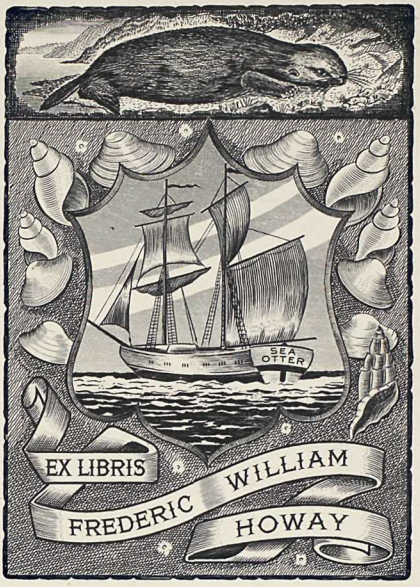

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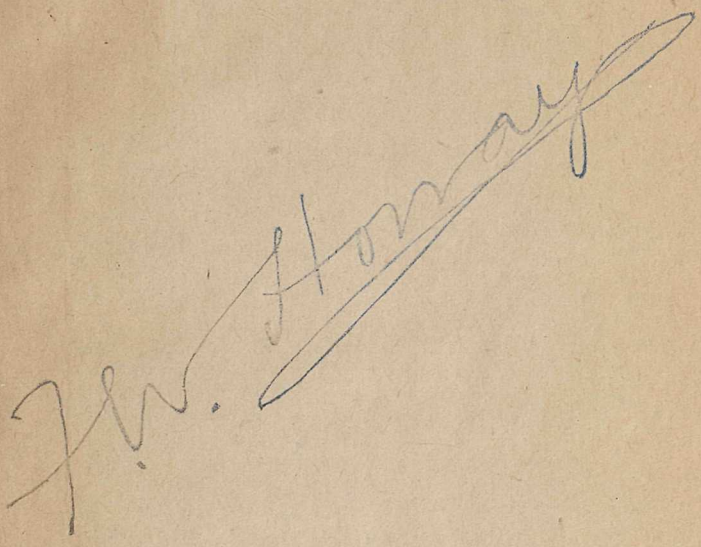

J. C. Howard

HISTORY

OF

OREGON TERRITORY,

IT BEING A

DEMONSTRATION OF THE TITLE

OF THE

UNITED STATES OF NORTH AMERICA

TO THE SAME.

ACCOMPANIED BY A MAP.

BY THOMAS J. FARNHAM, Esq.

AUTHOR OF "TRAVELS IN THE GREAT WESTERN PRAIRIES, THE ANAHUAC, AND THE ROCKY MOUNTAINS, AND THE OREGON TERRITORY," "TRAVELS IN THE CALIFORNIAS," AND "SCENES IN THE PACIFIC," ETC. ETC. ETC.

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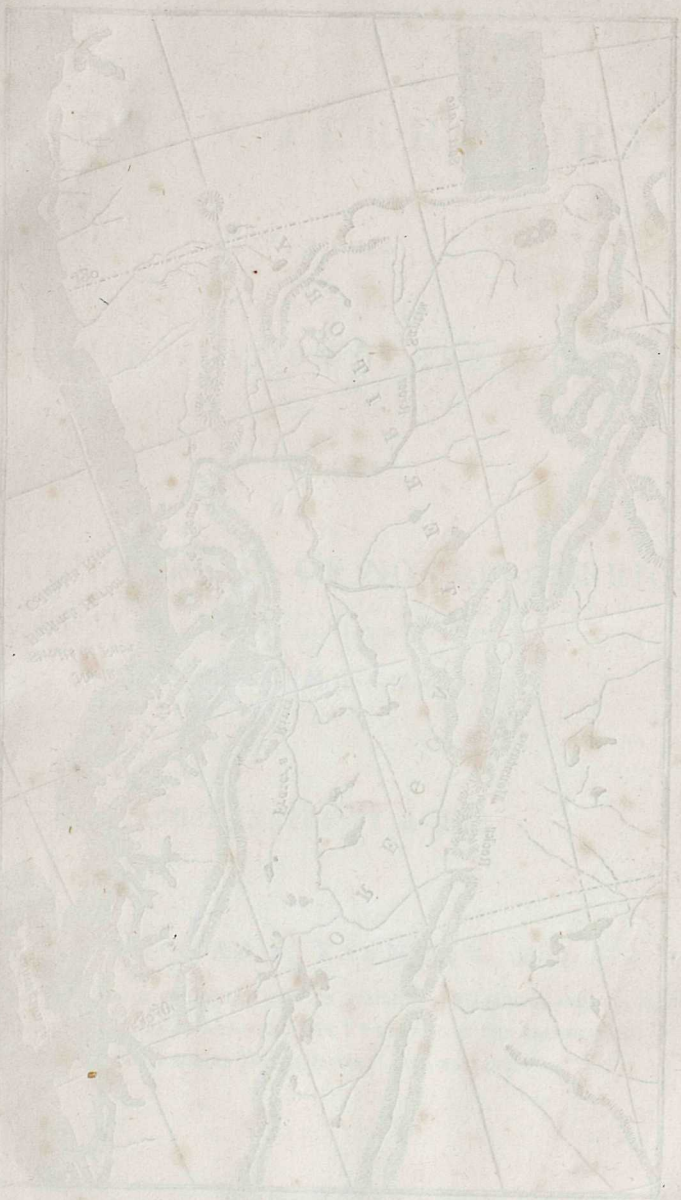

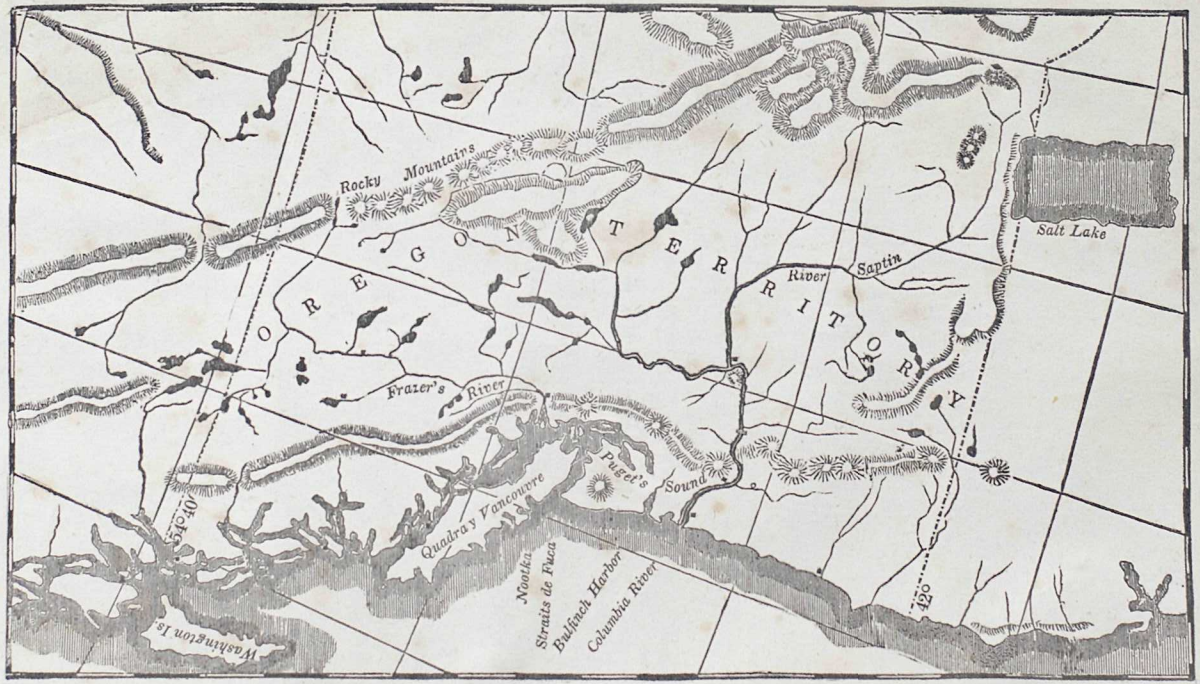
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Saptin River
Frazer's River
Puget's Sound
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Nootka
Straits de Fuca
Bulfinch Harbor
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New-York:
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PREFACE.

THE following pages are devoted to an examination of the American Title to the Oregon Territory. The course taken in the investigation is that of giving a plain and intelligible history of the discovery and occupation of that country, and the right of sovereignty, which has arisen under these acts. The conclusions at which I have arrived are these: That we own Oregon by purchase from Spain, the sole discoverer and first occupant of its Coast; by purchase from France, to whom England, by the Treaty of Versailles, relinquished her claim to it; and by our own discovery and prior occupancy of Columbia River. Throughout the work, incontrovertible Authorities are relied on for historical facts, and for the construction given to the laws of nations. Out of her own mouth is Britain judged: and if this pamphlet shall serve to convince my countrymen of the insolent selfishness of Great Britain—her grasping injustice, her destitution of political honesty—and serve to show a necessity for the people to act for themselves, and to expect from the hands of their Government, at Washington, the maintenance of the rights and honor of their country; the author will feel richly rewarded for whatever labor he has bestowed in collecting and arranging the evidence of their rights to the Oregon Territory—the whole of it, and nothing less!

THE AUTHOR.

NEW-YORK, May 30, 1844.

HISTORY OF OREGON.

CHAPTER I.

OREGON DISCOVERED BY SPAIN.

Forty years after the discovery of the Western Continent, Hernan Cortez, the conqueror of Mexico, having explored the neighboring countries, in search of rich nations to plunder, turned his attention to the north and northwest. At the commencement of the sixteenth century, the most northern settlements of the Spaniards in North America, were Culiacan, a small establishment on the eastern side of the Gulf of California, in about twenty-five degrees north latitude, and Panuco, situated near the spot now occupied by Tampico, on the Mexican Gulf.

Of this expedition, made under the direction and orders of Cortez, little authentic is known. In 1532, Diego Hurtado de Mendoza, a relation of Cortez, sailed from Acapulco in a small ship, accompanied by Juan de Mazuela, in command of another vessel. They proceeded along the southwest coast of Mexico, as far as the twenty-seventh degree of north latitude. Here a tempest separated them, and the vessel commanded by Mendoza was lost. After the storm abated, Mazuela was obliged to return to the river Culiacan, where the greater part of his crew deserted. Those who remained endeavoring to bring the ship back to Acapulco, ran ashore in the province of Jalisco. There the crew, excepting three, were murdered by the savages; and subsequently the vessel was rifled by Nuño de Guzman, the chief of a band of adventurers who pretended to be independent of Cortez. The next year, as no news of these vessels had reached Acapulco, Cortez sent out two others in the same direction, under Hernando de Grijalva and Diego de Becerra, who set sail from Tehuantepec in October, 1533.

Grijalva, separating from his companions, sailed to the westward, and having discovered a group of small islands about one hundred and fifty miles from the main land, (now known as the Revillagigedo islands,) he returned to Mexico without making any further discovery. Becerra also

sailed to the westward from Tehuantepec—discovered land under the tropic of Cancer, and anchored in a small bay, where his men, having obtained some valuable pearls, were desirous of remaining for a time. This, Becerra would not permit; and while preparing to continue his voyage, a mutiny broke out and he was murdered. The pilot, Fortunio Ximenes, then took command of the vessel. After the death of their commander, the mutineers landed, and began to erect habitations on the shore of the bay; and while thus engaged, were surprised by the savages, and nearly all of them killed. The few who made their escape, succeeded in navigating the vessel to the port of Chiametla, on the coast of Jalisco, where she was also seized by Muño de Guzman.

When Cortez heard of these spoliations and seizures, he immediately instituted a suit against Guzman, in the royal court of Madrid, and obtained a decree in his favor. Guzman refused, however, to make any restitution; and Cortez collecting a body of troops, marched to Chiametla, in order to recover his vessels, and reëstablish his authority in that country. On his approach Guzman fled, and Cortez being joined by three vessels that had been sent pursuant to his orders, determined to proceed, in person, to the country discovered by Belcerra, in the west, which was said to be exceedingly rich in pearls and precious stones.

Embarking with his forces therefore at Cheametla, he reached the bay where Becerra had been murdered on the third of May, and in honor of the day, which in the Roman calendar was the feast of the finding of the Holy Cross, he named the bay and the country Santa Cruz; and taking possession of it in the name of Spain, he immediately commenced preparations for establishing a colony.

On his return to Mexico, the following year, he learned that during his absence, he had been superseded in the government by Don Antonio de Mendoza. Still possessing the right, however, as *admiral of the South Sea*, to prepare and dispatch vessels on the Pacific, he determined to engage in another expedition to the north, in hopes of retrieving his fortunes. Therefore, recalling the colonists from Santa Cruz, he fitted out three ships for the expedition, and gave the command of them to Francisco de Ulloa. This expedition was the last made by the authority of Cortez.

Ulloa left Acapulco in July, 1539, and after losing one of his ships in a storm, sailed with the others to the harbor of Santa Cruz; having explored the Gulf of California, and sailed round Cape San Lucas, he proceeded on the western coast as far as latitude 30° north.

In 1527, a band of Spanish adventurers, under Panfilo Navarez, landed in Florida, in search of gold or of rich nations to plunder. This party were soon nearly all destroyed by the savages. The survivors, three Spaniards and a negro, after nine years' wanderings in the southern part of North America, reached Culiacan, near the Gulf of California, in 1536. The accounts they gave of rich nations, who, as they had been told by the savages, lived farther to the north, stimulated Mendoza, the successor of Cortez, to new exertions. He, therefore, sent two friars,

Marcos de Niza and Honorato, with the negro above mentioned, to ascertain the truth of these reports. They set out in 1539. After being absent about a year, the two friars returned; and in the report made to Mendoza by Marcos de Niza, countries abounding in gold and precious stones, were described as *lying to the northwest, beyond the 35th degree of north latitude*. The situation and extent of these countries were fully described, and more than all, a great city called Cibola, the capital of a province of that name, was represented as being peculiarly magnificent, and containing more than twenty thousand stone houses, adorned with gold and jewels. Of course, such an account related by an eye-witness, had its effect upon Mendoza; and he immediately prepared to take possession of these valuable regions in behalf of his sovereign, and convert their inhabitants to the Catholic faith. A body of soldiers and missionaries, commanded by Don Francisco de Coronado, the governor of New Gallicia, the country directly north of Mexico, were soon collected, and started on the route described by the friar Marcos. These new countries were said to be near the sea-coast; and in order to support these land forces, therefore, a small squadron, laden with supplies, was sent along the western coast toward the north, under the command of Fernando de Alarcon. *The fleet left Santiago on the western coast of Mexico, and sailed northward to the extremity of the Gulf of California, where Alarcon discovered a broad and rapid river. Embarking with a part of his crew in boats, he proceeded up the stream* 250 *miles*. He found the country on either side rich and thickly settled, though occupied only by savages. He was told by the natives, in answer to his inquiries respecting Cibola, that it was about ten days' journey in the interior. He desired to visit it; but fearing that he would be cut off if he went farther into the country, he descended to his ships, and returned to Mexico before the end of the year.

Coronado, with his land forces, followed the route pointed out by the two friars. The forests and deserts described in the narrative, were readily found. A country called Cibola, situated as Marcos had stated, was at last reached. But instead of magnificent cities, they saw a few scattered villages; their land of promise they found half cultivated, by a people half civilized, with a little gold and silver, supposed to be good, and a few turquoises; being their only wealth in the precious metals and stones. The letter written to the viceroy by the friar Marcos, with its fabulous history of Cibola, its wealth and its magnificent cities, had described not what the writer saw, but what he had heard from the Indians in his wanderings among them. Tradition had been their historian, and a correct one no doubt; for within a few years the ruins of a great city had been discovered on the Colorado, corresponding in size and position with that spoken of by the friar Marcos de Niza.

On making inquiries of the natives relative to the rich countries, the same answer was given by the natives of Cibola. Rich countries, they said, lay farther to the north. Thitherward Coronado directed his steps, and after wandering two years through the region between the Pacific and the Rocky Mountains, subsisting chiefly on the flesh of the buffalo,

he returned to Mexico in 1542. *A country called by the Spaniards Quivira, near the Pacific, and under the 4th degree of north latitude, was the limit of their explorations to the north.*

Before the return of Coronado from this expedition, the viceroy had prepared another naval armament, which was to proceed in the same direction from one of the ports of the Pacific. It was to be commanded by Pedro de Alvarado. On the eve of its departure an insurrection took place among the Indians in the province of Jalisco. The forces collected were all required to restore order, and reëstablish the Spanish authority. In the course of the campaign, Alvarado was killed, and Mendoza did not, therefore, send off his expedition to the northwest until the following year.

In 1542, Juan Rodriguez de Cabrillo was placed in command of two of the vessels that had been prepared for the expedition of Alvarado. He set sail from Navidad, in Jalisco, and after a short passage, reached Santa Cruz. From Santa Cruz he sailed round Cape San Lucas, and proceeded up that part of the coast of California which had, two years before, been discovered by Francisco de Ulloa; and by *the middle of November had advanced as far north as the 40th degree of north latitude.* He was then driven back to a harbor, which he had before entered, and named Port Possession, supposed to be in the small island of San Bernardo, in latitude thirty-four. Cabrillo sunk under the fatigues to which he had been subjected, and left the ships under the command of the pilot Bartolome Ferrez, or Ferrelo.

Ferrelo determined to attain some of the objects of the expedition before his return to Mexico. He set sail from Port Possession, and after having been driven back several times, on the 1st of March, found himself *in the 44th degree north latitude.* Want of provisions made him resolve to abandon the attempt to proceed farther north, and he therefore returned to Navidad in April, 1543. The most northern point on the American coast, seen by the Spaniards in this expedition, according to Navarette, who examined the journals and papers relating to the voyage, which are still preserved in the archives of the Indies, was the 43rd degree of north latitude, which he considered the northern limit of the discoveries of Cabrillo and Ferrelo.

In the meantime, Hernando de Soto and his band of adventurers, had been traversing the southern and southwestern parts of North America. The accounts given by them, and by Alvaro Nuñez, and Vasques de Coronado, of the northwest coast, rendered it absolutely certain, that neither wealthy nations, nor navigable passages between the Atlantic and Pacific Oceans, were to be found north of Mexico, unless beyond the 43rd degree of north latitude. The enthusiasm for disvovery now ceased for a time, and nearly half a century elapsed before it was again awakened.

It had been the settled policy of Old Spain, from the day she first obtained foothold in South America, to prevent foreigners from establishing themselves in any part of the territories claimed by her, as prior discov-

erer. She also held the exclusive right to navigate the seas in the vicinity of the New World ; and one of the titles of the viceroy of New Spain was, admiral of the South Sea. In 1494, Pope Alexander VI. had granted to Spain, on condition that she should make no attempts to communicate with India by the Eastern routes, the exclusive right to all other routes which might be discovered in the Western World. This right was for a long time conceded to them. When, however, the English had thrown off their allegiance to the pope of Rome, they demanded of Spain the right to occupy portions of America not already settled, the privilege of trading with such as were colonized, and also the liberty of navigating the South Sea. To these requests, of course, Spain did not accede ; and thereupon a system of piratical warfare against Spain was immediately commenced, which, if not openly sanctioned, was at least secretly encouraged by the English Government ; and the seas on the eastern side of the Continent, were soon visited by a fleet of English privateers, called in those days freebooters, or free-traders, who plundered the ships of the Spaniards, and laid under contribution their defenceless towns on the coast. The dangers of a passage through the stormy Straits of Magellan deterred them, for a time, from attempting anything in the Pacific Ocean. In the year 1577, however, a small fleet of five vessels was fitted out in Plymouth, England, under the command of Francis Drake. These vessels were armed and equipped by *private individuals*, ostensibly for a voyage to Egypt, but in reality, they were bound on a privateering expedition against the dominions, subjects, and ships of Spain. After some months' cruise in the Atlantic, without taking any prize of value, Drake put in on the eastern coast of Patagonia, and refitted his ships. Three of them he conducted safely through the Straits of Magellan into the Pacific. But immediately afterward a storm dispersed the little squadron, and Drake was left with sixty men in a schooner of one hundred tons burthen, to commence operations against the Spaniards on the western coast of North America. Remaining in the South Pacific about nine months, he succeeded in making a number of valuable prizes ; and fearing the Spanish cruisers in search of him, he determined to return home by the Cape of Good Hope. On the 15th April, he left Guatulco, the last place he had plundered, and sailed toward the north. On the 2nd of June, according to his accounts, he had reached the latitude of 42° north. The cold, however, (he relates) had become so intense, that the sailors could with great difficulty handle the ropes. This extreme cold, and the desire he had of repairing his vessel, induced him to turn back. He made the coast and anchored near it ; but finding the anchorage insecure, he coasted along the shore until he found a safe commodious harbor. This he entered on the 17th of June, and remained there until the 23rd of July. This harbor, according to English statements, was either the Bay of San Francisco, or the Port of Bodega, situated between the 38th and 39th degrees of north latitude. What part of the coast was seen by Drake, and how far north he reached, it is impossible, from any data left by him, to ascertain with the least degree of certainty. Some writers give the ex-

treme north latitude of his voyage as 43°; others 48° north. In another part of this work, where the English claims to the sovereignty of Oregon are examined, we will endeavor to show that it was impossible for him to have reached 48° north; or rather, that he never saw that part of the coast at all. On the 23rd of July, Drake states that he left the port in latitude 38°, where he had repaired his ship, and sailing across the Pacific, doubled the Cape of Good Hope, and returned to England, arriving at Plymouth on the 26th of September, 1580.

In 1592 Juan de Fuca, a Greek by birth, but in *the service of Spain*, discovered and sailed through the straits in latitude 48° north, which now bears his name. Though little credit, at that time, was given to his statements, subsequent discoveries proved the accuracy of his assertions.

About the close of the 16th century, reports were current in Spain as to the existence of a northern water passage between the Atlantic and the Pacific. The Spanish government therefore gave orders to ascertain, if possible, the truth of these reports. Accordingly in the spring of 1595, the viceroy of Mexico fitted out three vessels at Acapulco, and gave the command of them to Sebastian Vizcayño. He did not, however, proceed beyond the Gulf of California, and returned to Mexico before the end of the year. About two years afterward, another expedition was made on a grander scale than the last. *In May, 1602, two large ships and a small one, all under command of Vizcayño,* sailed from Acapulco. After proceeding as far as 32° north, a good harbor was found, and named San Diego. Five degrees farther north another was discovered, to which was given the name of Monterey. From this port Vizcayño sailed as far as 42° or 43° north, and returned to Acapulco on the 21st of March, 1604, having done nothing more than survey and take formal possession of what had been discovered by Cabrillo and Ferrelo sixty years before. This expedition was the last one undertaken by the Spaniards for more than a century and a half. In the year 1769, a party of emigrants, under Portola and Rivera, proceeded by land from La Paz, on the eastern coast of California, to San Diego and Monterey. This party established the first settlements in that part of the country. A number of other establishments called missions, were afterward formed in northwest California, the most northern of which was one on the Bay of San Francisco, made in 1776.

In 1774, the viceroy of Mexico dispatched a vessel, under the command of Juan Perez, to explore the coast beyond 43° north. He was directed to proceed to 60° north, and examine the coasts, to Monterey. In compliance with these orders, *Perez advanced as far as 34° N. He examined the coast, down to 49°, when he discovered a large bay, to which he gave the name of San Lorenzo.* There he remained some time, trading with the natives. *This bay is the one to which Captain Cook afterward gave the name of King George's Sound, and which is now known as Nootka Sound.* In 1775, a second expedition was determined on by the viceroy of Mexico. The Santiago was commanded by Bruno Heceta, Perez going in her as ensign. She was accompanied by a small schooner of thirty tons, Antonio Maurelle being the pilot. Heceta set sail in March, from

San Blas, and on the 10th of June cast anchor in a small cove, lying a little north of Cape Mendocino, *in latitude* 41° *north. He remained here nine days, refitting his vessels. He called the port, Trinidad*; *and after erecting a cross near the shore, with an inscription*, he set sail for the north, reaching the latitude in which Juan de Fuca was supposed to have discovered the strait leading eastward, through the Continent. Contrary winds drove him southward, to within eighty miles of the Columbia River, where he anchored between the Continent and a small island. Here, several of the crew of one of his vessels were murdered by the savages, and the vessel itself with difficulty was saved from falling into their hands. In consequence of this misfortune, the island was called Isla de Dolores, (Island of Grief.)

On the 14*th of August*, 1775, *Heceta discovered a promontory, which he called Cape San Roque, and immediately south of it, in latitude* 46°, AN OPENING *in the land, which was either a harbor or the mouth of a River.* This opening, represented in Spanish charts by the names of Entrada de Heceta, Entrada de Ascencion, and Rio de San Roque, was undoubtedly the *mouth of the Columbia River*, which was thus *discovered* by the Spaniards.

Maurelle, in the other vessel, continued on to the northward, *and in latitude* 57° *north, saw the land. Here a lofty mountain, in the shape of a beautiful cone, was discovered, and called by them San Jacinto*, since named Mount Edgecomb. Near it, two bays were discovered, one north and the other south of the mountain. The first was named Port Remedios, and the latter, Port Guadaloupe. *Here Maurelle landed, and took possession of the country in the name of his sovereign.* After sailing as high as 58° north, owing to the sickly state of the crew, he commenced his return, searching, as he went for the Rio de Los Reyes, a passage which was supposed to lead into the Atlantic. In the course of the search, a bay was found, affording a most excellent harbor, which was called Port Bucareli. On the 19th of September, he reached the Isla de Dolores. Thence Maurelle continued, some distance from the land, past the mouth of the Columbia River. A little south of this the great stream was sought, which was said to have been discovered by Aguilar, in 1603. He commenced his examination near a promontory, in shape like a table, which was called Cape Mesari, situated in latitude 45° 30′ north, and continued it to Cape Mendocino. He then made for Francisco; and, while seeking that port, discovered a smaller bay, which he named Bodega. He arrived in Monterey on the 7th of October.

From 1776 to 1778, vessels under the English, Portuguese, and the Austrian flags, were engaged in the fur trade on the northwest coast of America. But none of them did anything more than to follow on the track of the previous explorations of the Spaniards.

