

American branches of the title of the United States. The undersigned cannot forbear to congratulate himself upon the fact, that a gentleman of Mr. Pakenham's acknowledged ability has been reduced to the necessity of relying chiefly upon such a support for sustaining the British pretensions. Stated in brief, the argument is this: the American title is not good against Great Britain, because inconsistent with that of Spain; and the Spanish title is not good against Great Britain, because inconsistent with that of the United States. The undersigned had expected something far different from such an argument in a circle. He had anticipated that the British plenipotentiary would have attempted to prove that Spain had no right to the northwestern coast of America; that it was vacant and unappropriated; & hence, under the law of nations, was open to discovery, exploration, and settlement by all nations. But no such thing. On this vital point of his case, he rests his argument solely on the declaration made by the undersigned, that the title of the United States to the valley of the Columbia was perfect and complete before the treaties of joint occupation of October, 1818, and August 1827, and before the date of the Florida treaty, in 1819. But the British plenipotentiary ought to recollect that this title was asserted to be complete not against Spain, but against Great Britain; that the argument was conducted not against a Spanish, but a British plenipotentiary; and that the United States, and not Great Britain, represent the Spanish title. And, further, that the statement from which he extracts these declarations was almost exclusively devoted to prove, in the language quoted by the British plenipotentiary himself, that "Spain had a good title, as against Great Britain, to the whole of the Oregon territory." The undersigned has never, as he before observed, instituted a comparison between the American and the Spanish titles. Holding both having a perfect right to rely upon both, whether jointly or separately—he has strongly asserted each of them in their turn, fully persuaded that either the one or the other is good against Great Britain; and that no human ingenuity can make the Spanish title, now vested in the United States, worse than it would have been had it remained in the hands of Spain.

Briefly to illustrate and enforce that title, shall be the remaining task of the undersigned.

And, in the first place, he cannot but commend the frankness and candor of the British plenipotentiary in departing from the course of his predecessors; and rejecting all discoveries previous to those of Captain Cook, in the year 1778, as foundations of British title. Commencing with discovery at a period so late, the Spanish title, on the score of antiquity, presents a strong contrast to that of Great Britain. The undersigned had stated as a historical and striking fact, which must have an important bearing against the claim of Great Britain, that this convention, (the Nootka) which was dictated by her to Spain; contains no provision impairing the ultimate sovereignty which that power had asserted for nearly three centuries over the whole western side of North America; and which had never been seriously questioned by any European nation. This had been maintained by Spain with the most vigilant jealousy ever since the discovery of the American continent, and had been acquiesced in by all European governments. It had been admitted even beyond the latitude of 54° 40' north, by Russia, (the only power having claims which come in collision with Spain; and that, too, under a sovereign peculiarly tenacious of the territorial rights of her empire.)

These historical facts had not been, as they could not be, controverted by the British plenipotentiary, although they were even quoted by him with approbation, for the purpose of showing the inconsistency of the several titles held by the United States. In the language of Count Fernan de Nunez, the Spanish ambassador at Paris, to M. de Montmorin, the Secretary of the Foreign Department of France, under date of June 16th, 1790: "By the treaties, demarcations, takings of possession, and the most decided acts of sovereignty exercised by the Spaniards in those stations from the reign of Charles II. and authorized by that monarch, in 1692; the original vouchers for which shall be brought forward in the course of the negotiations, all the coast to the north of the western America, on the side of the South sea, as far as beyond what is called Prince William's Sound, which is in the 61st degree, is acknowledged to belong exclusively to Spain."

Compared with this ancient claim of Spain, acquiesced in by all European nations for centuries, the claim of Great Britain, founded on discoveries commenced at so late a period as the year 1778, must make an unfavorable first impression.

Spain considered the Northwest coast of America as exclusively her own. She did not send out expeditions to explore that coast, for the purpose of rendering her title more valid. When it suited her own interest, she fitted out such expeditions of discovery to ascertain the character and extent of her own territory; and yet her discoveries along that coast are far earlier than those of the British.

That Juan de Fuca, a Greek in the service of Spain, in 1592, discovered and sailed through the strait now bearing his name, from its southern to its northern extremity, and thence returned by the same passage, no longer admits of a reasonable doubt. An account of this voyage was published in London in 1625, in a work

called the Pilgrims, by Samuel Purchas. This account was received from the lips of Fuca himself at Venice, in April, 1593, by Michael Lock, a highly respectable English merchant.

