

THE DISPUTE OVER THE SAN JUAN ISLAND WATER BOUNDARY*

The San Juan dispute during the period of 1846 to 1872 between the United States and Great Britain, centered around the location of the boundary line separating Vancouver's Island from the main land of Washington Territory. According to the Treaty of June 15, 1846, between the United States and Great Britain, the boundary line on the Pacific Northwest was definitely established, in the opinions of the two governments. However, the Article defining the boundary line between Vancouver's Island and Washington Territory was not clear in its terminology. The Article read:

"From the point on the 49th parallel of North latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line boundary between the territories of Her Majesty and those of the United States, shall be continued westward along the said 49th parallel of North latitude, to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly, through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean; provided, however, that the navigation of the whole of said channel and straits, south of the 49th parallel of North latitude, remain free and open to both parties."¹

Since there are at least two distinct channels leading from the northern boundary on the 49th parallel south to the middle of the Straits of Fuca, and since neither was mentioned in the Treaty of June 15, 1846, each country was at liberty to place its own interpretation on the Article. The United States maintained that the channel intended, was the Canal de Haro, while Great Britain maintained that the logical channel was the Straits of Rosario.² If the Canal de Haro were taken as the dividing line, the United States would be in the possession of several important islands, the largest and most important of which was the Island of San Juan; if Rosario Straits were taken, England would then be in the possession of these islands.

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1 Hertslet's *Commercial Treaties*, (1851), Vol. 8, p. 931.

2 Moore, James B., *History of International Arbitration*, (6 vol. Wash., 1898), Vol. I, p. 219.

See also, *Encyclopedia Britannica*, Vol. 21, p. 266.

The dispute between England and the United States arose after the Treaty of June 15, 1846, when it was discovered that these islands lying between Canal de Haro and Rosario Straits were of great military importance. Both countries had noted men who supported the contentions of each with great vigor. The Secretary of War, John A. Rowings, in a report to the Senate of the United States, dated March 20, 1869,³ emphasized the significance of San Juan Island as a military stronghold for the command of Puget Sound. Brigadier General A. A. Humphrey, Chief Engineer, who had been in the disputed territory, supplied the Secretary of War with the details concerning the military importance of the island. He stressed at great length that if Great Britain should have control of San Juan Island, being already in control of all of Vancouver's Island, the English could absolutely control the entrance of Puget Sound and thereby command the chief harbors of the Pacific Northwest. If the United States could hold San Juan Island, that government would be in a position to defend its harbors and at the same time have an equal chance with Great Britain in controlling the channels leading into Puget Sound from the ocean.

J. Gregory Smith, of the Northern Pacific Railroad Company, addressed a letter to Senator G. F. Edmunds, February 20, 1869,⁴ calling his attention to the military importance of San Juan Island and how necessary it would be for the United States to control the island in order to command an entrance into Puget Sound. At the same time, Mr. Smith predicted that at some time in the future, the Puget Sound region would become the commercial center of the North Pacific. He further stated that the Northern Pacific Railroad Company would have a Western Terminal on Puget Sound and it would not do to have it entirely within range of British guns.

Mr. Campbell, who was appointed by the United States Government as a member of the commission to determine the water boundary in the disputed territory, stated in a letter to Mr. Cass, dated September 25, 1858, that, "it is in a military and naval point of view, however, that their (islands) importance is to be mainly regarded."⁵ Lord Russell at London wrote repeatedly to Lord Lyons, English Minister at Washington, D.C., emphasizing the great importance of San Juan Island to the British Government. Lord Russell's letter of December 16, 1859,⁶ particularly referred to the military value of San Juan Island, stating that San Juan Island

³ Senate Executive Doc. No. 8, Serial No. 1393, p. 1.

⁴ Sen. Mis. Doc. No. 14, Serial No. 1399, pp. 1-6.

⁵ Senate Exec. Doc. No. 29, Serial No. 1316, p. 52.

would be a defensive position if in the hands of Great Britain but an aggressive position if in the hands of the United States.