About this time the reports of various navigators began to be credited, that a water communication really existed between the Atlantic and the Pacific Oceans. In order to settle this question, England sent out two ships, the Resolution, Captain Cook, who had charge of the expedition,

and the Discovery, Captain Clerke. They left Plymouth, July, 1776, but did not reach the northwest coast until March, '78, when they made the land a degree or two north of Cape Mendocino. The coast was carefully examined northward in search of a strait to reach the Atlantic, till the 29th of March, when he anchored in a bay called Nootka Sound. This sound is the same as San Lorenzo, discovered by Perez four years before. Cook next saw a lofty peak, which he called Mount Edgecomb. This had been called by the Spaniards, San Jacinto. Two days afterward he saw two isolated mountains, one of which he named Mount Fairweather; the other was known as Mount St. Elias, described in the accounts of Beehring's last voyage. Here, the coast was observed to trend to the westward, instead of the northward, as represented in the Russian charts. From this point, Cook commenced his survey of the coast, in hopes of finding a passage round the northwestern extremity of North America into the sea, said to have been discovered by Ferne. He was, of course, unsuccessful, and returned as far south as Owyhee, where he was murdered. In the following summer, Captain Clerke, upon whom the command of the expedition devolved at the death of his superior officer, endeavored to effect a passage to the Atlantic through the Arctic Sea. The ice prevented his ships from advancing as far as they had the year before. On account of his health, he returned to the south before the end of the warm season, and died near Petro Pawlosk on the 22nd August. Captain John Gore next took command, and the ships being unfit to encounter the storms of an icy sea, he returned to England by the way of Canton, and arrived in the Thames, 4th of October, 1781. Cook, and those who succeeded him in command of the expedition, did not see any part of the coast of Oregon, which had not been previously discovered by the Spaniards. Nootka Sound had been occupied by them, four years previously, as a garrison. He even relates in his Journal, that he found among the natives there weapons of iron, ornaments of brass, and spoons of Spanish manufacture. He made no discoveries between latitudes 42° and 54° 40′ north.

In the year 1779, while Captain Clerke was making the second attempt to discover the northwest passage, the Spaniards sent out another expedition, to enlarge their discoveries on the northwestern coast. Two vessels, called the Princessa and Favorita, set sail from San Blas, in February, 1779, under the command of Ignacio Arteaga, and Juan Francisco de La Bodega y Quadra. This Bodega was the officer who had explored the Pacific to 58° north in 1775. Antonio Maurelle again was his ensign, from whose journal the following information is derived.

From San Blas the Spaniards sailed directly for Port Bucarelli, the bay discovered by Bodéga and Maurelle, in 56° north. This bay, and the neighboring shores, were carefully surveyed. They next saw Mount St. Elias, and proceeded thence along the coast, landing and trading with the natives. In the beginning of August, they entered a large gulf, and remained there a short time; returning to San Blas in November of the same year.

When the vessels that had been commanded by Cook, returned to England, that nation was at war with the United States, France, and Spain. The journals of the voyage were placed under the charge of the Board of Admiralty, and were not given to the world until 1784, when they were published, with charts, tables, maps, illustrations, etc. The accounts given in the work, of the furs to be obtained in the Pacific, and the high prices obtained for them in China, was the cause of half-a-dozen trading expeditions being made to that coast almost simultaneously, from the United States, from various parts of Europe, and from the East Indies. In April, 1785, James Hanna, an Englishman, set sail from Canton in a small brig, and arrived in Nootka Sound in the following August. In the same year, a mercantile association in London, sent two ships to the North Pacific; the Queen Charlotte, Captain Dixon, and the King George, Captain Portlock, who arrived in Cook's river, July, 1786.

The movements of these fur-traders in the Pacific, were the cause of great alarm to the Spanish government. In pursuance of orders from Madrid, therefore, the viceroy of Mexico sent from San Blas, in the spring of 1788, the Princessa and the San Carlos, commanded by Estevan Jose Martinez, for the purpose of watching the foreigners, who had thus begun to make encroachments upon the Spanish possessions in that quarter of the globe. The vessels arrived at Prince William's Sound in May. During the summer, Martinez visited the forts and factories belonging to the Russian trading establishments, when his crews suffering much from the scurvy, he returned, and sailed back by the way of Monterey to San Blas.

Upon the return of Martinez to San Blas, he made his report to the viceroy, of the intention of Russia to occupy Nootka. Whereupon, the viceroy immediately determined to take possession of it in the name of his sovereign; and Martinez was dispatched thither forthwith, with his vessels well-armed and manned. He left San Blas in February, 1789, and arrived in Nootka the 6th of May.

On his arrival, he found there two Portuguese vessels, the Felice and Iphigenia, under the direction of an Englishman by the name of John Meares; and two American vessels, the Washington and Columbia, commanded by Captains Gray and Kendrick. These vessels were engaged in the fur trade.

Martinez informed the officers of the Iphigenia and of the Columbia, that he had come to take possession of the country in the name of the king of Spain; and having landed his artillery, he commenced a fort on a small island, at the entrance of the upper arm of the sound, called Friendly Cove. About a week after, the San Carlos arrived, under the command of Lieut. Haro; and the day following, Martinez took possession of the Iphigenia, transferred her men and papers to his own vessel, and made preparations for sending her and her consort to San Blas. About two weeks afterward Martinez released the Iphigenia; and as she had been fully equipped for sea while in his possession, she sailed on the 2nd of June for the northern coasts. A week after the departure of the

Iphigenia, the Northwest America, a small vessel built on the coast by the crew of the Iphigenia, which had been on a trading voyage to the neighboring coast, returned to Nootka, and was taken possession of by Martinez.

On the 16th of June, 1789, the Princess Royal arrived at Macao. The King George's Sound Company, and the merchants at Macao, who had sent out Meares, united their interests, and the Princess Royal, belonging to this new company, was sent to Nootka. After remaining there some days, she left on a cruise. As she was going out of the harbor, the Argonaut, commanded by Captain Colnett, arrived in the sound. This vessel was also owned by the same company, and her captain had charge of the expedition. When Martinez boarded the Argonaut, he was informed by Colnett that he had come to take possession of Nootka, and erect a fort under the British flag. Martinez replied, that the harbor was *already occupied by the forces of his Catholic majesty*. The day following he seized the Argonaut; the Princess Royal coming a few days after, was also taken possession of. The Argonaut was sent, with most of the prisoners, to San Blas. In August, the crew of the Northwest America were sent off in the Columbia, under Captain Gray; Captain Kendrick remained on the coast with the Washington. In November of the same year Martinez left the sound, and sailed with all his vessels for Mexico; in December, the Columbia reached Macao with the officers and the crew of the Northwest America, who made known to the owners of the Argonaut and Princess Royal these occurrences at Nootka. They immediately determined to apply to the British government for redress; and Meares was dispatched to London for this special purpose, carrying with him various depositions and papers in substantiation of his claims for redress. The result of his application to Parliament will be found in another part of this volume.

With regard to the American vessels, the following is a brief detail of the facts: In the year 1787, an association of merchants in Boston had fitted out two vessels, the Columbia and the Washington, for the northwest coast. The Columbia was commanded by Captain Kendrick, and the Washington by Captain Gray. They were furnished with letters from the Federal government, and passports from the State of Massachusetts, and sailed from Boston on the 30th of September, the same year. The Washington arrived at Nootka on the 17th September, 1788. The Columbia arrived some days afterward, and both vessels remained there during the winter. After collecting as many furs as they could obtain, Captain Gray taking command of the Columbia, proceeded with her to Canton, and in the autumn of 1789 thence to Boston, where he arrived in 1790. In 1791 the Columbia returned from Boston under Captain Gray, accompanied by the brig Hope, commanded by Joseph Ingraham, the former mate of the Columbia. Captain Gray reached the northwest coast in May, and while sailing up the coast, observed an opening in the latitude of 46° 16′, from which a current issued so strong as to prevent his entrance, though he spent nine days in attempting to accomplish it.

Captain Kendrick, who had commanded the Columbia in her first voyage to the Pacific, had remained on the coast with the sloop Washington, since 1789. In August, 1791, while lying at Nootka Sound, fearing the Spaniards would seize his vessel if he attempted to go to sea, he determined to make way through a strait, which he believed existed from the extremity of the harbor northwestward, into the Pacific. He succeeded, and named the channel Massachusetts Sound. This passage, called by the natives Ahasset, is not laid down on Vancouver's maps. Two Spanish vessels, under Malasina, passed through it the latter part of the same month. It was called by the Spaniards, the passage of Buena Esperanza. In April, 1792, Captain Gray fell in with the ship Discovery, Captain Vancouver. The Discovery and the Chatham had been sent out to Nootka by the British government, to take possession of the land and buildings at Nootka, to be surrendered by the Spaniards agreeably to the 1st Article of the treaty of 1790, commonly called the Convention of the Escurial. Captain Gray informed Vancouver, that he had discovered the mouth of a river in latitude 46° 16′, which set out so strong as to prevent his entering it for nine days. Vancouver, in his journal, speaks of this latitude as having been passed by him two days before, and remarks that "the whole coast formed one compact, solid, and nearly straight barrier against the sea," and that he was "thoroughly convinced that he could not possibly have passed any safe navigable opening, harbor, or place of security for shipping on the coast from Cape Mendocino to Cape Flattery in latitude 48°, nor had he any reason to alter his opinion, notwithstanding theoretical geographers had thought proper to assert the existence of large inlets, communicating wiih a mediterranean sea, and extensive rivers with safe and convenient ports."

Captain Gray, satisfied that he had discovered the mouth of a great river, determined, if possible, to enter it with his ship. On the 11th of May he succeeded, and sailed up about twenty miles, where he remained a week, trading with the natives. This opening in the coast had been seen by Heceta in 1775, and the coast had been examined by Meares, in 1788; but the latter left it, under the conviction that no river emptied its waters into the ocean in that bay. He called it, therefore, Deception Bay, and the cape on the northern side, Cape Disappointment. Gray called the extremity of the land on the south side of the entrance of the river, Cape Adams, and the one on the north side, Cape Hancock. The river he named Columbia, after his ship. The following October Captain Vancouver, having learned from Quadra, the Spanish officer in command at Nootka, to whom Gray had communicated his discoveries, that a great river actually existed in latitude 46° 16′, sent Captain Broughton in the Chatham to explore it. On his arrival at the mouth of the river, *he found lying at anchor there the brig Jenny from Boston*, which had sailed from Nootka a few days previous. Finding the channel too intricate, Broughton left his vessel at the mouth of the river, and proceeded up in his cutter nearly one hundred miles. On the 10th November, the Chatham

quitted the Columbia, in company with the Jenny, and sailed for the bay of San Francisco, where she arrived before the end of the month.

In the meantime, Nootka had again been occupied by the Spaniards. Don Francisco Eliza had been sent from Mexico in 1790, and made an unsuccessful attempt to explore the Straits of Fuca. In 1792, the Spaniards had endeavored to form a settlement on the other side of the Straits of Fuca. This place they soon after abandoned, on account of the insecurity of the anchorage and the difficulty of obtaining provisions. In the spring of 1792, the Spanish authorities sent three vessels, the corvette Aranzaza, and two small sloops, the Sutil and Mexicana, from Mexico, to examine certain parts of the coast that had not been visited by Malasina, who had circumnavigated the globe in the years 1791, '92, and '93.

This expedition, and others sent out by Spain, explored the groups of islands and main land lying between Vancouver's Island and latitude 55° north.

In August, 1792, after the arrival of Vancouver at Nootka, negotiations were commenced between him and Quadra, the Spanish military governor of Nootka, respecting the transfer of the land, tenements, etc., claimed by Great Britain. They were unable to agree upon what was to be restored, according to the provisions of the treaty, and the matter was left in *statu quo*; the whole affair, with what additional information they could obtain, being submitted to their respective governments. It may be well here to remark, that it was never after even acted upon. In October following, Vancouver left Nootka for the southward. Captain Quadra departed for Monterey, and the Columbia and brig Hope sailed homeward, *via*. Canton. Subsequently, the British government sent out Captain Broughton, the late commander of the Chatham. He left Providence in October, 1794; and in April, 1796, he arrived at Nootka. But the Spaniards had left, "having previously delivered up the port of Nootka to Lieutenant Pierce," who had been dispatched from England to Nootka, by the way of Mexico. This account is given by Broughton, in his journal of his voyage, page 50. Belsham, however, says in his History of Great Britain, vol. viii., page 337: "*It is, nevertheless, certain, from the most authentic subsequent information, that the Spanish flag, flying at the port and settlement of Nootka, was never struck; and that the whole territory has been virtually relinquished by Great Britain.*"

In the meantime, while the surveys and explorations of the coast were in progress, two or three expeditions were undertaken over land. The object in view, was to advance the interest of the fur companies.

Alexander Mackenzie, a Scotchman in the employ of the Northwest Fur Company, left their westernmost post, at Athabaska Lake, near the fifty-ninth parallel of north latitude, and about eight hundred miles beyond Lake Superior. He proceeded in a boat down the *Slave River*, which runs out of the lake directly northward, and descended into the Great Slave Lake. Thence he continued northwestward down another, and much larger stream, to which he gave his own name, and followed it

to its termination in a sea, 69° north latitude. He then returned to Fort Chippewyan, the establishment on Athabaska Lake.

In October, 1972, Mackenzie ascended the Peace River, a stream emptying into the Lake-of-the-Hills, or Athabaska Lake, as it is most generally called, and followed it to its sources among the Rocky Mountains. Crossing the mountains, he embarked upon another large stream, called the Tacootchee, which he descended a short distance, and then making directly westward, reached the Pacific, July 22nd, 1793, in latitude 52° 30′ north.

For nearly twenty years after the declaration of war by Spain against Great Britain, in 1796, no event of any importance took place, in regard to the settlement or occupation of the Territory of Oregon. In 1803, January 18th, President Jefferson sent a confidential message to Congress, recommending the examination of the northwestern part of America. An undertaking, known as the expedition of Lewis and Clarke, was the result. These officers were intructed to explore the River Missouri and its principal branches to their sources, and then to trace to its termination, in he Pacific, some stream, the Columbia, Oregon, Colorado; or any other which might offer a practical water communication across the Continent.

In accordance with their instructions, Lewis and Clarke set out on the expedition the 14th of May, 1804. In the summer of 1805, they crossed the Rocky Mountains. On the 15th of November, the party under their command landed at Cape Disappointment, having passed down the Lewis to its junction with the Columbia, and thence down the Columbia to the ocean. The winter of 1805–6 was spent at Fort Clatsop, on the south side of the Columbia. This was the first party of whites that ever traversed the Oregon Territory; nor did a British subject ever visit any part of the country drained by the Columbia, until the summer of 1811. In the spring of 1806, Mr. Simon Frazer and some person in the employment of the Northwest Company, established the first British trading post on the west side of the Rocky Mountains, near the 54th parallel of north latitude, on the border of a sheet of water now called Frazer's Lake.

In 1808, the Missouri Fur Company, formed at St. Louis, established a trading post on the Lewis River, the southern branch of the Columbia.

In 1810, the Pacific Fur Company, under the direction of its originator, Mr. Astor, determined to make a settlement on the coast. On the 23rd of March, 1811, the ship Tonquin, belonging to the company, arrived at the mouth of the Columbia. After landing the goods and passengers, a site was selected about eight miles up the river, and was named in honor of the projector, Astoria. About four months afterward, a number of persons, under the direction of Mr. Thompson, the astronomer of the Northwest Company, arrived at the mouth of the Columbia, intending to take possession; but they found it occupied by the Pacific Fur Company. During the summer of this year, several trading posts were established by the company in the interior, the principal one at the confluence of the Okanagan with the Columbia, about four hundred miles from Astoria. Immediately after the news of the declaration of war had reached Astoria, the

partners of the company who were at the post, having ascertained that a large armed ship, under convoy of a frigate, were on their way to take and destroy everything in that quarter, agreed to sell all their property, furs, establishments, etc., to the Northwest Company. During the progress of the negotiation, the British sloop-of-war Racoon, entered the Columbia. The captain of the Racoon took possession of Astoria, lowered the American flag, which was flying at the factory, hoisted that of Britain, and changed the name of the factory to Fort George. According to the first article of the Treaty of Ghent, on the 6th of October, 1818, Captain Hicky of the British frigate Blossom, and James Keith, the superintendent for the Northwest Company at Fort George, surrendered to Mr. J. B. Prevost, the commissioner on the part of the United States, the settlement of Fort George or Astoria.

The following is a copy of the act of delivery:

"In obedience to the commands of his royal highness, the Prince Regent, signified in a dispatch from the right honorable the Earl Bathurst, addressed to the partners or agents of the Northwest Company, bearing date the 27th January, 1818, and in obedience to a subsequent order, dated the 26th of July, from W. H. Sheriff, Esq., captain of his majesty's ship Andromache, we, the undersigned do, in conformity to the first article of the Treaty of Ghent, restore to the Government of the United States, through its agent, J. B. Prevost, Esq., the settlement of Fort George on the Columbia River. Given under our hands in triplicate at Fort George, Columbia River, this 6th day of October.

"F. Hicky, Captain of his majesty's ship Blossom,
"J. Keith, Agent of the Northwest Company."

The acceptance is as follows:

"I do hereby acknowledge to have received, in behalf of the Government of the United States, the possession of the settlement designated above, in conformity to the first article of the Treaty of Ghent. Given under my hand in triplicate, at Fort George, Columbia River, this 6th day of October, 1818.

"J. B. Prevost, Agent of the United States."

By the same Treaty of Ghent it was also agreed, that the parties thereto shall have, for a limited time, equal rights of trade and of settlement in Oregon; and that such occupancy as shall accrue therefrom, shall in nowise affect the final settlement of the title to the sovereignty of the Territory, etc. This agreement has been renewed, from time to time, since that date—a tenancy in common, subject to be determined on twelve months notice from either party. The question of title is therefore an open one. It reverts back upon the questions of prior discovery and occupancy, treaties and the laws of nations, which we shall now proceed to consider.

The Spanish discoveries and occupancy, we have already cursorily considered. The British explorations of the coast, also, have been noticed whenever anything was accomplished on which that nation has relied to support her pretensions to the Oregon Territory. And, with this outline of history before us, we will proceed to make use of it, and such other matters as may properly belong to the question before us, viz: Who owns Oregon Territory?

CHAPTER II.

OREGON DOES NOT BELONG TO GREAT BRITAIN.

ALL British writers upon the subject of the Oregon Territory, assert, very complacently, that the right of prior discovery belongs exclusively to them. "In 1557," says one writer, "Admiral Drake discovered the country, and pushed his discoveries to the 47th degree of north latitude; taking possession of the country along his route in the name of the British sovereign." That assertion, of course, occupies the whole ground. Another one says: "He (Drake) sailed from 38° to 48°, assuming the title to the country by virtue of a cession of one of the chiefs." Now, we assert boldly and fearlessly, that no direct evidence can be produced giving Britain the least title to the right of sovereignty; nor, judging from the account of that part of the voyage relating to Northwest America, do we think Francis Drake saw the Oregon at all. The following brief sketch, taken from Hakluyt's Collection of Voyages, is all that is necessary to a full understanding of the case:

"The first British vessel that visited the western coast of North America, was the *Pelican*, commanded by Sir Francis Drake. He sailed from Plymouth, England, in 1577, with five vessels:—the Pelican, of one hundred tons; the Elizabeth, of eighty tons: the Swan, of fifty tons; the Marygold, of thirty tons; and the Christopher, of fifteen tons; carrying, in all, one hundred and sixty-seven men." The fleet was ostensibly bound on a voyage to Egypt. But, to use the words of the English writer, "it was indeed one of the most extraordinary expeditions ever equipped." It was, in reality, a piratical expedition against the subjects of Spain on the American Continent. The intention was to plunder the Spaniard, explore unknown regions, and circumnavigate the globe. After drifting about the Atlantic for some time, Drake took a prize of considerable value, and put into a harbor on the coast of Patagonia, to refit his ships, preparatory to his passage through the stormy Straits of Magellan. Three of his ships only reached the Pacific, and these soon afterward were dispersed in a

dreadful gale, and all lost, except the Pelican and sixty men. With this craft, Drake sailed up the western coast of America; and, as the Spaniards were unprepared to resist him, either by land or sea, he plundered their towns and ships with little difficulty. In the spring of 1579, after sacking the town of Guatulco, he determined to return to England. Being fearful of meeting some Spanish vessels if he should return through the Straits of Magellan, he concluded to cross the Pacific and double the Cape of Good Hope. He left Guatulco, therefore, on the 16th of April, and sailing to the northward, is reported to have reached the 42nd parallel of latitude on the 26th of June, when the violence of the northwest winds drove him on the Californian coast, where he is said to have anchored. Finding his berth insecure, it is pretended that he proceeded south to the Bay of Bodega, or its vicinity, in latitude 38°, where he remained from the 17th to the 23rd July, repairing his vessel and examining the surrounding country. The natives, who are alleged to have come in crowds to see the vessel, at first exhibited a hostile attitude; but the conduct of Drake and his men was so conciliatory, as to win upon the affections of the savages to such a degree, that, when he was about to leave, the fable says, they begged him to remain among them as their king. To this proposition, of course, Drake did not assent. He, however, accepted the "crown of feathers," a marvellous long chain, and some other insignia of savage royalty. In the words of Hakluyt, "he did not think meet to reject, as he did not know what honor or profit it might be to his country." He gave the name of New Albion to his newly acquired territory. Thus runs the tale of this fictitious discovery. It is stated that Drake left the coast on the 23rd July, touched at the Philippine Islands on the 30th September, 1579, and arrived in England on the 25th September, 1580.

There are two narratives of the expedition of Drake to the northwest coast of America. 1st. "The Famous Voyage of Sir Francis Drake into the South Sea, and then, hence, about the whole globe of the earth; begun in the year of our Lord 1577;" published in London by Hakluyt, in 1589.* 2nd. "The World Encompassed by Sir Francis Drake, collected out of the notes of Mr. Francis Fletcher, Preacher in this employment; and compared with divers others' notes that went in the same voyage." Published in 1652.†

In the first accounts, published in England, of this expedition, the 43rd degree of north latitude is named as the farthest degree north that was reached by Drake. On the title page of Hakluyt's work, and in his account, page 523, vol iii., this is distinctly set forth. Purchas, in his "Pilgrims," also mentions the 43rd degree as the northerly limit of his discoveries. Subsequently, however, English historians mention the 48th degree. Dr. Johnson is an exception. In his life of Sir Francis Drake, the 43rd degree is assumed as the ultimatum of his northing. The reason is obvious—the closing paragraph of the account of the "Famous Voyage," given by Hakluyt, is a full explanation. After narrating the

* Hakluyt's Collection, vol. iii., page 523. † Osborne's Collection of Voyages, vol. ii., page 434.

circumstances of the visit of Drake to New Albion, and of his acceptance of the sovereignty, he says: "It seemeth that the Spaniards had never been in this part of the coast; neither did they ever discover the land by many degrees to the southward of this place." The discoveries of Cabrillo and Ferrelo had been kept a secret by the Spaniards, so that they were not known in England, until after Hakluyt had published his work in 1589; and the 43rd degree north, was supposed to be far enough to give the English some title to territory in Northwest America. When, however, it became known that the Spaniards had pushed their discoveries to the 44th degree, English historians and compilers inserted forty-eight degrees instead of forty-three. Admiral Sir William Manson, in his "Naval Tracts," published in 1719, remarks: "Drake, after sailing from the 16th of April to the 5th of June, arrived in 48° north; and seeing land, he named it New Albion." And he further states, "that the inhabitants were living there in great extremity of *cold* and want."

We will now give the following extracts, from three English authors, relative to these discoveries; and, after making a few comments, leave it to the reader to judge what claims the English have to Oregon Territory, from this piratical expedition of Sir Francis Drake.

From vol. iii., page 523, Hakluyt's English Navigator, we have the following paragraph:

"The 5th day of June, being in 43° of the pole Arctic, being speedily come out of the extreme heat, we found the air so cold that our men, being pinched with the same, complained of the extremity thereof; and the further we went, the more the cold increased upon us. Wherefore, for that time, we thought it best to seek the land, and did so, finding it not mountainous, but low, plain land; and we drew back again, without landing, till we came within 38° toward the line, in which height it pleased God to send us into a fair and good bay, with a good wind to enter the same. In this bay we anchored on the 17th of June."

The following extract is from Purchas's Pilgrimage, book 2nd, page 52.

"The fifth day of June, being in three-and-forty degrees toward the pole Artic, we found the air so cold that our men, being grievously pinched with the same, complained of the extremity thereof; and the further we went the more the cold increased upon us. Wherefore, we thought it best, for that time, to seek the land, and did so, finding it not mountainous, but low, plain land, till we came within eight-and-thirty degrees toward the line, in which height it pleased God to send us into a fair and good bay, with a good wind to enter the same."

The following extracts are from the "World Encompassed:"

"From Guatulco we departed, April 15, setting our course directly into the sea; whereupon we sailed five hundred leagues in longitude to get a wind, and, between that and the 3rd of June, one thousand four hundred leagues in all, till we came into the latitude of 42° north; where, in the night following, we found such an alteration of the heat into extreme and nipping cold, that our men, in general, did grievously complain thereof.

*** It came to that extremity that, in sailing but two degrees farther to the northward in our course. **** Our meat, as soon as it was removed from the fire, would presently, in a manner, be frozen up; and our ropes and tackling, in a few days were grown to that stiffness, that what three men before were able to perform, now six men, with their best strength and utmost endeavor, were hardly able to accomplish **** The land, in that part of America, bearing farther out into the west than we before imagined, we were nearer on it than we were aware, and yet, the nearer still we came unto it, the more extremity of cold did seize upon us. The 5th day of June, we were forced by contrary winds to run in with the shore, which we then first descried, and to cast anchor in a bad bay, the best road we could at present meet with; where we were not without some danger, by reason of the many gusts and flaws that beat upon us. **** In this place was no abiding for us, and to go farther north, the extremity of the cold would not permit us; and the winds directly beat against us, having once gotten us under sail again, commanded us to the southward, whether we would or no. From the height of 48° *in which we now were, to* 38°, *we found the land, by coasting along it, to be low and reasonably plain, every hill, whereof we saw many,* BUT NONE VERY HIGH, *though it were in June,* and the sun in his nearest approach unto them, being covered with snow. In 38° 30′, we fell in with a convenient and fit harbor; and, June 17th, came to anchor therein, where we continued till the 23rd of July; *during all which time, notwithstanding it was the height of summer, and so near the sun, yet we were constantly visited with like nipping cold as we had felt before; neither could we, at any time in the whole fourteen days together, find the air so clear as to be able to take the height of sun or star.* **** *How unhandsome and deformed appeared the face of the earth itself, showing trees without leaves, and the ground without greenness, in those months of June and July.* **** For the causes of this extremity of cold, **** the chiefest we conceive to be the large spreading of the Asian and American continents, which commences northward of these parts, if they be not fully joined, yet seem to come very near each other; from whose high and snow-covered mountains, the north and northwest winds, the constant visitors of these coasts, send abroad their frozen nymphs. **** And that the north and northwest winds are here constant in June and July, as the north wind alone is in August and September, we not only found it by our own experience, but were fully confirmed in the opinion thereof by the continued observations of the Spaniards. **** Though we searched the coast diligently, even unto the 48th degree, yet found we not the land to trend as much as one point, in any place, toward the east, but rather, running on continually northwest, as if it went directly to meet with Asia."

