

SETTLEMENT OF THE CLAIMS IN WASHINGTON OF THE HUDSON'S BAY COMPANY AND THE PUGET'S SOUND AGRICULTURAL COMPANY

The claims of the Hudson's Bay Company and the Puget's Sound Agricultural Company were first recognized by the United States in the Treaty of 1846¹ between Great Britain and the United States, as negotiated and arranged by James Buchanan, Secretary of State for the United States, and Right Honorable Richard Pak- enham, member of the British Privy Council and Envoy Extra- ordinary and Minister Plenitrotentiary to the United States. Ar- ticles II, III and IV are those in which the companies' claims are recognized by the United States. The articles are in substance as follows:

Article II. Free navigation, to the Hudson's Bay Company, of the Columbia River and its tributaries from point where the 49th degree of latitude crosses the Grand Eddy, the great northern branch of the Columbia, to the Pacific Ocean.

Article III. Confirmation of the possessory rights of the Hud- son's Bay Company south of 49°, within the territory of the United States.

Article IV. Confirmation to the Puget's Sound Agricultural Company of farms, lands and other property belonging to the com- pany, north of the Columbia River and to the United States the right to take it at a proper valuation to be agreed on between the two parties concerned, if the property becomes of "public and po- litical importance to the United States."

From 1848 to 1863, when a treaty was made with England for the settlement of the claims,² many requests were made to Congress to buy these possessory rights of the two companies. On July 10, 1848, Sir George Simpson, on behalf of the Hudson's Bay Company, let it be known to Congress that the company was anxious to sell because of England's fear of disputes over the rights, which might lead to differences between the nations; hence, the company was willing to sacrifice its rights for \$1,000,000.³ In the same year, in answer to a resolution of the Senate, on July 31st, President Polk's message to Congress included a report of the Secretary of State

¹ Malloy, *Treaties and Conventions, Protocols and Agreements between the United States and Other Powers*. Vol. I, pages 657-658.

² Malloy, *Treaties, Conventions, Protocols and Agreements between the United States and Other Powers*. Vol. I, pp. 657-658.

³ Senate Documents 31st C. 2nd S. Vol. 3, Doc. no. 20, pp. 3-4.

with documents concerning the claims.⁴ President Fillmore's message to Congress on February 3, 1851 was similar.⁵

On September 18, 1848, Viscount Palmerston, taking a different attitude, sent word to Sir William Pelly to the effect that he was not willing for the British Government to surrender the rights of navigation of the Columbia; that the Hudson's Bay Company could not sell it for the sale could only be negotiated by treaty between the United States Government and the British Crown.⁶ On October 11, 1850 Sir William Pelly wrote to Daniel Webster, Secretary of State, to the effect that seizure by United States military officers of the Hudson's Bay Company's vessel and store at Nisqually (really the property of the Puget's Sound Agricultural Company, a company subsidiary to the Hudson's Bay Company and often included under the term Hudson's Bay Company⁷) hastened the necessity for transferring possessory rights to the United States; that part of the Puget's Sound Agricultural Company's land was already occupied by United States' troops, so was of public and political importance to the United States; that the purchase price was not so important and that it would be advisable to leave the price to the judgment of two parties,—one appointed by the United States and one by the Hudson's Bay and Puget's Sound Agricultural Companies, who should call in a third party as umpire should they not agree.⁸ It is interesting to note that this was the plan later provided by the Treaty of 1863.⁹

Twice the Legislature of Oregon Territory, on July 20, 1849 and again January 6, 1851, sent memorials to Congress to purchase the claims since the Puget's Sound Agricultural Company was resisting the efforts of American settlers to locate on the unenclosed lands¹⁰ to which the company, according to the legislature, had no right.¹¹

The report of the Commissioner of the General Land Office, November 26, 1851, mentioned the necessity of the Surveyor General of Oregon's obtaining from the companies evidence of the rights they may claim to be protected by the Treaty of 1846 and evidence of the original localities and boundaries of the same, which

4 Richardson, *Messages and Papers of the Presidents*, Vol. IV, p. 603. Edition of Joint Committee of Congress, *Messages and Papers of the Presidents*, Vol. VI, p. 2453.