During a long period this voyage was considered fabulous, because subsequent navigators had in vain attempted to find these straits. Finally, after they had been found, it was discovered that the descriptions of de Fuca corresponded so accurately with their geography, and the facts presented by nature upon the ground that it was no longer possible to consider his narrative as fabulous. It is true that the opening of the straits from the south lies between the 43rd and 49th parallels of latitude, and not between the 47th and 48th parallels, as he had supposed; but this mistake may be easily explained by the inaccuracy so common throughout the sixteenth century in ascertaining the latitude of places in newly discovered countries.

It is also true that de Fuca, after passing through these straits, supposed he had reached the Atlantic, and had discovered the passage so long and so anxiously sought after between the two oceans; but from the total ignorance and misapprehension which prevailed at that early day of the geography of this portion of North America, it was natural for him to believe that he had made this important discovery.

Justice has at length been done to his memory, and these straits which he discovered, will, in all future time, bear his name. Thus, the merit of the discovery of the straits of Fuca, belongs to Spain; and this nearly two centuries before they had been entered by Capt. Berkely, under the Austrian flag.

It is unnecessary to detail the discoveries of the Spaniards as they regularly advanced to the north from the settlements on the western coast of North America until we reach the voyage of Capt. Juan Perez, in 1774. That navigator was commissioned by the viceroy of Mexico to proceed, in the corvette Santiago, to the 60th degree of north latitude, and from that point to examine the coast down to Mexico. He sailed from San Blas on the 25th January, 1774. In the performance of this commission, he landed first on the northwest coast of Queen Charlotte's Island, near the 54th degree of north latitude; & thence proceeded south along the shore of that island and that of the great islands of Quadra and Vancouver; and then along the coast of the continent until he reached Monterey. He went on shore, and held intercourse with the natives at several places; and especially at the entrance of a bay in latitude 49½ degrees, which he called Port San Lorenzo—the same now known by the name of Nootka Sound. In addition to the journals of this voyage, which render the fact incontestible, we have the high authority of Baron Humboldt in its favor. That distinguished traveller, who had access to the manuscript documents in the city of Mexico, states that "Perez and his pilot Estiven Martinez, left the port of San Blas on the 24th of January, 1774. On the 9th of August they anchored (the first of all European navigators) in Nootka road, which they called the Port of San Lorenzo, and which the illustrious Cook, four years afterwards, called King George's Sound."

In the next year (1775) the viceroy of Mexico again fitted out the Santiago, under the command of Bruno Hecceta, with Perez, her former commander, as ensign, and also a schooner, called the Sonora, commanded by Juan Francisco de la Bodega y Quadra. These vessels were commissioned to examine the northwestern coast of America as far as the 65th degree of latitude, and sailed in company from San Blas on the 16th March, 1775.

It is unnecessary to enumerate the different places on the coast examined by these navigators, either in company or separately. Suffice it to say, that they landed at many places on the coast from the 41st to the 57th degree of latitude, on all of which occasions they took possession of the country in the name of their sovereign, according to a prescribed regulation, celebrating mass, reading declarations asserting the right of Spain to the territory, and erecting crosses with inscriptions to commemorate the event. Some of these crosses were afterwards found standing by British navigators. In relation to these voyages, Baron Humboldt says: "In the following year, (1775, after that of Perez,) a second expedition set out from San Blas, under the command of Hecceta, Ayala, and Quadra. Hecceta discovered the mouth of the Rio Columbia, called it the Entrada de Hecceta; the peak of San Jacinto, (Mount Edgecomb,) near Norfolk Bay, and the fine port of Bucareli. I possess two very curious small maps, engraved in 1788, in the city of Mexico, which give the bearings of the coast from the 27th to the 68th degree of latitude; as they were discovered in the expedition of the Quadra."

In the face of these incontestable facts, the British plenipotentiary says "that Captain Cook must also be considered as the discoverer of Nootka Sound, in consequence of the want of authenticity, in the alleged previous discovery of that port by Perez." And yet Cook did not sail from England until the 12th July, 1776—nearly two years after Perez had made this discovery. The chief object of Cook's voyage was the discovery of a northwest passage; and he never landed at any point of the continent south of Nootka Sound. It is true that in coasting along the continent before he reached this place, he had observed Cape Flattery; but he was entirely ignorant that this was the southern entrance of the straits of Fuca. In his journal he admits that he had heard some account of the Spanish voyages of 1774 and 1775; before he left England; and it is beyond

question that, before his departure, accounts of the voyage of Quadra had been published, both in Madrid and in London. From Nootka Sound, Cook did not again see land until he reached the 57th degree of north latitude.