Above, we have given the English authorities upon which Great Britain claims the Oregon Territory by right of prior discovery. The part of the coast said to have been seen by Drake, is from 38° to 48° north. The season of the year when this was seen, was the summer solstice; the face of the country was low and reasonably plain, and the climate cold and pinch-

ing; the hills, and there were very many, though *none very high*, covered with snow.

Now, if Great Britain can find on the northwest coast of North America, between the parallels of latitude claimed by the United States, a country with such a climate and such a shaped coast, or such a temperature, or any such snow-clad hills—not very high recollect, and the weather too, pinching cold in July—why then to that country we will relinquish all claim, forthwith. The latitude of the mouth of the Columbia river is 46° north, and the temperature is as mild as in the latitude of New-Orleans, on the eastern side of the Continent, or as mild as Bordeaux in France. Grass grows luxuriantly in Oregon during all the winter months, even as far north as Drake is said to have sailed; and as for the bay at latitude 38° north, in which they remained from the 17th of June to the 23rd of July, "in the height of summer, and so near the sun," and yet were constantly visited with nipping colds, and where the face of the earth was so deformed and unhandsome, and the ground was without greenness and the trees without leaves;—why, in that latitude nipping colds are unknown; the trees are studded with perpetual foliage; the ground is one eternal green carpet, and snow has never been seen on its plains or hills. It is the land of the olive and the grape; the tropical fruits are indigenous there; and as for pinching cold, or frosty weather, or leafless trees, or snowy hills, they are alike unknown and unheard of in that region. So much for the climate of the country Drake is pretended to have discovered. Now with regard to the face of the country. "From the height of 48° north," the highest point said to have been reached, "to 38°, the land was low and reasonably plain." The fact is otherwise. The coast of Oregon Territory from Cape Mendocino to the Straits of Fuca, is an overhanging wall of rough basaltic mountains, broken only at a few points by narrow gapes, the gates of the Columbia and other streams that fall into the Pacific Ocean. "Between these latitudes (38° and 48° north,) we found the land not to trend so much as one point in any place toward the east, but rather running continually northwest, as if it went directly to meet Asia." This description of the shape of the coast of Oregon between the latitudes of 38° and 48° does not at all correspond with the fact. From latitude 38° to 48° north, it runs northwesterly, and then for about 6° bears generally a few points eastwardly, and then runs a degree or two almost due north—thence a few points northwesterly, and then trends eastwardly toward the entrance of the Straits of Fuca. It will be perceived, therefore, that if we should condescend to allow Drake to have seen the coast of Northwest America between 38° and 48°, his description of the shape of that part of it would cast our condescension back upon us as a most ridiculous absurdity. In truth, that old chief of the Bucaneers probably manufactured this tale to delude his sovereign; and he succeeded but too well in his design. He was knighted; and his fable obtained such credence at the time, that his remains—stars, garters, and falsehoods, are exhumed now to testify against the right of America to the Oregon Territory.

We have observed before in this notice of Drake's voyage, that owing to the silence of the Spaniards with regard to their discoveries and explorations on the northwest coast, it was not known in England for some years after Drake arrived in London, that Cabrello and Ferrelo had proceeded as far north as the 44th degree. It was necessary, therefore, in the editions published afterward, to make the old sloop of Drake's sail a little faster, so as to proceed a little farther north in the given time. Dates belong to the class of stubborn facts which cannot be readily set aside. Let us attend to them. In the earlier accounts, Drake's vessel, on the 3rd of June, was in latitude 42°, and on the 5th of June, forty-eight hours afterward, had beat up against strong head winds and nipping cold, withal, about a degree; which, for an old ill-rigged sloop of the sixteenth century was reasonably fast sailing. But as this would not give the title to Great Britain, it was necessary to beat up a few degrees farther; and in subsequent notices of Drake's voyage, he is said to have reached the 48th degree of north latitude, making from six to seven hundred miles in two days' sailing, against contrary winds, in that old sloop!! Will any one suppose, for a moment, such an account to be in accordance with facts? Does it bear upon the face of it the least shade of consistency? But there is no need of comment. The English claim Oregon Territory by virtue of the prior discovery of Sir Francis Drake, and their authority we have just given. If a coast, trending as Drake made it to the northwest, so as to meet Asia, can be found beetween 38° and 48° north—if a climate such as he has described, is, or by any possibility can be considered the climate of Oregon Territory, then we may look at this matter in another light; until then, we assert that Sir Francis Drake could not have seen any part of the coast of Oregon in June and July, 1559.

Next in order to the claim of priority of discovery under Drake, come Britain's claim of priority of occupation, founded on the operations of John Meares, at Nootka Sound. Before proceeding to make any remarks upon this claim, the following brief sketch of the voyage of Meares, taken from his own account, published at London in 1790, will be given, in order that the reader may well judge upon what grounds we pronounce this claim by occupation, frivolous and absurd.*

In the preface to the volumes put forth by John Meares, he says: "Indeed, I feel it a duty I owe myself, as well to moderate the sanguine expectations which may have arisen respecting the history of these voyages, in which I have been engaged, and may be said to have conducted, *that they were voyages of* COMMERCE *and not of* DISCOVERY, and any novelty that may have arisen out of it, forms as it were, an incidental part of a *commercial undertaking*."

In January, 1786, Meares induced some Portuguese gentlemen at Macao to fit out two vessels, for the purpose of prosecuting the fur trade on the northwest coast of America. The one called the Nootka, in which he himself sailed, and a sloop, called the Sea Otter, in which was another British subject, named William Tipping, a lieutenant in the royal

* Meares's Voyage, printed at London, 1790.

navy. The Nootka reached the coast of North America in September, and spent the winter in Prince William's Sound. The Sea Otter was never heard of after leaving Macoa. The scurvy made sad ravages among the crew of the Nootka while at Prince William's Sound, and after suffering severely from sickness, Meares returned to Macao, in February, 1787.

Not at all daunted by this mishap, in January, 1788, two other vessels were fitted out at Macao, for another trading voyage to the northwest coast. These were the Felice and Iphigenia. These vessels belonged to a number of individuals, resident at Macao. In the letter of instructions which they gave to Meares when he left, they signed themselves "Merchant Proprietors." *These vessels were commanded by Portuguese captains; sailed under the Portuguese flag, and were furnished with Portuguese passports and papers; and the vessels were represented to be the property of Juan Cavallo, a well known Portuguese merchant of Macao.* The instructions for the conducting of the voyage, and for the procuring of furs, were written in the Portuguese language. The following is a translation of the concluding paragraphs:

"THE INSTRUCTIONS OF THE MERCHANT PROPRIETORS, TO JOHN MEARES:

"* * * * Should you, in the course of your voyage, meet with any Russian, *English*, or Spanish vessels, you will treat them with civility and friendship, and allow them, if authorized, to examine your papers, which will show the object of your voyage. *But you must, at the same time, guard against surprise. Should they attempt to seize you, or even carry you out of your way, you will prevent it by every means in your power, and repel force by force. You will on your arrival in the first port, protest before a proper officer against such illegal procedure; and ascertain as nearly as you can the value of your vessel and cargo, sending such protest, with a full account of the transaction to* US AT CHINA. *Should you in such conflict have the superiority, you will then take possession of the vessel that attacked you, as also her cargo, and bring both, with the officers and crew to China, that they may be condemned as* LEGAL PRIZES *and their* CREWS PUNISHED AS PIRATES. Wishing you a prosperous voyage, etc.

(Signed) "THE MERCHANT PROPRIETORS."

Substantially, the same instructions were given by Meares himself, to Douglass, the supercargo of the Iphigenia.

From Macao, the Iphigenia sailed for Cook's river, while Meares, in the Felice, prooceded to Nootka Sound. He arrived at, and entered Friendly Cove, the 13th of May. In order to facilitate the objects of the voyage, immediately on his arrival he commenced constructing a small vessel, of about forty tons, which he intended should be used in procuring furs in the sounds, bays, and inlets, in the vicinity of Friendly Cove. As it was necessary to have some temporary shelter for the workmen, and for the people who were to be left at the cove until the voyage was completed, permission was obtained from the chief of that part of the

coast for a sufficient plot of ground on which to erect a house; in consideration of which privilege, and of the further promise on the part of the chief, to protect the party to be left, he, Maquilla, received from Meares a pair of pistols, and an assurance, that when the traders should leave the coast, the grounds, with the house and furniture should revert back, and become the property of the chief. The building was finished by the 28th of May. This building, Supercargo Douglass, Meares's subaltern of the Iphigenia, *pulled to pieces, previous to sailing for the Sandwich Islands*, in 1788. The boards he took on board the Iphigenia, and the roof he gave to Captain Kendrick, who cut it up and used it as firewood on board the Columbia. And thus was this hut, or factory, destroyed, and the premises abandoned by the persons who established it; so that when the Spaniards arrived at Nootka, as related on page 10, there was no vestige of any house remaining. We have been thus explicit with regard to the contract between Maquilla and Meares, and of what became of it, because the English writers on the subject of the claims of Great Britain to the Oregon Territory, all lay great stress upon the settlement of Nootka Sound, and the taking possession of the country ronnd the Straits of Fuca, and, as some late writers have it, the establishment of a *factory*, by Captain John Meares. Now, according to the evidence of two disinterested witnesses, who were on the spot when the Spanish, under Martinez, took possession of the island, there was no *factory, no settlement, nor the vestige of a house*, when the Spaniards arrived to take possession of the country. And with regard to any land purchased by Meares from Maquilla and the other chiefs, these chiefs all assented that *Captain Kendrick, the American, was the only person to whom they had sold land.* In Meares's instructions to Colnett, who arrived in Nootka, July, 1789, there is no mention made of these *factories* or *settlements;* Nor does Douglass, of the Iphigenia, say anything that would go to prove the possession of *houses and lands.* Here is what Meares himself says: "Maquilla," (vol. 1 p. 82,) "had not only most readily consented to grant us a spot of ground in his territory, whereon a house might be built for the accommodation of the people we intended to leave there, but he had promised us his assistance in forwarding our works, and his protection for the party who were destined to remain at Nootka during our absence. In return for this kindness, and to insure a continuance of it, we presented the chief with a pair of pistols." He goes on to say: "The house was completed by the 28th May, a breast-work thrown up and a cannon mounted, that commanded the village. The keel of a small vessel of about forty tons was then laid, with which, when built, they intended to cruize in the vicinity for Otter skins. In connection with this subject he further says, (page 210,) "On the eve of the departure of the Felice, as an inducement for Maquilla to protect the party we intended to leave at Nootka, *he was promised, that when we finally left the coast, he, Maquilla, should enter into full possession of the house, and all the goods and chattels thereunto belonging.*"

In May, 1788, Meares, leaving a part of his crew at Friendly Cove,

sailed in the Felice toward the south. After an unsuccessful attempt to explore the Straits of Fuca, and to discover the mouth of the San Roque, he returned to Nootka Sound. September 17th, 1797, the sloop Washington, Captain Gray, arrived there from Boston. The small vessel commenced by the crew of the Felice, was launched, and named the Northwest America.

The 24th September, the Iphigenia arrived at Nootka from the northern coasts, laden with fur. These Captain Meares put on board of his own ship, the Felice, and left Nootka Sound for Macao, September 28th, 1788.

In October the ship Columbia, Captain Kendrick, arrived from Boston, and the Iphigenia and Northwest America left for the Sandwich Islands; the American vessels remaining through the winter at Nootka.

December 5th, 1688, the Felice arrived in Canton. A few days afterward two vessels, the Prince of Wales and the Princess Royal, arrived at Macao from the northwest coast. They had been fitted out by a London company, the "King George's Sound Company," and were under the command of Captain James Colnett, and the agent of this company, who was acting supercargo of one of the vessels. Meares formed a partnership with these men, making all the vessels engaged in the fur trade a joint stock. After this arrangement was entered into, a new ship was purchased to take the place of the Felice. She was called the Argonaut, and with the Princess Royal was dispatched to Nootka, under the direction of Colnett. This was in April, 1789. About the 20th of the same month, the Iphigenia and Northwest America returned to Nootka, from the Sandwich Islands. A few days after their arrival, the Washington left for the north; and a day or two after, the Northwest America, which had been hastily equipped, also proceeded to the north, on a trading voyage. *The Columbia remained at Nootka during the summer, and the account we have of the transaction between the vessels left by Meares and the Spaniards, is by Ingraham, the mate of the Columbia.*

On the 6th of May, the Spanish corvette Princessa, commanded by Don Estevan Jose de Martinez, arrived at Nootka. Martinez immediately informed the officers of the Columbia and Iphigenia, that he had come to take possession of the country for the king of Spain. He landed artillery and materials, and as is stated on a previous page, erected a fort on a small island at the entrance of Friendly Cove. A week after, the Don Carlos arrived, under the command of Lieutenant Haro. The day after her arrival, Viana, the captain, and Douglass, the supercargo of the Iphigenia, were invited on board the Princessa, and were informed as soon as they reached the deck that they were prisoners, and that their vessel was seized. After being retained in possession, however, for some days, she was released, on Viana and Douglass's engaging for themselves, as captain and supercargo respectively, and for Juan Cavallo of Macao as owner of said vessel, to pay her value on demand to the order of the viceroy of Mexico, should he pronounce her capture legal. Having been completely equipped by the Spaniards, she sailed on the 2nd of June for the northern coasts, where a large and valuable quantity of furs were collected, prior to her leaving for the Sandwich Islands and Canton.

About a week after the departure of the Iphigenia, the Northwest America returned to Nootka, and was immediately seized by Martinez. A few days afterward the Princess Royal arrived in the sound, under the command of William Hudson. She brought information of the failure of Juan Cavallo, the Portuguese merchant; whereupon Martinez determined to hold the Northwest America, in satisfaction for the amount of the bills drawn upon Cavallo, in consideration of the release of the Iphigenia. On the 2nd of July, the Princess Royal sailed from Nootka on a cruise. As she was leaving the sound, the Argonaut came in from Macao. She was boarded immediately by the Spanish commandant. Captain Colnett, upon being informed of what had taken place at Nootka, informed Martinez that he had come to take possession of Nootka, and erect a fort under the British flag. Martinez replied, that the place was already occupied by the forces of his Catholic majesty.

On the following day, July 4th, Martinez invited Colnett to an interview on board his ship. Captain Colnett went, and an altercation took place between them, in the cabin, the result of which was the arrest of Colnett, and the seizure of the Argonaut. On the 13th July, the Princess Royal arrived, and was taken possession of by the Spaniards. On the day following, the Argonaut sailed for San Blas with all the British prisoners taken at Nootka, under the charge of a Spanish lieutenant and crew.

The crew of the Northwest America were embarked as passengers on board of the Columbia. She sailed in August from Nootka, by way of China, to the United States under command of Gray. Kendrick remained on the coast in the Washington. In November, Martinez left for San Blas, leaving Maquilla in quiet possession of his dominions. The Columbia left Macao in December, 1789; and the seizure of the Argonaut and Princess Royal being made known to her owners, they immediately resolved to apply to the British government for redress. For this object, Meares was sent to London with the papers necessary to substantiate the claims for damages against the Spanish government.

The question to be decided upon a review of the above recited facts, is simply this: did the British crown acquire the right of sovereignty to Oregon Territory by any act of Meares's during his stay at Nootka, in 1787 or 1788?

The Felice and the Iphigenia, the two vessels engaged in the fur trade, under his control, were Portuguese vessels, fitted out in a port belonging to Portugal; their papers Portuguese, the flag Portuguese, the vessels the property of Juan Cavallo, a Portuguese merchant at Macao; commanded by Portuguese captains, under instructions in the Portuguese language, to seize, under certain circumstances, English vessels, and bring them into Macao for condemnation. All this was done, says Meares in his memorial, to avoid the payment of port charges at Macao. But it must be borne in mind that after Meares left Macao, he gave to Douglass, the supercargo of the Iphigenia, the same instructions that the merchant proprietors had given him. The vessels retained their national character while lying at Nootka; and when Martinez, after having held possession

of the Iphigenia, released her in May, 1789, *she hoisted the Portuguese flag*, while she remained in Friendly Cove, *and left the sound, as the Felice had done before her, to all intents and purposes a Portuguese ship.* Suppose, for the sake of argument, that Meares had bought Nootka Sound for a few sheets of copper; suppose he had taken possession of the coast on the Straits of Fuca; by what authority could England claim right of sovereignty in virtue of such acts? Suppose some merchants in London had fitted out a small fleet, under the command of English subjects, registered as English vessels, paying duties and port charges as English vessels, with instructions in the English language, and the vessels entered as the property of well-known English merchants; suppose that the object was to prosecute a new and lucrative branch of trade, and the trading operations to be conducted strictly in accordance with instructions given by their English proprietors, and all intrusted to a Frenchman, and he, on arriving at his destination—a country discovered and partly occupied by another power—should hoist the French flag and take possession of the country in the name of the king of France;—does any one believe, for a moment, that the right of sovereignty could be thus acquired for the king of France? Yet this is precisely the case with Meares. He was a British *subject*, and might have an undoubted right to any property he could, in his individual capacity, acquire by purchase or barter, no matter what flag he was sailing under; and should that property be forcibly taken from him by a national vessel bearing another flag, he could memorialize his own Government, to obtain a proper indemnity for his losses. But the right of sovereignty, according to the laws of nations, he could not acquire for himself or his prince, while sailing under another flag, and under instructions to capture the ships and subjects of his sovereign. In fact, the expedition was a Portuguese, not an English one, and whatever might have been accomplished in the way of discovery or of occupancy, must have been under the protection, and for the benefit, of the nation to which the vessels belonged, according to the evidence of her papers, her clearance, her instructions, the recorded ownership, etc. This is international law—such as would be in all cases enforced by England.

Vattel, (page 99,) expressly says: "Navigators on *voyages of discovery with a commission from their sovereign*, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, *provided it was soon followed by a real possession.*" Now we contend that Meares had NOT A COMMISSION from *his* sovereign, that he was not on a *voyage* of *discovery*—that from the day the vessels left Macao, bound on the expedition of which he seems to have had the charge, the vessels, and of course the officers and crew, were under the Portuguese flag; that Meares did not purchase a tract of land, and that he erected no other building save a hut, built for the accommodation of the workmen while the vessels lay at Nootka. We contend, that in 1789, when the Spanish took possession of Nootka, they were the first to *occupy* the island, and that when in 1795 the Spaniards abandoned Nootka, they lost not their right to the sovereignty of Oregon

Territory, for this reason, among many others equally cogent:—that England has never since that date occupied it, in such manner as to acquire title as against Spain or us. By Drake's and Meares's operations then, England can claim no right of sovereignty over Oregon; and we have shown that the English, prior to the treaty of 1790, had no right of sovereignty to any portion of that territory. It is therefore very certain, that they have, at this day, such rights and privileges only as they derived from the third and fifth articles of the treaty aforesaid; by which the subjects of Great Britain were permitted to navigate, and fish in the North Pacific; to trade or settle for purposes of trade, in unoccupied parts of the western American coasts, north of the parts occupied by the Spaniards before April, 1789; and to have free access to any Spanish settlements on the parts thus designated.

We have thus far given an account, taken of course from British authorities, of the voyages of Sir F. Drake and of John Meares. The right of sovereignty to Oregon Territory has been claimed by Great Britain, on the grounds following: 1st. From discovery by Drake. 2nd. Prior occupation by Meares. Drake, when he sailed from England, sailed under the British flag, and it was given out that his little fleet was bound to Egypt. From his own account, it appears, however, that he had heard that many of the Spanish settlements on the western coast of South America were so poorly manned, that they would fall an easy prey to an unexpected invader. Spain and England were at this time at peace, and if Drake had fallen into the hands of the Spaniards, he would undoubtedly have been condemned and executed as a pirate, as his mate afterward was, and could have claimed no protection from the English government. That he did seize upon their vessels, and *rob and pillage* their settlements, there is no question. He was a pirate and an outlaw; and if he had, by the accounts left us of his voyages, given such a description of the coast and of the climate, as would satisfy the world that he did discover any portion of the Oregon Territory, his prior piratical acts would have been an effectual bar against the English claims derived from such acts. From the before-mentioned facts, it must be remembered, however, that he did not accurately describe any part of the coast, and that the description he gave, would only apply to the polar region, which he had not time to reach, and not to the sunny shores of Oregon. But we are secured on this point by the British Foreign Review for 1844. The writer observes: "Although England has disputed the claims of Spain to the Northwest Territory, we really cannot find any ground for attributing the discovery to Sir Francis Drake." The same writer further observes: "It is now too late to inquire, whether *Captain Meares and his companions were justified in establishing themselves* upon a territory, to the colonization of which Spain may have had the prior right by discovery. The British government demanded and received satisfaction from Spain, for the seizure complained of, and the quarrel was terminated by a treaty." We beg leave to differ from the writer, and to say that it is not too late to inquire whether England had any right to the territory prior to the

treaty; for if she had not then the right, she has none now, for surely the treaty conferred none which can avail as against our pretensions. We claim the sovereignty over the Territory of Oregon, from latitude 42° north to latitude 54° 40′ north. And we shall see, as we advance with this discussion, on what this claim is based.

Having ascertained that the claim of prior discovery by Sir Francis Drake cannot be substantiated; that there is no proof, save in the assertion of Meares, that he could, or did acquire for Britain any right by occupation; and that the evidence even from his own journal, is on that point conclusive against him, the British government have shifted their ground, and now declare as follows: Since 1790, England has not claimed any exclusive right of sovereignty over the territory in question; neither does she *now* claim any exclusive sovereignty from the 42nd to the 49th degree of north latitude. She claims the right of joint occupancy in common with other States, leaving the right of exclusive sovereignty in abeyance, "for," say the British commissioners, "valuable British interests have grown up in those counties since 1790. To those interests Great Britain owes protection, and that protection will be given, both as regards settlement, and freedom of trade and navigation. All the title that the United States could derive from Spain, amounts to nothing more than the rights *secured to her* (Spain) in common with Great Britain, by the convention of 1790." The discoveries then of Alarcon, in 1540, of Coronado the same year, of Cabrillo in 1543, of Ferrelo in 1544, of Aquilar in 1603, of Perez and Martinez in 1774, of Quadra in 1775, the explorations of the islands and main coast between Vancouver's island and latitude 56° north, all these can give no right of sovereignty to Spain, or if they did, she lost all that right by the treaty of the Escurial!

We shall go at length into this treaty of the Escurial. We shall attempt to show what were the complaints, demands, and claims of Great Britain; what were the concessions of Spain; what the object and intentions of the treaty; and more than all these, what were the opinions of those who made the treaty, as to what rights, privileges, and advantages, Great Britain obtained by it. Let the reader bear in mind, while perusing the "Declaration of Spain to the European courts," the memorial of Spain to the British embassador at the court of Madrid—the answer of the embassador—the "Reply of Spain;" the "Declaration" and the "counter Declaration," that although Spain continued throughout the whole negotiation to reiterate her right to the sovereignty of the northwest coast, and although after the terms of the treaty were agreed upon, in the Declaration it is distinctly set forth, as being understood by the high contracting parties, that nothing in the said "Declaration should *preclude or prejudice the ulterior discussion of any right, which his majesty of Spain may claim, to form an exclusive settlement at Nootka.* Let the reader bear in mind, that, after the lapse of half a century, it is gravely asserted that this very treaty settled all differences between England and Spain, with respect to priority of discovery and the right of sovereignty to the Oregon Territory! And this too, although pending the whole negotiation, every

communication received from Spain on the subject of restoration of property, of indemnity for pecuniary losses, or satisfaction for the insulted honor of England, contained a saving clause—that the said restoration granted, the said indemnity allowed, and the said satisfaction given, should not affect the rights of Spain. Yet according to the construction put upon the treaty, by modern English diplomatists, Spain is said to have lost the very right she had so sedulously reserved. The following paper is the Declaration of his Catholic majesty, dated June 4, 1790, which was transmitted to all the European courts, and is a brief statement of the matter in dispute, and of the rights of Spain to the territories in the South Sea.

DECLARATION OF HIS CATHOLIC MAJESTY, JUNE 4, 1790, TRANSMITTED TO ALL THE EUROPEAN COURTS.*

"The king, being apprised of the particulars laid before his ministers on the 16th of May, by Mr. Merry, his Britannic majesty's minister, relative to the unexpected dispute between this court and Great Britain, *as to the vessels captured in Port St. Lorenzo*, or Nootka Sound, on the coast of California in the South Sea, has commanded the undersigned, his majesty's first secretary of state, to answer to the said minister of England, that he had the honor to make known personally, and in writing, to the said minister, upon the 18th of the same month, that his majesty at no time pretended to any rights, in any ports, seas, or places, *other than what belong to his crown by the most solemn treaties, recognized by all nations, and more particularly with Great Britain, by a right founded on particular treaties, the uniform consent of both nations, and by an immemorial, regular, and established possession;* that his majesty is ready to enter upon every examination and discussion, most likely to terminate the dispute in an amicable way; and is willing to enter into immediate conference with the new embassador; and, if justice requires it, will certainly disapprove the conduct, and punish his subjects, if they have gone beyond their powers. This offer and satisfaction will, it is hoped, serve as an example to the court of London, to do the same on its part.

As the two courts of London and Madrid have not yet received proper and authenticated accounts and proofs of all that has really passed in those distant latitudes, a contradiction in the development of facts has, by this means, been occasioned. Even at this moment, the papers and minutes made up by the viceroy of New Spain, on this matter, are not arrived. Posterior letters, indeed, say that the English vessel, the Argonaut, had not been seized and confiscated till legally condemned, and that the small vessel, called the Princess Royal, which had afterward arrived, was not seized or confiscated; but that, on the contrary, full restitution was made by the viceroy, and an obligation only taken from the captain, to pay the price of the vessel, if she was declared a lawful prize; and on the precise same terms, he had liberated a Portuguese vessel belonging

* Parliamentary History.

to Macao, and two American vessels. These particulars will be more implicitly proved and elucidated, on the arrival of the necessary papers.

"The first time that our embassador made a public notification of this matter to the ministry at London, on the 10th of February last, many of the circumstances that are now certain, were then doubtful. *The rights and immemorial possession of Spain to that coast and ports, as well as several other titles proper to be taken into view, in a pacific negotiation, were not quite certain.* And, if the court of London had made an amicable return to the complaints made by his majesty, relative to *those merchants whom Spain regards as usurpers, and the violators of treaties*, and had shown any desire to terminate the affair by an amicable accommodation, a great deal of unnecessary expense might have been saved. The high and menacing tone and manner, in which the answer of the British minister was couched, at a time when no certain information of the particulars had arrived, made the Spanish cabinet entertain some suspicions, that it was made, not so much for the purpose of the dispute in question, as a pretext to break entirely with our court, for which reasons it was thought necessary to take some precautions relative to the subject.

