

REPRINT DEPARTMENT

George Wilkes: History of Oregon, Geographical, Geological and Political. (New York, Colyer, 1845.)

[The reprint of this rare work was begun in the first number of the Washington Historical Quarterly and has been continued in portions of varying lengths. The installment in this issue concludes the reprinted book.—*Editor.*]

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

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

If the right of sovereignty over the territory in question accrues to the United States by Mr. Gray's discovery, how happens it that they never protested against the violence done to that right by the two powers, who, by the convention of 1790, regulated their respective rights in and over a district so belonging, as it is now asserted, to the United States?

This claim of the United States to the territory drained by the Columbia and its tributary streams, on the ground of one of their citizens having been the first to discover the entrance of that river, has been here

*These Englishmen are crazy—the Columbia was not discovered by Captain Gray till 1792. If the above is intended as an illustration only, the instance is as weak as the previous arguments are inconclusive.

so far entered into, not because it is considered to be necessarily entitled to notice, since the whole country watered by the Columbia falls within the provisions of the convention of 1790, but because the doctrine above alluded to has been put forward so broadly, and with such confidence, by the United States, that Great Britain considered it equally due to herself and to other powers to enter her protest against it.

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

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

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

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

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

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

† We have seen that Mr. Thomson came a year too late.

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

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

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

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

Viscount Castlereagh, in directing the British minister at Washington to intimate the intention of the British government to Mr. Adams, then secretary of state, uses these expressions, in a despatch dated 4th February, 1818:—

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

“In signifying, therefore, to Mr. Adams the full acquiescence of your government in the reoccupation of *the limited position* which the United States held in that river at the breaking out of the war, *you will at the same time assert, in suitable terms, the claim* of Great Britain to that territory, upon which the American settlement must be considered as an encroachment.”

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

The following is a transcript of the act by which the fort was delivered up, by the British, into the hand of Mr. Prevost, the American agent:—

*Those views were carried into effect. The place was regularly taken possession of in the king's name on the 1st December, 1813, and the British flag was run up with all the formalities of conquest, in place of the American standard.

"In obedience to the command of H. R. H. the prince regent, *signified in a despatch from the right honorable the Earl Bathurst*, addressed to the partners or agents of the North-West Company, bearing date the 27th of January, 1818, and in obedience to a subsequent order, dated the 26th July, from W. H. Sheriff, Esq., captain of H. M. 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. P. 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, 1818.

"F. HICKEY, *Captain H. M. ship Blossom.*

"J. KEITH, *of the N. W. Co.*"

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

DOWNING-STREET, 27th January, 1818.

"Intelligence having been received that the United States sloop of war *Ontario* has been sent by the American government to establish a settlement on the Columbia river, which was held by that state, on the breaking out of the last war, I am to acquaint you, that it is the prince regent's pleasure, (*without, however, admitting the right of that government to the possession in question*) that, in pursuance of the first article of the treaty of Ghent, due facility should be given to the reoccupation of the said settlement by the officers of the United States; and I am to desire that you would contribute as much as lies in your power to the execution of his royal highness's command.

"I have, &c. &c.

BATHURST.

"*To the Partners or Agents of the North-West Company, residing on the Columbia river.*"

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

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

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

under that convention, the United States must also have succeeded to the obligations which it imposed.

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

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

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

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

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

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

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

*Here is an assertion that Great Britain has been accruing title, through the operations of her Hudson's Bay Company, ever since the treaty of 1818. This gives an additional significance to her grant of the civil and criminal jurisdiction of the territory, to that incorporation. It will be well for our readers here to recollect the declaration of our Government made in 1823, that thenceforth no portion of the American Continents were to be considered as subjects for European Colonization.

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

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

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

These rights have been peaceably exercised ever since the date of that convention; that is, for a period of near forty years. Under that convention, valuable British interests have grown up in those countries. It is fully admitted that the United States possess the same rights, although they have been exercised by them only in a single instance, and have not, since the year 1813, been exercised at all. But beyond these rights they possess none.

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

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

(No. 7.)

*Convention between the United States and Great Britain, signed at London,
October 20th, 1818.*

ARTICLE 2.—It is agreed that a line drawn from the most north-western point of the Lake of the Woods, along the 49th parallel of north latitude, or, if the said point shall not be 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 the said parallel, shall be the line of demarkation between the territories of the United States and those of his Britannic 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 territories of his Britannic Majesty, from the Lake of the Woods to the Stony Mountains.

ART. 3.—It is agreed that any country that may be claimed by either party on the north-west 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, nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences among themselves.

(No. 8.)

The Florida Treaty, signed at Washington, February 22d, 1819...

ARTICLE 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 32d 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 isands 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 said line; that is to say, the United States hereby cede to his Catholic Majesty, and renounce forever, 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 forever.

(No. 9)

Convention between the United States and Great Britain, signed at London, August 6th, 1827.

ARTICLE I. All the provisions of the third article of the convention concluded between the United States of America and his majesty the king of the United Kingdom of Great Britain and Ireland, on the 20th of October, 1818, shall be, and they are hereby, further indefinitely extended and continued in force, in the same manner as if all the provisions of the said article were herein specifically recited.

ART. 2. 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.

ART. 3. Nothing contained in this convention, or in the third article of the convention of the 20th October, 1818, hereby continued in force, shall be constructed to impair, or in any manner affect, the claims

which either of the contracting parties may have to any part of the country westward of the Stony or Rocky Mountains.

(No. 10.)

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.”