In 1787, it is alleged by the British plenipotentiary that Capt. Berkely, a British subject, discovered the straits of Fuca; but these straits had been discovered by Juan de Fuca, nearly two centuries before. Besides, if there had been any merit in this discovery of Capt. Berkely, it would have belonged to Austria, in whose service he was, and under whose colors he sailed, and cannot be appropriated by Great Britain.

And here it is worthy of remark, that these discoveries of Cook and Berkely, in 1778 and 1787, are all those on which the British plenipotentiary relies, previous to the date of the Nootka Sound convention, in October, 1790, to defeat the ancient Spanish title to the northwest coast of America.

The undersigned will now take a position which cannot, in his opinion, be successfully assailed; and this is, that no discovery, exploration or settlement made by Great Britain on the northwest coast of America, after the date of the Nootka Sound convention, and before it was terminated by the war of 1796, can be invoked by that power in favor of her own title, or against the title of Spain. Even according to the British construction of this convention, the sovereignty over the territory was to remain in abeyance during its continuance, as well in regard to Great Britain as to Spain. It would, therefore, have been an open violation of faith on the part of Great Britain, after having secured the privileges conferred upon her by the convention, to turn round against her partner and perform any acts calculated to divest Spain of her ultimate sovereignty over any portion of the country. The palpable meaning of the convention was, that during its continuance the rights of the respective parties, whatever they may have been, should remain just as they had existed at its commencement.

The government of Great Britain is not justly chargeable with any such breach of faith. Capt. Vancouver acted without instructions in attempting to take possession of the whole northwest coast of America in the name of his sovereign. This officer, sent out from England to execute the convention, did not carry with him any authority to violate it in this outrageous manner.

Without this treaty, he would have been a mere intruder; under it, Great Britain had a right to make discoveries and surveys, not thereby to acquire title, but merely to enable her subjects to select spots the most advantageous, to use the language of the convention, "for the purpose of carrying on their commerce with the natives of the country, or of making settlements there."

If this construction of the Nootka Sound convention be correct—and the undersigned does not perceive how it can be questioned—then Vancouver's passage through the straits of Fuca, in 1792, and Alexander Mackenzie's journey across the continent in 1793, can never be transformed into elements of title in favor of Great Britain.

But even if the undersigned could be mistaken in these positions, it would be easy to prove that Capt. John Kendrick, in the American sloop Washington, passed through the straits of Fuca in 1790, three years before Capt. Vancouver performed the same voyage. The very instructions to the latter, before he left England, in January, 1791, refer to this fact, which had been communicated to the British government by Lieutenant Meares, who has rendered his name so notorious by its connection with the transactions preceding the Nootka Sound convention. It is, moreover, well known that the whole southern division of the straits had been explored by the Spanish navigators, Elisa and Quimper—the first in 1790, and the latter in 1791.

After what has been said, it will be perceived how little reason the British plenipotentiary has for stating that his government has, "as far as relates to Vancouver's island, as complete a case of discovery, exploration, and settlement, as can well be presented, giving to Great Britain, in any arrangement that may be made with regard to the territory in dispute, the strongest possible claim to the exclusive possession of that island."

The discovery thus relied upon is that of Nootka Sound, by Cook, in 1778; when it has been demonstrated that this port was first discovered by Perez, in 1774. The exploration is that by Vancouver, in passing through the straits of Fuca, in 1792, and examining the coasts of the territory in dispute, when de Fuca himself had passed through these straits in 1592, and Kendrick again in 1780; and a complete examination of the western coast had been made in 1774 and 1775, both by Perez and Quadra. As to possession, if Meares was ever actually restored to his possessions at Nootka Sound, whatever these may have been, the undersigned has never seen any evidence of the fact. It is not to be found in the journal of Vancouver, although this officer was sent from England for the avowed purpose of witnessing such a restoration. The undersigned knows not whether any new understanding took place between the British and Spanish governments on this subject; but one fact is placed beyond all doubt, that the Spaniards continued in the undisturbed possession of Nootka Sound until the year 1796, when they voluntarily abandoned the place. Great Britain has never at any time since occupied this or any other position on Vancouver's island. Thus, on the score of either discovery, exploration, or possession, this island

seems to be the very last portion of the territory in dispute to which she can assert a just claim.

In the mean time, the United States were proceeding with the discoveries which served to complete and confirm the Spanish American title to the whole of the disputed territory.