"On a late occasion, a complaint was made to the court of Russia, as to some similar points, relative to the navigation of the South Sea. A candid answer being returned by that court, the affair was terminated without the least disagreement. Indeed, it may be asserted with truth, that the manner, much more than the substance, has produced the disputes that have taken place on this head with Great Britain.

"Nevertheless, the king does deny what the enemies to peace have industriously circulated, that Spain extends pretensions and rights of sovereignty over the whole of the South Sea, as far as China. When the words are made use of, 'In the name of the king, his sovereignty, navigation, and exclusive commerce to the Continent and Islands of the South Sea,' it is the manner in which Spain, in speaking of the Indies, has always used these words, that is to say: *to the Continent, islands, and seas, which belong to his majesty, so far as* DISCOVERIES *have been made and secured to him by treaties and immemorial possession, and uniformly acquiesced in, notwithstanding some infringements by individuals, who have been punished upon knowledge of their offences. And the king sets up no pretensions to any possessions, the right of which he cannot prove by irrefragible titles.*

"*Although Spain may not have establishments or colonies planted upon the coasts or in the ports in dispute, it does not follow that such coast or port does not belong to her. If this rule were to be followed, one nation might establish colonies on the coast of another nation in America, Asia, and Europe, by which means there would be no fixed boundary—a circumstance evidently absurd.*

"But whatsover may be the issue of the question of right upon a mature consideration of the claims of both parties, the result of the question of fact is, that the captain of the English vessel is repaired by the restitution that has been made, and the conduct of the viceroy; for as to the qualification of such restitution, and whether the prize was lawful or not, that

respects the question of right yet to be investigated, that is to say, if it has been agreeably to, or in contradiction, to the treaties relative to the rights and possessions of Spain. Lastly, the king will readily enter into any plan by which future disputes on this subject may be obviated, that no reproach may be upon him, as having refused any means of reconciliation and for the establishment of a solid and permanent peace, not only between Spain and Great Britain, but also between all nations; for the accomplishment of which object, his majesty has made the greatest efforts in all the courts of Europe, which he certainly would not have done if he had any design to involve England, and the other European powers, in a calamitous and destructive war.

"EL CONDE DE FLORIDA BANCA.

"ARANGUEZ, *June* 4."

In this memorial, addressed to the several courts of Europe, are set forth, clearly and distinctly, the rights and claims of Spain to the territory in dispute. "Prior discovery," "uniform consent of both nations," "particular treaties," (as of Utrecht,) "an immemorial, regular, and established possession," are advanced as the grounds of these claims.

In the following memorial of the court of Spain, delivered to the English embassador at Madrid, June 13th, the subject of the right of Spain is treated of more fully, and in this, as well as in the preceding paper, the right of sovereignty over that coast is constantly maintained.

"MEMORIAL OF THE COURT OF SPAIN, DELIVERED JUNE 13, TO MR. FITZHERBERT, THE BRITISH EMBASSADOR AT MADRID.

"*By every treaty upon record, between Spain and the other nations of Europe, for upward of two centuries, an exclusive right of property, navigation and commerce, to the Spanish West Indies,* (Spanish America,) *has been uniformly secured to Spain, England having always stood forth, in a particular manner, in support of such rights.*

"By Article Eighth of the treaty of Utrecht—a treaty in which all the European nations may be said to have taken a part—Spain and England profess to establish it, as a fundamental principle of agreement, that the navigation and commerce of the West Indies, under the dominion of Spain, *shall remain in the precise same situation in which they stood in the reign of his Catholic majesty, Charles II., and that that rule shall be inviolably adhered to, and be incapable of infringement.*

"After this maxim, the two powers stipulated that Spain should never grant liberty or permission to any nation to trade to, or introduce their merchandise into, the Spanish American dominions, or to sell, cede, or give up to any other nation, its lands, dominions, or territories, or any part thereof. On the contrary, and in order that its territories should be preserved whole and entire, England offers to aid and assist the Spaniards in re-establishing the limits of their American dominions, and placing them in the exact situation they stood in, at the time of his said Catholic majesty, Charles II., if, by accident, it shall be discovered that they have

undergone any alteration to the prejudice of Spain, in whatever manner or pretext such alteration may have been brought about.

"The vast extent of the Spanish territories, navigation and dominion on the Continent of America, and isles and seas contiguous to the South Sea, are clearly laid down and authenticated by a variety of documents, laws, and formal acts of possession, in the reign of King Charles II. *It is also clearly ascertained that, notwithstanding the repeated attempts made by* ADVENTURERS *and pirates on the Spanish coasts of the South Sea, and adjacent islands, Spain has still preserved her possessions entire, and opposed with success these usurpations, by constantly sending her ships and vessels to take possession of such settlements. By these measures, and reiterated acts of possession, Spain has preserved her dominion, which she has* EXTENDED TO THE BORDERS OF THE RUSSIAN ESTABLISHMENTS IN THAT PART OF THE WORLD.

"The viceroys of Peru and New Spain, having been informed that these seas had been, for some time past, more frequented than formerly; that smuggling had increased; that several usurpations, prejudicial to Spain and the general tranquillity, had been suffered to be made; they gave orders that the western coasts of Spanish America, and islands and seas adjacent, should be more frequently navigated and explored.

"They were also informed, that several Russian vessels were upon the point of making commercial establishments upon that coast. At the time that Spain demonstrated to Russia the inconveniences attendant upon such encroachments, she entered upon the negotiation with Russia upon the supposition that the Russian navigators of the Pacific Ocean had no orders to make establishments within the limits of Spanish America, of which the Spaniards were the first possessors, (limits situated within Prince William's Strait) purposely to avoid all dissensions, and in order to maintain the harmony and amity which Spain wished to preserve.

"The court of Russia replied, 'It had already given treaty orders, that its subjects should make no settlements in places belonging to other powers; and that if those orders had been violated, and any had been made in Spanish America, they desired the king would put a stop to them in a friendly manner.' To this Pacific language, on the part of Russia, Spain observed, 'That she could not be answerable for what her officers might do, at that distance, whose general orders and instructions were, not to permit any settlement to be made by other nations on the Continent of Spanish merica.'

"Though *trespasses had been made by the English on some of the islands of those coasts, which had given rise to similar complaints having been made to the court of London,* Spain did not know that the English had endeavored to make any *settlements* on the northern part of the Southern Ocean, till the commanding officer of a Spanish ship *in the usual tour of the coasts* of California, found two American vessels in St. Lorenzo, or Nootka Harbor, where he was going for provisions and stores. These vessels he permitted to proceed on their voyage, it appearing, from their papers, that *they were driven there by distress, and only came in to refit.*

"He also found there the ship Iphigenia from Macao, *under Portuguese*

colors, which had a passport from the governor. (of Macao) and though he *came manifestly with the view to trade there,* yet the Spanish admiral, when he saw his instructions, gave him leave to depart upon his signing an engagement to pay the value of the vessel, should the Government declare it a lawful prize.

"With this vessel there came a second, which the admiral detained, and a few days after a third, named the Argonaut, from the above-mentioned place. The captain of this latter was an Englishman. He came, not only to trade, *but brought everything with him proper to form a* SETTLEMENT *there, and to fortify it.* This, notwithstanding the remonstrances of the Spanish admiral, he persevered in, and was detained, together with his vessel.

"After him came a fourth English vessel, named the Princess Royal, and evidently for the same purposes. She, likewise, was detained and sent to Fort San Blas, where the pilot of the Argonaut made away with himself. The viceroy, on being informed of these particulars, gave orders that the captain and the vessels should be released, and that they should have leave to refit, without declaring them a lawful prize; and *this he did on account of the ignorance of the proprietors, and the friendship which subsisted between the two courts of London and Madrid.*

"He also gave them leave to return to Macao with their cargo, after capitulating with them in the same manner as with the Portuguese captain; and leaving the affair to be finally determined by the Count de Revillagegido, his successor, who also gave them their liberty.

"As soon as the court of Madrid had received an account of the detention of the first English vessel at Nootka Sound, and before that of the second arrived, it ordered its embassador at London to make a report thereof to the English minister, which he did on the 10th of February last; and to require that the parties who had planned these expeditions should be punished, *in order to deter others from making settlements on territories occupied and frequented by the Spaniards for a number of years.*

"In the embassador's memorial, mention was only made of the Spanish admiral that commanded the present armament having visited Nootka Sound in 1774, *though that harbor has been frequently visited, both before and since, with the usual forms of taking possession. These forms were repeated more particularly in the years* 1765 *and* 1759, ALL ALONG THE COAST AS FAR AS PRINCE WILLIAM'S SOUND; and it was these acts that gave occasion to the memorial made by the court of Russia, as has been already noticed.

"The Spanish embassador at London did not represent in this memorial, *at that time, that the right of Spain to these coasts was conformable to ancient boundaries, which had been guarantied by England* AT THE TREATY OF UTRECHT, *in the reign of Charles II., deeming it to be unnecessary; as orders had been given, and vessels had actually been seized* AS FAR BACK AS 1692.

"The answer that the English ministry gave, on the 26th of February, was, that they had not as yet been informed of the facts stated by the

embassador; and that the act of violence, mentioned in his memorial, necessarily suspended any discussion of the claims till an adequate atonement had been made for a proceeding so injurious to Great Britain.

"In addition to this haughty language of the British minister, he further added, that the ship must in the first place be restored; and that with respect to any future stipulations, it would be necessary to wait for a more full detail of all the circumstances of this affair. The harsh and laconic style in which this answer was given, made the court of Madrid suspect that the king of Great Britain's ministers *were forming other plans*, and they were the more induced to think so, as there were reports that they were going to fit out two fleets—one for the Mediterranean and the other for the Baltic. This of course obliged Spain to increase the small squadron she was getting ready to exercise her marine.

"The court of Spain then ordered her embassador at London to present a memorial to the British ministry, setting forth that *though the crown of Spain had an indubitable right to the Continent, islands, harbors, and coasts of that part of the world, founded on treaties and immemorial possession*, yet as the viceroy of Mexico had released the vessels that were detained, the king looked upon the affair as concluded, without entering into any disputes or discussions on the undoubted rights of Spain; and desiring to give a proof of his friendship for Great Britain, *he should rest satisfied if she ordered that her subjects in future respected those rights.*

"As if Spain, in this answer, had laid claim to the empire of that ocean, *though she only spoke of what belonged to her by* TREATIES, and as if it had been so grievous an offence to terminate this affair of restitution of the only vessel which was then known to have been taken, it excited such clamor and agitation in the Parliament of England, that the most vigorous preparations for war have been commenced; and those powers disinclined to peace, charge Spain with designs contrary to the known principles of honor and probity, as well as to the tranquillity of Europe, which the Spahish monarch and his ministers have always had in view.

"While England was employed in making the greatest armaments and preparations, that court made answer to the Spanish embassador, (upon the 5th May,) that the acts of violence committed against the British flag 'rendered it necessary for the sovereign to charge his minister at Madrid to renew the remonstrances, (being the answer of England already mentioned,) and to require that satisfaction which his majesty thought he had an indisputable right to demand.

"To this was added a declaration not to enter formally into the matter, until a satisfactory answer was obtained, 'and at the same time the memorial of Spain should not include in it the question of right,' which formed a most essential part of the discussion.

"The British administration offer, in the same answer, to take most effective and pacific measures, that the English *subjects shall not act against the just and* ACKNOWLEDGED RIGHTS *of Spain;* but that they cannot *at present* accede to the pretensions of *absolute sovereignty*, commerce and navigation, which appeared to be the principal object of the memorial of the

embassador; and that the king of England considers it a duty incumbent upon him, to *protect his subjects in the enjoyment of the right of continuing their fishery in the Pacific Ocean.*

"*If this pretension is found to trespass upon the ancient boundaries laid down in the reign of King Charles II., and guarantied by England in the treaty of Utrecht, as Spain believes,* it appears that that court will have good reason for disputing and opposing this claim; and it is to be hoped that the equity of the British administration will suspend and restrict it accordingly.

"In consequence of the foregoing answer, the charge d'affaires from the court of London at Madrid insisted, in a memorial of the 16th of May, *on restitution of the vessel detained at Nootka and the property therein contained* of an indemnification for the losses sustained, and a reparation proportioned to the injury done to the English subjects trading under the British flag; and that they have an indisputable right to the *enjoyment of a free and uninterrupted navigation, commerce and fishery,* and to the possession of such *establishments* as they should form with the consent of the natives of the country, *not previously occupied* by any of the European nations. (No rights of sovereignty demanded here.) An explicit and prompt answer was desired upon this head, in such terms as might tend to calm the anxieties, and to maintain the friendship subsisting between the two courts.

"The charge d'affaires having observed, that a suspension of the Spanish armaments would contribute to tranquillity, upon the terms to be communicated by the British administration; an answer was made by the Spanish administration, that the king was sincerely inclined to disarm, upon the principles of reciprocity, and proportioned to the circumstances of the two courts; adding, that the court of Spain was actuated by the most pacific intentions, and a desire to give every satisfaction and indemnification, if justice was not on their side, provided England did as much if she was found to be in the wrong.

"This answer must convince all the courts of Europe, that the conduct of the king and his administration, is consonant to the invariable principles of justice, truth and peace.

"El Conde de Florida Banca."

To this memorial Mr. Fitzgerald, the British minister at the court of Madrid, made the following reply.

"Sir:

"In compliance with your excellency's desire, I have now the honor of communicating to you, in writing, what I observed to you in the conversation we had the day before yesterday.

"The substance of these observations is briefly this. The court of London is animated with the most sincere desire of terminating the difference that at present subsists between it and the court of Madrid, relative to the port of Nootka and the adjacent latitudes, by a friendly negotiation;

but as it is evident, upon the clearest principles of justice and reason, that an equal negotiation cannot be opened till matters are put in their original state; and as certain acts have been committed in the latitudes in question, by vessels belonging to the royal marine of Spain, against several British vessels, without any reprisals having been made of any sort, on the part of Britain; that power is perfectly in the right to insist, as a preliminary condition, upon a prompt and suitable reparation for these acts of violence; and, in consequence of this principle, *the practice of nations has limited such right of reparation to three articles, viz., the restitution of the vessels, a full indemnification for the losses sustained by the party injured, and, finally, satisfaction to the sovereign for the insult offered to his flag;* so that it is evident, that the *actual demands* of my court, far from containing anything to *prejudice the rights or the dignity of his Catholic majesty*, amount to no more, in fact, than what is done by Great Britain herself, as well as every other maritime power, in similar circumstances. Finally, as to the nature of the *satisfaction the court of London exacts* on this occasion, and on which your excellency appears to desire some explanation, I am authorized, sir, to assure you, that, if his Catholic majesty consents to make a declaration in his name, bearing in substance, that he had determined to offer to his Britannic majesty, *a just and suitable satisfaction for the insult offered to his flag, such offer, joined to a promise of making restitution of the* VESSELS *captured, and to indemnify the* PROPRIETORS, under the conditions specified in the official of Mr. Merry, on the 16th of May, will be regarded by his Britannic majesty, as constituting in itself the *satisfaction demanded;* and his said majesty will accept of it as such, by a counter-declaration on his part. I have to add, that, as it appears *uncertain* if the vessels, the North West, an American vessel, and the Iphigenia, had truly a right to enjoy the protection of the British flag, the king will, with pleasure, consent that an examination of this question, as well as that relative to the just amount of the losses sustained by his subjects, may be left to the determination of *commissioners*, to be named by the two courts.

"Having thus recapitulated to your excellency, the heads of what I observed to you in conversation, I flatter myself you will weigh the whole in your mind, with that spirit of equity and moderation which characterizes you, that I may be in a condition of sending to my court, as soon as possible, a satisfactory answer as to the point contained in the official paper sent to Mr. Merry on the 4th of the month, and which, for the reasons I have mentioned, cannot be regarded by his Britannic majesty, as fulfilling his just expectations.

"I have the honor to be, etc.

"ALLEYNE FITZHERBERT."

From the foregoing answer of the British minister, it will be seen what were the demands of Great Britain upon the court of Spain—restitution of the vessels taken at Nootka—indemnification for the losses to the proprietors, and satisfaction for the insult to the British flag. And, moreover,

these demands, says the minister, do not *contain anything to prejudice the right of his Catholic majesty*. Lest there should be any misunderstanding with regard to this subject, the following reply of the Spanish minister is as full and explicit as language can make it, and was intended by the minister to be conclusive evidence, that whatever concessions were made by his Catholic majesty, they were not made upon the ground that Spain had not *exclusive sovereignty* in the port of Nootka and adjacent territories, or that Martinez had committed a wrong by the seizure of the vessels under the British flag.

THE COUNT DE FLORIDA BANCA'S REPLY.

"June 18th, 1790.

"You will pardon me, sir, that *I cannot give my assent to the principles* laid down in your last letter, as Spain maintains *on the most solid grounds, that the detention of the vessels was made in a bay of Spanish America, the commerce and navigation of which belonged* EXCLUSIVELY *to Spain, by* TREATIES WITH ALL NATIONS, EVEN ENGLAND HERSELF.

"The principles laid down cannot be adapted to the case. The vessels detained, attempted to make an establishment at a port where they found a nation actually settled—the Spanish commander at Nootka having, previous to their detention, made the most amicable representations to the aggressors, to desist from their purpose.

"Your excellency will also permit me to lay before you, that it is not at all certain that the vessels detained, navigated under the British flag, although they were English vessels; there having been reason to believe that they navigated under the protection of Portuguese passports, furnished them by the governor of Macao, as commercial vessels, and not belonging to the royal marine. Your excellency will add to these reasons, that by the restitution of these vessels, their furniture and cargoes, or their value, in consequence of the resolution adopted by the viceroy of Mexico, which has been approved of by the king, for the sake of peace, everything is placed in its original state, the object your excellency aims at; nothing remaining unsettled but the indemnification of the losses, and satisfaction for the insult, which shall also be regulated, when evidence shall be given what insult has been committed; which, hitherto, has not been sufficiently explained.

"However, that a quarrel may not arise about words, and that two nations, friendly to each other, may not be exposed to the calamities of war, I have to inform you, sir, by order of the king, that his majesty consents to make the declaration which your excellency proposes in your letter, and will offer to his Britannic majesty a just and suitable satisfaction, for the insult offered to the honor of his flag, provided that to these are added either of the following explanations:

"1. That in offering such satisfaction, the insult and satisfaction shall be fully settled, both in form and substance, by a judgment to be pronounced by one of the kings of Europe, whom the king, my master, leaves wholly

to the choice of his Britannic majesty; for it is sufficient to the Spanish monarch that a crowned head, from full information of the facts, shall decide as he thinks fit.

"2. That in offering a full, just and suitable satisfaction, care shall be taken, that in progress of the negotiation to be opened, no facts be admitted as true, but such as can be fully established by Great Britain, with regard to the insult offered to her flag.

"3. *That the said satisfaction shall be given on condition that no inference be drawn therefrom to affect the* RIGHTS OF SPAIN, nor of the right of exacting from Great Britain an equivalent satisfaction, if it shall be found in the course of the negotiation, that the king has a right to demand satisfaction *for the aggression and usurpation made on the Spanish territory contrary to* SUBSISTING TREATIES.

"Your excellency will please to make choice of either of these three explanations to the declaration your excellency proposes, or all the three together, and to point out any difficulty that occurs to you that it may be obviated—or any other mode that may tend to promote the peace which we desire to establish.

"I have the honor to be, etc.,

"EL CONDE DE FLORIDA BANCA."

On the 24th of July, 1760, the following declaration and counter declaration were signed and exchanged at Madrid; by which it will be seen that the demands of the court of London were complied with, the vessels to be restored, the parties interested in them to be indemnified, and satisfaction given for the insult to the honor of England.

However, it will be seen that not a word is said about giving up the *right of sovereignty* over any portion of the territory claimed by Spain; but on the contrary, the latter clause of the declaration distinctly says, that nothing in the declaration shall preclude or prejudice the right of Spain to form an exclusive establishment at Nootka.

DECLARATION.

"His Britannic majesty, having complained of the capture of certain vessels belonging to his subjects in the Port Nootka, situated on the northwest coast of America, by an officer in the service of the king, the undersigned, counsellor and principal secretary of state to his majesty, being thereto duly authorized, declares in the name and by the order of his said majesty, that he is willing to give satisfaction to his Britannic majesty for the injury of which he has complained, fully persuaded that his said Britannic majesty would act in the same manner toward the king under similar circumstances. And his majesty further engages to make full restitution of all the British vessels which were captured at Nootka, and to indemnify the parties interested in those vessels for the losses which they shall have sustained, as soon as the amount thereof shall have been ascertained.

"*It being understood, that this declaration is not to preclude or prejudice the ulterior discussion of any right which his majesty may claim to form an exclusive establishment at the Port of Nootka.*

"In witness whereof, I have signed this declaration, and sealed L. S. it with the seal of my arms, at Madrid, the 27th July, 1790.

(Signed,) "LE CONDE DE FLORIDA BANCA."

COUNTER DECLARATION.

"His Catholic majesty, having declared that he was willing to *give satisfaction for the injury done to the king by the capture of certain vessels belonging to his subjects*, in the Bay of Nootka, and the Count de Florida Banca having signed, in the name and by order of his Catholic majesty, a declaration to this effect, and by which his said majesty likewise engages *to make full restitution of the vessels so captured, and to indemnify the parties interested in these vessels for the losses they shall have sustained*, the undersigned, embassador extraordinary and plenipotentiary of his majesty to the Catholic king, being duly and expressly authorized, *accepts the said declaration, in the name of the king, and declares that his majesty will consider this declaration, together with the performance of the engagements contained therein, as a* FULL *and* ENTIRE SATISFACTION *for the injury of which his majesty has complained.*

"The undersigned declares, at the same time, that it is to be understood that neither the said declaration, signed by Count Florida Banca, nor the acceptance thereof, by the undersigned, in the name of the king, *is to preclude or prejudice, in any respect, the right which his majesty may claim to any establishment which his subjects may have formed, or should be desirous of forming in future at the said Bay of Nootka.*

"In witness whereof, I have signed this counter declaration, and L. S. sealed it with the seal of my Arms. At Madrid, the 24th July, 1790.

(Signed,) "ALLEYNE FITZHERBERT."

It may be well to note here, the difference between the last clause of the declaration by Count Banca, and the last clause in the counter-declaration by Mr. Fitzherbert. The declaration of his Catholic majesty is not to preclude or prejudice the right to the forming of an exclusive establishment at Nootka, while the counter-declaration words it thus: "the right his majesty *may claim* to any establishment which his subjects *may have* formed or *should be desirous* of forming in future at the said Bay of Nootka."

If Great Britain had obtained this claim, so set forth in the counter-declaration as reserved, it could not have given the least right of *sovereignty*, for the fifth article of the treaty which was concluded on the 28th of October following, reserved to the court of Spain, (should these *establishments* be formed at Nootka,) *equal* rights of forming *establishments* and making *settlements*. The following is a copy of the convention of 1790, called the Convention of the Escurial:

COPY OF THE CONVENTION BETWEEN HIS BRITANNIC MAJESTY AND THE KING OF SPAIN, SIGNED AT THE ESCURIAL, THE TWENTY-EIGHTH OF OCTOBER, 1790.

"Their Britannic and Catholic majesties, being desirous of terminating by a speedy and solid agreement, the differences that have lately arisen between the two crowns, have judged that the best way of attaining this salutary object, would be that of an amicable arrangement, which, *setting aside all retrospective discussion of the rights and pretensions of the two parties*, should fix their respective situation for the future on a basis conformable to their true interests, as well as to the mutual desire with which their said majesties are animated, of establishing with each other, in everything and in all places, the most perfect friendship, harmony, and good correspondence. In this view, they have constituted for their plenipotentiaries, to wit: on the part of his Britannic majesty, Alleyne Fitzherbert, Esq., one of his said majesty's privy council in Great Britain and Ireland, and his embassador extraordinary and plenipotentiary to his Catholic majesty; and on the part of his Catholic majesty, Don Joseph Monino, Count de Florida Banca, knight grand cross of the royal Spanish order of Charles II., counsellor of state to his said majesty, and his principal secretary of state and of the dispatches; who, after having communicated to each their respective full powers, have agreed upon the following articles:

"ARTICLE 1. The buildings and tracts of land situated on the northwest coast of the Continent of North America, or on the islands adjacent to that Continent, of which the *subjects* of his Britannic majesty were dispossessed about the month of April, 1789, by a Spanish officer, shall be restored to the said British subjects.

"ART. 2. A just reparation shall be made according to the nature of the case, for all acts of violence and hostility which may have been committed subsequent to the month of April, 1789, by the subjects of either of the contracting parties against the subjects of the other; and in case said respective subjects shall, since the same period, have been forcibly dispossessed of their lands, buildings, vessels, merchandise, and other property whatever on the said Continent, or on the seas and islands adjacent, they shall be rëestablished in the possession thereof, or a just compensation shall be made to them for the losses which they have sustained.

"ART. 3. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed, that their *respective subjects shall not be disturbed or molested, either in negotiating or carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of these seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there;* the whole subject, nevertheless, to the instructions specified in these following articles.

"ART. 4. His Britannic majesty engages to take the most effectual measures to prevent the navigation, and the fishing of his subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit

trade with the Spanish settlements; and with this view, it is, moreover, expressly stipulated, that British subjects shall not navigate or *carry on their fishery in the said seas, within the space of ten sea leagues from any part of the coasts already occupied by Spain.*

"ART. 5. As well in the *places* which are to be *restored* to the *British subjects* by virtue of the first Article, as in all other parts of the north-western coast of America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of the two powers shall have made settlements, since the month of April, 1789, or shall hereafter make any, the subjects of the other shall *have free access, and shall carry on their trade without any disturbance or molestation.*

"ART. 6. With respect to the eastern and western coasts of South America, and to the islands adjacent, no settlement shall be formed hereafter by the respective subjects in such part of those coasts as are situated to the south of those parts of the same coasts, and of the islands adjacent, which are already occupied by Spain; provided, that the said respective subjects shall retain the liberty of landing on the coasts and islands so situated, for the purposes of their fishery, and of erecting thereon, huts and other temporary buildings, serving only for those purposes.

"ART. 7. In all cases of complaint, or infraction of the articles of the present convention, the officers of either party, without permitting themselves previously to commit any violence or acts of force, shall be bound to make an exact report of the affair, and of its circumstances, to their respective courts, who will terminate such differences in an amicable manner.