5 *Ibid.*, Vol. VI, p. 2633.

6 Senate Documents, 31st C. 2nd S. Vol. 3, no. 20, pp. 10-11.

7 *Ibid.*, p. 18.

8 Bancroft's Works, Vol. XXVIII, *History of the Northwest Coast*, Vol. II, p. 614-615.

9 Malloy, *Treaties, Conventions, Protocols and Agreements between the United States and Other Powers*, Vol. I, pp. 657-658.

10 Senate Miscellaneous, 31st C. 2nd S., no. 5, p. 5.

11 *Ibid.*, p. 5.

they held at the time of the treaty. The report recommended that provision be made by Congress for "prompt summary and final adjustment of the said claims in order that all within the purview of the treaty may be respected; and the United States protected from any not within its stipulations."¹²

The memorial of the Washington Legislature to Congress in 1854 asked Congress to ascertain the rights of the company and to purchase them, since the Puget's Sound Agricultural Company had commanded American settlers to vacate unenclosed lands over which the company's herds occasionally roamed, although these same settlers had improved this land.¹³

Governor I. I. Stevens of Washington Territory, in 1854, said that the company claimed the right of felling timber in the forests, of grazing large tracts of unenclosed pasture and prairie land with immense herds of cattle and flocks of sheep.

In his third annual message to Congress, December 31, 1855, President Franklin Pierce mentioned misunderstanding as to the extent, character, and value of the possessory rights of the Hudson's Bay and Puget's Sound Agricultural Companies and, to terminate the question, advocated cession to the United States of the rights of both companies, which could be obtained at reasonable terms. He asked for Congress' attention to the subject.¹⁴

On August 14, 1864, A. G. Henry, Surveyor General of Washington Territory, evidently not having received news of the negotiating of the treaty of July 1, 1863, in a letter to J. M. Edmunds, Commissioner of the General Land Office, Washington, D.C., called attention to the necessity for a survey of the lands of the Puget's Sound Agricultural "Society," at that time occupied by more than one thousand settlers, many of whom had made large and valuable improvements in the land. He added that the whole Territory was annoyed by conflicts between the American settlers and the company and asked for prompt and decisive interference by the United States government.¹⁵

In answer to these many requests, came the treaty of July 1, 1863, between Great Britain and the United States, providing, since it was desirable to transfer the companies' claims to the United States, for the appointment of commissioners by each country with-

12 Executive Documents 32nd C. 1st S. p. 7.

13 *Washington Journal, Council*, 1854, pp. 184-185. Senate Documents, 33rd C. 2nd S. Vol. 7, no. 37, p. 7.

14 Richardson, *Messages and Papers of the Presidents*, Vol. V, p. 333. Edition by Joint Committee of House and Senate. *Messages and Papers of the Presidents*, Vol VII, p. 2866.

15 *Messages and Documents, Department of Interior*, 1863-64, p. 95.

in twelve months. These men were to decide upon all claims arising out of provisions of the Treaty of 1846. They were to meet in Washington, D.C. at the earliest convenience. If necessary, they were to name an umpire to decide cases on which they differed or name the King of Italy if they couldn't decide on an umpire. The commissioners' decision of the claims would be final and put into execution at once. All sums awarded were to be paid by one government to the other in two equal installments, the first in twelve months after the award and the second in twenty-four months after the award, "without interest and without any deduction whatsoever."¹⁶