Viscount Milton, an Englishman, devoted considerable space in his book, *History of the San Juan Water Boundary Question*, in an effort to impress upon the people of Great Britain that San Juan Island was absolutely necessary if the British hoped ever to hold a safe commercial position on the Pacific Coast. In part, Viscount Milton said:

"The entrance to the strait or Canal (de Haro) is, however, commanded by the Island of San Juan, one of the islands of the group, and it will be seen that it is of the very last importance to the citizens of Vancouver's Island, and of the mainland of British Columbia, that in case of any disagreement with the United States they should hold possession to this key to the Strait. . . . and should the island of San Juan, commanding the Canal de Haro fall into the hands of the United States the mainland of British Columbia could be cut off from intercourse with each other by the batteries of the United States erected on San Juan."⁷

Besides the military importance of San Juan Island, it was very valuable, also, from the economic standpoint. The waters just south of San Juan Island were believed to be the best for fishing on all of Puget Sound. The Hudson's Bay Company annually put up from 2,000 to 3,000 barrels of salmon which were taken from these waters. In addition to the salmon, cod and halibut existed and were caught in great quantities each year by the Indians of the territory.⁸ The Hudson's Bay Company regarded San Juan Island as an ideal location for sheep raising also, and owned thousands of sheep which grazed near the establishment of the company. The mutton produced on San Juan was reported to be of superior flavor, and the climate and grazing conditions were believed responsible for the rapid growth of the sheep and the delicate flavor of the meat.⁹

San Juan Island, in addition to offering ideal fishing and grazing locations, was noted for its deposits of coal and limestone.¹⁰ "A circumstance of great importance in connection with this island is the existence upon it of extensive deposits of limestone."¹¹

Because of the material value of San Juan Island in particular,

⁶ *Ibid.*, pp. 223 and also 249.

⁷ Milton, Viscount, *History of the San Juan Water Boundary Question*, (London, 1869), pp. 10-11.

⁸ *Ibid.*, p. 19. See also, Sen. Ex. Doc. No. 29, Serial No. 1316, pp. 131-135.

⁹ Senate Ex. Doc. No. 10, Serial No. 1027, p. 7. See also, Executive Doc. No. 77, Serial No. 1056, p. 1. See also, Milton, *op. cit.*, 16.

¹⁰ Sen. Ex. Doc. No. 29, Serial No. 1316, pp. 131-135.

¹¹ Milton, *op. cit.*, p. 16.

and because of its strategic position from military standpoint, the water boundary dispute very nearly brought the United States and Great Britain into another war.

Opinions of Officials of Both Governments

An investigation of the negotiations between the governments of England and of the United States just before and immediately after the Treaty of June 15, 1846, shows that representatives of both governments believed that the Canal de Haro was really intended as the water boundary between Vancouver's Island and the United States. Before the Treaty was signed, the two governments could not agree on the exact boundary line between United States territory and British Columbia, although the 49th parallel was satisfactory to both. England did not wish a 49th parallel to extend to the Pacific because she would lose part of Vancouver's Island. However, Mr. Edward Everett, our representative in England, addressed a letter to Lord Aberdeen of the English ministry, November 30, 1843, in which he suggested that the 49th parallel could extend to the middle of the Gulf of Georgia and then south to the Gulf of Juan de Fuca; thus England would retain all of Vancouver's Island.¹²

A letter dated May 18, 1846, from Mr. McLane, who had charge of the San Juan Island question in London, to Mr. Buchanan, Secretary of State, explained in detail a conversation that he had had with Lord Aberdeen regarding a reasonable settlement of the boundary dispute. The plan which seemed reasonable to Lord Aberdeen and which was then authorized to be presented to the United States through Mr. Pakenham, England's Minister to the United States, was as follows: "First—to divide the territory by the extension of the line or parallel of 49 to the Sea; that is to say, to the arm of the sea called Birches Bay, thence by the Canal de Arro and Straits of Fuca to the ocean."¹³

In this dispatch, Mr. McLane actually mentioned Canal de Arro (same as Haro); evidently the governmental officials in England, who were responsible for the settlement of the boundary line, believed that the Canal de Haro was the only channel contemplated for the Treaty of June 15, 1846.