"ART. 8. The present convention shall be ratified and confirmed in the space of six weeks, to be computed from the day of its signature, or sooner, if it can be done.

"In witness whereof, we, the undersigned, plenipotentiaries of their Britannic and Catholic majesties, have in their names, and by virtue of respective full powers, signed the present convention, and set thereto the seals of our Arms. Done at the palace of St. Lawrence, the 28th of October, 1790.

[L. S.] "EL CONDE DE FLORIDA BANCA.
[L. S.] "ALLEYNE FITZHERBERT."

One of the most temperate writers on this subject, speaking of the treaty, makes this observation relative to an assertion of Mr. Greenhow: "If Mr. Greenhow were as good a lawyer as he is a historian, he would have known that the Convention of the Escurial is one of those national compacts, called Transitory Conventions; that such conventions are not put an end to, or even necessarily suspended by war; but that if suspended, they revive as a matter of course on the restoration of peace, without any express stipulation. This," continues the writer, "is international law." And he quotes Wheaton, which he says will be respected in the United States. Now, in order to make the treaty of 1790 fall

within this definition, one of these characteristics must attach to it. Territory must be ceded; *the boundaries of some territory must be defined; territory must be exchanged; or permanent servitude in favor of one nation, must be created within the territory of another.*" Was there in this treaty of 1790, any cession of territory? Were there any boundaries defined? Was there any territory exchanged? Anything, in fact, that could be construed into the relinquishing of a sovereign right, on the part of Spain? We answer, no. Reparation was made for an insult to a national flag; restitution was granted to individuals for property taken; and the rest of the treaty is taken up to show, under what restrictions England might navigate the waters of the South Sea, and carry on their fisheries and trade with the natives. And it was strictly a *treaty*, and not a *transitory convention*, so called. England left the discussion of the right of sovereignty, advanced by Spain, to the operation of the treaty of Utrecht. We shall see as we advance, that this treaty of the Escurial was annulled in 1796.

Thus far, has been given the history of the alleged aggression of Spain, of the demand of England, the compliance with that demand by the court of Madrid, and the treaty. Upon a review of these facts, for they are all historical facts, the following appears to be the true state of the case.

From the first attempts at discovery, made under the authority of Hernan Cortez, in 1532, for two centuries and a half, the eastern world gave to Spain the right of sovereignty over the northwest coast of America. In 1785, the viceroy of Mexico, regarding with a jealous and watchful eye the movement of the fur traders in the North Pacific, sent two armed vessels, under Martinez, to observe their movements. He arrived at Prince William's Sound in May, and after remaining a few months in the vicinity, returned to San Blas.

In Martinez's report to the viceroy, the Russian establishments were represented as being four in number; that they had not advanced eastward beyond Prince William's Sound, but that a large force was about embarking from Asia to occupy Nootka Sound, in the name of the Empress of Russia. The viceroy thereupon ordered Martinez to proceed to Nootka, and take possession of it in the name of his Catholic majesty.* In February, Martinez left San Blas, and arrived at Nootka on the 6th May, 1789. On his arrival he found the American ship Columbia, and the Iphigenia, a vessel under the Portuguese flag. The officers of these vessels were informed, that his object was to take possession of the country, in the name of the king of Spain. Having ascertained the purport of the instructions given to the commander of the Iphigenia, by her owners, he took possession of her, but subsequently released her, as we have before related. In July, the Argonaut, Captain Colnett, arrived for the purpose of taking possession of the sound, and erecting a fort under the British flag. This vessel and her consort, the Princess Royal, were taken by

* For the instructions given to Martinez, see the introduction to the narrative of the voyage of the Sutil and Mexicana, which may be considered an official work.

Martinez and sent to San Blas. The owners of these vessels memorialized the British government, who immediately demanded satisfaction for the aggressions; at the same time stating that the discussion of the claims which either party might advance to the sovereignty of the territory, should be suspended. After considerable negotiation on the subject, the demands of Great Britain were complied with by the Spanish government, with the full understanding that the concession was not to affect the right of his Catholic majesty, to the sovereignty of the northwest coast. The treaty has been given at length. We have now but one question to ask, relative to this assertion of Great Britain, *viz.* "The United States can claim, as the assignee of the Spanish title, only the same rights as were conceded to England by the treaty of 1790. We ask what has become of the right of sovereignty? It surely must have had an existence. If England had the right in 1790, she has it now. If Spain possessed it, we possess it now; for surely there is not an article in the treaty that can be construed into an abandonment of the title by Spain. It most assuredly did not expire by limitation. The treaty itself was not an adjudication of sovereignty. It simply said, "Know all men, by these presents, that Spain agrees to indemnify England for the loss sustained by her subjects, at Nootka Sound; and she now grants what she before denied, the right of England to navigate those seas; to carry on the fisheries in the North Pacific; to trade on the coast of any part of Northwest America; and to make such settlements as are necessary for the purposes of commerce with the nations;" Spain still continuing in full possession and in the enjoyment of all those rights she had conceded to England, as tenant in common, of a property in which Spain had the fee simple; the consideration and the examination, and ultimate action of the parties as to the right of soil, being for a time suspended. That this was the opinion of those who made the treaty, and the leading members in the British Parliament at the time, will be seen from the following extracts from the debates in the House of Commons, on the occasion of a motion for a vote, approval of the convention. The following remarks of Mr Fox, the leading member of the house, will explain fully all that Spain conceded, and all that England obtained by the treaty of 1790.

"In the early part of the debate, he had heard nothing but rhodomontade about our acquisition, of new sources of trade, new objects of enterprise, new oceans, and new continents, opened to the activity of our merchants, and the courage of our sailors; such flowers of rhetoric were elegant embellishments, equally convenient to give force to argument, or to conceal the want of it. But was it true that we had opened any of these sources, or made a single acquisition? The honorable gentleman who had spoke last (Mr. Ryder,) had put the question on the true grounds. Having caught the contagion of the speakers, who preceded him on the same side, he had talked of gaining and acquiring; but in the progress of his argument, he had very properly stated that we had acquired nothing, but only obtained security for what we had before. This was precisely what we had obtained, an advantage no doubt, because it was wise *to give up*

part of an unlimited right, to secure the uninterrupted possession of the rest; but an advantage to be estimated by comparing what we gave up, with what we retained. What then was the extent of our rights, before the convention, (whether admitted or denied by Spain was of no consequence,) and to what extent were they now secured to us? We possessed and exercised the *free navigation of the Pacific Ocean, without restraint or limitation.* We possessed and exercised the *right of carrying on fisheries in the South Seas,* equally unlimited. This was no barren right, but a right of which we had availed ourselves, as appeared by the papers on the table, which showed that the produce of it had increased, in five years, from twelve to ninety-seven thousand pounds. This estate we had, and were daily improving; it was not to be disgraced by the name of an acquisition. *The admission of part of these rights* (navigation and fishing) by Spain, was all we had obtained. It remained to inquire *what it had cost.* Our *right before was to settle* (not rule) *in any part of South or Northwest America, not fortified against us by previous occupancy*; and we are now restricted to *settle in certain places only, and under certain restrictions. This was an important concession* on our part. Our *rights* of *fishing extended to the whole ocean,* and *it too was limited,* and to be carried on within certain distances of the Spanish settlements. Our right of making settlements was not as *now, a right to build* HUTS, *but to plant* COLONIES *if we thought proper.* Surely these were acquisitions, or rather conquests, as they must be considered, if we were to judge by the triumphant language respecting them, but great and important concessions! Every new regulation was a concession, not an acquisition. It was, indeed, said in his majesty's message to both Houses of Parliament, that a claim was asserted by Spain *to the exclusive right of sovereignty, navigation* and *commerce in the territories, coasts and seas,* in that part of the world. But was a message from his majesty a sufficient authority to the House for the nature and extent of the claims of Spain? An honorable baronet had said: '*Look into all the treaties from the time of Charles II. to the treaty* of *Utrecht, and* THERE *the romantic and unwarrantable claims of Spain will appear.*' Were that statement correct, the consequence must be that our claims on Spain were unjust and unwarrantable, and insisting on them a direct violation, because, *wherever the claims of Spain were recorded,* the *concessions of Great Britain were recorded.* But he rejoiced for his country that it was so. He was as much a friend to the claims of Spain, SANCTIONED BY the TREATY of UTRECHT, as Count Florida Banca, or any Spanish minister, *because they were founded in justice. These were an exclusive right of territory, navigation and commerce, in the seas and coasts* of SPANISH AMERICA. The absurd and extravagant claims arose, from extending the term Spanish America to the seas and coasts where Spain had no right of occupancy; and in this extension of the term, had every one of our preceding disputes about the claims of Spain originated.* To what did we object before, but to the indefinite limits of

* The question, what territories were embraced in *Spanish America,* depends upon proof of what she had discovered at, and before, the formation of the Treaty of Utrecht. This question is now open between America and Britain.

Spanish America? The objection still remained, for the limits of Spanish America were still undefined, not perhaps in a way so likely to create disputes as formerly, but sufficiently vague and uncertain to afford a pretext, where there was a previous disposition to quarrel.

On this point, therefore, abstractedly considered, we had gained nothing. We had *renounced the right of permanent settlement on the whole extent of South America, and where the admitted right of settlement on the Northwest coast commenced,* WAS COMPLETELY UNDEFINED. If it was said at Nootka, we did not know that Nootka would be restored. (It never was.) It was, indeed, stipulated, by the first article of the convention, that all the *buildings* and *tracts* of lands of which we had been dispossessed about the month of April, 1789, were to be restored. Why, about the month of April was mentioned in so indefinite a way, a learned gentleman had endeavored to explain, by saying there was danger in mentioning a particular day; because, if any mistake of date should occur, that might give rise to dispute. If Captain Meares's authority was good for anything, it was surely good for the date at which his ship was taken; and that, by his own account, was on the 13th of May. Why, about the month of April was inserted as the date of what happened in May, being on the face of it unaccountable, gave reason to imagine that it was done to answer some purpose, and consequently excited suspicion. By the 2nd Article, it was provided, that *everything of which either party had been dispossessed, by the other, subsequent to the month of April, should be restored,* OR *a just compensation made.** Now, as there was some ground to believe that we had been dispossessed of Nootka subsequent to that period, how could we be sure that Spain, instead of restoring it, would *not offer a compensation.* The learned gentleman said it was otherwise agreed upon. If he knew that, he knew more than the House knew. By the 3rd Article, we are authorized to navigate the Pacific Ocean and South Seas, unmolested, for the purpose of carrying on our fisheries, and to land on the unsettled coasts, for the purpose of trading with the natives; but after this pompous recognition of right to navigation, fishery and commerce, comes another article, the 6th, *which takes away all right of landing, and erecting even temporary huts, for any purpose but that of carrying on the fishery; and amounts to a complete dereliction of all right to settle, in any way, for the purpose of commerce with the natives.* * * * * In renouncing all right to make settlements in South America, we had given to Spain what she considered as inestimable, and had, in return, been contented with dross. * * * * Thus, he had shown that the treaty was a treaty of concessions, and not of acquisitions; that admitting, as he did admit, the propriety of conceding part of our general rights to secure the undisturbed possession of the rest, we had given up what was of infinite value to Spain, and retained what could never be of much value to ourselves; and that what we had retained was so vague and indescriptive, so undefined in limits, and, consequently, so liable to be again disputed, that we had conceded much more in point of right, than we had gained in point of security."

* It was not restored. Spain sold to us; England must go to Spain for arrears.

We have room but for one more remark of the honorable gentleman, which is of the most force of any made on the occasion, and it is this: "It was not true, as had been asserted, that there was any intricacy in the question of right, between us and Spain, had it been thought expedient to bring it fairly to discussion. It stood on the general principle by which all European nations were governed in forming settlements, namely: that where the subjects of *no power had settled, those of every other had a right to settle.* This was the general principle."

By this, then, we will test the claims that have been put forth by Great Britain. Let us grant that Sir Francis Drake, in the year 1579, saw some part of the coast of Northwest America, and took possession of the country in the name of the king of England—*no other British vessel visited that coast for near two hundred years.* So, of course, that would give them no right. Captain Meares, if he had sailed under the English flag, made no *settlement* at Nootka; for the very purpose he had in view in erecting a house, was for the temporary accommodation of the party he left there while collecting fur in the vicinity; and when the vessel left for Macao, there was not a vestige remaining even of that small hut at Nootka; and the English made no settlement on the northwest coast of America, in any part of it drained by the Columbia, prior to 1811; nor in any other part of Oregon, till 1806.

To proceed, however, with the treaty, we have given the remarks of the leader of the House of Commons; we will now give some extracts from the reply of Mr. Pitt. In answer to the argument of Mr. Fox, to prove that the convention had been one of concessions, and not of acquisitions, on the part of Great Britan, Mr. Pitt maintained, that "though what this country had gained consisted not of new rights, it certainly did of new advantages. *We had before a right to the southern whale fishery, and a right to navigate and carry on fisheries in the Pacific Ocean, and to trade on the coasts of any part of it northwest of America;* BUT THAT RIGHT NOT ONLY HAD NOT BEEN ACKNOWLEDGED, BUT DISPUTED AND RESISTED." Here we have the claims of Great Britain, which had been "disputed and resisted" by Spain: "the southern whale fishery, the navigation and the carrying on of the fisheries in the Pacific Ocean, and of trading on any of the coasts northwest of America." By the convention, these claims of Great Britain had been allowed; "a circumstance," says Mr. Pitt, "which, though *no new right,* was a new advantage. Spain, besides the right of sovereignty on the northwest coast, as far as the Russian settlements, had claimed the navigation and exclusive commerce of the South Sea. And this convention had for its object, besides the reparation for the insult to the British flag, and the restoration of property, the arranging the rights of navigating the aforesaid South Sea; of fishing and of trading with the natives, and some restrictions as to the manner and mode of making temporary settlements. The king of Great Britain, in his message to Parliament, spoke of this claim to Spain's rights of *sovereignty, navigation and commerce,* in the territories, seas, and coasts in that part of the world. The king of Spain reiterated it, in his circular to the different courts of Europe; and it was

the burthen of every official communication between the high contracting parties, at the time of forming the treaty. Great Britain made no such pretension, nor did she deny the validity of the title of Spain to the country. All that was said of it, in the preliminary negotiation, was, that the question should not be discussed until a proper reparation had been made for the *insult to the flag of England*. That reparation was made; and the title to the sovereignty of Oregon being clearly and in explicit terms, for that time, waived, is the matter in difference between these States, as the successors to the Spanish title, and Great Britain. England, indeed, must now show her title. Was it derived from Drake's and Meares's operations, the treaty of 1790, or is there some other ridiculous fabrication to be drummed from its grave to support it?

CHAPTER III.

WHOSE IS THE SOVEREIGNTY OF OREGON?—IT IS OURS.

We have given, in the preceding pages, the history of the discovery of the Oregon coast by Spain, and of the pretensions of Britain in that regard. We have shown, that Spain explored Northwest America by land, as far as the 35th degree of north latitude, as early as 1539; explored and took possession of the country about the Gulf of California, for two hundred miles up the Colorado of the west, in 1540–41–42; explored and took possession of the whole interior of California, as far as 43° or 44° north, in 1542; explored, by sea, the Californian coast, and took formal possession of bays and lands, as far as 44° north, in 1542–3; explored by land, and took possession of it, as far as 44° north, in the same year; and we have seen that, up to this last date, Spain had no competitor in the march of her discoveries on the northwest coast of America. She alone had title as discoverer and occupant, from Cape San Lucas, northward, to a point situated about one hundred and fifty miles south of the Columbia River.

But, in 1577, we have learned that Drake, an English pirate, entered the Pacific Ocean, and pretended to have visited this coast, between latitudes 37° and 48°. We have shown, however, that he never saw the coast of Northwest America, at the latitudes mentioned in the accounts of his voyages; because, in the first place, if he saw any part of that coast, the account given by him of the climate and geographical features of the country, show, most conclusively, that it could not have been the coast in question; and because, in the second place, whatever land he might

have discovered, could not have accrued to the crown of England, by reason of the piratical character of the voyage. Drake was a pirate;* Elizabeth, while she knighted him, remunerated the subjects of the crown of Spain, for the piracies he had committed. From such men's acts, the laws of nations recognize no rights of nations to arise;—because, if it be still insisted that Drake ever saw this coast, and that his discovery was for the benefit of the crown of England, still it avails nothing, inasmuch as Spain had already discovered and explored it several years before; and, in the fourth place, because England did not afterward occupy by permanent settlement, as required by the laws in such cases governing.

The next discoveries we have noticed, were made by Juan de Fuca, in 1592, who explored the northwest coast to latitudes 48° and 49° north; sailed up the straits which bear his name, and took possession of the bordering lands in the name of Spain. This was the extent northward up to the year 1700.

Charles II. of Spain, died Nov. 1, 1700, leaving no issue entitled to succeed him. A war arose among the powers of Europe, as to which of the royal houses, Spain and its colonies should pass. The question was, whether the crowns of Spain, the Netherlands, Naples, Sicily, Milan, and the vast possessions of Spain in America, should be united with Austria, already very powerful, or with France, which was less formidable. The Austrian monarch, Leopold I., claimed the whole of these dominions for his son Charles, afterward emperor; and Louis XIV. claimed them for his second son, Philip of Anjou, afterward Philip V. England, the German emperor, and the States General, sided with Leopold; while Bavaria and Cologne took part with Louis. This war lasted ten years, and was finally terminated by the treaties of Utrecht, in 1713, which gave the Spanish crown to Philip of Anjou, under the title of Philip V.

The treaty which England at this time made with Philip, contains the following important article.

VIII. Liber sit Usus Navigationis & Commerciorum inter utriusque Regni Subditos, prout jam olim erat tempore Pacis, & ante nuperrimi Belli denunciationem, regnante Catholico Hispaniarum Rege Carolo Secundo, gloriosæ memoriæ, Secundum Amicitæ, Confœderationis, & Commerciorum Pacta, quæ quondam inita erant inter utramque Nationem, secundum Consuetudines antiquas, Literas Patentes, Schedulas, aliaque Acta speciatim facta; atque etiam secundum Tractatum, vel Tractatus Commerciorum, qui Madriti jam nunc confecti, aut mox conficiendi sunt. *Cum vero inter alias conditiones Pacis Generalis, præcipua quædam & Fundamentalis Regula communi consensu stabilita sit, ut Navigationis & Commerciorum Usus ad Indias Occidentales Hispanici Juris eodem in statu maneat, quo fuit tempore præfati Regis Catholici Caroli Secundi;* Quo igitur Regula hæc, fide inviolabili, & modo non temerando in posterum observetur, adeoque præveniantur, amoveanturque, omnes circa istoc negotium Diffidentiæ, suspiciorumque causæ, conventum, speciatim

* Hume's History of England, vol. v. chap. 41.

statutumque est, quod sive Gallis, seu Nationi cuilibetcunque, quovis nomine, aut quocunque sub prætextu, directe vel indirecte, nulla unquam licentia, nullaque omnino facultas dabitur navigandi, Mercaturam exercendi, aut Nigritas, Bona, Mercimonia, vel Res quascunque in Ditiones Americanas Coronæ Hispanicæ parentes introducendi, præterqam quod Tractatu, vel Tractatibus Commerciorum Supradictis, & Juribus ac Privilegiis in Pactione quadam concessis, vulgo el Assiento de Negros nuncupata, cujus Articulo Duodecimo mentio facta est, concordatum fuerit. Excepto etiam quidquid Rex Catholicus prædictus, vel Hæredes, Successoresve ejus Pacto seu Pactis quibusvis de Introductione Nigritarum in Indias Occidentales Hispaniæ obtemperantes, ineundis spondebunt, postquam Pactis, sive el Assiento de Negros supradicta, determinata fuerit. Utque de Navigatione & Commercio ad Indias Occidentales, ut supradictum est, firmius, & uberius undiquaque præcautum sit; hisce præterea conventum concordatumque est, quod neque Rex Caholicus, neque Hæredes, Successoresque ejus quilibetcunque, ullas Ditiones, Dominia, sive Territoria in America Hispanici Juris, vel ullam earundem partem, seu Gallis, sive Nationi aliæ cuicunque vendent, cedent, oppignorabunt, transferent, aut ullo modo, ullove sub nomine, ab se & Corona Hispanica alienabunt. E contra autem, quo Ditiones Americanæ Hispaniæ obtemperantes partæ tectæ conserventur, spondet Regina Magnæ Britanniæ sese operam daturam, opemque laturam Hispanis, ut Limites antqui Ditionum suarum Americanarum restituantur, figanturque, prout Regis Catholici Caroli Secundi supradicti tempore steterant, si quidem compertum fuerit, ullo modo, ullove sub prætextu eosdem in parte quacunque effractos, imminutosve esse, *ex quo antedictus Rex Catholicus Carolus Secundus mortem obierit.*

TRANSLATION.

"VIII. The right of navigation and commerce between the countries, subject to both nations, shall remain free, as it was formerly in the time of peace, before the declaration of the late war, during the reign of his Catholic majesty, Charles the Second, king of Spain, of glorious memory, according to the treaties of friendship, confederation and commerce concluded between both nations, according to ancient usages; letters patent, schedules, and other acts specially provided; and also according to the treaty or treaties of commerce which have heretofore been concluded, or are soon to be concluded at Madrid.

"But especially among the other conditions of a general peace, this particular and fundamental rule is established by common consent: that the right of navigation and commerce with the West Indies, subject to Spain, shall remain in the same condition as it was in the time of his said Catholic majesty, Charles the Second.

"To the end, therefore, that this rule may be observed in good faith, and in a manner inviolate in future, and that all doubts and causes of suspicion in relation to this matter may be anticipated and removed, it is especially agreed upon and ordained, that no authority or permission of any kind,

or under any pretext whatsoever, either directly or indirectly, of navigating or trading in merchandise, shall be granted to the French or any other nation whatever; nor shall they import Negroes, goods, merchandise, or anything else into the American territories, subject to the crown of Spain, except as may be provided for in the treaty or treaties of commerce before mentioned, and in accordance with the rights and privileges secured by a certain treaty, commonly called 'el Assiento de Negros,' as set forth in the twelfth article thereof. And except whatever his Catholic majesty aforesaid, or his heirs or successors may promise to persons entering into the West Indies subject to Spain, under any treaty or treaties whatsoever, in relation to the importation of slaves into the Spanish West Indies after the treaty, or 'el Assiento,' above mentioned, may have terminated.

"And that it may be more thoroughly and fully provided for, in relation to the navigation and commerce among the West Indies, as aforesaid, it is further by these presents covenanted and agreed upon, that neither his Catholic majesty nor any of his heirs or successors shall sell, cede, pledge, transfer, or in any way or under any pretence, alienate from themselves and the crown of Spain any provinces, dominions or territories in America, belonging to Spain or any portion thereof, either to the French, or any other nation whatsoever. But, on the contrary, in order that the American territories subject to Spain may be reinstated inviolate, her majesty, the Queen of Great Britain, promises that she will aid and assist Spain to reëstablish and confirm the ancient boundaries of her American possessions, as they stood in the time of his said Catholic majesty, King Charles the Second, if indeed, it shall be ascertained that they have in any manner, or by any means, been infringed upon or diminished since the death of his said Catholic majesty, Charles the Second."

This article of the "Treaty of Utrecht" guaranties to the Spanish crown the ownership and sovereignty of the territories in America, and the exclusive rights of commerce and navigation in the Pacific Ocean, which she claimed at the death of Charles the Second, and pledges its arms to aid in restoring whatever of these rights may have been taken from her by any power or means whatsoever.

That Oregon was embraced in this treaty appears evident. For before the death of his majesty, Charles the Second, Spain had discovered and taken possession of its whole coast, and the interior country, to 49° north; and was known to all civilized nations to claim it as a portion of her American dominions.

This treaty of Utrecht was a TRANSITORY CONVENTION,* inviolable, and operating in perpetuity, for ever binding as against the British nation.

England, therefore, in the year 1713, for ever quit-claimed to Spain, and warranted for ever to her monarch and his successors, the northwest coast of North America, as far north as the Straits de Fuca; and thereby, in virtue of the perpetual nature of the treaty thus entered into, placed it

*Vattel, Transitory Convention. Vattel, book ii., chap. 12.

beyond her power, ever after, except by treaty, to resume any pretensions of title to it. For to that point had discoveries been made, and possession taken, previous to the death of Charles the Second. She also confirmed the claims of Spain to the exclusive sovereignty, commerce and navigation of the great South Sea or Pacific Ocean; and by consequence, the sole right to explore and make discoveries farther to the northward. And Spain, resting on these solemn treaty stipulations, considered it unnecessary to make farther explorations in that quarter, till the year 1774, when another expedition was sent out, which discovered San Lorenzo, (Nootka Sound,) in latitude 49½° north, and surveyed the coast with great care, and took possession of it in due form, as high as the 60th degree north.

Another expedition, under Heceta, in 1775, discovered the mouth of the Columbia River, and called it Rio de San Roque. Maurelle explored the coast to 57° north, and surveyed bays, harbors etc., and took possession of the country in the name of the king of Spain.

The discoveries of the Spaniards on the northwest coast of America, from the time of Cortez to the year 1775, are seen, therefore, to embrace both coasts of the Gulf of California—the Rio Colorado of the west, the Pacific coast from the southern point of the Californian peninsula to latitude 60° north, the Columbia River: *the entire line of coast between these degrees of latitude, and the two largest rivers of Western America.* In all the practice of nations, these discoveries were, doubtless, sufficient to entitle Spain to the rights arising from prior discovery. And we have demonstrated, by historical facts, that neither England nor any other power, up to this date, could present any opposing claim between these latitudes. Indeed, at the convention of Utrecht, England and the other powers of Europe not only abandoned, but guarantied these lands, and the entire South Sea, to the crown of Spain, in *perpetuity.*

It will be manifest to the reader, at this stage of our investigation, that the title of Spain to those countries and seas was not only exclusive, so far as exclusive discovery could give title, but that the guaranties of England, and the other powers at the convention of Utrecht, rendered all further acts, as subsequent acts of occupancy, etc., unnecessary to perfect that title through all after time. For, by these guaranties, England and the other powers waived the necessity of occupancy, ect., required by the laws of nations to perfect the inchoate rights of prior discovery; and waived also the possibility, on the part of those powers, of acquiring, by subsequent discovery or occupancy, any rights in the territories thus solemnly conceded to Spain.

