we must then mark down the future boundaries of this country with the point of the sword,

PURCHASED 6 Aug 1913
FROM The Larch Press
PLACE OF PURCHASE Cedar Rapids, Iowa
PRICE \$1.00

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