Extracts of a lecture delivered by Mr. William Sturgis on the San Juan Island dispute before the Mercantile Library Association of Boston, January 22, 1845, outlined the plan that was later con-

¹² Papers Relating to the Treaty of Wash., Vol. 5, Berlin Arbitration, p. 8.

¹³ Sen. Ex. Doc. No. 29, Serial No. 1316, pp. 80-81. See also, Vol. 5, Berlin Arbitration, *op. cit.*, p. 49. See also, Foreign Relations of the U.S., part III, p. 309.

sidered a fair method for the settlement of the boundary dispute. He said in part:

"In this opinion I doubt not that the distinguished statesmen, Messrs. Pakenham and Calhoun, who now have charge of the negotiations, will cordially concur; and it seems to me that each party will obtain their object, and justice will be done to both, by adopting as a boundary a continuation of the parallel of 49 (degrees) across the Rocky Mountains to the tide water, say to the middle of the Gulf of Georgia; thence by the northern most navigable passage (not north of 49 degrees) to the Strait of Juan de Fuca, and down the middle of those straits to the Pacific Ocean; the navigation of the Gulf of Georgia and the Straits of Juan de Fuca to be forever free to both parties, all the islands and other territory lying south and east of this line to belong to the United States and all north and west to Great Britain."¹⁴

In this speech, Mr. Sturgis specified that all islands south and east were to be the property of the United States. As a consequence no channel other than the Canal de Haro could have been designated to meet those specifications. This lecture of Mr. Sturgis reached England and was published in English papers. As a result of this plan presented by Mr. Sturgis, Lord Ashburton addressed a letter to Mr. Sturgis, April 2, 1845, in which he expressed his full agreement in every detail of the proposed water boundary.¹⁵ Just a month later on May 1, 1845, Mr. Bates, editor of the *Examiner*, London, sent a letter to Mr. Sturgis, in which he stated that before he published the address he had sent a copy to Lord Aberdeen for approval because he did not wish to form public opinion for a plan not in harmony with the opinion of the English Government. Lord Aberdeen replied that all details relating to the boundary settlement as outlined by Mr. Sturgis were satisfactory to his wishes.¹⁶ This evidence proves that opinions of the leading men of England and America in regard to the water boundary on Puget Sound were in perfect harmony with the claims held by the United States at the time of the later controversy.

Mr. Bancroft, who was Minister to London, wrote to Mr. Campbell June 15, 1858, and explained very clearly how both governments interpreted the Treaty of 1846: "The United States held that both parties had a right to the free navigation of the waters round Vancouver's Island, and therefore consented that the British

¹⁴ Papers Relating to the Treaty of Wash., Vol. 5, Berlin Arbitration, Appendix 21, p. 34.

¹⁵ Papers Relating to the Treaty of Wash., Vol. 5, Berlin Arbitration, Appen. 25, p. 37.

¹⁶ *Ibid*, Appendix 26, pp. 37-38.

Boundary should extend to the center of the channel of Haro. Such was the understanding of everybody at the time of consummating the treaty in England and at Washington."¹⁷

In 1849, England ceded to the Hudson's Bay Company the exclusive right of Vancouver's Island on condition that the company would encourage colonization. Nothing was mentioned regarding the territory east of the Canal de Haro, so evidently the British did not acknowledge ownership of the disputed territory, or they would doubtless have included the Island of San Juan in the grant.¹⁸

At the time of the ratification of the Treaty of June 15, 1846, Mr. Benton in a speech before the Senate points out very clearly the interpretation held by your government. Mr. Benton said in part: "The line . . . followed the parallel of 49 to the sea, with a slight deflection through the Strait of Fuca to avoid cutting the south end of Vancouver's Island. . . . When the line reaches the channel which separates Vancouver's Island from the continent, it proceeds to the channel, and thence turning south through the channel de Haro (wrongfully written Arro on the map) to the Strait of Fuca; and then west through the middle of the channel to the sea."¹⁹