But, about this time, England, France, Austria and Portugal, parties to the convention of Utrecht, began to violate the faith pledged in those treaties, not only by allowing their merchant ships to visit the northwest coast, for the purpose of trade with the savages, but even by sending out fleets to explore it for the fabled water-passage from the Pacific to the Atlantic. As these merchant vessels were not sent out for the purpose of making discoveries, not furnished with that authority from their respective governments, which the laws of nations require, in order to render

any discoveries made by them available, in giving title of sovereignty, we may well pass them in silence, as not affecting the question under discussion. But there is this stronger reason for so doing: it was impossible even for expeditions, sent out with full powers to make discoveries, to *rediscover* the Northwest American coast, from latitude 28° north to 60° north, so as to give any shadow of title to the sovereignty over it, as against Spain. But inasmuch as there is a disposition on the part of Britain to forget the distinction which the laws of nations make in this matter, it may be well to pause a moment here, and inquire whether any English freetraders, from the year 1775, or even the celebrated Captain Cook, did actually make any discoveries between latitudes 28° north and 60° north, on the Northwest American coast.

Captain Cook was sent out in 1776. This great navigator was instructed to "proceed to the coast of New Albion, endeavoring to fall in with it in the latitude of 45°," where he was to procure wood, water, and other supplies, and then proceed along the coast without delay, to latitude 65° north, where he should commence his search for "a water passage, pointing toward Hudson's or Baffin's Bays." He entered the Pacific in the summer of 1777—saw Cape Blanco, in latitude 43° north, on the 7th of March, 1778—passed the mouth of the Columbia without observing it—on the 22nd perceived the southern cape of the Straits de Fuca—passed those magnificent straits without observing them—and on the 29th, anchored in the harbor of San Lorenzo, or Nootka, in latitude 49½° north. Here he remained till the 26th of April, when he stood away to the northward to the 60th degree, and thence explored south as far as 55°. This part of the coast Cook surveyed with great care and skill. But it had long before been discovered and explored by the Spaniards. This is the substance and effect of Cook's voyages on the northwest coast of America, south of latitude 60° north. He only followed in the path of previous discoveries by the Spaniards, and landed at only one point on the Oregon coast—at San Lorenzo—Nootka. The account given in the narrative of Cook's voyages, of the furs to be found on the northwest coast, and the extraordinary prices given for them in China, gave rise to Hanna's voyage in 1785, Dixon's and Portlock's in 1786, and others from the East Indies in 1787 and '88, and of La Perouse in 1790. All these, except La Perouse, were mere traders. They made no discoveries; and had they done so, they could have availed nothing as against Spain, south of latitude 60° north. The nations under whose flags these vessels sailed, were parties to the great *transitory convention* of Utrecht—unalterable by the occurrence of war between the contracting parties, and they could not acquire rights over their own acts of grant or quit-claim. The operations of Colnett and Meares, unavailable, as against Spain, for these reasons, as well as for the many other sufficient ones, are set forth in our notice of the British claim to Oregon. And the conclusion which all the facts derived from British history, and the history of other nations concerned in this matter is, that previous to 1790, the date of the Escurial Convention, there were no rights existing in any other nation than Spain, over that

part of the coast of northwest America lying between latitudes 28° and 60° north.

The convention of the Escurial was, to the extent of its terms, an abrogation of the treaty of Utrecht. We have shown on previous pages, to what extent Spain surrendered her previously existing rights; that she gave to England the joint right of navigating the South Sea—of fishing—trading, and making temporary settlements for that purpose on certain portions of the Northwest American coast. No right of sovereignty over the territory was conceded to England; that remained as it was at the death of Charles the Second in 1700, and as it had been most solemnly recognized by Great Britain, at the treaty of Utrecht in 1713. By the treaty of the Escurial then, Great Britain acquired only the right to land and live upon the coast under Spanish laws, and to trade with the Indians under certain restrictions and limitations, and nothing more. It was, at best, a restricted joint-tenancy, subject to be terminated at the will of Spain. The concessions of this treaty of the Escurial, were indeed important to England, but were abrogated by the occurrence of war between the parties in 1796; and from the very nature of that treaty, its provisions in favor of Britain were not revived by the subsequent peace; and although England continued to exercise many of the rights which were granted to her under it, she did so in violation of her most solemn national engagements. In 1796, therefore, the title of Spain to her immense possessions along the whole Northwest American coast, as far as 60° north, was disencumbered of whatever concessions she had made to England, by the treaty of 1790, and reverted back to its original condition as it was in 1700, the time of the death of Charles the Second, and as it had been recognized by England in 1713.

And thus, this treaty of the Escurial was annulled by the war of 1796, and was never revived. And we repeat, that Spain, by the annulling of the treaty of 1790, was restored to the absolute and unconditional sovereignty (so far, at least, as Great Britain was concerned,) of the whole of her Northwest American coast, and retained such sovereignty until the treaty of Florida, in 1819, when she ceded to the United States all her rights to the territory in question.

Treaty of amity, settlement, and limits, between the United States and Spain, (commonly called the Florida Treaty,) signed at Washington, February 22, 1819.

"ART. 3. The boundary-line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the River Sabine, in the sea, continuing north, along the western bank of that river, to the 32nd degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then crossing the said Red River, and running thence, by a line due north, to the River

Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude 42 north; and thence, by that parallel of latitude, to the South Sea; the whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the 1st of January, 1818. But, if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea. All the islands in the Sabine, and the said Red and Arkansas Rivers, throughout the course thus described, to belong to the United States; but the use of the waters and the navigation of the Sabine to the sea, and of the said Rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

"The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say, the United States hereby cede to his Catholic majesty, and renounce for ever all their rights, claims, and pretensions to the territories lying west and south of the above described line; and, in like manner, his Catholic majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of the said line; and for himself, his heirs, and successors, renounces all claim to the said territories for ever."

Here then, the United States might rest their right of sovereignty to the whole Terrritory of Oregon, acquired by treaty of purchase, the same in extent as it was in the hands of Spain, in 1797; a sovereignty which England is bound, by the laws of nations, to respect, as we shall show in the sequel, by the most solemn treaties on her part.

In the year 1783, a new power arose on this Continent, which was neither a party to the treaty of Utrecht, nor to that of the Escurial. That power was the United States of North America. Bound by no treaties in reference to making discoveries upon the northwestern coast, the Republic was at liberty to enlarge its territory in such manner as to give its frontier a form at once capable of defence, and sufficiently extended to embrace all the territory that would be required in the development of its institutions and the energies of its people. Accordingly, in 1803, we purchased Louisiana from France. This vast valley extended from the mouth of the Mississippi to the 49th degree north; its eastern line the Mississippi; its western extension was indefinite. It was represented on the old French maps to extend in that direction beyond the Rocky Mountains, embracing rivers running westward into the Pacific. In 1763, France and Great Britain entered into the treaty of Versailles; by which, the boundaries between their several American possessions were determined. By this treaty, it will be seen Great Britain *relinquished, irrevocably,* to France, all her possessions *west of the Mississippi.*

This treaty of Versailles, was one of mutual concessions; France yielding to Britain the Canadas, and other possessions east of the Mississippi; and receiving in return, a quit-claim from Britain of all her rights west of the same river. Had France, after that treaty, pushed her settlements through to the Pacific, could Britain have interposed? And if not then, when has she since acquired the right to do so, as against France or her grantees? This was a transitory convention.

England had, previous to 1763, claimed that her Atlantic territories extended across the valley of the Mississippi—over the Rocky Mountains to the Pacific Ocean. Indeed that old leaven of arrogant ambition, so long ago tried to grasp the rights of France, arising out of discovering the Mississippi river, and the occupancy of the valley, as it now desires to do those of the Republic, derived from discovery, purchase, and occupancy, and every other just title, to Oregon. France had many reasons, therefore, for obtaining from that unscrupulous neighbor, a guaranty of her territories "west of the Mississippi;" and did so in this treaty of Versailles, as far as 49° north. If, therefore, she owned any land beyond the Mississippi valley, she ceded it to France. If she did not, she ceded to her the right as against herself, of acquiring title to all the territory of America lying "west of the Mississippi river, and south of the forty-ninth parallel of latitude."* How will British sophistry maintain her claim to the Oregon as against the grantees of France? To this treaty, the United States, by the purchase of 1803, have become a party; and as by the treaties of Utrecht and Versailles, England has abandoned in the one case, to Spain, as high as latitude 48° north, on the northwestern coast of America, and in the other, as high as 49° on the same coast; it becomes difficult to see, with what pretence of right she now comes forward to recover what she has thus solemnly, by two several treaties, defeased to others.

It is proper to remark, as we proceed, that the discoveries of England on the northwest coast, after the treaty of 1790, with Spain, and before the treaty of Ghent, in 1815, could not confer upon Great Britain any rights of sovereignty. For the treaty of 1790 defined, to their fullest extent, the rights of Britain on the western coast of America, and left the sovereignty in Spain, as settled by the treaty of Utrecht, in 1713. The only matter remaining open, was, how far to the north the Spanish discoveries extended at the death of Charles the Second, in 1700. This limit, we have shown, was in latitude 48° north. Before England, therefore, can claim any sovereignty south of this limit, she must first obtain an express grant of the same, from Spain, or her grantees. Is there any such grant in the treaty of 1790? Nothing like it.

It should, in this connection, be remarked, that while we hold that the treaty of 1790, was annulled by the war of 1796, the same cannot be said of the treaties of 1713, and of 1763. These latter compacts were binding upon the high contracting parties thereto, and their successors—and according to Vattel, remain in force for ever. They were transitory con-

* See Story Com., Vol. i, p. 17.

ventions. So that, if the treaty of the Escurial did not expire in 1796, but comes in to deprive us—and we deny even this—of any of our rights purchased from Spain, certainly by the treaty of Versailles, we, as purchasers of Louisiana, have an unconditional grant from England herself, to that part of the Territory of Oregon lying south of 49° north, and an unquestionable right to the remainder lying north, by the law of contiguity, and the discoveries of Spain, subsequent to the death of Charles the Second. Again, although England, by virtue of the treaties of 1713 and of 1763, was precluded from gaining any rights of sovereignty from discovery or occupancy, the United States have labored under no such disabilities.

Accordingly, the discovery of Washington Island in 1789, by Gray; the Columbia River, in 1792; of Bulfinch's Harbor; the purchase of nearly the whole of the island on which Nootka is situated, in 1792, of Maquilla and other chiefs; the explorations and occupations of Lewis and Clark, in 1805–6; of Henry and others, 1808; and of Astor, in 1811; all stand out for their own value, under the laws of nations, as conferring title to the sovereignty of Oregon. They are certainly available to us against Britain, who, as has been abundantly shown, was not only barred by her own treaties from acquiring title by discovery or occupancy, but also, in fact, never did anything more than survey what Spain and the United States had previously discovered and occupied on that coast.

In conclusion we remark—Britain did not discover Oregon. It was fully discovered by Spain before a Briton ever saw its coast. She has, indeed, since the date at which the Spaniards explored to latitude 60° north, surveyed its rivers and inlets; but the surveying another's possessions confers no title to them. Britain and Europe, in 1713, conceded its sovereignty to Spain; since that time, Meares, and other Britons, have attempted to occupy those dominions of a neighbor, but have not succeeded in thus pirating any title to the country. She, indeed, built a trading-post on the head-waters of Frazer's River; but it was after the United States had occupied the valley of the Columbia, by Lewis and Clark. She, indeed, built trading-posts on the head-waters of the north branch of the Columbia River; but it was after the Columbia had been occupied by Lewis and Clark. She has, indeed, had possession of Astoria and other American posts, for many years; but that occupancy is rendered nugatory, as against the American title, by the fact that she came into that possession by an act of war, and annulled it, as conferring title, by the surrender of the country at the restoration of peace; and since that event, express treaty stipulations prevent the occupancy of her subjects from affecting the claims of the United States; who, on the other hand, hold the Spanish title of discovery, occupancy and contiguity, all which were guarantied to the crown of Spain, by Britain, France, and the rest of Europe, a hundred and forty years ago. We have our own title of discovery, purchase from the Indians, and occupancy. And further, we assert, that our title is supported by that law of nations which strengthens a title derived from discovery, etc., by the consideration of contiguity, its position,

and natural dependence for commercial and civil affairs, upon the several claimants. Oregon is more naturally dependent in these respects, on California and Mexico, than upon the Canadas, and the frozen regions of British America. We have purchased from Spain this right of contiguity. Therefore, for all the reasons ever assigned by Britain in such cases—by the laws and customs of nations, and by grant from Britain herself, Oregon is ours.

The author of these pages desires to put a single question to his countrymen. He would do it with the deepest feeling which love of country can inspire. He would urge its consideration home, upon that mighty impulse of the American mind, which had the intelligence to perceive its rights, and the courage to defend them in the struggles of the Revolution. WILL YOU DEFEND, AT EVERY HAZARD, THE RIGHTS AND HONOR OF YOUR COUNTRY; OR WILL YOU YIELD THEM, AND YOUR OWN HONOR, TO THE INSOLENT PRETENSIONS OF GREAT BRITAIN? I believe the response from every hamlet in the land, will be an indignant negative. Shall we not hear everywhere uttered, in the firmest tones: "We demand what is clearly right; we submit to nothing that is wrong." The value of Oregon, to us, is inestimable. In an agricultural sense, that Territory would be worth little. But, when we remember that the genius of our government forbids us to establish colonies on the islands of the Pacific; that we can never own a harbor on that sea, unless we retain Oregon; that there is the finest group of harbors in the world on the northern portion of Oregon; that there are none south of latitude 47° north; that Britain claims that the Columbia River shall be the line between her and us; that by yielding to her demands, we shall not have a bay on that great Ocean, in which a common merchant vessel can find shelter from a storm; that the nation which shall own the ports in the north part of the territory, will control the whole maritime and commercial interest of the North Pacific; that the distance between the navigable waters of the Missouri River, and the splendid harbor of Puget's Sound, in latitude 47° north, is only about three hundred miles; that a rail-road, six hundred miles in length, costing less than the Erie Canal, will bring the commerce of the Indies into the heart of the Republic;—we may well ask ourselves, if we will yield this most important of all our national wealth, to the unscrupulous and baseless claims of Britain? Shall it be done? It will not, until we cease to be Americans.

THE END.

APPENDIX.

The following Report of a Committee of Congress in 1843, is thought very valuable, as illustrating the title of the United States to Oregon Territory.

REPORT.

The Committee on Military Affairs, to which was referred so much of the President's message as relates to the establishment of a chain of military posts from Council Bluffs to the Pacific Ocean, submits the following report:

The Secretary of War, in his report accompanying the President's message, speaking of the "territory which extends from the Lakes to the Gulf of Mexico," has the following remark: "It is in immediate contact with numerous wild and warlike Indians, who are capable of bringing into the field a number of warriors estimated at from twenty to thirty thousand. From the intercourse which subsists between them and the traders, and emissaries of foreign nations, they may be rendered as formidable as any description of force that could be brought against us. To secure a proper influence over them in peace, and to counteract and control their dispositions in war—to secure our own territory, and to protect our traders, it is indispensable that a chain of posts should be established, extending from the Council Bluffs to the mouth of the Columbia, so as to command the avenues by which the Indians pass from the north to the south, and at the same time to maintain a communication with the territories belonging to us on the Pacific." In allusion to the same subject, the President, in his message, says: "I recommend particularly to your consideration, that portion of the Secretary's report which proposes the establishment of a chain of military posts from Council Bluffs to some point on the Pacific Ocean within our limits. The benefit thereby destined to accrue to our citizens engaged in the fur trade over that wilderness region, added to the importance of cultivating friendly relations with savage tribes inhabiting it, and at the same time of giving protection to our frontier settlements, and of establishing the means of safe intercourse between the American settlements at the mouth of the Columbia River and those on this side of the Rocky Mountains, would seem to suggest the importance of carrying into effect the recommendations upon this head, with as little delay as may be practicable."

Thus invoked by these high authorities, whose especial and responsible duty it is carefully to have weighed all the circumstances which may justify this recommendation, and all the consequences to which it may lead, the Committee on Military Affairs has given to this subject the anxious consideration its importance demands.

Mr. Monroe, in his last annual message, referring to this subject, uses the following language:

"In looking to the interests which the United States have on the Pacific ocean, and on the western coast of this Continent, the propriety of establishing a military post at the mouth of the Columbia river, or at some other point in that quarter, within our acknowledged limits, is submitted to the consideration of Congress. Our commerce and fishing on that sea and along the coast have much increased and are increasing. It is thought that a military post to which our ships of war might resort, would afford protection to every interest, and have a tendency to conciliate the tribes of the Northwest, with whom our trade is extensive. It is thought, also, that, by

the establishment of such a post, the intercourse between our Western States and Territories and the Pacific, and our trade with the tribes residing in the interior, on each side of the Rocky Mountains, would be essentially promoted. To carry this object into effect, the appropriation of an adequate sum to authorize the employment of a frigate, with an officer of the corps of engineers, to explore the mouth of the Columbia River and the coast contiguous thereto, to enable the Executive to make such establishment at the most suitable point, is recommended to Congress."

Mr. Adams, in his first message, in 1825, referring to this recommendation of Mr. Monroe, says:

"The interior of our own territories has yet been very imperfectly explored. Our coasts, along many degrees of latitude upon the shores of the Pacific Ocean, though much frequented by our spirited commercial navigators, have been rarely visited by our public ships. The river of the west, first fully discovered and navigated by a countryman of our own, still bears the name of the ship in which he ascended its waters, and claims the protection of our armed national flag at its mouth. With the establishment of a military post there, or at some other point of the coast, recommended by my predecessor, and already matured in the deliberations of the last Congress, I would suggest the expediency of connecting the equipment of a public ship for the exploration of the whole Northwest coast of this Continent."

The attention of the committee has been in the first place directed to the title of the United States to the territory claimed by them on the Pacific Ocean, and which is contested by Great Britain.

Russia, Great Britain, the United States, and Mexico, and in the order in which they are here named, from north to south, claim the possession of the whole western coast of North America. By the Florida treaty, concluded between the King of Spain and the United States on the 22nd of February, 1819, the forty-second degree of north latitude, from the source of the river Arkansas to the South Sea, is established as the boundary between the two countries in that quarter; and his Catholic majesty ceded to the United States all his rights, claims, and pretensions, to any territory north of said line; and for himself, his heirs and successors, renounced all claim to the said territories for ever. At the time of the ratification of this treaty, Mexico constituted a part of the Spanish monarchy, and, as such, was bound by its stipulations. Mexico, having established her independence of the Crown of Spain, to remove all doubts upon this subject, made a treaty of limits with the United States on the 12th January, 1828, by which the said forty-second degree of north latitude designated by the Florida treaty was recognized and confirmed as the boundary line between "the respective bordering territories of the United States of North America and of the United Mexican States." By these two treaties with Spain and Mexico, the southern boundary of the United States is permanently established, and there is no difficulty or dispute in that quarter.

By the third article of the convention between the United States and Russia, signed at St. Petersburg in April, 1824, it is "agreed that hereafter there shall not be formed by the citizens of the United States, or under the authority of said States, any establishment upon the northwest coast of America, nor any of the islands adjacent, *to the north of fifty-four degrees forty minutes of north latitude;* and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, *south* of the same parallel. In the convention between Great Britain and Russia, signed at St. Petersburg in February, 1825, the intersection of the same parallel of fifty-four degrees forty minutes of north latitude, and the southernmost point of Prince of Wales's Island, is established as the commencement of the line of demarcation between their possessions "upon the coast of the Continent and the islands of America to the northwest."

By these several treaties with Spain, Mexico, and Russia, the United States have limited their claim on the Pacific Ocean to twelve degrees and forty minutes of latitude; that is, to the space intervening between forty-two and forty-four degrees and forty minutes of north latitude. Great Britain asserts her title to the whole, or a large part of this territory. This title the committee propose very briefly to examine, fully convinced that it cannot be sustained.

By the second article of the convention of the 20th day of October, 1818, between Great Britain and the United States, it is agreed that the 49th parallel of north latitude shall be the line of demarcation of their respective territories, from the north-

western point of the Lake-of-the-Woods to the Stony Mountains. In 1824 and 1826, the United States proposed to Great Britain to adopt this same 49th parallel of latitude as the line between their respective territories, from the Rocky Mountains west to the Pacific Ocean. To this proposal the British ministry refused to accede, and in their turn proposed "that the boundary between the territories of Great Britain and those of the United States west of the Rocky Mountains should be a line drawn from those mountains westward, along the 49th parallel, to the nearest head-waters of the Columbia, and thence down the middle of the stream to its termination in the Pacific—the British possessing the country north and west of such line, and the Americans that on the other side." This proposal the United States rejected, on the ground that it gave Great Britain territory south of the forty-ninth degree of latitude. The negotiation having thus failed, in 1827, Mr. Gallatin, the American minister, was directed to give notice that the "American Government did not hold itself bound hereafter, in consequence of any proposal which it had made for a line of separation between the territories of the two nations beyond the Rocky Mountains, but would consider itself at liberty to contend for the full extent of the claims of the United States." All efforts to settle by negotiation the conflicting claims of the two nations to the territory in question having failed, each is left to assert its right in such manner as its own honor and interest shall dictate.

The committee submits a brief abstract of the title of the United States, referring, for a more full and general view of it, to the several reports heretofore made to both Houses of Congress, to the correspondence with Great Britain, and an interesting memoir prepared in 1840, by Mr. Robert Greenhow, under the direction of the Hon. John Forsyth, then Secretary of State.*

The United States claim the territory in question in virtue of their own original discovery and possession, and as successors of France and Spain under the Louisiana and Florida treaties. The committee is therefore led to the investigation of the titles thus acquired; and, first,

OF THE FRENCH TITLE.

The treaty of Utrecht was concluded in 1713. By the tenth article it was agreed, between Great Britain and France, to determine within one year, by commissioners, the limits between the Hudson's Bay and the places appertaining to the French. The same commissioners were also authorized to settle, in like manner, the boundaries between the other British and French colonies in those parts. Commissioners were accordingly appointed by the two Powers, and there is strong reason to believe they actually established the boundaries according to the terms of the treaty, although no formal record of the fact now exists. The evidence that the boundaries were thus established is, first, the fact of the appointment of the commissioners for that express purpose; and that two distinct lines may be found traced on the different maps published in the last century, each purporting to be the limit between the Hudson's Bay territories on the north and the French possessions on the south, fixed by commissioners according to the treaty of Utrecht." One of these lines "is drawn irregularly from the Atlantic to a point in the 49th parallel of latitude, south of the southernmost part of the Hudson's Bay, and thence westward along that parallel to Red River, and, in some maps, still further west. This line is generally considered in the United States, and has been assumed by their government, as the true boundary settled by the commissioners agreeably to the treaty above mentioned." Thus we find Messrs. Monroe and Pinckney, at Madrid, in 1805, writing to the Spanish minister as follows: "In conformity with the tenth article of the first-mentioned

* The first report upon "the expediency of occupying the Columbia River" was made by Mr. Floyd, of Virginia, to the House of Representatives, January 25, 1821, accompanied by a bill for that purpose. (House Doc. 1820—'21, No. 45.) The second report came from a select committee, of which Mr. Baylies, of Massachusetts, was chairman, to which had been referred the subject of establishing a military post at the mouth of the Columbia River, etc., January 16, 1826, (Ho. Doc., 1825—'26, vol. 1., No. 35;) and a supplemental report from the same committee, May 15, 1826. (Ho. Doc., vol. 2., No. 213.) The third report was made by Mr. Cushing, of Massachusetts, from the Committee on Foreign Relations, in relation to the territory of the United States beyond the Rocky Mountains, January 4, 1839; and a supplemental report, February 16, 1839. (Ho. Doc., vol 1, No. 101.) The fourth report was made to the Senate, by Mr. Lynn, of Missouri, from the select committee to which was referred the bill to authorize the President to occupy the Oregon Territory, June 6, 1838. (Senate Doc., No. 470.)

The Memoir of Mr. Greenhow was printed by order of the Senate, and is to be found in Senate Doc. 1839—'40, vol. 4., No. 174.

treaty, (treaty of Utrecht,) the boundary between Canada and Louisiana on the one side, and the Hudson's Bay and Northwestern Companies on the other, was established by commissioners by a line to commence at a cape or promontory on the ocean in 58 degrees 31 minutes north latitude; to run thence southwestwardly to latitude 49 degrees north from the equator, and along that line indefinitely westward." These extracts are taken from the Memoir of Mr. Greenhow, who, it is proper to add, considers the opinion that these boundary lines were actually established by the commissioners "at variance with the most accredited authorities." In this opinion the committee does not concur; so far from doing so, it is thought the presumption that the 49th parallel was adopted by the commissioners under the treaty of Utrecht, is strengthened by the line of demarcation subsequently agreed on by the treaty of Versailles, in 1763, between France and Great Britain, and also by the treaty of peace of 1783, between the United States and Great Britain. By the former, the "confines between the British and French possessions were irrevocably fixed by a line drawn along the middle of the Mississipi, from its source to the Iberville," etc. By the latter, that part of the northern boundary of the United States which is applicable to the subject is described to be through the Lake-of-the-Woods, "to the most northwestern point thereof, and from thence on a due west course to the Mississippi river." The most northwestern point of the Lake-of-the-Woods is perhaps a few minutes north of the 49th parallel of latitude. By the convention of 1818, between the United States and Great Britain, in the second article, it is agreed that a line drawn from the most northwestern point of the Lake-of-the-Woods, along the 49th parallel of north latitude, or if the said point shall not lie in the 49th parallel of north latitude, then that a line drawn from the said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection, due west, along and with said parallel, shall be the line of demarcation between the territories of the United States and those of his Brittanic majesty; and that the said line shall form the northern boundary of the said territories of the United States, and the southern boundary of the territory of his Brittanic majesty, from the Lake-of-the-Woods to the Stony Mountains."

This line, it will be observed, is a deviation from the boundary established by the treaty of 1783; for that was to extend due west from the northwestern point of the Lake-of-the-Woods, *without any reference to its latitude.* By this, we are, in the contingency named, to run by the shortest line from the specified point on the Lake-of-the-Woods to the forty-ninth parallel of latitude. Whence, it may be asked, the solicitude to adopt this particular parallel, except as it corresponded with preëxisting arrangements, which could have been made under the provisions of the treaty of Utrecht alone? for under no other had any reference at that time been made to the said forty-ninth degree.

This coincidence between the boundaries established by Great Britain and France in 1763, and between Great Britain and the United States in 1783 and in 1818, can scarcely be accounted for on any other supposition, than that the said line had been previously established by the commissioners under the treaty of Utrecht. This conclusion is strengthened by a further coincidence in the boundaries fixed in the said treaties of 1763 and 1783. In both, the Mississippi is adopted as the boundary. One of the lines then (the Mississippi) previously established between Great Britain and France being thus, beyond all cavil, adopted between the United States and Great Britain, may it not be fairly inferred, in the absence of all proof to the contrary, and with strong corroborating proof in favor of the inference, drawn from the stipulations of treaties, lines of demarcation on old maps, etc., that the other line, (forty-ninth parallel,) equally beyond cavil established by the United States and Great Britain, was also the same one previously existing between Great Britain and France? but such line had no existence, unless under the stipulations of the treaty of Utrecht. For these reasons, the committee has adopted the opinion, that the forty-ninth parallel of latitude was actually established by the commissioners under that treaty. It may not be unimportant here to observe, that this forty-ninth parallel is not a random line, arbitrarily selected, but the one to which France was entitled upon the well-settled principle that the first discoverer of a river is entitled, by virtue of that discovery, to all the unoccupied territory watered by that river and its tributaries.