This convention was presented on December 16, 1863, by President Lincoln to the Senate for ratification.¹⁷ On March 14, 1864, President Lincoln recommended to Congress an appropriation to carry into effect articles I, II and III of this convention.¹⁸ ([See Treaty of 1863], Meaning for the contingent expenses and salary of umpire of the Joint International Commission provided for in the treaty). On December 6, 1864, President Lincoln mentioned in his fourth annual message to Congress that the Joint Commission was at work on the matter assigned to it.¹⁹ President Johnson in his fourth annual message to Congress, December 9, 1868, mentioned that the examination of claims was proceeding under the direction of the Joint International Commission, which would probably conclude its work soon.²⁰ However it was not till September 10, 1869, that the work of the commissioners was completed and the award made.²¹

The commissioners were Alexander Johnson of the United States and John Rose of Great Britain.²¹ During the sittings of the Commission, many and various were the arguments presented by both interested parties. The following propositions were presented by the Hudson's Bay Company in support of its argument:

- I. Possessory rights under Treaty of 1846 to be respected.
- II. "Possessory rights" was everything of appreciable value:
 1. Posts and establishments.
 2. Right of trade.
 3. Right of navigation of Columbia and its tributaries.

¹⁶ Malloy, *Treaties and Conventions*, Vol. I, p. 689-690.

¹⁷ Richardson, *Messages and Papers of the Presidents*, Vol. VI, 194. Edition by Joint Committee of House and Senate. *Messages and Papers of the Presidents*, Vol. VIII, p. 3395.

¹⁸ Richardson, *Messages and Papers of the Presidents*, Vol. VI, p. 200. Edition by Joint Committee of House and Senate, *Messages and Papers of the Presidents*, Vol. VIII, p. 3401.

¹⁹ *Ibid.*, Vol. VII, p. 3447.

²⁰ *Ibid.*, Vol. IX, p. 3888.

²¹ Malloy, *Treaties, Conventions, Protocols and Agreements between the United States and Other Powers*, Vol. I, pp. 690-691.

III. Possessory rights were of the value stated in the memorial.

IV. That the United States not only had failed to protect the Hudson's Bay Company's rights but United States officers and citizens under authority of United States government had violated and usurped them.

V. That the United States was now liable to the Hudson's Bay Company for the highest value of the rights at any time between 1846 and the producing of the claim in 1865, and that this value ought to be the right amount to be awarded.²²

After due consideration Commissioner Rose declared that he was bound to adopt the conclusion that, since the functions of the commissioners were limited to the third and fourth articles of the Treaty of 1846, any right of navigation secured by article II of the Oregon Treaty was beyond the jurisdiction of their commission.²³ This left only the question of the trading rights and the value of the posts and establishments, for consideration by the Commission.

There was a great divergence in the acreage also in the valuation of the possessory rights as figured by the companies and by the witnesses for the United States, as well as differences in the valuation given by the companies at different dates. For example, the Earl of Berens in a letter to the Earl of Clarendon in 1857, stated that the assessor's books listed the Puget's Sound Agricultural Company's property at \$670,000;²⁴ in 1865 the company was claiming \$1,168,000.²⁵ The possessory rights of this company principally included, according to its memorial to the Joint International Commission, a tract at Nisqually of 167,000 acres and a farm at Cowlitz River of about 3,572 acres. Governor I. I. Stevens of Washington Territory in a report, in 1854, to Secretary of State Marcy valued the Puget's Sound Agricultural Company's rights, which included, according to the claims of the company in 1854, enclosed and unenclosed pasture and prairie land to the amount of 8,000 acres for Cowlitz farm and 800 square miles for Nisqually territory, at \$180,000 and the Hudson's Bay Company's rights at \$120,000 or \$300,000 for the entire claim.²⁶ The \$1,168,000 for the Puget's Sound Agricultural Company, as quoted above, included \$50,000 for

²² *British and American Commission for Settlement of Claims of Hudson's Bay Company and Puget Sound Agriculture Company, Memorial and Agreement on Part of Hudson Bay Company.* (Montreal: John Lovell, 1868) Vol. V, (University of Washington Library), pp. 8 and 9.