Robert Peel, Prime Minister of England, in his last address before the House of Commons on June 29, 1846, just after the treaty had been signed, gave a similar idea of what should actually constitute the boundary line on the Pacific Northwest. He said: "Those who remember the local confirmation of the country will understand that that we propose is the continuation of the 49th parallel of latitude till it strikes the Strait of Fuca; that that parallel should not be continued as a boundary across Vancouver's Island, thus depriving us of a part of Vancouver's Island with equal rights to navigation of straits."²⁰

All these officials of both governments who expressed opinions before, at the time, and immediately after the Treaty of June 15, 1846, were of the understanding that the Canal de Haro was the only channel that was meant. England's representatives in the negotiations stressed that they could not agree with a plan that would cut off Vancouver's Island at the 49th parallel, but that they would agree to a plan that would give England all of Vancouver's Island. To do this, it surely would not seem logical nor at all prob-

17 Sen. Ex. Doc. No. 29, Serial No. 1316, p. 54.

18 Howay, F. W., *British Columbia—The Making of a Province* (Toronto and London, 1928), p. 104. See also, Wilson, Beckles, *The Great Company* (New York, 1906) pp. 464-465.

19 Sen. Ex. Doc. No. 29, Serial No. 1316, p. 68. See also, Moore, *op. cit.*, p. 214.

20 *Foreign Relations of the United States*, Part III (1873), p. 309 (quoted by Foreign Relations).

able that a channel so remote as that of Rosario Straits would be selected. Since England would not agree to lose a part of Vancouver's Island, surely the United States would not agree to give up a group of islands when the deepest and best channel passed by the shores of Vancouver's Island.

When Robert Peel's Ministry went out of office, the boundary line between British Columbia and the United States seemed to have been permanently settled, but with the inauguration of the ministry under Lord Russell, a controversy was brought up again over the water boundary because the Canal de Haro was not definitely mentioned in the Treaty of June 15, 1846, nor was any other channel between the Gulf of Georgia and the Strait of Juan de Fuca.

Why was the controversy over the water boundary re-opened when statesmen of both countries had settled it to their own satisfaction and to that of the two countries in 1846? The English government had seen no reason to claim the Island of San Juan then but she did so later, it seems evident, because the importance of these islands was pushed forward by influential persons. Evidence seems to place the blame for originating the claim for Rosario Straits as a boundary to the Hudson's Bay Company and not the English Government. In fact, in 1846, the English officials did not believe that even all the land north of the Columbia River was worth having, and surely they would not be ready to fight for a few islands in the Sound.²¹ The English Government had sent out an expedition before the treaty was signed to explore and to determine the value of the region north of the Columbia. Captain Gordon, brother of Lord Aberdeen, and Lieutenant William Peel, son of Sir Robert Peel, explored the Oregon territory and returned with the report that the territory was worthless.²² *The Edinburgh Review* of July 18, 1845, proclaimed the territory north of the Columbia River of no value.²³ Another English publication, the *Nile Register*, in its issue of May 2, 1846, called the disputed territory north of the Columbia River, a sterile region, remote and useless.²⁴ These facts show that the English Government did not feel that it lost land of any value by giving up the territory to the 49th parallel, and at the same time public opinion in England must have been unfavorable to the territory because of the writings of current publications.

Reference has been made to the settlement that the Hudson's Bay Company had on San Juan Island and also of the fishing sta-

²¹ *Oregon Historical Quarterly*, Vol. 28, p. 19.

²² Laut, Agnes C., *Conquest of the Great Northwest* (New York, 1918), pp. 369-384.

²³ *Oregon Historical Quarterly*, Vol. 28, p. 26.