We have seen that, by the treaty of 1763, the Mississippi, from its source, was adopted as the line of demarcation between the British and French possessions. Louisiana then extended north as far as that river reached; in other words, it stretched along the whole course of the Mississippi, from its source, in about latitude forty nine, to its mouth, in the Gulf of Mexico, in latitude twenty-nine. By the stipulations, then, of this treaty alone, without calling in the aid of the previous treaty o Utrecht, the northern boundary of Louisiana is clearly recognized as a line drawn due west from the source of the Mississippi: we say due west, because the east line alone of the boundaries of Louisiana being specifically and in express terms established by the treaty, her surface can only be ascertained by the extension of that whole line in the direction in which her territory is admitted to lie. This simple and only practicable process of *giving to Louisiana any territory under the treaty, fixes* as the whole of her northern boundary a line running due west from the source of the Mississippi, which may, for the purpose of this argument, be fairly assumed as the forty-ninth parallel, without injustice to any party.

Having thus ascertained the northern boundary of Louisiana, it becomes important to inquire what were its western limits, as between Great Britain and France: we say between Great Britain and France, because here another competitor appeared, (we speak of 1763,) in the person of the King of Spain, upon whose title we shall insist, if we fail to establish that of France.

The treaty of 1763 professing to establish and actually establishing lines of demarcation between the contiguous territories of the contracting parties, it cannot be denied, except upon strong proof, that all the boundaries about which any dispute then existed, or subsequent disputes could be anticipated, (that is, where their respective territories touched each other,) were then definitely adjusted and settled. These territories are known to have touched on the north and on the east; and accordingly in those quarters we find the lines clearly described. Is it not evident, that had they touched in other points, had there been other quarters where questions of conflicting claims might have arisen, the lines in those quarters also would have been fixed with equal precision? But to the south and west there is no allusion in the treaty; an omission conclusive of the fact that in those directions Great Britain had no territory contiguous to Louisiana. But Louisiana extended, by the stipulations of the treaty, west from the Mississippi; and Great Britain, having no territory or claim to territory which could arrest her extension in that direction, is precluded from denying that the French title covered the whole country from that river to the shores of the Pacific Ocean.

The parties to the treaty of 1763 made partition of almost the whole continent of North America, assigning to England the territory east of the Mississippi, and north of the forty-ninth parallel of latitude. No claim was at that time advanced by Grea Britain to territory in any other quarter of this vast continent; a very pregnant conclusion against the existence of any such claim. Her Government, ever vigilant fo the increase of her territory, with a view to the extension of her commerce, manifested upon the occasion of this treaty an avidity of acquisition which the continent was scarcely large enough to satisfy. Never very nice in scrutinizing the foundation of her pretensions, nor over scrupulous in the selection of means to enforce them, she was at this juncture in a position peculiarly auspicious to the gratification of her absorbing passion of territorial aggrandizement. Conqueror at every point, she dictated the terms of peace, and asserted successfully every claim founded in the slightest pretext of right. Still no title is either advanced, or even intimated, to possessions west of the Mississippi.

Mr. Cushing, of Massachusetts, in a report from the Committee on Foreign Relations, to the House of Representatives, made January 4, 1839, has the following sentences: "As between France and Great Britain, or Great Britain and the United States, the successor of all the rights of France, the question (of boundary) would seem to be concluded by the treaty of Versailles, already cited, in which Great Britain relinquishes, *irrevocably*, all pretensions west of the Mississippi. On the footing of the treaty of Utrecht, ratified by our convention of 1818, England may possibly, by extension of contiguity, carry her possessions from Hudson's Bay across to the Pacific, north of latitude 49°; but by the treaty of Versailles we possess the same right, and an exclusive one, to carry our territory across the continent, south of that line, in the right of France."

It may, perhaps, be urged that the limits of Louisianna, on the west, are confined to the territory drained by the Mississippi and its tributaries; the extent of her claim, founded on the discovery of that river, being restricted to the country so drained. The principle upon which this limitation is attempted may be safely admitted, without in any degree affecting the right for which we contend; because, first, Great Britain is precluded from asserting it by her admission, in 1763, that Louisiana extended indefinitely west from the Mississippi; and, second, because the principle being of universal application, if the discovery of the Mississippi by the French confine Louisiana to its waters east of the Rocky Mountains, the discovery of the Columbia by the Americans will extend their claim to the whole country watered by that great river, west of those mountains, and our true claim has this extent. Yet, to avoid unprofitable disputes, and for the sake of peace, we have expressed a willingness (met in no corresponding spirit, the committee is sorry to say,) to confine ourselves to much narrower limits.

SPANISH TITLE.

The Spanish claim to territory north of California depends in a great measure upon prior discovery, for we cannot find that any settlements were made or colonies planted by them north of the 42nd parallel of latitude, except the temporary occupation of Nootka Sound, by Martinez, in 1789 That the Spaniards first discovered and took possession of the country at the head of the Gulf of California, and upon the river Colorado, which empties into it, is questioned by none; and that, by such discovery and possession, Spain acquired, against all the world except the natives, the paramount title to the whole country watered by that river and its tributaries, depends upon a principle too well settled now to be denied. Hence we find the Mexican territory extending with the acquiescence of all nations, to the 42nd degree of north latitude, in which the Colorado takes its rise. We mention this fact now, as it furnishes a conclusive answer to the idle claim set up by Great Britain under the pretended discoveries of Sir Francis Drake. It is not the intention of the committee to encumber their report with a dry and barren detail of the dates of vaunted discoveries of early navigators. Little reliance can be placed upon the truth of their reports, and still less upon the accuracy of their observations, which were seldom verified by the subsequent use of more perfect instruments. It will be recollected that the committee professes to give but an abstract of the title upon which the United States now relies, and will therefore pass over entirely, without notice, all such voyages and discoveries as have no direct bearing upon that point. Within forty years after the discovery of America, Hernan Cortez, the most intrepid if not the least scrupulous of the Spanish generals, overran the empire of Mexico, penetrated to the Pacific Ocean, and made a small establishment at Culiacan, on the Gulf of California, in latitude 25 degrees.

From this period till 1543, a number of voyages were made toward the northwest, with results wholly unimportant to the present investigation. In that year, two vessels were placed under the command of Cabrillo, who died before the termination of the voyage, and the command devolved upon Bartholome Ferrelo, who pushed his discoveries as far north as 43 or 44 degrees. The committee refers to this expedition as no otherwise important than as it furnishes another very satisfactory refutation of the claim, even at this day advanced by the British ministry, under the first discovery, as they allege, of Sir Francis Drake. This great captain and successful bucaneer arrived in the Pacific Ocean in the fall of the year 1578; and during the following winter, having plundered the Spanish towns on the coast and the vessels he encountered on the ocean, he turned his thoughts to England. To avoid the Spanish ships, which would probably assemble in sufficient force to intercept his return round Cape Horn, he resolved upon the route by the Cape of Good Hope. To avoid the westerly winds which prevail in the lower latitudes, he sailed north as far, perhaps, as the 42nd or 43rd degree of latitude. His crew here suffering from the cold, he again turned toward the south, and, running along the coast, found a good harbor, now San Francisco, in latitude 38 degrees. Here he remained some time, preparing his vessels for the voyage home. We pass over, as entitled to little belief and no consideration, the idle offer by the Indians and the equally idle acceptance by Drake, in the name of Elizabeth, of the sovereignty of the country. Certainly it is scarcely possible to imagine titles founded upon weaker grounds than the discove-

ries of Cabrillo, Ferrelo, and Drake But if Drake's voyage be a basis of the British caim, Ferrello's is a better of the Spanish, for it was thirty-six years anterior, and *prior tempore potier est jure.*

Juan de Fuca, in the service of Spain, in 1692, discovered and sailed through the straits, in latitude 48 degrees, which now bear his name. The account given of this voyage was many years considered fabulous, and of the existence even of De Fuca there was no other evidence than some letters of an Englishman named Lock, written from Venice in 1596. The veracity and general accuracy of De Fuca, however, have been vindicated by the researches of subsequent navigators. And when Vancouver, in 1792, sailed through these straits, which had been pointed out to him by the American Captain Gray, he was forcibly reminded of the description of De Fuca; and further investigations developing further points of resemblance, he perpetuated his own conviction of the original discovery of De Fuca, by giving his name to the straits, which they bear to this day.

In 1603, a more imposing expedition was fitted out under Viscaino, which did little more than make minute examinations of the coast which had been visited by Cabrillo and Ferrelo.

In 1770, Portola made an establishment at Monterey, in latitude 36°; and in 1776 the bay of San Francisco was settled, in latitude 38°, the most northern town in California.

We now approach a period when the spirit of adventure, stimulated by the desire and hope of gain, and directed by nautical skill and science, made more rapid and accurate advances in the exploration of the hitherto almost unknown shores of Northwestern America. These were carried on almost simultaneously, under the authority of Great Britain and Spain. Prior to 1774, the period to which our attention is now directed, no Spanish navigator had examined the coast north of 43° or 44°, the limits of the discovery of Cabrillo and Viscaino. In that year, the Spaniards, aroused to renewed activity by the settlements which the Russians were pushing from the north, entered upon the execution of their long-cherished purposes of extending their dominion north of California. For the accomplishing of this object, so dear to Spain, as the means of enlarging her own possessions, to the exclusion of the rest of the world, several expeditions were undertaken in the years 1774 and 1775. They were directed to proceed as far north as the 65th degree of latitude, and minutely to examine the coast south to the 43rd, to which point it had been explored a century and a half before by Cabrillo and Viscaino. Juan Perez, the officer in command of the first expedition, in 1774, did not advance beyond the 54th degree; thence, sailing south, he examined the coast to 49½°, where he discovered a commodious bay, to which he gave the name of Port San Lorenzo. There he remained some time, trading with the natives. This was the first visit ever made to this part of the coast by Europeans. San Lorenzo was four years afterward entered (discovered, as he alleges) by Cook, and called King George's Sound. Its present name is Nootka Sound, which derives all its celebrity from becoming the subject of an important negotiation between the British and Spanish Governments. Captain Cook himself admits that he was preceded by these Spaniards, though he comes to the conclusion they had not been at Nootka. He tells us that some account of this voyage had reached England before he sailed. In the following note, referring to the conduct of the natives to Cook, we have this important fact thus distinctly admitted: "Similar to the behavior of the natives of Nootka, on this occasion, was that of another tribe of Indians further north, in latitude 57° 18′, to the Spaniards, who had preceded Captain Cook only three years, in a voyage to explore the coast of America north of California."

In the following year, 1775, another expedition sailed for the same purpose of exploration. They saw the entrance of the strait said to have been discovered by De Fuca, (for the authenticity of De Fuca's narrative had not then been established,) which they were unable to examine in consequence of a violent storm, which drove them off the coast. One of the vessels, sailing south, Heceta, the commander, discovered a promontory called by him San Roque, (now Cape Disappointment,) forming the northern point of the mouth of Columbia River, "which was thus, for the first time, seen by the natives of a civilized country." The other schooner, under Bodega and Maurelle, sailed to the north as far as the 57th degree, and, landing in a bay which they called Port Remedios, formally, and with religious ceremonies, took

possession of the country in the name of their sovereign. Other points, along the whole coast, were visited by these exploring expeditions.

BRITISH DISCOVERIES.

Having thus briefly brought the account of the Spanish discoveries down to the year 1775, the committee proceeds, with equal brevity, to refer to the result of British voyages, to find a north west passage from the Atlantic to the Pacific Ocean ; for that was the leading object of all their expeditions—to discover a more direct route to India than the circuitous one by the Cape of Good Hope, or the more circuitous and dangerous one round Cape Horn. The genius, the skill, the enterprise, and the fate of Cook, have immortalized his name. Under his auspices, two ships, in 1776, sailed for the Pacific, to explore the coast, with a view to find the outlet of the north-west passage into that ocean. The date (1776) of Cook's sailing is important, as showing that he could lay no claim to the discovery of any part of the coast previously (in 1774—'75) visited and discovered by the Spaniards. The object of Cook's voyage (the discovery of a northwest passage) it is important to keep constantly in view, as it precludes the idea, now so strongly urged, that it was any part of his design to take possession of or to make settlements on any part of the territory now covered by the claim of the United States. That no such result was anticipated from the expedition is incontrovertible, from the instructions given to Cook by the Lords of the Admiralty. After reciting that it is " His Majesty's pleasure that an attempt should be made to find out a passage by sea from the Pacific to the Atlantic Ocean," and giving minute directions for their voyage to Otaheite, the instructions proceed : " and having refreshed the people belonging to the sloops under your command, and taken on board such wood and water as they may respectively stand in need of, you are to leave those islands in the beginning of February, or sooner if you shall judge it necessary, and then proceed in as direct a course as you can to the coast of New Albion, endeavoring to fall in with it in the latitude of 45° north, and taking care, in your way thither, not to lose any time in search of new lands, or to stop at any you may fall in with, unless you find it necessary to recruit your wood and water." After strictly enjoining him " not to touch upon any part of the Spanish dominions," etc., the instructions proceed : " Upon your arrival on the coast of New Albion, you are to put into the first convenient port, to recruit your wood and water, and procure refreshments, and then to proceed northward along the coast as far as the latitude of 65°, or further if you are not obstructed by lands or ice, taking care not to lose any time in exploring rivers or inlets, or upon any other account, until you get into the before-mentioned latitude of 65°, where we could wish you to arrive in the month of June next." " When you get that length, you are very carefully to search for and to explore such rivers or inlets as may appear to be of a considerable extent, and pointing toward Hudson's or Baffin's Bays." " You are also, with the consent of the natives, to take possession, in the name of the King of Great Britain, of convenient situations, in such countries as you may discover, that have not already been discovered or visited by any European Power, and to distribute among the inhabitants such things as will remain as traces and testimonies of your having been there ; but if you find the countries so discovered are uninhabited, you are to take possession of them for His Majesty, by setting up proper marks and inscriptions, as first discoverers and possessors."

The name of New Albion, given in these instructions to a part of the coast, is well calculated to excite a smile, when we recollect that it has no other warrant than the predatory voyage of Sir Francis Drake. We have said these instructions render it certain that it was no part of the object of Cook's voyage to acquire territory and effect settlements ; and we cannot resist the conviction that the name was selected, and the directions to acquire territory by negotiation, etc., were given solely to preclude this very inference, and not that they should be obeyed, for that is manifestly incompatible with the positive instructions " to lose no time in exploring inlets or rivers, or upon any other account." The prohibition to lose any time, on any account, south of 65°, and the direction " carefully to search for and explore rivers and inlets" north of that parallel, seem to justify the inference that the instructions to take possession, etc., could only apply to territory situated to the north of 65°, where alone they were permitted to spend sufficient time, and directed to make the surveys necessary for that purpose. But this inference becomes absolutely certain, when to

the instructions we add the practical commentary of Cook's conduct under them. To this we now proceed.

On the 7th of March, 1778, in latitude 44° 10′ north, Captain Cook first saw the "long looked-for coast of New Albion." All their efforts to find a harbor or effect a landing were baffled by tempestuous weather and contrary winds until the 29th, when they found an inlet and safe harbor in latitude 49° 33′, now called Nootka Sound. This point is the same visited and examined by Juan Perez, in 1774, and which he called Port San Lorenzo. Of the natives, Cook says: "They showed great readiness to part with anything they had, and took from us whatever we offered in exchange, but were more desirous of iron than of any other of our articles of commerce, appearing to be perfectly acquainted with the use of that metal. Subsequently, he ascribes "their great dexterity in works of wood to the assistance they receive from iron tools."

Whence did these savages, cannibals, as they are represented, derive their knowledge of the use of iron, and of the mode of converting it into tools? If there be any difficulty in answering this question, there can be none in asserting they did not derive it from the British, for on their arrival they found the iron and tools in common use. Cook, foreseeing that he was exposed to this embarrassing interrogatory, seeks to avoid the only reasonable solution, in referring to the previous visit of the Spaniards, by saying, "Iron being familiar to these people, it was very natural for us to speculate about the mode of its being conveyed to them." In the course of this speculation, he indulges in a variety of conjectures not very probable—as that the iron came from the north. If so, it must have been from the Russians, who, at that period, had not penetrated so far south; or from the English settlements on Hudson's Bay, which may be pronounced impossible. He does not hesitate to assert that the Spaniards (the account of whose visit to this coast in 1774 and 1775 he admits had reached England before he sailed) did not introduce the iron at Nootka Sound. He adds, with great simplicity, that it cannot easily be determined "whether these things be introduced by way of Hudson's Bay and Canada, from the Indians who deal with our traders, and so successively across from one tribe to another, or whether they be brought from the northwestern parts of Mexico in the same manner." He rejects the only probable supposition, that the Spaniards, who unquestionably were there in 1774, left this iron in exchange for skins, and resorts to an idle fancy of its having been transmitted from the English or Spaniards, through the intervention of numerous and hostile tribes of Indians. This iron may have been left by the Spaniards for the same purposes that Cook was directed to leave that, or similar substances—"to remain as traces and evidences of their having been there." Several articles were found, of which the "materials certainly were European"—such as brass ornaments, of which it is said, if not from Canada, they "must have been introduced at Nootka from the quarter of Mexico, from whence no doubt the two silver spoons met with here were originally derived." Here is proof, which cannot be controverted, that Nootka Sound had been previously discovered and visited by another European Power; in which event, by the very terms of his instructions, Cook was prohibited from taking possession. He found in the iron, the tools, the brass ornaments, the silver spoons, "traces and evidences" that the Spaniards had been there. Under these circumstances, he literally obeyed his instructions, took in a supply of "wood and water," and, although he remained there from March 29 to April 26, he gives no intimation of having taken possession in the "name of His Majesty," as he subsequently did when he had proceeded further north. In June following, in latitude 61° 30′, he discovered the mouth of a large river, which, after his death, received his own name. Believing this "river capable of extensive inland navigation," Cook sent Mr. King to the land, "there to display the flag, and take possession of the country and river in His Majesty's name." Having performed this idle ceremony, the expedition prosecuted its northern voyage, in which we have no interest to accompany it. Cook never returned to this part of the coast. We have the opinion of the British ministry of the validity of the title acquired by Cook at this place, in the fact that in 1825 they admitted the Russian possessions to extend as far south as 54° 40′.

We have thus seen that Captain Cook first touched the American shore in the spring of 1778, and could thus acquire no right of possession adverse to that of Spain, whose vessels had visited the same point four years before. If the British,

by raising their flag and other ceremonies, acquired a valid title to the country on Cook's river, the Spaniards had, three years before, acquired a title equally valid, by the performance of similar ceremonies, to the territory of Port Remedios, in latitude 57°. The title of Spain was at this period unquestionably better than that of Great Britain. Has anything occurred since to deprive Spain of this advantage? The British ministry contend that, by the surrender of the territory under the stipulations of the convention of Nootka Sound, the title of Spain was transferred to Great Britain. If this reasoning be worth anything, it is only upon the admission that the title of Spain thus acquired was good; for if bad, no right would have been acquired under it. It is necessary to look into the act of surrender by Spain, to ascertain the extent of the British right under it; for they can claim no more territory than was actually surrendered. In other words, the title of Spain remains good to all her territory not surrendered. The surrender was made by virtue of an order from Count Florida Banca, dated May 12, 1791. The following extract describes all that was to be restored: "You will give directions that His Majesty's officer, who will deliver this letter, shall immediately be put in possession of the buildings and districts or parcels of land which were occupied by the subjects of that sovereign in April, 1780, as well in the port of Nootka Sound or of St. Lawrence, as in the other, said to be called Port Cox, and to be situated about sixteen leagues distant from the former, to the southward; and that such parcels or districts of land, of which the English subjects were dispossessed, be restored to the said officer." It will be seen how cautious Spain was in so wording this order as to exclude the presumption of any right of dominion in the Crown of Great Britain, and confining it to the possession of certain tracts or parcels of land by British subjects, The British subject was Meares, who gives us the extent of his grant in the following words: King Maquinna "most readily consented to grant us a spot of ground in his territory, whereon a house might be built for the accommodation of the people we intended to leave behind." This looks very little like an intention on the part of the British to take permanent possession of the country; and that Meares himself considered it a temporary establishment only, is clear from his having promised Maquinna, that when they finally left the coast, he should "enter into full possession of the house and all the goods thereunto belonging." It is a little doubtful whether the house were ever built: but if it were, then the surrender of this temporary house and lot to a British subject is to give title in the British Crown to the whole of that coast, for many degrees of latitude.

Captain Vancouver was sent to receive the surrender, but Señor Quadra, putting the same construction upon the letter of Count Florida Banca which it has received from the committee, viz. that he was to surrender only the particular parcel of land occupied by Meares, and Vancouver contending for the whole territory adjoining Nootka Sound, the parties separated, and no surrender was in fact made. For the particulars of the correspondence between Captain Vancouver and Señor Quadra, relative to the surrender, the committee refers to the 2nd volume of Vancouver's voyage. For an account of the transactions which led to the Nootka convention, and the true meaning and effect of that convention, the committee refers to the report of Mr. Cushing and the Memoir of Mr. Greenhow.

On the 14th of December, 1790, Mr. Duncombe, in the House of Commons, moved an address to His Majesty on the Nootka convention. The following extract from that address will show what the minister claimed to have acquired by that convention:

"They (the House of Commons) are eager to embrace the first opportunity of offering to His Majesty their cordial congratulations on so satisfactory an issue of the late negotiation, which has continued to these kingdoms the blessings of peace, has maintained the honor of His Majesty's crown, by providing an adequate reparation for the violence which was committed at Nootka, and has secured to His Majesty's subjects the exercise of their navigation, commerce, and fisheries, in those parts of the world which were the subject of discussion."

Mr. Fox opposed this address, and the following extracts from his speech will show his estimate of these acquisitions:

"In the early part of the debate we had heard nothing but rhodomontade about acquisition, nothing but of new sources of trade, new objects of enterprise, new oceans and new continents opened to the activity of our merchants and the courage

of our sailors. Such flowers of rhetoric were elegant embellishments, equally convenient to give force to argument or to conceal the want of it. But was it true that we had opened any of those sources, or made a single acquisition? An honorable gentleman, who spoke immediately before him, had put the question upon its true grounds. Having caught the contagion of the speakers who preceded him on the same side, he had talked of gaining and acquiring; but, in the progress of his argument, he had very properly stated that we had acquired nothing, but only obtained *security for what we possessed before.*

"What, then, was the extent of our rights before the convention, and to what extent were they now secured to us? We possessed and exercised the free navigation of the Pacific Ocean, without restraint or limitation; we possessed and exercised the right of carrying on fisheries in the South Seas, equally unlimited. This estate we had, and were daily improving; it was not to be disgraced by the name of an acquisition. The admission of part of these rights by Spain was all we had obtained. It remained to inquire what it cost. Our right before was to settle in any part of South or Northwest America not fortified against us by previous occupancy; and we are now restricted to settle in certain places only, and under certain restrictions. This was an important concession on our part; our rights of fishing extended to the whole ocean; and now it too was limited, and to be carried on within certain distances of the Spanish settlements. Our right of making settlements was not, as now, a right to build huts, but to plant colonies if we thought proper. Surely these were not acquisitions."

Speaking of the indefinite limits of Spanish America, he says:

"On this point we have gained nothing. We have renounced the right of permanent settlement on the whole extent of South America, and where the admitted right of settlement on the Northwest coast commenced was completely undefined; it was said at Nootka, but we did not know that Nootka would be restored.

"By the third article, we are authorized to navigate the Pacific Ocean and South Seas unmolested, for the purpose of carrying on our fisheries, and to land on the unsettled coasts, for the purpose of trading with the natives; but after this pompous recognition of right to navigation, fishery, and commerce, comes another article, (the sixth,) which takes away all right of landing and erecting even temporary huts for any purpose but that of carrying on the fishery, and amounts to a complete dereliction of all right to settle in any way for the purpose of commerce with the natives.

"In renouncing all right to make settlements in South America, we had given to Spain what she considered as inestimable, and had in return been contented with dross."

Vancouver informs us that in April, 1792, he discovered a sail, which soon hoisted American colors and fired a gun to leeward. She proved to be the ship Columbia, commanded by Mr. Robert Gray, of Boston, whence she had been absent nineteen months; and this brings us to the

AMERICAN DISCOVERIES.

Vancouver sent a boat on board of the Columbia, to the officer of which Captain Gray communicated information of the extent of his visit into a strait which had attracted much attention. He said "he had penetrated only fifty miles into the strait in question, in an E. S. E. direction," etc. The inlet he supposed to be the same De Fuca had discovered, which opinion seemed to be universally received by all modern writers. He likewise informed them of his having been "off the mouth of a river in latitude 47° 10′, where the outset or reflux was so strong as to prevent his entering for nine days." Vancouver adds: "This was probably the opening passed by us on the forenoon of the 27th, and was apparently inaccessible, not from the current, but from the breakers that extended across it."

So Vancouver had no idea of there being a river there until he was informed by Captain Gray. He afterward admits Gray discovered the river; for, after leaving Nootka, in October, 1782, he says the serenity of the weather encouraged him to hope that he might be enabled, on his way South, to "rëexamine the coast of New Albion, and particularly a river and harbor discovered by Mr. Gray, in the Columbia, between the 46th and 47th degrees of north latitude." Here is a distinct recognition, by an officer of the British navy, of the first discovery of that river by a citi-

zen of the United States. In the year 1787, the expedition of which the ship Columbia formed part, was fitted out by the sagacious liberality and enlightened enterprise of several citizens of Boston, for the purposes of commerce and discovery on the Northwest coast. From the log-book of the Columbia we learn that on the 11th day of May, 1792, Captain Gray discovered the mouth of the Columbia; and, crossing the bar, "found this to be a large river of fresh water, up which he steered." Here they remained until the 20th.