²³ *Report of Navy and Postmaster General*, 41st C. 2nd S., 1869-70, p. XXXII.

²⁴ Photostat Addition to Doc. Evidence of Joint Interstate Commission, University of Washington Library, G5, p. 187.

²⁵ *Ibid.*, pp. 26-29.

²⁶ *Report of Navy and Postmaster General*, 41st C. 2nd S., 1869-70, p. XXXV.

²⁶ Senate Documents, 33rd C. 2nd S., Vol. 7, no. 37, pp. 11-12.

loss of livestock due to encroachment by American citizens.²⁷ For instance, William F. Tolmie, agent for the Puget's Sound Agricultural Company at Nisqually, in a list of losses due to American encroachment included among others the following: enclosed land under cultivation taken, rails from sheep folds taken, and shooting of Company's cattle and even riding horses when near American houses or enclosures.²⁸ In a memorial to Congress in 1854, the Legislature of Washington Territory states that when the Treaty of 1846 was ratified, the Puget's Sound Agricultural Company's property at Cowlitz and Nisqually was not more than 2000 acres but now, 1854, the company claims 227 square miles.²⁹ In 1855, Mr. Tolmie gives the acreage for Nisqually alone as 161,000 acres.³⁰ Jesse Applegate in a letter to Governor Gibbs of Oregon, in 1865, stated that the memorial of the Hudson's Bay Company to the Joint International Commission, April 8, 1865, was not correct since it valued improvements at Vancouver at £5000 when they were really worth only \$1000.³¹ In this memorial the Hudson's Bay Company claimed for value of posts and loss of profit \$1,388,703.33, for loss of right to trade \$973,333.33, for right to navigate the Columbia \$1,460,000, making a total claim of \$3,822,036.67—and as amended,* \$4,281,936.67.³² This sum added to the Puget's Sound Company's claim of \$1,168,000 totaled \$5,449,936.67 for the claims of the two companies as presented in their memorials to the Joint International Commission.

It might be interesting here to note that of the fourteen posts or properties enumerated in the memorial, six; namely Fort Vancouver, Fort George, post at Umpqua, Fort Nez Perce (Walla Walla), Fort Hall and post at Boise had either been abandoned or taken over by the United States army officers or American settlers, that part of the post at Cape Disappointment had been taken by the United States officers for a light-house and other public purposes, and that the other seven; namely, Champoeg, and the posts at Cow-

27 Photostat Additions to Documentary Evidence of Joint International Commission, University of Washington Library, pp. 26-29.

28 Senate Documents, 33rd C. 2nd S., Vol. 7, no. 37, pp.14-15.

29 *Washington Journal, Council*, 1854, p. 184.

30 *Executive Documents* 34th C. 1st S., Vol. I, p. 152.

31 Photostat Additions to Documentary Evidence of Joint International Commission, University of Washington Library.

*Amounts for Vancouver and Colville increased by motion to amend made by the Hudson's Bay Company, See reference for thirty-two pages IV to X.

32 *British and American Joint Commission for Settlement of Claims of Hudson's Bay Company and Puget Sound Agricultural Company, Memorial and Agreement in part of Hudson's Bay Company.* (Montreal: John Lovell 1868), Vol. V, (University of Washington), pp. X, XI, XIV.

litz, Chinook, Okanagan, Colville, Kootanais and Flat-Heads were still, in 1865, in the hands of the Hudson's Bay Company.³³

As to offers made before 1865, the United States offered to pay \$1,000,000 for the Hudson's Bay Company's rights, including the right to navigation of the Columbia. This was expressed in a convention prepared by Daniel Webster in 1852.³⁴ On the other hand, the Hudson's Bay Company, through Mr. Lyons, in 1860 agreed to accept \$500,000 in full of their demands.³⁴

Since the evidence of the claimant's witnesses made claims considerably in excess of the sum the company was once ready to accept, and the evidence adduced by the United States reduced the claims to an insignificant sum,³⁴ Mr. Rose, anxious not to prevent settlement,³⁴ made the award \$450,000 for the Hudson's Bay Company and \$200,000 for the Puget's Sound Agricultural Company, or \$650,000 in all. The same award was made by Mr. Johnson. The sum of \$650,000 was to be paid by the United States to the government of Great Britain as specified in the Treaty of 1863. Before payment, or at the time of, each company was to deliver to the United States a sufficient deed or transfer and release, the form for which was annexed to the award. Thus the award was made by the Joint International Commission on September 10, 1869.³⁵

On December 6, 1869, President Grant notified Congress of the award, of the extinguishing of the titles and rights of the company to territory in the United States and of the delivery of the deeds for the property of this company; and asked for an appropriation by Congress to meet the award of \$650,000.³⁶

On March 24, 1870, Hamilton Fish, Secretary of State called the attention of George Boutwell, Secretary of the Treasury, to the fact that the first installment of the award would become payable on September 10, 1870, according to the Treaty of 1863.³⁷ Two days later, the Secretary of the Treasury in a letter to James G. Blaine, Speaker of the House, asked for an appropriation to pay this part of the award.³⁷ This was accordingly appropriated and the first installment paid by the United States as stipulated.³⁸

33 *British and American Joint Commission for Settlement of Claims of Hudson's Bay Company and Puget Sound Agricultural Company, Memorial and Agreements on part of Hudson's Bay Company.* (Montreal: John Lovell, 1868.) Vol. V, University of Washington, pp. IV to X.

34 Report of Secretary of Navy and Postmaster General, 41st C. 2nd S. p. XXXIII.

35 Report of Secretary of Navy and Postmaster General, 41st C. 2nd S., p. XXXIII.

36 Richardson, *Messages and Papers of the Presidents*, Vol. VII, p. 35. Edition by Joint Commission of House and Senate *Messages and Papers of the Presidents*, Vol. III, p. 3989.

37 Executive Documents, no 220, 41st C. 2nd S., p. 1-2.

38 *Messages and Reports of Departments of Foreign Relations of the United States*, 42nd C. 2nd S., p. 534.

On February 21, 1871, Congress appropriated \$350,000 for payment in gold coin of the last installment of the award to the Hudson's Bay and Puget's Sound Agricultural Companies and attached a proviso that before payment was made, all taxes assessed on the property covered by the award and still unpaid, be paid or the amount of such taxes be withheld by the United States Government from the sum appropriated.³⁹

The second payment on the award was made without any deduction of taxes, so Congress on May 24, 1872, requested the President of the United States to communicate to the House the reasons for the violating of the proviso of the act of February 21, 1871.³⁹ However the Secretary of State, Hamilton Fish, had been fully persuaded before September 10, 1871, the date upon which the second payment was due, that the taxes of \$50,000 assessed by Pierce County, Washington, against the Puget's Sound Agricultural Company was not the one referred to by Congress since the United States could only assess Federal taxes, according to an opinion rendered by Justice A. T. Akerman, Department of Justice, in a letter to Secretary Fish on August 7, 1871.⁴⁰ Mr. Fish also received from J. H. Hartley, acting Secretary of Treasury, on September 2, 1871, a copy of a letter from the Commissioner of Internal Revenue, J. W. Douglas, stating that no taxes had been legally assessed and remained unpaid to the United States on property of the Puget's Sound Agricultural Company up to the time of the award in 1869.⁴¹

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³⁹ House Miscellaneous, no. 222, p. 1.

⁴⁰ *Messages and Reports of Departments Foreign Relations of United States*, 42nd C. 2nd S., p. 539.

⁴¹ *Messages and Reports of Departments Foreign Relations of the United States*, 42nd C. 2nd S., p. 540.