²⁴ *Ibid*, p. 34.

tions which had been established there even before the treaty was signed. Because the Hudson's Bay Company wished to have the islands for fishing purposes and later for sheep raising, the company would naturally try to persuade Great Britain to claim all islands west of the Rosario Straits and to refuse an acceptance of the Canal de Haro as the water boundary. As early as May 16, 1846, Sir J. Pelly, Governor of Hudson's Bay Company, sent a letter to Lord Aberdeen urging him to claim the Rosario Straits and thus to give the islands to Great Britain.²⁵ Mr. Bancroft, our Minister in London, addressed a letter to the Secretary of State of the United States in November, 1846, in which he stated that the Hudson's Bay Company was urging the British Government to claim the Rosario Straits in order that the company could possess the valuable islands between Rosario Straits and Canal de Haro. At the same time he mentioned that the British Ministry was not in favor of making such a claim.²⁶ Mr. Bancroft again emphasized the contention of the Hudson's Bay Company in a letter dated March 29, 1847, addressed to Mr. Buchanan. In part he said: "While on this point I ought to add that my attention has again been called to the probable wishes of the Hudson's Bay Company to get some of the islands on our side of the line in the Straits of Fuca. . . . The ministry, I believe, has no such design. Some of its members would be the first to frown on it."²⁷

The evidence presented may not be conclusive proof that the Hudson's Bay Company was the instigator for England's claim on San Juan and adjacent islands, but it arouses a certain amount of suspicion in that regard. Later on, when conflict actually began, the Hudson's Bay Company did everything within its power to have England hold San Juan Island, and the British Government did everything possible short of war to make her claim for Rosario Straits as a boundary effective.

United States and Great Britain Appoint Commissioners

When trouble seemed likely to occur between the British and American Governments over the possession of the disputed territory, the United States and Great Britain each appointed commissioners, whose duty it was to determine the boundary line according to the provisions of the Treaty of June 15, 1846. Archibald Campbell represented the United States, and James C. Provost repre-

²⁵ *Foreign Relations*, Part II, Vol. 5, Berlin Arbitration, p. 180.

²⁶ Sen. Ex. Doc. No. 29, Serial No. 1316, p. 3. See also, *Ibid*, p. 82.

²⁷ *Foreign Relations*, Part II, Vol. 5, *op. cit.*, p. 148. See also, Sen. Ex. Doc. No. 29, Serial No. 1316, p. 83.

sented Great Britain on the boundary commission.²⁸ The commissioners representing the two countries arrived at the disputed boundary line in June, 1857. The first meeting was held June 27, 1857.²⁹ The commissioners exchanged orders given them by their governments explaining the conditions under which a settlement could be made. According to these orders, each one had full authority to settle the dispute according to his own interpretation of the Treaty. With this understanding of each others' powers, the commissioners began work immediately. Each one presented his arguments and all evidence possible in six different meetings; the first one was held June 27, 1857, and the last one December 3, 1857.³⁰ Captain James Provost outlined the conditions under which the boundary line could be determined. According to a careful consideration of the wording of the treaty, Provost maintained that the treaty provided that the channel mentioned should possess three characteristics: First, it should separate the continent from Vancouver's Island; second, it should admit of the boundary line being carried through the middle of the channel in a southerly direction; third, it should be a navigable channel.³¹ Capt. Provost maintained that the Canal de Haro satisfied the third point but that it did not meet the requirements of the other two. He argued that the Canal de Haro did not separate Vancouver's Island from the mainland because there were several navigable channels between Vancouver's Island and the continent. Capt. Provost further maintained that Canal de Haro did not satisfy the second point because the channel ran more westerly than southerly.³²

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(To be Continued)

²⁸ Moore, James Basset, *History of International Arbitration* (6 Vol. Wash. 1898) Vol. I, p. 219. See also, *Congressional Globe*, 1st Sess., 34 Cong., Part II, p. 1930. See also, *Foreign Relations*, Part III, pp. 312-315.

²⁹ Sen. Ex. Doc. No. 29, Serial No. 1316, p. 48.

³⁰ *Ibid.*, p. 49. See also, Moore *op. cit.*, Vol. I, pp. 219-220.

³¹ Sen. Ex. Doc. No. 29, Serial No. 1316, p. 11. See also, Moore, *op. cit.*, Vol. I, p. 219.

³² Sen. Ex. Doc. No. 29, Serial No. 1316, pp. 10-11.