That Captain Gray was the first to discover the Columbia river, it is believed, is not now denied. It only remains to inquire whether the discovery has been followed up by such possession and acts of ownership as manifested an intention on the part of the Government of the United States to appropriate the territory thus discovered. A reasonable time to manifest this disposition must depend upon the circumstances of each case. In the opinion of the committee, the only equitable rule is this: that such a length of time must have elapsed after the discovery as, under all the circumstances of the party making it, shall repel the presumption of his intention to follow up the discovery by actual possession; or, in other words, that the right to take possession is abandoned. It will be recollected that, at the time of this discovery, the United States had just commenced the organization of a new Government; that for many years afterward its undivided attention was required to its relations with foreign nations, to guard its own interests from the aggressions to which they were constantly exposed by the great belligerent powers of France and England. These circumstances, and indeed the whole history of the United States for the next twenty years, sufficiently account for their inattention to this new territory, without giving any countenance to the idea that they had abandoned their claim, or in the slightest degree weakening their right growing out of the discovery. Whatever opinion may be entertained of the propriety of this rule, there can be no doubt that the first discovery, followed by the first possession, no matter at how remote a period, constitutes a perfect title; and it is equally clear, that in case of simultaneous possession by two parties, one of whom is the discoverer, the right shall be in him.

In 1803, the expedition which was placed under the direction of Captains Lewis and Clark, was planned by Mr. Jefferson and approved by Congress, who made the necessary appropriations for carrying it into effect. The object was to ascend the Missouri to its source in the Rocky Mountains, and, crossing that ridge, to explore the Columbia from its source to its mouth in the Pacific. This duty was performed by those officers with great intrepidity, judgment, and fidelity; their journal furnishing a large amount of useful information relative to the geography, the Indian tribes, and the animal, vegetable, and mineral productions of those vast regions. Having crossed the mountains early in October, 1805, they descended, in their canoes, Lewis River to its junction with the Columbia, and down that river to its mouth, where they arrived on the 14th day of November. Having selected a proper site, they built the houses necessary for their accommodation, and a fort for their protection during the winter, which was passed in making such examination of the surrounding country as the season would permit. Early in the spring, being seriously apprehensive of want of provisions, they anticipated the period originally fixed for their return. Before leaving the country, they gave certificates to several of the chiefs, as "traces and evidences" of their having been there. With the same view, a paper was also posted up in the fort, to the following effect: "The object of this last is, that through the medium of some civilized person, who may see the same, it may be made known to the world that the party consisting of the persons whose names are hereunto annexed, and who were sent out by the Government of the United States to explore the interior of the continent of North America, did penetrate the same by the way of the Missouri and Columbia rivers, to the discharge of the latter into the Pacific ocean, where they arrived on the 14th day of November, 1805, and departed on the 23rd day of March, 1806, on their return to the United States, by the same route by which they had come out." On their return homeward, they divided into two parties: Captain Lewis carefully examining Clarke's River and its principal branches; while Captain Clarke, crossing over to the Yellow Stone, descended that river to its junction with the Missouri, where the two parties reunited; thence they proceeded to St. Louis, and the two officers reached Washington in February, 1807. The practicability of crossing the Rocky Mountains being thus satisfactorily established, the attention of our citizens was attracted to this quarter by the quantity and quality of the furs, which were said to be excellent and abundant.

"The earliest attempts made by citizens of the United States for similar purposes (trading establishments) were those of an association, formed at St. Louis in 1808, called the Missouri Fur Company. At its head was an enterprising Spaniard named Manuel Lisa, through whose exertions, chiefly, several trading posts were, within the two ensuing years, established on the Upper Missouri, and one beyond the Rocky Mountains, on the head-waters of the Lewis, the southern branch of the Columbia. The post on the Lewis appears to have been the first ever formed by white men in the country drained by the Columbia.* The enmity of the savages in its vicinity, and the difficulty of procuring a regular supply of food, however, obliged Mr. Henry, the superintendent, to abandon it in 1810."

In the same year (1810) Mr. John Jacob Astor, of New York, formed an association for the purpose of occupying positions on the Columbia River favorable to a successful prosecution of the fur trade. It was known as the Pacific Fur Company. The plan was to divide the forces intended for this enterprise; to send part by sea round Cape Horn, and part by land across the continent. Accordingly, the ship Tonquin, with the first detachment, sailed from New York in 1810; and in January following, the second detachment left St. Louis, under the direction of Mr. Wilson P. Hunt.

The Tonquin arrived at the mouth of the Columbia in March, 1811, and establishing their principal factory on the south bank of the river, they gave it the name of Astoria, made familiar to every ear by the elegant and interesting narrative of Mr. Washington Irving. As the object of the committee is only to show the continual claim and actual possession of the territory, from the time of its discovery in 1792, it will not further our design to give an account of the commercial and trading transactions of the association. They occupied Astoria, and their different hunting and trading establishments on the river, until the 16th day of October, 1813; having thus been in actual possession from March, 1811—two years and six months. At the latter period, having received information, upon which they could rely, that a British force was approaching forcibly to dispossess them, the managers sold "all the establishments, furs, and property," to the Northwest Company. The report of the approach of a British force was soon verified; for, in December following, the Rackoon British sloop of war arrived at Astoria, of which Captain Black took possession, substituted the English for the American flag, and changed the name to Fort George.

From this narrative, it appears that the Americans were the first to discover the river Columbia, and first to take possession of the territory through which it passes. The committee has no doubt that the United States has thus acquired a title to that whole territory, of more validity than that of any other nation. As the British Government now refuses to acknowledge the claims of the United States either to the original discovery or possession, (the *discovery was admitted by Vancouver*,) the committee will advert to the facts and reasons by which they justify this refusal.

The pretensions of Captain Gray to the honor and right of the discovery are contested, because it is alleged that, at the same time, Alexander Mackenzie, a British subject, discovered the northern branch of that river. If that allegation be true, it certainly produces some difficulty. That it is not true, we have the testimony of Mackenzie himself, who has left us the only account of his travels. Peace River rises in the Rocky Mountains in latitude 55°, and, running generally a northeast course, empties into Slave River in latitude 59°. The entire river is east of the mountains. But on this river Mackenzie tells us he spent the winter of 1792-93; that, for the accommodation of his party, on the 7th of December, 1792, he "set all hands at work to construct the fort, build the house, and form store-houses," at a point which he ascertained, "by various observations," to be in latitude 59° 9′ north, and longitude 117° 35′ 15″ west. This place they left on the 9th of May, 1773, and, ascending Peace River on the 17th, came in sight of the Rocky Mountains. We have seen that, in May, 1792, Gray had discovered the mouth of the river—that, so far from the river being simultaneously discovered, the American discovery was at least one year before the British, even if Mackenzie ever touched the river. His own account gives no reason to suppose that he did. He says that, after crossing the Rocky Mountains, he came to a large river, which he descended

* Greenhow.—Permanent post must be meant; for Lewis and Clarke had erected Fort Clatsop, in 1805, as we have seen, at the mouth of the river.

for several days in a canoe; but, becoming discouraged by the difficulties of the navigation, he determined to make an effort to reach the Pacific Ocean by land. For this purpose he returned up the river to a point from which he had resolved to advance west by the shortest route to the ocean, where they arrived July 22nd, in latitude 52° 23′ 43″. This river, he tells us, was navigable, and, by his account, he reached it in about 56° north. None of the sources of the Columbia are north of 54°. The source of the Columbia is directly south of the source of Peace River; but the object of Mackenzie (to reach the Pacific) would carry him west, and not south. The Columbia is known not to be navigable at any point where it is possible Mackenzie could have touched it. The river asserted to be the Columbia he left on the 4th, and arrived at the ocean on the 22nd of July—an interval in which it is impossible they could have performed the journey, which could not have been less than four or five hundred miles in the most direct route. Mackenzie's general course from the river was southwest; and yet he informs us that, on the 10th, after six days' travelling, he found the latitude to be 53° 4′ 32″, which is nearly as far north as any of the sources of the Columbia. For these reasons, the committee is led to the conclusion that Mackenzie did not see the Columbia River. He himself admits that he did not do so until June, 1793, leaving Captain Gray the undisputed discoverer.

The committee submits the following extract of Mr. Greenhow's Memoir, upon the disputed question of prior possession: "With regard to the priority of their discoveries, the plenipotentiaries of Great Britain, in the statement presented by them to the American minister during the negotiation of 1826, make the following observations: 'In reply to the allegations, on the part of the United States, that their claim to the country is strengthened and confirmed by the discovery of the sources of the Columbia, and by the exploration of the course of that river to the sea, by Lewis and Clark, in 1805-'6, Great Britain affirms, and can distinctly prove, that, if not before, at least in the same and subsequent years, her Northwestern Trading Company had, by means of their agent, Mr. Thompson, already established their posts among the Flathead and Kootanie tribes on the head waters or main branch of the Columbia, and were gradually extending them down the principal streams of that river; thus giving to Great Britain in this particular, as in the discovery of the mouth of the river, a title of parity at least, if not of priority of discovery, as opposed to the United States. It was from these posts that, having heard of the American establishment forming in 1811 at the mouth of the river, Mr. Thompson hastened thither, descending the river to ascertain the nature of that establishment.' As the words 'in the same and subsequent year,' are rather indefinite, the dates of the occurrences above mentioned will be stated somewhat more exactly. Lewis and Clarke reached the Pacific ocean, after exploring the Columbia River from one of its most eastern head waters in the Rocky Mountains to its mouth, on the 15th of November, 1805. In the spring of 1806, as will hereafter be shown, Mr. Simon Frazer, and other persons in the employment of the Northwest Company, crossed the Rocky Mountains through the great gap near the 56th degree of latitude, and established the first British trading post west of that chain, on Frazer's lake, about two degrees further south; but no evidence has been obtained that British subjects had ever visited any part of the country drained by the Columbia, above the falls of that river, before the summer of 1811. In that year, Mr. Thompson, astronomer of the Northwest Company, and his party, on their way down the stream, for the purpose of anticipating the Americans at its mouth, did build some huts on the northern branch, and did there open trade with the Flathead and Kootanie Indians; and from these posts Mr. Thompson did, indeed, hasten down to the ocean, where he, however, found the citizens of the United States in full possession." Suppose the possession by Thompson and Lewis and Clarke to have been simultaneous, as alleged by the British ministry, the committee is clearly of opinion that even such possession, strengthened by our prior discovery, gives us the better title.

Having thus established in the United States the priority both of discovery and possession, the committee proceeds to a consideration of the events which followed the occupation of Astoria by the British, in December, 1813. By the first article of the treaty of Ghent, it is agreed that "all territory, places, and possessions, whatsoever, taken by either party from the other," etc., "shall be restored without delay." Astoria, having been taken from the Americans during the war, was included in the

stipulations of this article, and was restored to the United States, through their agent, J. B. Prevost, Esq., in the following manner:

"In obedience to the commands of his Royal Higness the Prince Regent, signified in a dispatch from the right honorable the Earl of Bathurst, addressed to the partners or agents of the Northwest Company, bearing date the 27th of January, 1818, and in obedience to a subsequent order, dated 26th of July, from W. H. Sheriff, Esq., captain of his Majesty's ship Andromache, we, the undersigned, do, in conformity to the first article of the treaty of Ghent, restore to the Government of the United States, through its agent, J. B. Prevost, Esq , the settlement of Fort George, on the Columbia River. Given under our hand, in triplicate, at Fort George, on the Columbia River, this 6th day of October, 1818.

"F. HICKEY,
Captain of his Majesty's ship Blossom.
"J. KEITH,
of the Northwest Company."

I do hereby acknowledge to have this day received, in behalf of the Government of the United States, the possession of the settlement designated above, in conformity to the first article of the treaty of Ghent. Given under my hand, in triplicate, at Fort George, Columbia River, this 6th day of October, 1818.

"J. B. PREVOST,
Agent for the United States."

It is true that, in the dispatch of Earl Bathurst, and in Lord Castlereagh's instructions to the British minister at Washington, a reservation is made, that the surrender of possession should not be deemed an admission of the absolute and exclusive right of dominion claimed by the United States; but at the same time, in explanation to Mr. Rush, as stated in a public dispatch, "Lord Castlereagh admitted, in the most ample extent, our right to be reinstated, and to be the party in possession while treating of the title."*

Notwithstanding this protest against any inference favorable to our title from the restoration of the territory, that restoration, and the admission of Lord Castlereagh of our right to the possession during the controversy, are conclusive of some facts very important to an equitable settlement of the rights in dispute. In the first place, it proves the Americans to have been in possession in June, 1812, at the declaration of the war; for such places only were to be restored as were taken during the war. And, in the second place, the act of restoration, and the admission of Lord Castlereagh, establish the important fact that we are actually in possession now; for they recognize our right to the possession while treating of the title, which treating, unfortunately, has not yet been brought to a close.

The effect of the surrender of Fort George was to restore the United States to their position before the capture, reinstating them in all their territorial rights, etc. To determine what was restored, we must first ascertain what was surrendered. The act of surrender designates it as "the settlement of Fort George, on the Columbia River." The question recurs, what was embraced in the settlement of Fort George? Certainly something besides the fort itself. The terms of the act imply that the restoration extended beyond the site of the fort. The extent of the settlement of Astoria (Fort George) depends upon actual occupation, intention clearly manifested to extend that occupation, and principles of law by which the limits of settlements in new countries are defined. The discovery of the Columbia by Gray; the public mission of Lewis and Clarke, who twice traversed the whole breadth of the territory, spent the winter in a temporary fort, which they built on the bank of the river, and took formal possession, by the authority, in the name, and at the expense of the United States, constitute a title to territory beyond the mere line of march and the ground occupied by the fort. The right of our citizens to form settlements was coextensive with the territory covered by this title.

We have already seen that the discovery of a river and actual possession within a reasonable time give the right to form settlements on every part of the territory watered by the river and its tributaries. This right may be surrendered, or it may be

* Cushing's Report.

forfeited by *non-user*. There is no pretence that in this case it has ever been surrendered, nor can a forfeiture be successfully urged. This principle will carry the northern boundary of the United States west of the Rocky Mountains to about 54°. This will be the northern limit of the title acquired by the discovery and possession above referred to.

There is another principle by which the extent of the right of our people to form settlements in this territory may be ascertained. It is settled that the nation which takes possession of unoccupied territory acquires the right to form settlements of its people in every direction, over one-half the space intervening between the point of such actual possession, and the settlements already made of any other organized community. How will the recognition of this principle affect the present inquiry? The position occupied by Lewis and Clarke, (Fort Clatsop,) and Astoria, are in latitude 46° 18′. The most southern point of which Cook took possession, though no settlement followed, was at the mouth of Cook's River, in latitude 61° 30′. The intermediate point between the mouth of Columbia and Cook's River is 53° 54′, and this would be our northern limit. The extent of our right under either principle would be nearly the same.

The committee proceeds to exhibit, from the best information within its reach, how far this right of settlement by citizens of the United States has been actually exercised. Mr. Astor, in a letter to the Hon. J. Q. Adams, then Secretary of State, dated New-York, January 4, 1823, states that his plan in 1810 was to make an establishment at the mouth of Columbia River, which would serve as a place of depot, and give further facilities for conducting a trade across this continent, to that river, etc. We have already stated that the agents of Mr. Astor, apprehending an invasion from a British force, sold the establishments, etc., to the Northwest Company. The article of agreement for this purpose throws some light upon the extent of the country actually in the occupation of the Americans. It is dated the 16th day of October, 1813, and recites, that an association had heretofore carried "on the fur trade to the Columbia River and its dependencies, under the firm and denomination of the Pacific Fur Company." The first articles covenant, etc., for the sale and delivery "of the whole of their establishments, furs, and present stock on hand, on the Columbia and Thompson's Rivers;" and the fourth article refers to "John Reid's adventure, and Freeman's, in the vicinity of Snake country and Spanish River." One of the witnesses to this agreement is Alfred Seton, Esquire, now a resident of the city of New-York, A letter was addressed to him, asking information of the number and location of Mr. Astor's establishments. Mr. Seton was one of the young men selected by Mr. Astor to carry out the extensive plans which he had formed for establishing a trade in these vast regions. He is a gentleman of education and character, and participated in the events he relates. His reply is dated at New-York, 26th March, 1842, of which the following extracts are applicable to our present purpose: "Thompson's River was the north branch of the Columbia. In the common parlance of the country, among our people, the southern branch of the Columbia, by which Lewis and Clarke went down to the main river, was called Lewis's River. So the northern branch was, by the northwesters, called Thompson's River."

"The post or establishment alluded to in the treacherous agreement for the transfer of Mr. Astor's property was that of Okenagan, established by David Stuart, of the Pacific Fur Company, in the autumn of 1811, and situated about 150 or 200 miles up Thompson's River, or the north branch of the Columbia." Mr. Seton proceeds: "I will try to convey to you some sort of ideas of the country, and out of these you must pick, if you can, the information you require. Lay before you the map appended to the second volume of Astoria, follow up the south branch of the Columbia, or Lewis's River, until you come to a tributary stream called the Kooskooske. This little river, you will see, runs from a spur of the Rocky Mountains. Lewis and Clarke embarked on it, where it first becomes deep enough to swim a canoe, and floated down to the south branch of the Columbia. This south branch, from the mouth of the Kooskooske to the forks, being the only part navigated by Lewis and Clarke, is called Lewis's River; above the mouth of the Kooskooske, it is called the Snake River, and the adjacent country the Snake country. The Indian name for this part of it, however, is the Camoenum. The Pacific Fur Company established a post at the head of the Kooskooske in the summer of 1812, and nearly where Lewis and Clarke built their canoes. This was located by Donald Mackenzie, of whose party

both John Reid and myself were members. In our various exploring expeditions, to make ourselves practically acquainted with the fur bearing properties of the country, it was my lot to take the route from the mouth of the Kooskooske, along the Snake or Camoenum River, to the west" "Mackenzie explored the region of the country north and west, lying between the Kooskooske and the northern branch of the Columbia, (called, as before said, sometimes Thompson's River, and laid down in the map referred to, as Clarke's River.) This region was called the Spokan country, and in it he found Mr. Clarke, also a partner of the Pacific Fur Company, already established." "John Reid went to the eastward, if I remember rightly, to look at the country in that direction."

"At the time of the transfer of Mr. Astor's property, the posts actually established were—

"1. Astoria, near to the seacoast.

"2. Okenagan, at the confluence of that river and the north branch of the Columbia.

"3. Spokan House, on the river of the same name, and with the Spokan Indians. A branch of this establishment had also been pushed further west, in the Flathead country, and among the Coutonois Indians.

"4. A post, as before mentioned, on the Kooskooske.

"5. One on the Wallamette River."

These posts, established in all parts of the territory on the Columbia and its principal tributaries, at intervals of several hundred miles, and with water communication between them all, constitute all the possession which the Pacific Fur Company had it in its power at that time to take, and all that was required by the laws and usages of European nations in acquiring territory on this continent. The inchoate title in the United States, by the discovery of Gray and the exploration of Lewis and Clarke, was perfected by the actual settlement and occupation by Mr. Astor and his associates. Although a title by discovery, without possession, may be lost by lapse of time, yet the title of the United States, perfected as this was by the actual possession and settlement of their people, could not be thus lost or divested, except by conquest or agreement. If the posts above enumerated were included in the capitulation of Astoria, then they are within the provisions of the treaty of Ghent, and were restored with it; and of course there was no conquest. If not included in the capitulation, although the American parties (cut off from their depot) were withdrawn, our title is not lost, for there is no pretence of an agreement for its surrender. The territory belonged to the United States; was not open to the colonization of any foreign country; nor has the Northwest Company any rights there, except such as were conceded by the conventions of 1818 and 1827—no right of domain in them, or dominion in their government.

The committee proceed to inquire, what are the consequences of this actual possession, coupled with the right? The restoration absolute, but for the single condition that it shall not be used as evidence in the discussion of the title, and the right of possession perfect in its character, limited only in its duration, constitute, during the continuance of the latter, a complete title.

We learn from Vattel that this right of possession comprehends two things: "1. The *domain*, in virtue of which the nation alone may use this country for the supply of its necessities, and may dispose of it in such manner and derive from it such advantages as it thinks proper. 2. The *empire*, or the right of sovereign command, by which the nation ordains or regulates at its pleasure everything that passes in the country."

The following paragraph is exactly applicable to our present case:

"When a nation takes possession of a country (our possession is admitted) that never yet belonged to another, it is considered as possessing there the *empire* or sovereignty, at the same time with the *domain*."

All the powers and authorities of government are comprised in the right of empire, which Vattel informs us accompanies the possession. But if the authority of Vattel be rejected, reason and argument lead directly to the same conclusion. It will scarcely be contended that the possession thus restored was a mere naked possession, conferring no rights upon the United States. The power which was competent to send Mr. Prevost to receive and acknowledge the act of restoration might certainly have sent a battalion of troops to have marched into the vacated post, and to have restored

the flag of the United States. In such an event, who that knows the restless and enterprising character of our people will hesitate to believe, that long ere this large and flourishing settlements would have been formed in every part of the territory? We say in every part of the territory, for the possession of Astoria, at the mouth of the river, was a virtual possession of the whole, and the restoration of Astoria was a virtual restoration of the whole. If such settlements had been formed by citizens of the United States, it would have become not only the right but the duty of our government to have extended to them the protection of our power and the benefits of our laws, otherwise they must have been settlements without laws; for if the United States, in possession, had not the right of empire, no other government, out of possession, could lay claim to any such right. This course of reasoning might be greatly extended; but the committee, throwing out these few hints for the consideration of the House, proceeds to the examination of the conventions of 1818 and 1827, to ascertain if the right of empire, thus in the United States, has been, by anything therein contained, divested or restricted.

By the third article of the convention of 1818, "it is agreed that any country that may be claimed by either party on the northwest coast of America, westward of the Stony Mountains, shall, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country," etc.

By the first article of the convention of 1827, it is agreed that the provisions of the first article of the convention of 1818, above recited, "shall be, and they are hereby, indefinitely extended and continued in force in the same manner as if all the provisions of the said article were herein specifically recited."

By the second article it is agreed, "it shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the 20th of October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this convention; and it shall, in such case, be accordingly entirely annulled and abrogated, after the expiration of the said term of notice."

The third article saves all rights and claims of the parties. The first remark we have to make upon these articles is, that they contain no reference whatever to the possession, which, by the treaty of Ghent, and subsequent acts under it, was acknowledged to be in the United States, in the most formal manner, and which could not be divested except in a manner equally formal, or by the consent of the United States, under the limitations of that acknowledgment. It is hardly necessary to observe that in neither manner is it divested by the stipulations of these conventions, or either of them.

What rights, then, were granted or acquired by these conventions? Clearly none inconsistent with our previously admitted possession. We have seen, from the highest authority, that the right to govern is incident to the possession. The right of the citizens of the United States, under this possession, and with the permission of this government, to cultivate the soil, navigate the rivers, fish, hunt, etc., is also clear. This right of our citizens existed with the possession before the war of 1812, and was restored with the restoration of the "settlement of Fort George," on the 6th day of October, 1818, prior to either of these conventions, and of course independent of both. If this be true, we acquired no new rights under the convention of 1818; all these accompanied our prior possession. That convention, then, was a concession to English subjects of a participation in individual rights, which, but for that convention, would have appertained exclusively to our own citizens. It contains no recognition of any authority in the British Government over the territory.

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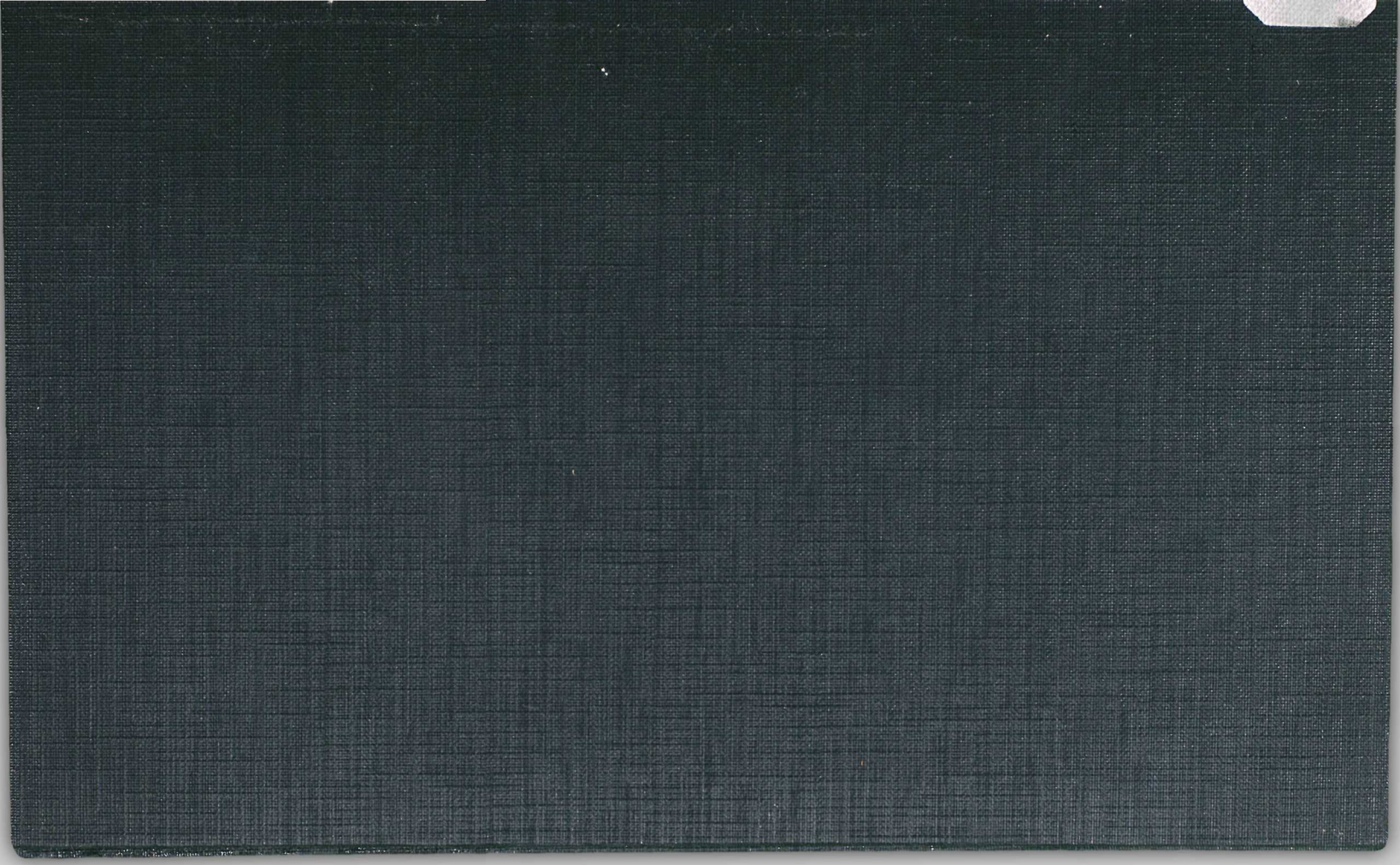
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