Captain Robert Gray, in June, 1790, in the sloop Washington, first explored the whole eastern coast of Queen Charlotte's island.

In the autumn of the same year, Capt. John Kendrick—having in the mean time surrendered the command of the Columbia to Captain Grey—sailed, as has been already stated, in the sloop Washington, entirely through the straits of Fuca.

In 1791, Captain Gray returned to the North Pacific in the Columbia; and in the summer of that year, examined many of the inlets and passages between the 54th and 56th degrees of latitude, which the undersigned considers it unnecessary to specify.

On the 7th May, 1792, he discovered and entered Bulfinch's harbor, where he remained at anchor three days, trading with the Indians.

On the 14th May, 1792, Captain Gray entered the mouth of the Columbia, and completed the discovery of that great river. This river had been long sought in vain by former navigators. Both Meares and Vancouver, after examination, had denied its existence. Thus is the world indebted to the enterprise, perseverance, and intelligence of an American captain of a trading vessel for their first knowledge of this, the greatest river on the western coast of America—a river whose head springs flow from the gorges of the Rocky mountains, and whose branches extend from the 42d to the 53d parallels of latitude. This was the last and most important discovery on the coast, and has perpetuated the name of Robert Gray. In all future time, this great river will bear the name of his vessel.

It is true that Bruno Hecceta, in the year 1775, had been opposite the bay of the Columbia; and the currents and eddies of the water caused him, as he remarks, to believe that this was the mouth of some great river, or of some passage to another sea; and his opinion seems decidedly to have been that this was the opening of the strait discovered by Juan de Fuca in 1592. To use his own language: "Notwithstanding the great difference between the position of this bay and the passage mentioned by de Fuca, I have little difficulty in conceiving that they may be the same, having observed equal or greater differences in the latitudes of other capes and ports on this coast, as I shall show at its proper time; and in all cases the latitudes thus assigned are higher than the real ones."

Hecceta, from his own declaration, had never entered the Columbia; and he was in doubt whether the opening was the mouth of a river or an arm of the sea; and subsequent examinations of the coast by other navigators had rendered the opinion universal that no such river existed, when Gray first bore the American flag across its bar, sailed up its channel for twenty-five miles, and remained in the river nine days, trading with the Indians.

The British plenipotentiary attempts to depreciate the value to the United States of Gray's discovery, because his ship, (the Columbia) was a trading, and not a national vessel. As he furnishes no reason for this distinction, the undersigned will confine himself to the remark that a merchant vessel bears the flag of her country at her mast-head, and continues under its jurisdiction and protection, in the same manner as though she had been commissioned for the express purpose of making discoveries. Besides, beyond all doubt, this discovery was made by Gray; and to what nation could the benefit of it belong, unless it be to the United States? Certainly not to Great Britain. And if to Spain, the United States are now her representative.

Nor does the undersigned perceive in what manner the value of this great discovery can be lessened by the fact that it was first published to the world through the journal of Captain Vancouver, a British authority. On the contrary, its authenticity being thus acknowledged by the party having an adverse interest, is more firmly established than if it had been first published in the United States.

From a careful examination and review of the subject, the undersigned ventures the assertion, that to Spain and the United States belong all the merit of the discovery of the northwest coast of America south of the Russian line, not a spot of which unless it may have been the shores of some of the interior bays and inlets, after the entrance to them had been known; was ever beheld by British subjects, until after it had been seen or touched by a Spaniard or an American. Spain proceeded in this work of discovery, not as a means of acquiring title, but for the purpose of examining and surveying territory to which she believed she had an incontestable right. This title had been sanctioned for centuries by the acknowledgment or acquiescence of all the European powers. The United States alone could have disputed this title, and that only to the extent of the region watered by the Columbia. The Spanish and American titles, now united by the Florida treaty, cannot be justly resisted by Great Britain. Considered together, they constitute a perfect title to the whole territory in dispute, ever since the 11th May, 1792, when Captain Gray passed the bar at the mouth of the Columbia, which he had observed in August, 1788.

The undersigned will now proceed to show that this title of the United States, at least to the possession of the territory

at the mouth of the Columbia, has been acknowledged by the most solemn and unequivocal acts of the British government.

After the purchase of Louisiana from France, the government of the United States fitted out an expedition under Messrs. Lewis and Clarke, who, in 1805, first explored the Columbia, from its source to its mouth, preparatory to the occupation of the territory by the United States.

In 1811, the settlement at Astoria was made by the Americans near the mouth of the river, and several other posts were established in the interior along its banks. The war of 1812 between Great Britain and the United States thus found the latter in peaceable possession of that region. Astoria was captured by Great Britain during this war. The treaty of peace concluded at Ghent in December, 1814, provided that "all territory, places, and possessions whatsoever, taken by either party from the other, during the war," &c. &c., "shall be restored without delay." In obedience to the provisions of this treaty Great Britain restored Astoria to the United States; and thus admitted in the most solemn manner, not only that it had been an American territory or possession at the commencement of the war, but that it had been captured by British arms during its continuance. It is now too late to gainsay or explain away these facts.—Both the treaty of Ghent, and the acts of the British Government under it, disprove the allegations of the British plenipotentiary, that Astoria passed "into British hands by the voluntary act of the persons in charge of it," and "that it was restored to the United States in 1818 with certain well-authenticated reservations."

In reply to the first of these allegations, it is true that the agents of the (American) Pacific Fur Company, before the capture of Astoria, on the 16th October, 1813, had transferred all that they could transfer—the private property of the company—to the (British) Northwest Company; but it will scarcely be contended that such an arrangement could impair the sovereign rights of the United States to the territory. Accordingly, the American flag was still kept flying over the fort until the 1st of December, 1813, when it was captured by his Majesty's sloop of war Raccoon, and the British flag was then substituted.

That it was not restored to the United States "with certain well authenticated reservations," fully appears from the act of restoration itself, bearing date 6th October, 1818. This is as absolute and unconditional as the English language can make it. That this was according to the intention of Lord Castlereagh, clearly appears from his previous admission to Mr. Rush of the right of the Americans to be reinstated, and to be the party in possession while treating on the title. If British ministers afterwards, in despatches to their own agents, the contents of which were not communicated to the government of the United States, thought proper to protest against our title, these were, in effect, but mere mental reservations, which could not affect the validity of their own solemn and unconditional act of restoration.

But the British plenipotentiary, notwithstanding the American discovery of the Columbia by Capt. Gray, and the exploration by Lewis and Clarke of several of its branches, from their sources in the Rocky mountains, as well as its main channel to the ocean, contends that because Thompson, a British subject in the employ of the Northwest Company, was the first who navigated the northern branch of that river, the British Government thereby acquired certain rights against the United States, the extent of which he does not undertake to specify. In other words, that after one nation had discovered and explored a great river, and several tributaries, and made settlements on its banks, another nation, if it could find a single branch on its head waters which had not been actually explored, might appropriate to itself this branch, together with the adjacent territory. If this could have been done, it would have produced perpetual strife and collision among the nations of the discovery of America. It would have violated the wise principle consecrated by the practice of nations, which gives the valley drained by a river and its branches to the nation which had first discovered and appropriated its mouth.

But, for another reason, this alleged discovery of Thompson has no merit whatever. His journey was undertaken on behalf of the Northwest Company for the mere purpose of anticipating the United States in the occupation of the mouth of the Columbia—a territory to which no nation, unless it may have been Spain, could, with any show of justice, dispute their right. They had acquired it by discovery and exploration, and were now in the act of taking possession. It was in an enterprise undertaken for such a purpose, that Thompson, in hastening from Canada to the mouth of the Columbia, descended the north, arbitrarily assumed by Great Britain to be the main, branch of this river. This period was far too late to impair the title of either Spain or the United States by any such proceeding.

Mr. Thompson, on his return, was accompanied by a party from Astoria, under Mr. David Stuart, who established a post at the confluence of the Okingwan with the north branch of the Columbia, about six hundred miles above the mouth of the latter.

In the next year (1813) a second trading post was established by a party from Astoria, on the Spokan, about six hundred and fifty miles from the ocean.

It thus appears that, previous to the capture of Astoria by the British, the Americans had extended their possession up the Columbia six hundred and fifty miles. The mere intrusion of the Northwest Company into this territory, with any show of force, would have been a violation of the rights of the United States, in 1811 and 1812, on the head waters of the river, can surely not interfere with, or impair the Spanish-American title. What this company may have done in the intermediate period until the 20th October, 1818—the date of the first treaty of joint occupation—is unknown to the undersigned, from the impenetrable mystery in which they have veiled their proceedings. After the date of this treaty, neither Great Britain nor the United States could have performed any act affecting their claims to the disputed territory.

To sum up the whole, then, Great Britain cannot rest her claim to the northwest coast of America upon discovery. A title will her single claim by settlement at Nootka Sound avail her. Even before, her own navigation, forty years ago, declared it to be certain, from the most authentic information, that the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain."