

GREAT BRITAIN : JUNE 15, 1846

The Oregon Treaty. Treaty Establishing the Boundary in the Territory on the Northwest Coast of America Lying Westward of the Rocky Mountains, signed at Washington June 15, 1846. Original in English.

Draft treaty proposed by the Government of Great Britain June 6, 1846, submitted to the Senate June 10, 1846. Resolution of advice June 12, 1846. Treaty submitted to the Senate June 16, 1846. Resolution, of advice and consent June 18, 1846. Ratified by the United States June 19, 1846. Ratified by Great Britain July 14, 1846. Ratifications exchanged at London July 17, 1846. Proclaimed August 5, 1846.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the Territory on the northwest coast of America lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two Parties over the said Territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement, that is to say: the President of the United States of America, has, on his part, furnished with Full Powers, James Buchanan, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the Right Honorable Richard Pakenham, a Member of Her Majesty's most honorable Privy Council, and Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States; who, after having communicated to each other their respective full Powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

From the point on the forty-ninth parallel of north latitude where the boundary laid down in existing treaties and conventions¹ between

¹ See Documents 40 and 56.

the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth 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 the said channel and Straits south of the forty ninth parallel of north latitude remain free and open to both Parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the Ocean, with free access into and through the said River or Rivers, it being understood that all the usual portages along the line thus described shall in like manner be free and open. In navigating the said River or Rivers, British subjects with their goods and produce, shall be treated on the same footing as citizens of the United States; it being however always understood that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

ARTICLE III.

In the future appropriation of the territory, south of the forty-ninth parallel of north latitude, as provided in the first article of this Treaty, the possessory rights of the Hudson's Bay Company and of all British subjects who may be already in the occupation of land or other property, lawfully acquired within the said Territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company on the north side of the Columbia River, shall be confirmed to the said Company. In case however the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States' Government should signify a desire to obtain possession

of the whole, or of any part thereof, the property so required shall be transferred to the said Government, at a proper valuation, to be agreed upon between the Parties.

ARTICLE V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

[Seal] JAMES BUCHANAN

[Seal] RICHARD PAKENHAM.

NOTES

The papers in the treaty file include the signed original of the treaty, two attested resolutions of the Senate, of June 12 and 18, 1846, respectively (Executive Journal, VII, 89, 95), the duplicate United States instrument of ratification of June 19, the British instrument of ratification of July 14, the certificate of the exchange of ratifications at London on July 17, and the original proclamation of August 5, 1846. The various papers are in customary form; and from the text of the treaty included in the British instrument of ratification it appears that the *alternat* was duly observed.

THE FULL POWERS

In the preamble of the treaty there is the usual statement of the communication of the full powers; but there is a difference in the references to the respective Plenipotentiaries, as it is said that James Buchanan, Secretary of State, had been "furnished with Full Powers", and that the Right Honorable Richard Pakenham had been "appointed".

In this case the original full powers were not exchanged, for that given to James Buchanan is in the treaty file. It is in customary form, reading as follows (recorded in D.S., 3 Credences, 176):

James K. Polk, President of the United States of America,

To all whom these presents shall concern, Greeting:

Know Ye, That I have given and granted, and do hereby give and grant, to James Buchanan, Secretary of State of the United States, full power and authority, and also general and special command, to meet and confer with Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, he being furnished

with like full power on the part of his Government; and with him to treat of and concerning the boundary line between the United States and the British possessions in North America, from its western termination in the Rocky Mountains to the Pacific Ocean, and of all matters and subjects connected therewith, which may be interesting to the two Nations; and to conclude and sign a treaty or treaties, convention or conventions, touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate thereof.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand, at the City of Washington, [Seal] this 13th day of June, A.D. 1846, and of the Independence of the United States the seventieth.

JAMES K. POLK

By the President:

JAMES BUCHANAN
Secretary of State.

No copy of the full power of the British Plenipotentiary (the Right Honorable Richard Pakenham) is available; but instruction No. 6 to Pakenham from Lord Aberdeen, British Secretary of State for Foreign Affairs, thus gives its substance (Library of Congress, Pakenham Papers, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 115:85; hereinafter cited as "Pakenham Papers"):

FOREIGN OFFICE *February 27. 1844*

SIR, I transmit to you herewith, a Full Power which The Queen has graciously pleased to grant to you under the Great Seal, authorizing and empowering you to negotiate and conclude, with the Minister or Ministers duly vested with similar Power and Authority on the part of The President of the United States of America, any Treaty or Agreement for the arrangement of matters which are now in discussion, or which may hereafter come into discussion, between Her Majesty and the United States.

I am, with great Truth and Regard, Sir, your most obedient humble servant
ABERDEEN

The Right Honourable RICHARD PAKENHAM
&c &c &c

THE SENATE PROCEDURE

In the case of this treaty President Polk adopted the unusual course of asking the advice of the Senate prior to the signature of the agreement. On June 10, 1846, he sent to the Senate the following message (Executive Journal, VII, 84-85):

I lay before the Senate a proposal in the form of a convention, presented to the Secretary of State on the sixth instant, by the envoy extraordinary and minister plenipotentiary of Her Britannic Majesty, for the adjustment of the Oregon question, together with a protocol of this proceeding. I submit this proposal to the consideration of the Senate and request their advice as to the action which in their judgment it may be proper to take in reference to it.

In the early periods of the Government the opinion and advice of the Senate were often taken in advance upon important questions of our foreign policy. General Washington repeatedly consulted the Senate and asked their previous advice upon pending negotiations with foreign powers; and the Senate in every instance responded to his call by giving their advice, to which he always conformed his action. This practice, though rarely resorted to in later times, was in my judgment eminently wise, and may on occasions of great importance be properly revived. The Senate are a branch of the treaty-making power, and by consulting

them in advance of his own action, upon important measures of foreign policy which may ultimately come before them for their consideration, the President secures harmony of action between that body and himself. The Senate are, moreover, a branch of the war-making power, and it may be eminently proper for the Executive to take the opinion and advice of that body in advance, upon any great question which may involve in its decision the issue of peace or war. On the present occasion the magnitude of the subject would induce me under any circumstances to desire the previous advice of the Senate, and that desire is increased by the recent debates and proceedings in Congress, which render it, in my judgment, not only respectful to the Senate, but necessary and proper, if not indispensable to insure harmonious action between that body and the Executive. In conferring on the Executive the authority to give notice for the abrogation of the convention of 1827, the Senate acted publicly so large a part that a decision on the proposal now made by the British Government, without a definite knowledge of the views of that body in reference to it, might render the question still more complicated and difficult of adjustment. For these reasons I invite the consideration of the Senate to the proposal of the British Government for the settlement of the Oregon question, and ask their advice on the subject.

My opinions and my action on the Oregon question were fully made known to Congress in my annual message of the second of December last, and the opinions therein expressed remain unchanged.

Should the Senate, by the constitutional majority required for the ratification of treaties, advise the acceptance of this proposition or advise it with such modifications as they may upon full deliberation deem proper, I shall conform my action to their advice. Should the Senate, however, decline by such constitutional majority to give such advice, or to express an opinion on the subject, I shall consider it my duty to reject the offer.

I also communicate herewith an extract from a dispatch of the Secretary of State to the minister of the United States at London, under date of the 28th of April last, directing him, in accordance with the joint resolution of Congress "concerning the Oregon Territory," to deliver the notice to the British Government for the abrogation of the convention of the 6th of August, 1827, and also a copy of the notice transmitted to him for that purpose, together with extracts from a dispatch of that minister to the Secretary of State, bearing date on the 18th day of May last.

The papers accompanying the message were the British proposal (in the form of a draft treaty) presented by the British Minister on June 6, with a protocol (quoted below) of the conference of that date; extracts from, and the enclosure to, the instruction to Louis McLane, Minister at London, of April 28, 1846, regarding the form of abrogation of the convention of August 6, 1827 (Document 56); and most of a despatch of McLane of May 18, 1846 (Senate Confidential Document No. 8, 29th Congress, 1st session, Regular Confidential Documents, XX, 379-89; reprinted as part of Senate Document No. 489, 29th Congress, 1st session, serial 478).

Upon receipt of the presidential message of June 10, the Senate at once refused either to refer it to the Committee on Foreign Relations, or to print the papers transmitted, or to postpone consideration for five days (Executive Journal, VII, 85-86); and on Friday, June 12, 1846, after a proposal to fix a limited term for the right of navigation of the Columbia River (Article 2) had been negatived, the Senate adopted the following resolution by a vote of 38 yeas to 12 nays (*ibid.*, 89; collated with the attested resolution in the file):

Resolved, (two thirds of the Senators present concurring) That the President of the United States be and he is hereby advised to accept the proposal of the British

Government accompanying his message to the Senate dated 10th June, 1846, for a Convention to settle boundaries &c, between the United States and Great Britain west of the Rocky or Stony Mountains.

The full power to Buchanan was issued on June 13; on the following Monday, June 15, the treaty was signed in the form proposed; the following statement is from the entry for that day in the Diary of James K. Polk, I, 470-71 (hereinafter cited as "Polk's Diary"):

About 3½ P.M. to-day the Secretary of State and the British Minister concluded & signed a convention for the settlement of the Oregon question, being the same submitted by the latter on the 6th Instant, by me submitted to the Senate for their advice on the 10th, and by that body advised on the 12th Instant. Mr. Buchanan brought the convention to me, and my Private Secretary started with it, accompanied with a message from me, to the Senate, but before he reached the Capitol the Senate had adjourned for the day.

The treaty was sent to the Senate on June 16 without any further accompanying papers, with the following message (Executive Journal, VII, 90):

In accordance with the resolution of the Senate of the 12th instant, that "the President of the United States be, and he is hereby, advised to accept the proposal of the British Government, accompanying his message to the Senate dated 10th June, 1846, for a convention to settle boundaries, &c., between the United States and Great Britain west of the Rocky or Stony Mountains," a convention was concluded and signed on the 15th instant by the Secretary of State, on the part of the United States, and the envoy extraordinary and minister plenipotentiary of Her Britannic Majesty, on the part of Great Britain.

This convention I now lay before the Senate for their consideration, with a view to its ratification.

Again the Senate refused reference to committee; the papers previously transmitted were ordered printed; resolutions asking for further papers were adopted on June 17 and 18; on the latter day an amendment to the pending resolution, proposing as a "compromise" the line of 54°40' north latitude, received only five votes; the resolution of advice and consent to the ratification of the treaty was adopted by a vote of 41 yeas to 14 nays (*ibid.*, 90-95; this was a full Senate except for Spencer Jarnagin, of Tennessee, who voted among the minority on June 12; see Polk's Diary, I, 479).

Thus the papers before the Senate during its proceedings on the treaty were merely those transmitted with the message of June 10, 1846. Not until July 21 were papers transmitted in response to the requests of June 17 and 18; these included all the relevant instructions to Louis McLane, Minister at London, but none of his despatches, except extracts from two of them (Executive Journal, VII, 123); the Secretary of State reported at some length and decidedly against the publication of all the despatches of McLane (Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 25-26); with that report Polk concurred; in the first of the two presidential messages of July 21 it was said that the publication of those despatches "would be highly prejudicial to the public interest"; but it was added that the President was "not only willing but anxious that

every Senator who may desire it shall have an opportunity of perusing these dispatches at the Department of State" (Executive Journal, VII, 123).

The papers communicated to the Senate on July 21, 1846, were at once ordered printed in confidence; but the injunction of secrecy was later (August 6 and 7) removed from the proceedings and the correspondence transmitted, which were then (August 8) ordered printed as a public document (*ibid.*, 124, 137, 142, 148). That print is Senate Document No. 489, 29th Congress, 1st session, serial 478.

The two votes in the Senate (June 12 and 18, 1846) were to the same effect, for the proposal of the British Government was as nearly like the signed treaty as an unsigned draft could well be; the draft treaty naturally differed, in the preamble and elsewhere, in accordance with the principle of the *alternat*; but otherwise, with blanks for the names and styles of the plenipotentiaries, for the number of months to be allowed for the exchange of ratifications, and for the date, the proposal was identically ¹ the same in wording as the treaty.

The brevity of the Senate proceedings (June 10-12 and 16-18) is to be attributed to the elaborate debates on the Oregon question which had previously been had in that body (as well as in the House of Representatives) during the same session of Congress; in his message of June 10 Polk alluded to those "recent debates and proceedings in Congress"; the chief occasion thereof was the resolution of authorization to abrogate the convention of August 6, 1827 (Document 56); to those congressional proceedings reference is made below.

The treaty was communicated to Congress with the presidential message of August 5, 1846 (Richardson, IV, 457-58), the date of its proclamation.

In the strictest sense the instrument signed on June 15, 1846, is a treaty; and it is so styled in Articles 2, 3, and 5 of the text, in the Senate resolution of June 18, and in each instrument of ratification; but the protocol of June 6 referred to a "convention" (the draft with that protocol is headed "Draft of Convention"), which is the term used in the presidential messages to the Senate of June 10 and June 16, in the resolution of the Senate of June 12, and in the presidential message to Congress of August 5, 1846.

THE PAPERS PRINTED

The relevant papers published at Washington in 1845-46 were (a) those with the annual message to Congress of December 2, 1845, which are in Senate Document No. 1, 29th Congress, 1st session, serial 470, pages 138-42; they comprise notes and protocols written at Washington, two in 1842 and the remainder from February 24, 1844, to August 30, 1845; (b) those sent to the Senate and the House of Representatives with the messages of February 7, 1846, which are

¹ In the preamble "Territory on" was "Territory of" in the draft as submitted to the Senate; but in the draft as sent to Pakenham from London the word was "on" (Pakenham Papers, F.O. 115: 91, instruction No. 19, May 18, 1846, enclosure).

in Senate Document No. 117, 29th Congress, 1st session, serial 473 (the same papers are in House Document No. 105 of that session, serial 483); these comprise the notes written at Washington from December 27, 1845, to February 4, 1846, and extracts from one instruction to and one despatch from London, of December 13, 1845, and January 3, 1846, respectively; (c) those sent to the Senate from June 10 to July 21, 1846, which are in Senate Document No. 489, 29th Congress, 1st session, serial 478; these include twelve instructions from Buchanan to McLane (one in part) from July 12, 1845, to June 22, 1846, and extracts from three of McLane's despatches, as well as one formal note of Lord Aberdeen; only two of the papers mentioned (the instruction of April 28, 1846, and the despatch of May 18, 1846, each in part) were before the Senate during the consideration of the Oregon Treaty.

Some of the diplomatic exchanges and other material of importance are printed in *Foreign Relations, 1872, part 2, Papers Relating to the Treaty of Washington, V* (treaty of May 8, 1871; that volume is here usually cited as "Washington Papers, V").

With two exceptions (two short and unimportant British notes, of August 22, 1844, and January 6, 1846, respectively), the communications between the two Governments for the period from November 15, 1842, up to but not including June 6, 1846, are printed in *British and Foreign State Papers, XXXIV, 49-145*. That volume contains also (mostly in part only) various instructions of the Earl of Aberdeen, British Secretary of State for Foreign Affairs, and despatches from the Right Honorable Richard Pakenham, British Minister at Washington, and his predecessor, Henry Stephen Fox.

In the Library of Congress are facsimiles from the Public Record Office, London, of numerous instructions of Aberdeen to Pakenham, and despatches of the latter from the beginning of his mission; these are here cited as "Pakenham Papers".

All the instructions of Buchanan to McLane on Oregon (except a short and unimportant instruction of September 13, 1845), with other papers, including some of the diplomatic correspondence, are printed in Moore, *Works of James Buchanan, VI and VII*.

THE OREGON QUESTION

The first agreement between the United States and Great Britain dealing directly with the Oregon country was the convention of October 20, 1818 (Document 40), Article 3 whereof reads as follows:

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 it's Harbours, Bays, and Creeks, and the Navigation of all Rivers within the same, be free and open, for the term of ten Years¹ 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

¹ Extended indefinitely by the convention of August 6, 1827 (Document 56), which was subject to abrogation on twelve months' notice by either party.

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 amongst Themselves.

By Article 2 of the same convention the northern boundary of the United States had been drawn from the northwesternmost point of the Lake of the Woods to the 49th parallel of north latitude, and thence due west along said parallel to the Rocky Mountains, meaning, as was afterwards assumed, to the summit of the Rocky Mountains.

In 1818 there were both Russian and Spanish claims in the Oregon country; but the treaty with Spain of February 22, 1819 (Document 41), gave to the United States all the rights of Spain north of the 42d parallel; and the claims of Russia south of 54°40' north latitude were relinquished by the conventions made, respectively, with the United States on April 17, 1824 (Document 46), and with Great Britain on February 28, 1825 (French text and English translation in British and Foreign State Papers, XII, 38-43).

The Oregon country, the sovereignty over which was left to be discussed between the United States and Great Britain, was thus the region from the Pacific eastward to the Rocky Mountains between latitudes 42° and 54°40' north, comprising an area of some 500,000 square miles, which now includes the States of Washington, Oregon, and Idaho, portions of Montana and Wyoming (about 286,500 square miles of United States territory), and a large part of British Columbia.¹

On various occasions, as, for example, in the London protocols of December 16 and 19, 1826 (American State Papers, Foreign Relations, VI, 661-71), grounds of the respective claims of the two Governments were set forth at length; and the arguments were elaborated in the later exchanges (most of them cited below) to a degree which wellnigh precludes summary. The facts as to early discoveries, explorations, and otherwise were in dispute and were, indeed, imper-

¹ A map entitled "The Oregon Country" faces p. 12; in order that the diversity of geographic character of the country traversed by the 49th-parallel boundary west of the summit of the Rocky Mountains may be appreciated, as it cannot be on a "flat map", the historical data are there shown upon a physiographic diagram which has been prepared and drawn by Mrs. Sophia A. Saucerman, Assistant Geographer of the Department of State. The representation of physiographic features in the United States and a small portion of southern Canada is based (with the author's permission) upon Dr. A. K. Lobeck's Physiographic Diagram of the United States, scale 1:3,000,000. The representation of physiographic features in Canada is much more generalized, the attempt being made to indicate chiefly the physiographic regions or provinces. The Canadian portion is based principally upon the following publications: (1) Guidebooks Nos. 8, 9, and 10 (covering excursions in western Canada), issued by the Canadian Geological Survey, Ottawa, 1913; (2) The Physical Map of Canada, scale 1:3,801,000, issued in 1928 by the Canadian Department of the Interior; and (3) a map entitled "British Columbia", scale 1:1,000,000, published in 1933 by the Department of Lands of British Columbia. Acknowledgment is also made of information and a sketch map furnished by Professor Edwin T. Hodge, of the University of Oregon.

fectly known; and there were divergent conclusions even from such facts as were unquestioned.

It may perhaps be said that the chief bases of the United States claim to the Oregon country were (a) the supposed possibility that the Louisiana cession of 1803 included territory west of the Rocky Mountains; (b) the Spanish title to the Oregon country, which passed to the United States under the treaty with Spain of February 22, 1819 (Document 41); (c) the discovery and exploration of the Columbia River in 1792 by Captain Robert Gray; (d) the explorations of the Lewis and Clark expedition of 1804-6; (e) the fur-trading settlement established at Astoria in 1811 by John Jacob Astor, coupled with the restoration thereof by the British Government after the War of 1812, pursuant to the Treaty of Ghent (Document 33); and (f) the principles of continuity and contiguity, particularly in respect of the region south of the 49th parallel.

At no time did the British Government claim exclusive sovereignty over the whole Oregon country; its contention was that both Great Britain and the United States had rights there from which might follow division of the territory between the two powers. The British argument was grounded on (a) the Nootka controversy and the Nootka Sound Convention between Great Britain and Spain of October 28, 1790, which was considered as being in full force (though deemed by this Government to have been terminated by the war between Great Britain and Spain begun in 1796); (b) the explorations of Captain James Cook in 1778, during his third voyage; (c) the explorations of Captain George Vancouver in 1792; (d) the explorations of Alexander Mackenzie (later Sir Alexander Mackenzie) in 1792-93; and (e) settlement, begun with the trading post established in 1806 by the North-West Company on Fraser Lake, situated in 54° north latitude and thought to have been "the first settlement made by civilized men west of the Rocky Mountains" (Washington Papers, V, 241).

The controversial literature of the Oregon question in its latest years extended beyond governmental communications or publications; there were pamphlets and books written on each side of the Atlantic; the most complete presentation of the American case was in the work of Robert Greenhow ("Translator and Librarian to the Department of State"), entitled "The History of Oregon and California", which appeared in 1845; by the act of February 20, 1845 (5 Statutes at Large, 722-23), 1,500 copies thereof were directed to be purchased and distributed by the Department of State. Buchanan wrote on June 24, 1848, that "it was from this history that my information as to the facts in support of our claim was principally derived" (D.S., 36 Domestic Letters, 447-48; Moore, Works of James Buchanan, VIII, 106; Greenhow's 1840 Memoir on the Northwest Coast of North America was printed as Senate Document No. 174, 26th Congress, 1st session, serial 357).

Of the English works of the time, the most authoritative was *The Oregon Question Examined*, by Sir Travers Twiss; on March 3, 1846,

two copies of this work were sent from London to Pakenham with a suggestion for republication in America (Pakenham Papers, F.O. 115:91).

Recent researches have made available much that was unknown to the writers of ninety years ago regarding the Spanish explorations on the northwest coast of America. Two works of Henry R. Wagner should be consulted, Spanish Voyages to the Northwest Coast of America in the Sixteenth Century (including those down to 1602) and Spanish Explorations in the Strait of Juan de Fuca (1790-92). In his foreword to the volume last cited, the learned author writes (p. iv):

I have no intention of belittling the important work which Captain Vancouver did in this quarter but it seems time to present the other side of the picture. Vancouver was not the first to explore these channels, to anchor in these ports and to view the majestic mountains, even although many of these still bear the names he gave them. My aim is to do justice to the Spaniards who preceded him and who have left us accounts of their experiences just as vivid and entertaining as his.

A thorough summary of British and American exploration, discovery, and settlement is in Samuel Flagg Bemis, A Diplomatic History of the United States, chapter 16, "Oregon"; and see Schafer, "The Acquisition of Oregon Territory, part 1, Discovery and Exploration", in University of Oregon Bulletin, VI, No. 3, December 1908. American (land) explorations in the west are charted in Paullin, Atlas of the Historical Geography of the United States, plate 39B, with text at pages 19-21; see also Explorations of the Pacific Coast Region of North America, appendix I of the Joint Report of the International Boundary Commission submitted May 10, 1921, pp. 61-76.

THE NOOTKA SOUND CONTROVERSY

In Manning, "The Nootka Sound Controversy" (Annual Report of the American Historical Association for the Year 1904, 279-478), is a history of the events leading up to that dispute, of the negotiations between Great Britain and Spain, and of the settlement reached. From the introductory chapter of that work (pp. 283-84) is excerpted the following summary of the Nootka incident of 1789:

Nootka Sound¹ is a small inlet [entrance 49°33' north] on the western shore of Vancouver Island. It was christened and made known to the world by Captain Cook in 1778. A few years afterwards a flourishing fur trade sprang up between the Northwest Coast and China. Nootka became the center of this trade, though it remained for several years without any settlement except an Indian village. On account of its sudden and growing importance, the Russians, English, and Spaniards all laid plans for occupying the port. It happened that all planned to carry out the project in the year 1789, a year that meant so much for the subsequent history of the world. Though the Nootka incident can make no claim to rank in importance with the great events of that year, yet it was destined to have an influence on the movements then started and to be influenced in turn by them.

The Russian plans were not acted upon, but the plans of the other two were. An English expedition from India and a Spanish from Mexico each sailed in the

¹ Captain Cook first called the waters "King Georges Sound", but later adopted the native name (*ibid.*, 306).

spring of 1789 to establish a colony at Nootka. The promoters of neither knew anything of the other. The Spanish commander arrived first and took possession. Nearly two months later the Englishman came. A quarrel ensued. The Spaniard seized the Englishman, imprisoned him, his officers and crew, and sent him to Mexico as a prize. A consort vessel arrived a few days later and met the same fate. Two other English vessels had been seized earlier. One of them had been released on bond and the other had been confiscated without adjudication.

The Viceroy of Mexico, instead of acting on his own responsibility, reported the matter to the Government at Madrid. The Spanish Court complained to the British that subjects of the latter had violated the territorial sovereignty of the former, and demanded that the offenders be punished to prevent such enterprises in the future. The British Cabinet rejected the Spanish claim to exclusive sovereignty over the territory in question, and suspended all diplomatic relations until Spain should have offered a satisfactory reparation for the insult which His Britannic Majesty felt that his flag had suffered. Each Court refused to grant the demand of the other and stood firmly on the ground originally taken. To support their respective claims, both Governments made the most extensive armaments. Each nation also called upon its allies for assurances of support and entered negotiations for forming new alliances. For a time it seemed that all Europe would be drawn into war over what, on the face of it, appeared to be an insignificant quarrel between two obscure sea captains.

On October 28, 1790, the convention between Great Britain and Spain which is generally known as the Nootka Sound Convention was signed at San Lorenzo el Real (French text, with English translation, but without the secret article, in British and Foreign State Papers, I, pt. 1, 663-67; English translation, including the secret article, in Manning, *op. cit.*, 454-56).

During the later years of the Oregon question the relation thereto of the Nootka Sound controversy was extensively debated; much argument was devoted to the Nootka Sound Convention of October 28, 1790, its interpretation and legal effect; and there were two opinions as to whether that convention was terminated by the war between Great Britain and Spain which began in 1796; but neither in the literature of the period nor in the diplomatic exchanges was mention made of either of the two later conventions between Great Britain and Spain which dealt with the Nootka Sound affair. Those two conventions were signed, respectively, at Whitehall on February 12, 1793, and at Madrid on January 11, 1794 (English translations from the Spanish are in Manning, *op. cit.*, 467-68, 469-70).

By Article 1 of the Nootka Sound Convention of October 28, 1790, provision was made for the restoration to British subjects of the "buildings and tracts of land" of which they had been "dispossessed" at Nootka in 1789; Article 2 related to indemnity; the Commissioners appointed to execute Article 1 were Captain George Vancouver for Great Britain and Don Juan Francisco de Bodega y Quadra for Spain; they met at Nootka late in the summer of 1792 but failed to agree (*ibid.*, 464); the convention of February 12, 1793, settled the matter of indemnity; the convention of January 11, 1794 (signed in English and Spanish), provided for the due execution of Article 1 of the 1790 convention and contained also other important clauses, as follows (text here from enclosure to despatch No. 718, of May 22, 1934, from London, D.S., file 026 Treaties/1265; the English version of this convention has not, it seems, been heretofore printed):

Their Britannick and Catholick Majesties being desirous to remove and obviate all Doubt and Difficulty relative to the Execution of the First Article of the Convention concluded between Their said Majesties on the Twenty Eighth of October One Thousand Seven Hundred and Ninety have resolved and agreed that new Instructions shall be sent to the Officers whom They have respectively commissioned to carry into due Effect the said Article, which Instructions shall be of the following Tenor.

"That in the shortest Time that may be possible after the Arrival of the said Officers at Nootka they shall meet together at or near the Place on which stood the Buildings which were formerly occupied by the Subjects of His Britannick Majesty, at which Time and Place they shall mutually exchange the following Declaration and Counter Declaration."

"Declaration."

"I N.N. in the Name and by Order of His Catholick Majesty do by These Presents restore to N.N. the Buildings and Districts of Land situated on the North West Coast of the Continent of North America, or on the Islands adjacent to that Continent, of which the Subjects of His Britannick Majesty were dispossessed about the Month of April One Thousand Seven Hundred and Eighty Nine by a Spanish Officer. In Witness whereof I have signed this Declaration, and have hereunto affixed the Seal of my Arms. Done at Nootka the day of One Thousand Seven Hundred and Ninety ."

"Counter Declaration."

"I N.N. in the Name and by Order of His Britannick Majesty do by These Presents Declare that the Buildings and Districts of Land situated on the North West Coast of the Continent of North America, or on the Islands adjacent to that Continent, of which the Subjects of His Britannick Majesty were dispossessed about the Month of April One Thousand Seven Hundred and Eighty Nine by a Spanish Officer, have been restored to me by N.N., which Restitution I declare to be full and satisfactory. In witness whereof I have signed this Counter Declaration, and have hereunto affixed the Seal of my Arms. Done at Nootka the Day of One Thousand Seven Hundred and Ninety ."

"That the British Officer shall then cause the British Flag to be hoisted on the land thus restored in Token of Possession. And that after these Formalities the Officers of the Two Crowns shall respectively withdraw their People from the said Port of Nootka."

Their said Majesties have farther agreed that it shall be free for the Subjects of both Nations to frequent occasionally the aforesaid Port and to construct there temporary Buildings for their Accommodation during their said occasional Residence: But that Neither the One nor the Other of the Two Parties shall make any permanent Establishment in the said Port, or claim there any Right of Sovereignty or territorial Dominion to the Exclusion of the Other. And Their said Majesties will assist Each Other mutually to maintain to Their Subjects free Access to the said Port of Nootka against any other Nation which should attempt to establish there any Sovereignty or Dominion.

In Witness whereof We the undersigned Ambassador Extraordinary and Plenipotentiary of His Britannick Majesty, and First Secretary of State and of the Despacho of His Catholick Majesty, in the Name and by the express Order of our respective Sovereigns have signed the present Agreement and have hereunto affixed the Seals of our Arms.

Done at Madrid the Eleventh Day of January One Thousand Seven Hundred and Ninety Four.

ST. HELENS. [Seal]
EL DUQUE DE LA ALCUDIA. [Seal]

¹ The "Spanish Officer", Estévan José Martínez, did not arrive at Nootka until May 5, 1789 (Manning, *op. cit.*, 312, 432).

The acts prescribed by the convention of January 11, 1794, were duly performed at Nootka on March 28, 1795, by Commissioners of the two Governments, Thomas Pearce, First Lieutenant in His Majesty's Marine Forces, for Great Britain, and Brigadier General José Manuel de Álava, for Spain (see Pearce to the Duke of Portland, April 25, 1795, in the London Gazette, No. 13813, p. 943, September 12-15, 1795).

It appears that in 1846 neither the indemnity convention of February 12, 1793 (which was not very material to claims of sovereignty), nor the convention of January 11, 1794, for the mutual withdrawal from Nootka, etc., was known to the Government of the United States (see the elaborate discussion of the Nootka Sound controversy in the instruction of October 9, 1843, in D.S., 15 Instructions, Great Britain, 144-72; references are there made to "the most important documents relating to the subject which have yet been published", and various articles of the 1790 Nootka Convention are quoted; but there is no mention of the conventions of 1793 and 1794). On November 30, 1843, Edward Everett, Minister at London, sought the aid of Washington Irving, then Minister at Madrid, in respect of the Oregon question. Everett hoped (vainly, as it proved) to obtain further Nootka papers. He wrote that "All that was ever published of the Nootka negotiations will be found in the Annual Register for 1790" (D.S., 51 Despatches, Great Britain, No. 69, December 2, 1843, enclosure); later, with his despatch of July 17, 1844 (D.S., 53 Despatches, Great Britain, No. 162; see also 52 *ibid.*, No. 152, June 29, 1844), Everett transmitted a copy of the Narrative of the Negotiations Occasioned by the Dispute between England and Spain in the Year 1790 (a rare volume, probably of 1791, by Sir James Bland Burges; see Manning, *op. cit.*, 474).

That Secretary of State James Buchanan, when he was engaged in the Oregon negotiations in 1845, was ignorant of the later Nootka Conventions (of 1793 and 1794) is indeed evident from what he wrote on the subject to the British Plenipotentiary (Senate Document No. 1, 29th Congress, 1st session, serial 470, p. 164):

That convention [of October 28, 1790] provides, by its first and second articles, for the restoration of the lands and buildings of which the subjects of Great Britain had been dispossessed by the Spaniards, and the payment of an indemnity for the injuries sustained. This indemnity was paid by Spain; but no sufficient evidence has been adduced, that either Nootka Sound, or any other spot upon the coast, was ever actually surrendered by that power to Great Britain. All we know with certainty is, that Spain continued in possession of Nootka Sound until 1795, when she voluntarily abandoned the place.

The foregoing was written on July 12, 1845; this was added on August 30, 1845 (*ibid.*, 188):

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 1795, when they voluntarily abandoned the place. Great Britain has never, at any time since, occupied this or any other position on Vancouver's island.

The texts (in Spanish) of the Nootka Conventions of February 12, 1793, and January 11, 1794, are printed in Calvo, *Recueil complet des traités de l'Amérique latine*, III, 364–68, published in 1862; it has been thought that this was the earliest publication of them (White, "Boundary Disputes and Treaties", in *Canada and Its Provinces*, VIII, 848); but they appeared at Madrid in 1843 in Cantillo, *Tratados, convenios y declaraciones de paz y de comercio*, 646, 653–54; and at page 633 of that volume is a statement regarding the execution of the convention of 1794. It seems strange that Washington Irving at Madrid missed the work last mentioned when he was called on by Edward Everett for information regarding the Nootka controversy (see the letters of Irving of December 23, 1843, and January 15, 1844, enclosed with Everett's despatch No. 82, of February 2, 1844, in D.S., 52 Despatches, Great Britain); for, while that work is not strictly an official publication, it was edited by a former official of the Spanish Foreign Office and was dedicated to the Queen of Spain.

Various authors, by 1846, had given incomplete or inaccurate accounts of the proceedings at Nootka in March 1795 (e.g., Twiss, *The Oregon Question Examined*, 121–23; and see the works there cited; one of them, Koch, *Histoire abrégée des traités de paix*, was quoted in the Senate debates by Senator John Adams Dix, of New York; see *Congressional Globe*, XV, appendix, 314, February 18, 1846); but none of those writers made any mention of the convention of January 11, 1794; the second edition of the work of Robert Greenhow, *History of Oregon and California*, (on which, as has been seen, Buchanan relied), appeared in 1845; there is cited (p. 257) supposed authority for the mistaken belief that "the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain", and it is given as the probability "that the Spaniards merely abandoned the place"; and Buchanan believed in the summer of 1845 that in 1795 Spain had "voluntarily abandoned" Nootka (see the quotations above from the notes of July 12 and August 30, 1845).

There would necessarily have been a marked difference in the argument of the Oregon question in 1845 and 1846 on the one side and on the other if this Government had become informed, say, in 1844 (from the treaty compilation published at Madrid in 1843 and cited above) of the text of the Nootka Convention of January 11, 1794.

THE EARLIER DISCUSSIONS

Certain negotiations, including those prior and subsequent to 1818, are to be mentioned; they are recounted, with numerous citations, in Moore, *International Arbitrations*, I, 198–209.

The treaty of 1783 (Document 11) had drawn an impossible boundary from the most northwestern point of the Lake of the Woods by providing that the line should run thence due west to the Mississippi, the source of which is some 150 miles almost due south of the point mentioned; and the joint survey of the region contemplated by Article 4 of the Jay Treaty (Document 16) was not had. By Article 5 of the Hawkesbury-King Convention signed at London on May 12, 1803 (American State Papers, Foreign Relations, II, 584-85), it was provided that the boundary in that quarter should be the shortest line from the northwesternmost point of the Lake of the Woods to the nearest source of the Mississippi; but, owing to the cession of Louisiana, the Senate resolution of advice and consent excepted Article 5 (Executive Journal, I, 463-64), and the convention did not go into force.

In 1807, in negotiations following the signature at London of the treaty of December 31, 1806 (British and Foreign State Papers, I, pt. 2, 1190-1203), an article was drafted (and was found acceptable) by which the boundary would run from the most northwestern point of the Lake of the Woods to and along the 49th parallel of north latitude "as far as their said respective territories extend in that quarter", with a proviso excepting the northwest coast of America and any territories claimed by either party westward of the Rocky Mountains; Madison wrote that it was "much to be wished and pressed . . . that the proviso . . . should be omitted" (American State Papers, Foreign Relations, III, 162, 165, 185); nothing came of those negotiations, as President Jefferson refused to submit the treaty of December 31, 1806, to the Senate; but the desire of the Jefferson administration to omit the proviso mentioned was used in argument by the "forty-niners" of 1846 (see the remarks of Senator Thomas H. Benton in Congressional Globe, XV, 590, April 2, 1846).

Further discussions took place at Ghent in 1814, and, so far as concerned the boundary, the substance of the article drafted in 1807 was again put forward by the American Plenipotentiaries (November 10, 1814); but because of an additional clause regarding the navigation of the Mississippi proposed by the British Plenipotentiaries (November 26, 1814), assent to which was declined, the Treaty of Ghent (Document 33) contained no article on the subject (American State Papers, Foreign Relations, III, 738, 743-45; IV, 377).

During the negotiations which resulted in the convention of October 20, 1818 (Document 40), the American Plenipotentiaries (Albert Gallatin and Richard Rush) proposed to extend the line along the 49th parallel west to the Pacific Ocean. The British Plenipotentiaries (Frederick John Robinson and Henry Goulburn) "did not make any formal proposition for a boundary", but an article proposed by them included language of agreement by the two parties "not to exercise as against each other¹ any other sovereign or territorial authority within the above-mentioned country lying between the forty-fifth

¹ This word "other", although omitted in the print cited, is in the original enclosure with the despatch of the American Plenipotentiaries of October 20, 1818.

and forty-ninth parallels of latitude" (*ibid.*, IV, 381, 391; cf. the wording of the Nootka Convention of January 11, 1794, quoted above).

As a result of the Russian ukase of 1821 (as to which, see the notes to Document 46), discussions were resumed in 1823 at London; the respective Plenipotentiaries were Richard Rush, the American Minister, and, for Great Britain, the Right Honorable William Huskisson and the Right Honorable Stratford Canning; the British Secretary of State for Foreign Affairs was then George Canning; the final American proposal (as modified on June 29, 1824) was that Article 3 of the convention of October 20, 1818, should be continued for ten years and that during that term "no settlement shall be made on the Northwest Coast of America, or on any of the islands thereunto adjoining, by citizens of the United States, north of the forty-ninth degree of north latitude, or by British subjects either south of the said forty-ninth degree or north of the fifty-fifth degree of north latitude" (*ibid.*, V, 582, 563); the final British proposal (formally presented on July 13, 1824) was (with some clauses for rights of passage, navigation, and trade during ten years, and for protection of existing settlements during the same period) "that the boundary line between the territories claimed by his Britannic Majesty and those claimed by the United States, to the west, in both cases, of the Rocky mountains, shall be drawn due west along the 49th parallel of north latitude, to the point where that parallel strikes the great northeasternmost branch of the Oregon or Columbia river, marked in the maps as McGillivray's river, thence down along the middle of the Oregon or Columbia, to its junction with the Pacific Ocean; the navigation of the whole channel being perpetually free to the subjects and citizens of both parties" (*ibid.*, 582, 563, 564; as to the rejection of the respective proposals, see *ibid.*, 557, 563; the instructions to Rush of July 22, 1823, are in *ibid.*, 791-93; the arguments are not protocoled, but the report of Rush of August 12, 1824, in *ibid.*, 533 *et seq.*, has an account of them at pp. 553-57; Rush had learned of the convention with Russia of April 17, 1824, Document 46).

The "great northeasternmost branch" of the Columbia River was then called McGillivray or McGillivray's River, and later "the great northwesternmost branch" and also the "great northern branch", as in Article 2 of the Oregon Treaty; that "branch" is now deemed to be part of the main stream of the Columbia River, which crosses the international boundary at approximately 117°38' west longitude (see the map facing page 12 and Paullin, Atlas of the Historical Geography of the United States, plate 93C and p. 61).

By Articles 1 and 2 of the convention of August 6, 1827 (Document 56), the "joint occupation" (as it had come to be called) of the Oregon country, provided by the convention of October 20, 1818 (Document 40), was indefinitely continued, subject to the right of either party to give one year's notice of abrogation of the convention; but in the negotiations which began at London in 1826, and from which that convention resulted, there had been further unsuccessful efforts to reach a definitive settlement of the Oregon question. In accordance with his instructions, Albert Gallatin, Minister at London, made the

proposal (November 15, 1826) of the line of 49° north latitude, to the Pacific as a permanent boundary, coupled with a grant in favor of British subjects of a perpetual right of navigation of the Columbia River from the boundary to the ocean (for the instructions, see American State Papers, Foreign Relations, VI, 645, and, for the proposal, *ibid.*, 652; it included some temporary provisions; and the involved and conditional wording of the navigation clauses reflects the then lack of complete geographical knowledge of the region); one of the British Plenipotentiaries observed that the cutting off of the southern portion of Vancouver Island "was quite inadmissible"; Gallatin suggested that there might be compensating deviations from the line; he had in mind the exchange of the southern end of Vancouver Island for the whole or part of the upper waters of the Columbia River, north of the proposed boundary (*ibid.*, 654, 656).

The proposal of the British Plenipotentiaries (William Huskisson and Henry Unwin Addington) is recorded in the protocol of December 1, 1826 (*ibid.*, 660); the offer was that of 1824, plus, as a detached territory, the whole of the Olympic Peninsula north of a straight line from the southern extremity of Gray's Harbor to the southern extremity of Hood's Inlet or Hood Canal (plate 93C in Paullin, *op. cit.*, shows the line of the offer); it was also suggested verbally that it might further, "perhaps, be agreed that the northern shore [of the Columbia River], for some distance from the mouth up the river, should remain unoccupied by both parties" (American State Papers, Foreign Relations, VI, 656; for the arguments, see Gallatin's despatches of November 25 and December 2, 1826, and the sixth and seventh protocols, of December 16 and 19, in *ibid.*, 652-56, 661-71).

The respective offers of 1826 were of influence in the final settlement twenty years later. The territorial difference between the two proposals, while only a fraction of the vast area of the whole Oregon country, was still of the utmost importance to the United States, of great value and very extensive; it comprised more than half the present State of Washington, together with that portion of Vancouver Island south of 49° north latitude.

Following the negotiations of 1826 and 1827, other questions, particularly that of the northeastern boundary, were more important in Anglo-American relations than that of the Oregon country; the problem of "joint occupation" presented little difficulty as long as the number of settlers was very small (Webster wrote on November 25, 1842, that there were then not more than seven hundred white persons in the whole Oregon country; Curtis, *Life of Webster*, II, 173-75).

The negotiations of 1842 which resulted in the Webster-Ashburton Treaty (see the notes to Document 99) dealt formally with every major question then pending between the United States and Great Britain except that of Oregon. The Oregon question was then the subject of conversations between Secretary of State Daniel Webster and Lord Ashburton, the British Plenipotentiary; and it was mentioned in the presidential message of August 11, 1842, with which the Webster-Ashburton Treaty was submitted to the Senate (quoted in



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vol. 4, pp. 393-98); but its adjustment was left to the future. The instructions of Ashburton did not permit him to go very far; they contemplated, in the first instance, a boundary following the course of the Columbia from its mouth to its confluence with the Snake River and thence due east to the Rocky Mountains; beyond that Ashburton was authorized to concede only as much as had been offered in 1824; even the British proposal of 1826 would have been beyond his authority (Library of Congress, Ashburton Papers, facsimiles from the Public Record Office, London, Foreign Office Records, vol. 5:378, instruction No. 2, February 8, 1842; hereinafter cited as "Ashburton Papers"; the instruction referred to is printed in Washington Papers, V, 218-19); perhaps the fact that the proposal of 1826 had been made was overlooked at London; certainly its terms were a surprise to Lord Aberdeen in the autumn of 1843, when one of the British Plenipotentiaries of 1826 did not recollect that offer and when Edward Everett, Minister at London, found it necessary to confirm the fact by reference to the protocol of December 1, 1826 (D.S., 51 Despatches, Great Britain, No. 69, December 2, 1843, and enclosure B, Everett to Aberdeen, November 30, 1843). Ashburton thought at one time that Webster would agree to the Columbia River boundary (Ashburton Papers, F.O. 5:379, despatch No. 2, April 25, 1842; there is no formal record of discussions of the Oregon question between Webster and Ashburton either by note or by protocol); but the return of the Wilkes expedition, with the report of Wilkes to the Secretary of the Navy "upon the Territory of Oregon", was both opportune and of influence (see *ibid.*, F.O. 5:379, despatches Nos. 9 and 10, June 14 and 29, 1842; the Wilkes report was sent to the Senate on July 1, 1842, but was not then printed; see Richardson, IV, 160, and Executive Journal, VI, 98-99; not until sixty-nine years later was that report, with a covering letter dated New York, June 1842, but without the maps which were with it, printed; see Congressional Record, XLVII, pt. 3, 2977-83, July 15, 1911; also printed in Oregon Historical Quarterly, XII, 269-99; for the views of Wilkes regarding the harbor at the mouth of the Columbia River, see Senate Document No. 475, 29th Congress, 1st session, serial 478; the account of Wilkes of his visit to the northwest coast is in Narrative of the United States Exploring Expedition, IV, chs. 9-14).

NEGOTIATIONS DURING THE TYLER ADMINISTRATION

On October 18, 1842, five days after the exchange of ratifications of the Webster-Ashburton Treaty, the British Government took the first steps toward the opening of negotiations at London on the subject of the boundary west of the Rocky Mountains (Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 139-40; see also British and Foreign State Papers, XXXIV, 49-50). President Tyler desired to send Daniel Webster to London on a special mission for that purpose, but an appropriation was refused in committee (Memoirs of John Quincy Adams, XI, 329-30, February 28, 1843; and as to the suggested tripartite treaty, involving a cession from Mexico of

California down to 36° north latitude, and the line of the Columbia River for the Oregon boundary, see Tyler, Letters and Times of the Tylers, II, 260-61, and Memoirs of John Quincy Adams, XI, 347; see also Duniway, in American Secretaries of State and Their Diplomacy, V, 57-61, and Schafer, "The British Attitude toward the Oregon Question, 1815-1846", in American Historical Review, XVI, 293-94); perhaps Webster would have succeeded Edward Everett as Minister at London if Everett had accepted the mission to China (see Curtis, Life of Webster, II, 178-80); but Everett declined to go to China, and that mission was undertaken by Caleb Cushing (see the treaty with China of July 3, 1844, Document 109, and the notes thereto); on May 8, 1843, Webster resigned as Secretary of State, and not until more than two months thereafter did Abel P. Upshur take over that post (July 24, 1843, after service of a month *ad interim*, while Secretary of the Navy); thus before this Government was prepared to proceed, nearly a year had elapsed.

Under date of October 9, 1843, lengthy instructions for negotiation were sent by Secretary of State Upshur to Edward Everett, Minister at London (D.S., 15 Instructions, Great Britain, 144-72); a full power was also transmitted (D.S., 3 Credences, 54); the opening pages of the instruction were devoted to a synopsis of the documents and arguments of 1823-24 and 1826; these were followed by this paragraph, which, insofar as it states the British position, should be read with the formal record thereof made on December 16, 1826 (American State Papers, Foreign Relations, VI, 662-66):

Such is the present position of this question. It has been fully discussed upon all the topics which belong to it, and upon all the facts which were then known, with no other result than to confirm the parties in their respective pretensions. There is no reason to doubt that both parties are, and have always been, sincerely desirous to settle the matter upon just principles; but it has been found impossible to bring them to any agreement upon the *facts* which enter into it as a question of right. Each party has contended for an exclusive right, so far as discovery could give it, and has insisted that the other had no right at all: the claim of each resulting from discovery, rests upon certain historical facts which are utterly denied by the other. There is evidence upon this point not possessed by former negotiators; but the difference of opinion between the two countries is so great, and has been so decisively expressed, that there seems to be some reason to apprehend that no future negotiation on the ground of mere discovery will be attended with better results than those which have heretofore failed. Nevertheless, this Government, not doubting the justice of our claim, is not without hope that it will be acknowledged by England; and, to that end, is disposed to renew the discussion of the question as one of mere right. The exclusive right of the United States to the whole territory between the 42^d degree of latitude and the parallel of 54 degrees 40 minutes is believed to be now susceptible of very satisfactory proof.

The instruction then includes a statement of the case for the United States on the merits; on discovery and its results under the law of nations, the former rights of Spain, the Nootka negotiations and the Nootka Sound Convention of October 28, 1790, the voyages of various navigators, the Lewis and Clark expedition, and the settlements at Astoria and elsewhere, something like eight thousand words were written, followed by these concluding paragraphs:

But we claim this territory upon other grounds. It lies contiguous to our settled country, and is a mere extension of our acknowledged boundaries. The natural spread of our population must cover it, without any direct effort, on our part, to settle or colonize it. It is important to our peace and security, that it should belong to us. It cannot be reasonably required of us to acquiesce in the settlement of a foreign Nation, which may become a hostile one, on an important part of our western border. In proportion as our population extends westward—and its extension is in the due course of nature and of absolute necessity—access to the Pacific will be absolutely indispensable to our prosperity. Our commerce in the Pacific Ocean is already of great extent and value, requiring the presence of armed vessels to protect it; and there is no port belonging to us to which our vessels, whether of commerce or of war, can resort, south of the Straits of Fuga. Hence that portion of the territory at least is indispensable to us. To England it is of little value. The fur trade, for the sake of which alone her settlements have been made, has ceased to be very profitable, in consequence of the destruction of the animals yielding that article; and no part of the land which she claims is of sufficient value to her for agricultural purposes to justify a serious contest for the possession of it. She can have no considerable settlement there, except as a colony; and the necessary poverty of such a colony, together with its great distance from the mother country, must render it a constant source of expense, to say nothing of its tendency to bring her into collision with other Powers. Even supposing, therefore, that the claims of the two countries to the territory, on the ground of discovery or settlement, are equally good, there is much stronger reason why it should belong to the United States than to England. Every useful purpose for which she can desire it, would be fully answered by the accommodations and privileges which a friendly country in possession of it would readily extend to her.

Such are our rights and our claims. How far the new proofs which it is now in our power to offer, may induce Great Britain to acknowledge them, I cannot undertake to say. If there should be, as heretofore, an insuperable difficulty in settling the controversy on the ground of mere right, the sincere desire which the President feels to preserve the existing harmony between the two countries will induce him to consent to terms of equitable compromise. The United States have offered to accept the 49th degree of north latitude as the boundary from the Rocky Mountains to the Pacific Ocean. This has been rejected by Great Britain, and she has offered in lieu of it an extension of the 49th degree of north latitude till it strikes the most northeastern branch of the Columbia, and thence along the middle of the channel of the Columbia to its mouth. This has been rejected by the United States. Great Britain has also offered the following boundary. Adhering to the Columbia river as the basis, she proposed to concede to the United States "the possession of Port Discovery, a most valuable harbor on the southern coast of De Fuca's Inlet; and to annex thereto all that tract of country comprised within a line to be drawn from Cape Flattery along the southern shore of De Fuca's Inlet, to Point Wilson, at the northwestern extremity of Admiralty Inlet; from thence, along the western shore of that inlet, across the entrance of Hood's Inlet, to the point of land forming the northeastern extremity of the said inlet; from thence, along the eastern shore of that inlet to the southern extremity of the same; from thence, direct to the southern point of Gray's Harbor; from thence, along the shore of the Pacific, to Cape Flattery, as before mentioned." This offer was promptly and very properly rejected by the United States. Exclusive of other objections to it, it left Great Britain in possession of the northern cape of the Columbia, which completely commands its entrance. To this the United States are not prepared to consent under any circumstances. The offer of the 49th parallel of latitude, although it has once been rejected, may be again tendered, together with the right of navigating the Columbia, upon equitable terms. Beyond this, the President is not now prepared to go. Nevertheless, you may propose or receive, subject to the approval of this Government, any other terms of compromise which in the progress of your discussions, may appear to promise a satisfactory adjustment of this important question.

You will receive, herewith, the necessary powers to negotiate upon the subject. If, however, the British Government prefers that the negotiation shall be conducted in Washington, that arrangement will be perfectly agreeable to the President.

It will be seen that the British proposal of 1826 was definitely declared to be unacceptable; Everett was authorized to again offer the line of 49° north, with "the right of navigating the Columbia, upon equitable terms"; and the door was left open to "any other terms of compromise which . . . may appear to promise a satisfactory adjustment".

In the meantime, however, the decision had been reached at London to treat on the Oregon question at Washington; the reasons are thus given by Everett in his confidential despatch of November 2, 1843 (D.S., 51 Despatches, Great Britain, No. 61):

By the steamer of the 16th October I had the honor to receive your despatch N^o 62, enclosing a Full Power from the President to treat with this Government for the adjustment of the Oregon boundary, and containing your instructions on that subject. I lost no time in applying for an interview with Lord Aberdeen and saw him the first day of his return to town. On apprizing him of the disposition of the President to open a negotiation on this subject at London, Lord Aberdeen informed me that such an arrangement would have been altogether agreeable to him if somewhat earlier made, and reminded me that he had very often, in the course of the last winter, expressed the wish that the President would authorize me to treat on the subject. He had, however, lately come to a conclusion and taken a step, that made it necessary to treat upon the subject at Washington; this was the recall of Mr Fox and the appointment of a successor. Among the grounds for adopting this measure, was the belief that there would be decided advantage in putting the management of this subject into new hands, & consequently that had been and would be assigned as a leading reason for the contemplated change. This course he said had not been resolved upon, till they had entirely given up the expectation that I should be authorized to treat on this subject, not only in consequence of my not receiving powers; but Mr Fox having latterly written them, that the President had decided that the negotiation must be at Washington.

It was as I informed you at the time, the purpose of Lord Aberdeen a few weeks ago, that Mr Fox should make an overture for the settlement of the question on the basis of Lord Ashburton's instructions; which I have been informed were to proceed upon the forty ninth parallel of latitude westward, till it strikes the North Westernmost branch of the Columbia river; and then follow that river to the ocean; and Mr Fox was accordingly so authorized and directed. In reply to the letters containing this authority, Mr Fox wrote back that he was not in possession of Lord Ashburton's instructions; and the determination above alluded to was then taken. Lord Aberdeen told me I must consider this communication as strictly confidential, for Mr Fox was not yet acquainted with his intended recall. I told Lord Aberdeen, that I must give you the information, to account for my not proceeding under the Full Power. He desired that I would request you to consider the information as confidential, till you should receive it from Mr Fox himself. I afterwards intimated to Lord Aberdeen that it was highly desirable that public intelligence should go to America by the steamer of the 4th, that he proposed to open a new negotiation at Washington on the subject of the Oregon boundary, as the information by that opportunity would be the last which would reach you, before the meeting of Congress and the delivery of the President's message.

None the less, Everett continued the "very frequent conversations" he had had with Aberdeen on the Oregon question; Everett wished to influence favorably the tenor of the instructions which were to be given; *inter alia* he urged "the extreme reasonableness of the proposal" of 49° north as the boundary; and he suggested that a modification of that line so as to leave the whole of Vancouver Island to Great

Britain would perhaps be conceded (*ibid.*, No. 69, December 2, 1843, confidential). Aberdeen thus stated his views on the various arguments presented (*ibid.*):

that these were grounds which in the main result had been long ago taken by the United States and rejected by England;—that the question was quite different from what it would have been if now presented for the first time;—and that it was impossible for the present ministry to accept what had been rejected in 1824 and 1826; that they did not suppose that we any more than themselves could now agree to terms which we had declined then; and that consequently there must be concession on both sides;—that they were willing to act on this principle and that we must do the same.

Conversations between Everett and Aberdeen along the same lines did not cease (D.S., 52 Despatches, Great Britain, No. 82, February 2, 1844; No. 106, April 1, 1844; 54 *ibid.*, No. 269, February 28, 1845); and while Aberdeen's first instructions, of December 28, 1843, permitted Pakenham to go beyond the British offer of 1826 only in respect of free ports south of 49° (Pakenham Papers, F.O. 115:83, instruction No. 10; see Washington Papers, V, 220, for a summary of that instruction), Aberdeen wrote to Pakenham on March 4, 1844, "to draw from the American negotiator a proposal" of the line of 49° to the sea (i.e., not across Vancouver Island), with free ports to Great Britain south of the line and common navigation of the Columbia (quoted by Schafer in "The British Attitude toward the Oregon Question, 1815-1846", in *American Historical Review*, XVI, 273-99; also quoted by Pakenham in a letter to Aberdeen of October 28, 1845, cited below); this, it may be observed, is (aside from the words about free ports) not far from Articles 1 and 2 of the Oregon Treaty; more in detail, the same bases were put forward in a letter of Aberdeen to Peel of September 25, 1844, from which one paragraph is excerpted (from Clark, "Aberdeen and Peel on Oregon, 1844", in *Oregon Historical Quarterly*, XXXIV, 236-40, where the letter appears in full):

I believe that if the line of the 49th degree were extended only to the waters edge, and should leave us possession of all of Vancouver's Island, with the northern side of the entrance to Puget's Sound; and if all the harbors within the Sound, and to the Columbia, inclusive, were made free to both countries; and further, if the river Columbia from the point at which it became navigable to its mouth, were also made free to both, this would be in reality a most advantageous settlement.

Aberdeen wrote in the same letter that he was "convinced that this is the utmost which can be hoped for from negotiation" (*ibid.*); but Peel was not then willing to go so far (letter of Peel to Aberdeen, September 28, 1844, in *ibid.*; and see Merk, "The Oregon Pioneers and the Boundary", in *American Historical Review*, XXIX, 681-99); none the less, such an adjustment continued to be considered by Aberdeen (see his letters to Pakenham of April 18, 1845, and to Peel of October 17, 1845, cited and quoted in part below).

The decision to negotiate at Washington was one of the circumstances which caused delay; the British Plenipotentiary (Richard Pakenham) did not reach Washington until February 19, 1844; his

credence, dated December 14, 1843, and the letter of recall of his predecessor, Henry Stephen Fox, dated November 15, 1843, were both presented on February 21, 1844 (Pakenham Papers, F.O. 5:404, despatch No. 4, February 27, 1844; D.S., Ceremonial Letters, Great Britain, 1815-65); Pakenham's first note was written on February 24; the tragic death of Abel P. Upshur, Secretary of State, took place on February 28; not until August 26, 1844, were the terms of the British proposal for a settlement communicated to Secretary of State John C. Calhoun; that proposal, which was at once declined, renewed that made by the British Plenipotentiary in 1826, with the added feature of an undertaking "to make free to the United States, any Port, or Ports, which the United States Government might desire, either on the Mainland, or on Van-Couver's Island, South of Latitude 49°" (D.S., 22 Notes from the British Legation); in respect of free ports Pakenham had authority to go further than he did; but he "saw at once that Mr Calhoun attached so little importance to the concessions of this kind, that the further concession which I was also contingently authorized to make respecting free Ports would be of no use" (Pakenham Papers, F.O. 5:426, despatch No. 53, May 13, 1845).

The arguments on the one side and the other, relating chiefly to the region south of the 49th parallel, were developed during conferences held in September 1844; the way was opened for a counterproposal from the United States; and in the meantime, on January 21, 1845, an offer of arbitration (in very general terms), made by the British Government on the previous January 15, was declined. No further steps were taken prior to the going into office of the Polk administration on March 4, 1845 (the protocols, arguments, and correspondence of the negotiation at Washington in 1844-45 during the Tyler administration are printed in Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 140-62).

Beyond the formal record of the Calhoun-Pakenham negotiations there is this account of their conversations off the record (Washington Papers, V, 222-23):

In various informal conversations between Mr. Pakenham and Mr. Calhoun, when Mr. Calhoun insisted on the parallel of 49° as the very lowest terms which the United States would accept, Mr. Pakenham told him that, if he wished Her Majesty's Government even to take into consideration a proposal founded on that basis, it must be accompanied by some indications of a desire on the part of the United States Government to make some corresponding sacrifice to accommodate the interest and convenience of Great Britain; that Her Majesty's Government had already gone very far in the way of concession, while the United States Government had as yet shown no disposition to recede from their original proposal. To which Mr. Calhoun replied, on one occasion, that for his part he should have no objection to give up absolutely the free navigation of the Columbia, which had before been offered only conditionally; on another occasion, he said that if Great Britain would consent to the parallel of 49° on the Continent, perhaps the United States might be willing to leave to Great Britain the entire possession of Vancouver's Island, Fuca's Inlet, and the passage northwards from it to the Pacific remaining an open sea to both countries; but he never said that he would be ready to yield both these points. In fact, he said that he was not authorized to make any proposal of the kind, nor should he until he had ascertained that such an arrangement would find favor with the Senate.

The foregoing statement was taken (slightly paraphrased) from the private and confidential despatch of Pakenham of September 28, 1844 (Pakenham Papers, F.O. 5:408). In the same despatch Pakenham reported his well-grounded fear "that there is no chance, whatever, of inducing Him, or any other American Negotiator to accept the line of the Columbia as a frontier".

Under the circumstances no consummation of the negotiations between Calhoun and Pakenham was possible; the Tyler administration was in its last few months of office; a presidential campaign was approaching; and Calhoun was not anxious to proceed. Pakenham thus stated his impressions (*ibid.*):

I believe that Mr Calhoun is in earnest in wishing to settle the Oregon Question, quietly and peaceably, but being a vain and ambitious man, He wishes to settle it in a manner that shall gain Him credit in the eyes of His Countrymen—and He has Confessed to me, more than once, that He felt so mortified by the rejection of His Texas Treaty, that He was determined never to affix His signature to another Treaty, without a positive certainty of its being accepted by the Senate.

In the absence of any counterproposal from Calhoun and without further instructions than those of December 28, 1843 (cited above), Pakenham could do no more than was done. (There were later instructions, but they did not alter or go beyond those cited; Pakenham Papers, F.O. 115:85, Nos. 45 and 47, November 1 and 18, 1844.) By those instructions he was limited (territorially) to the British offer of 1826 plus the making of "all the Ports within de Fuca's Inlet, and South of the 49th parallel of latitude, free Ports"; and by August 29, 1844, Pakenham had let Aberdeen know that he agreed with Calhoun's view that no boundary south of that parallel would obtain the assent of the Senate, even if Calhoun could bring himself to accede to it (*ibid.*, F.O. 5:407, despatch No. 99). There were only two other courses within Pakenham's authority; the first of these was to propose arbitration, as he did, though feeling pretty well assured in advance that it would not be acceptable to either Calhoun or the Senate (*ibid.*, F.O. 5:409, despatch No. 140, December 29, 1844, and F.O. 5:424, No. 10, January 29, 1845). The other was to propose an extension of the "joint occupation" for a further term of ten years; and this was clearly impossible, if for no other reason, because of the sentiment in Congress, as Pakenham reported (*ibid.*; F.O. 5:409, despatch No. 134, December 12, 1844).

Evidence of the views of the House of Representatives was later disclosed by the passage by that body on February 3, 1845, by a vote of 140 to 59, of a bill "to organize a territorial government in the Oregon Territory, and for other purposes". By the terms of that long project, the territory to be organized was the entire region in dispute up to 54°40' north latitude; and by section 43, the final section, the President was required "to cause due notice to be given to the British government of the desire and intention of the government of the United States to annul and abrogate" the convention of August 6, 1827 (Document 56; see Congressional Globe, XIV, 236, February 3, 1845, and appendix, 44).

The bill failed, as no action was taken on it in the Senate (*ibid.*, 387-88, March 3, 1845); but Calhoun was chagrined at the action of the House, according to Pakenham's report of an interview at the former's residence on the day of the passage of the bill by that body (Pakenham Papers, F.O. 5:424, despatch No. 11, February 4, 1845):

He seems to be a good deal mortified and disappointed by what has occurred in the House of Representatives, but He flatters Himself that the progress of the mischief may yet be arrested by a Message which He proposes to recommend to the President to send to Congress explaining the causes which led to the postponement of the Negotiation until a late period of last year, and expressing the expectation that the efforts of the two Governments to accomplish an amicable settlement of the question may yet be successful.¹

The Oregon question was not new in Congress; it had been discussed there from time to time since 1819 (see "The Federal Relations of Oregon", by Lester Burrell Shippee, in *Oregon Historical Quarterly*, XIX, 111-33, 283-333; see also Carey, *History of Oregon*, 308-12, 482-92; references for the period 1828-46 are in Hasse, *Index to United States Documents Relating to Foreign Affairs*, II, 1178-96); but congressional and public interest had naturally grown along with the increasing American emigration to the Oregon country. (In "Influence of American Settlement upon the Oregon Boundary Treaty of 1846", by Leslie M. Scott, in *Oregon Historical Quarterly*, XXIX, 1-19, the numbers of immigrants from the United States are thus given: 137 in 1842; 875 in 1843; 1,475 in 1844; 3,000 in 1845; see also Merk, "The Oregon Pioneers and the Boundary", in *American Historical Review*, XXIX, 681-99).

The Oregon question naturally bulked much larger in American eyes than in British. On the map "contiguity" was just as relevant north of the 49th parallel as it was to the south; but both for that time and for the years to come, England appeared much more remote from the northwest coast of America than did the country whence led the Oregon Trail. From the history of the question there were inevitably points of honor or pride to consider; but the material interests of the one side and the other in the Oregon country were not large; to American sentiment, however, it was the future that counted, as these were interests of pioneers, aiding expansion of the Republic to the Pacific; and the only British settlements west of the Rocky Mountains were the establishments of the Hudson's Bay Company, enjoying a grant of trade (exclusive as to British subjects) in the region and exercising there extensive powers of government. (For the grant of May 30, 1838, and the charter of the company of May 2, 1670, see Great Britain, House of Commons, Accounts and Papers, XXVIII, papers relative to the Hudson's Bay Company ordered printed August 8, 1842; by 1845 the Hudson's Bay Company had "established their principal settlement on Vancouver's Island"; see the letter of Lord Aberdeen to Sir Robert Peel of October 17, 1845, cited and quoted in part below; the interests of the company

¹ For the message of President Tyler of February 19, 1845, see Richardson, IV, 361-62.

and its "shift of base" are both carefully examined by Merk in "The Oregon Pioneers and the Boundary", *American Historical Review*, XXIX, 681-99; for detailed statements of the properties of the Hudson's Bay Company and of the Puget's Sound Agricultural Company on the mainland south of the 49th parallel, see their memorials, of April 8 and 10, 1865, respectively, presented to the Commissioners under the treaty of July 1, 1863, in the papers of the "British and American Joint Commission for the Final Settlement of the Claims of the Hudson's Bay and Puget's Sound Agricultural Companies".) Lord Aberdeen could write of the Oregon question that "the interests involved are of no great moment" (letter to Peel of October 17, 1845, above mentioned); but any such opinion was impossible at Washington.

THE PROPOSAL OF PRESIDENT POLK

The Oregon question was becoming more acute; the Democratic Convention in May 1844 had resolved "That our title to the whole of the territory of Oregon is clear and unquestionable; that no portion of the same ought to be ceded to England or any other power" (*Niles' Weekly Register*, LXVI, 227, June 8, 1844); accordingly, "fifty-four forty or fight" was a slogan during the presidential campaign of that year; and when President Polk in his inaugural address of March 4, 1845, quoted the words "clear and unquestionable" (Richardson, IV, 381), popular feeling was aroused in both countries; the possibility of war was openly discussed; and it was not forgotten that in the previous year James Buchanan, then Senator from Pennsylvania, and from March 6, 1845, Secretary of State, had said (on March 12, 1844; *Congressional Globe*, XIII, appendix, 345):

Thus the territory in dispute embraces that vast region extending along the Pacific ocean, from the forty-second degree of north latitude to fifty-four degrees and forty minutes north, and running east along these respective parallels of latitude to the summit of the Rocky mountains. Now, sir, to the whole of this territory—to every foot of it—I believe most firmly that we have a clear and conclusive title.

The inaugural address of Polk was deemed by Aberdeen to have "impressed a very serious character on our actual relations with the United States"; that portion of former instructions to Pakenham which authorized an extension for a fixed term of years of the convention of August 6, 1827, was canceled; and the danger that the termination of the convention of 1827 (by notice from the United States) would be followed by "a local collision" which might "not improbably lead to war itself", was in mind (Aberdeen to Pakenham, April 6, 1845; Pakenham Papers, F.O. 115 : 88, instruction No. 21; *Washington Papers*, V, 223-24, but dated April 3, 1845). The language used by Sir Robert Peel in the Commons and by the Earl of Aberdeen in the Lords on April 4 was appropriate to a situation deemed to be grave (see Hansard, 3d series, LXXIX, 120-24, 193-99); and Aberdeen thus wrote to the Queen on March 27 (Selections from

the Correspondence of George, Earl of Aberdeen, 1845, 102-3; a copy of this volume is in the Library of Congress):

The language of the new President is menacing, but he will have been made fully aware of the determination of Your Majesty's Government to uphold at all hazards the rights and honour of this country.

Pakenham, however, soon learned that the negotiation was not to be suspended. His first two conversations with James Buchanan, Secretary of State, are thus reported (Pakenham Papers, F.O. 5 : 425, despatch No. 40, March 29, 1845):

Since the Installation of the New Government, I have had two conversations with Mr Buchanan, Mr Calhoun's successor in the office of Secretary of State.

The first was on the occasion of a visit of ceremony which I paid Him on receiving official notice of His appointment, on which occasion He was profuse in professions of His desire to contribute by every means in His power to the continuation of a good understanding with England. "Whatever opinions I may have expressed" He said "in the Senate or elsewhere of an unfriendly character towards England, you will find that while I remain in this office, neither Her Majesty's Government, nor Yourself, shall have the least cause to complain of me."

I am very unwilling, My Lord, to say anything that might raise a doubt in the mind of Her Majesty's Government as to the sincerity of such a declaration, made, as it was, with every appearance of earnestness and good will, but I must observe, that if Mr Buchanan really acts up to His professions in this respect His conduct will exhibit a very remarkable contrast to that observed by Him of late years in every thing relating to intercourse with England.

At our second interview the subject of Oregon was introduced, when I took occasion to inform Him of the Instructions which I had lately received from Your Lordship (those contained in Your Lordship's despatch No. 8 of 3. Instant) again to press on the Government of the United States, the expediency of resorting to a settlement by arbitration, as the only practicable mode of finally adjusting our differences on this important question.

Mr Buchanan observed that He had not yet had an opportunity of ascertaining what might be the views of the President on this particular point connected with the Oregon Question—but He said He would not fail to take advantage of the earliest moment to direct the President's attention to it.

For His own part although He did not seem to be much taken with the idea of an arbitration He did not appear prepared altogether to reject it,—what He said was, that He did not at all despair of effecting a settlement of the question by Negotiation, "by adopting" to use His own words "the principle of giving and taking".

Perhaps his intention may be to propose the parallel of 49. to the Sea, as a Boundary, leaving to Great Britain the entire possession of Van Couver's Island, with an agreement for the free Navigation of the Columbia River.

If such an arrangement would suit the views of Her Majesty's Government for the sake of getting rid of the dispute, I am quite sure, My Lord, that the only way to obtain it will be to wait till it is proposed by the United States' Government, for if that proposal or any other, involving Concession on the part of Great Britain were to originate with us, I have not the least doubt that it would be rejected, in the hope of obtaining ultimately still greater advantages.

Aberdeen welcomed the news that the negotiations were to go on; but in the answering instruction he followed lines previously laid down and was vague as to the attitude to be taken toward such an American proposal as Pakenham had suggested as possible (*ibid.*, F.O. 115 : 88, instruction No. 22, April 18, 1845):

It now appears that Mr Buchanan whom we had always considered as one of the most decided opponents of any compromise respecting the Oregon Territory has expressed himself to you as prepared to adopt "the principle of giving and taking". It is not improbable therefore that he may submit to you some proposal of compromise on the part of his Government. We entirely concur in your opinion that it may be wise to withhold any further Proposition on our part until we shall have received Mr Buchanan's Proposal, which will probably be too unfavourable to be accepted by us. You might, then, as a counter-proposal, inform Mr Buchanan that, in addition to the Terms already offered by us, we are prepared to allow all the Ports within the Disputed Territory South of 49° North Latitude, whether on the main land or on Vancouver's Island, to be made perpetually free Ports.

Should no proposal be put forward by Mr Buchanan, you will use your own discretion as to originating the offer respecting the free Ports. In order to prove to the United States' Government, and to place on record the extent to which Her Majesty's Government are disposed to carry their desire to arrive at an amicable adjustment, they would wish that, if it can be conveniently introduced, that proposition should be submitted to Mr Buchanan. Of this, however, they leave you to be the Judge.

Beyond this degree of compromise, Her Majesty's Government could not consent to go. Should you therefore have an opportunity of making such a Proposal, and should it be rejected, you will have no alternative but to recur to the demand for an Arbitration.

But with the foregoing instruction went a private letter from Aberdeen of the same date, referring thus to the proposal envisaged by Pakenham (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 141):

I am glad to receive your report of Mr. Buchanan's language, and hope that the spirit of his conduct will be found in unison with it. If Mr. Buchanan should propose an extension of the 49th parallel to the sea, as the line of boundary, leaving us in possession of the whole of Vancouver's Island, and the free entrance into the Straits of Juan de Fuca; although I would put forward in answer our proposal described in my despatch this day, I should not like to regard his proposal as perfectly inadmissible. It is possible that by some modifications it might be accepted, although I do not think it at all likely, and of course you will give no encouragement to the notion, but recur to arbitration in the event of our terms being rejected. At the same time, you might send Mr. Buchanan's proposal, if made, for the consideration of Her Majesty's Government.

I think it should be clearly understood that the navigation of the Columbia should be common to both parties, and the Ports within the Straits of Juan de Fuca, and south of latitude 49° should be free Ports, by whomsoever they might be occupied.

It is to be noted that the terms outlined in the foregoing letter hardly vary from those of the letter of Aberdeen to Pakenham of March 4, 1844, cited above.

In conversations of May 12 and May 28 Pakenham was informed by Buchanan that a reference of the Oregon question to arbitration was not favored by the President and that an American proposition for settlement would be made but would not be presented until the successor to Edward Everett at London was ready to proceed to his post (Pakenham Papers, F.O. 5 : 426, despatches Nos. 53 and 60, May 13 and 29, 1845). Louis McLane, who was commissioned as Minister at London on June 16, 1845, sailed on the packet of July 16 and reached London on July 31 (Historical Society of Pennsylvania,

Buchanan Papers, copy of a letter of McLane to Polk of August 4, 1845, quoted in part below).

The American proposal was made in a note dated July 12, 1845, delivered by the Secretary of State to the British Minister on July 16 (D.S., 7 Notes to the British Legation, 76-89; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 163-69); the delay of four days (from Saturday to Wednesday) in the delivery of the note, whether so calculated or not, made it impossible for Pakenham to send a copy to Aberdeen by the packet of July 16, on which McLane sailed; the latter, as will be seen, had a copy with him; it was Pakenham's despatch of July 29 (Pakenham Papers, F.O. 5:427, No. 87) which enclosed to Aberdeen copies both of the American proposal and of Pakenham's rejection thereof; Pakenham knew by July 13 that he was to receive the proposal "in the course of next week"; he took for granted that McLane was fully informed of its terms; and he considered that Buchanan "may have thought it politick to keep back His promised communication until after M^r M^r Lanes departure, in order that that Gentleman may have an opportunity of conversing with Your Lordship respecting it, before it is formally submitted for Your Lordship's Consideration" (Pakenham Papers, F.O. 5:427, despatch No. 79, July 13, 1845).

In his note Buchanan stated that he "now proceeds to resume the negotiation on the Oregon question at the point where it was left by his predecessor"; the question of title, particularly to "the territory north of the valley of the Columbia", was argued; the effect of the Nootka Sound Convention of October 28, 1790, was discussed, and it was said that that convention was temporary in its nature and was terminated by the war between Great Britain and Spain which began in 1796. The proposal of the United States was thus set forth:

In view of these facts, the President has determined to pursue the present negotiation to its conclusion, upon the principle of compromise in which it commenced, and to make one more effort to adjust this long-pending controversy. In this determination he trusts that the British Government will recognise his sincere and anxious desire to cultivate the most friendly relations between the two countries, and to manifest to the world that he is actuated by a spirit of moderation. He has, therefore, instructed the Undersigned again to propose to the Government of Great Britain that the Oregon territory shall be divided between the two countries by the forty-ninth parallel of north latitude from the Rocky Mountains to the Pacific Ocean, offering, at the same time, to make free to Great Britain any port or ports on Vancouver's Island south of this parallel which the British Government may desire. He trusts that Great Britain may receive this proposition in the friendly spirit by which it was dictated, and that it may prove the stable foundation of lasting peace and harmony between the two countries. The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of ancient Louisiana and Canada to the Pacific along the same parallel of latitude which divides them east of the Rocky Mountains; and it will secure to each a sufficient number of commodious harbors on the northwest coast of America.

Thus the American proposal went beyond that of 1826 in its offer of free ports on Vancouver Island; but, on the other hand, in its omission of any reference at all to rights of navigation of the Columbia River, it was more restricted.

On the same date as that of the American proposal (July 12, 1845) instructions were written by Secretary of State Buchanan to Louis McLane, who had been appointed to succeed Edward Everett as Minister at London; the negotiations of 1818, 1824, and 1826 were reviewed; reference was made to the instructions of Secretary of State Livingston to Martin Van Buren, Minister at London, of August 1, 1831; a copy of the note to Pakenham of July 12, 1845, was enclosed; the attitude of Polk against the concession of any privilege of free navigation of the Columbia River was strongly stated; it was evidently thought that the American proposal would be discussed at London; and the final paragraphs were these (D.S., 15 Instructions, Great Britain, 271-81; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 27-32):

Had this been a new question, you are fully aware that the President never would have presented such a proposition; but it must not be forgotten that the American Government never dies, although the agents who administer it are perpetually changing. Its course of policy towards foreign nations should not change with every changing administration, but ought to be uniform and consistent, unless for reasons of imperative necessity.

From what has been said, you will perceive how wholly impossible it is for the President to accept any terms of compromise which would bring the British south of the parallel of 49°; and this you may intimate to the British Ministers in conversation, should you deem it wise under all the circumstances. The only exception to this rule which could possibly be made might be the concession, for an adequate equivalent, of the small cap of Vancouver's Island, south of this latitude, which would be of no importance to the United States, whilst it is of considerable value to Great Britain.

You will enforce our proposition upon the British Ministry with all the enlightened ability of which you are so eminently the master. Should it be rejected, the President will be relieved from the embarrassment in which he has been involved by the acts, offers, and declarations of his predecessors. Afterwards, if the difficulty can only be resolved by the sword, we may then appeal with confidence to the world for the equity and justice of our cause, and may anticipate the smiles of Heaven upon the right.

Comparing the terms of the American offer of July 12, 1845, with the clauses of the Oregon Treaty as signed, it will be seen that the differences of moment are two only (for Articles 3 and 4 of the treaty, dealing with the possessory rights of British subjects and of the Hudson's Bay Company, and with the property of its subsidiary, the Puget's Sound Agricultural Company, could hardly be regarded as contentious; see the motion of Senator Edward A. Hannegan, of Indiana, in Executive Journal, VII, 94-95); the treaty goes beyond the offer in making provision (albeit somewhat limited in scope) for the navigation of the Columbia River (Article 2); and by the treaty the "small cap of Vancouver's Island", which had been said to be "of no importance to the United States", is north of the line of boundary.

The proposal of this Government of July 12, 1845, was rejected by the British Minister, without reference to his Government, by his note of July 29 (D.S., 23 Notes from the British Legation; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 170-77).

That note (presented on July 30; see Pakenham Papers, F.O. 5 : 429, despatch No. 115, October 29, 1845, enclosure) added "a few observations in reply" to the arguments of Buchanan; the Nootka Sound Convention of 1790 was said to be "in full and complete force up to the present moment"; the merits of the respective claims, insofar as they rested on "discovery, exploration, and settlement", were compared; the "strongest possible claim to the exclusive [British] possession" of Vancouver Island was maintained; it was thought that the facts were not "of that complete and exclusive character which would justify a claim [by the United States] to the whole valley of the Columbia"; and there followed these paragraphs:

After this exposition of the views entertained by the British Government respecting the relative value and importance of the British and American Claims, The American Plenipotentiary will not be surprised to hear that the Undersigned does not feel at liberty to accept the proposal offered by the American Plenipotentiary for the settlement of the Question.

This proposal in fact offers less than that tendered by the American Plenipotentiaries in the Negotiation of 1826, and declined by the British Government.

On that occasion it was proposed that the Navigation of the Columbia should be made free to both Parties.

On this nothing is said in the proposal to which the Undersigned has now the honor to reply, while with respect to the proposed freedom of the Ports on Vancouver's Island, south of latitude 49° the facts which have been appealed to in this paper, as giving to Great Britain the strongest claim to the possession of the whole Island would seem to deprive such a proposal of any value.

The Undersigned therefore trusts that the American Plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon Question, more Consistent with fairness and equity and with the reasonable expectations of the British Government, as defined in the statement marked D [printed in Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 153-58], which the Undersigned had the honor to present to the American Plenipotentiary at the [early part of the present Negotiation.

Pakenham subsequently argued to Buchanan, without success, that "he had not rejected our proposition, but had merely refused to accept it" (D.S., 15 Instructions, Great Britain, 266, November 5, 1845); but the unhappy final paragraph quoted was regarded as a rejection of the American offer, both at London and at Washington (indeed, Pakenham himself wrote in his despatch of July 29, 1845, above cited, that he had "felt obliged at once to reject" the proposal without referring it to London for consideration); and its wording was thought by Polk to be, "to say the least of it, scarcely courteous or respectful" (Polk's Diary, I, 2).

WITHDRAWAL OF THE AMERICAN PROPOSAL

The American answer of August 30, 1845, to the British note of the previous July 29 was one which Pakenham naturally communicated to Aberdeen with "great concern" (Pakenham Papers, F.O. 5:428, despatch No. 95, September 13, 1845); it embodied a reasoned argument for the American title to the Oregon country, the most impressive presentation of the case that had been written; it then adverted to "the reasons which actuated the President to offer a proposition

so liberal to Great Britain", and thus concluded (D.S., 7 Notes to the British Legation, 89-121; Senate Document No. 1, 29th Congress, 1st session, serial 470, pp. 177-92):

And how has this proposition been received by the British Plenipotentiary? It has been rejected without even a reference to his own Government. Nay, more, the British Plenipotentiary, to use his own language, "trusts that the American Plenipotentiary will be prepared to offer some farther proposal for the settlement of the Oregon question, *more consistent with fairness and equity, and with the reasonable expectations of the British Government.*"

Under such circumstances, the Undersigned is instructed by the President to say, that he owes it to his own country, and a just appreciation of her title to the Oregon territory, to withdraw the proposition to the British Government which had been made under his direction; and it is hereby accordingly withdrawn.

In taking this necessary step, the President still cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace or interrupt the harmony now so happily subsisting between the two nations.

The note of August 30, 1845, withdrawing the American offer of the previous July 12, was written and delivered by the express direction of President Polk; James Buchanan, Secretary of State, was not in accord with the policy; "he did not think it was the part of wise statesmanship to deliver such a paper in the existing state of our relations with Mexico"; Buchanan urged delay, at least "until late in September"; but Polk had determined on his course and was not to be moved; and he thought that it would be for the British Government to decide on the next step: "Let our proposition be absolutely withdrawn & then let the British Minister take his own course. If he chooses to close the negotiation he can do so. If he chooses to make a proposition he can as well do it without our invitation as with it. Let him take the one course or the other, the U. States will stand in the right in the eyes of the whole civilized world, and if war was the consequence England would be in the wrong." Polk saw "no necessary connection between the two questions" of Oregon and Mexico; "we should do our duty towards both Mexico and Great Britain and firmly maintain our rights, & leave the rest to God and the country." The answer of Buchanan to this was that "he thought God would not have much to do in justifying us in a war for the country North of 49°" (see Polk's Diary, I, 1-12, *passim*, August 26-30, 1845). It was the "important conversation" which "took place in Cabinet" on August 26, 1845, which moved Polk to keep his diary (*ibid.*, II, 100-1).

Before the decision on the character of the American note of August 30, 1845, had been taken, Polk had received (on August 19) his first news from Louis McLane at London, accurately estimating the attitude of the British Government. In that letter of August 4 (Historical Society of Pennsylvania, Buchanan Papers) McLane wrote as follows:

Meantime I have approached such sources as have been accessible to me; and I have also conversed with Mr Bates from whom the information in Mr Sturgis's letter to Mr Bancroft proceeded. His means of information not less than his good sense & devotion to our Country entitles his communications to great

respect. He was mainly instrumental in procuring the article from Mr Senior with which you are already acquainted & of submitting it previously to its publication to Lord Aberdeen, who, it is pretty certain, gave it his approbation.¹

The result of all I have learned is that this Government is earnestly desirous of adjusting the Oregon question, & willing to do so upon liberal terms. *Their chief difficulty arises from the opposition & influence of the Hudson's Bay Company.*

The Government will be disposed, I infer, under these circumstances, to adopt the 49th parallel to the straits of Fuca, and thence by a line giving the whole of Vancouver's island to the British side; but will insist, at the same time, upon a continuance for a longer period of existing privileges to the Hudson's Bay Company. The duration of this period, it is supposed, will form the most difficult point of the compromise.

STANDSTILL OF THE NEGOTIATIONS

The rejection, followed by the withdrawal, of the American proposal of July 12 brought the negotiations to a stand, a result which was quite contrary to the wishes of the British Government; the course of Pakenham was not approved by his superiors; the "regret" of Her Majesty's Government that the American proposal had been rejected by the note of July 29 and had not been referred to London was stated in two instructions (Pakenham Papers, F.O. 115:89, Nos. 64 and 72, October 3 and November 28, 1845; Pakenham's official apologia is in *ibid.*, F.O. 5:429, despatch No. 114, of October 29; there are also private letters which are in Selections from the Correspondence of George, Earl of Aberdeen, 1845: Aberdeen to Pakenham, October 3, 1845, pp. 326-28; Pakenham to Aberdeen, October 28, 1845, pp. 482-84; Aberdeen to Pakenham, December 3, 1845, pp. 507-9; the subject was discussed in writing with Sir Robert Peel; see *ibid.*, 328-29, Peel to Aberdeen, October 2, 1845, thinking the tone of Pakenham's note "needlessly harsh and peremptory"; Aberdeen to Peel, October 3, 1845, pp. 329-31; Peel to Aberdeen, October 3, 1845, p. 331; Aberdeen to Peel, November 21, 1845, p. 485; Peel to Aberdeen, November 22, 1845, pp. 485-86).

The expressed views of Lord Aberdeen were thus described by Louis McLane, Minister at London, in his despatch of October 3, 1845 (D.S., 56 Despatches, Great Britain, No. 9):

I received on the 29th ultimo, your despatch, Number 9, dated the 13th September, transmitting a copy of your last note (30th August 1845) to Mr Pakenham relative to the Oregon question.

On the day following, I was invited by Lord Aberdeen, in the note hereto appended, to an interview at his house in Argyll street, which I granted accordingly. The object of the interview, as I had anticipated related exclusively to the posture in which the negotiations between the two governments had been placed by your note of the 30th August to Mr Pakenham, and the withdrawal of the proposition, which the President had previously directed.

¹ Joshua Bates, of London, an American born and reared in New England, was a member of the firm of Barings. William Sturgis, of Boston, had there delivered a lecture on the Oregon question on January 22, 1845, which was subsequently published in a pamphlet; he was related to George Bancroft, then Secretary of the Navy. The article by Nassau W. Senior, notable British economist and friend of Bates, was in the London Examiner for April 26, 1845. See Moore, *International Arbitrations*, I, 224-25; *Washington Papers*, V, 34-38; and Merk, "British Government Propaganda and the Oregon Treaty", in *American Historical Review*, XL, 38-62.

Lord Aberdeen not only lamented, but censured the rejection of our proposition by Mr Packenham without referring it to his Government; and frankly confessed the embarrassing position in which the withdrawal of the proposition by the President had placed this Government. He also stated that if it were the desire or intention of the President, to terminate the negotiation at its present stage, without further effort towards an amicable adjustment, Mr Packenham's treatment of our proposition, had afforded him a good opportunity of doing so, and that, in the withdrawing our proposition, he had acquired in this respect, a decided advantage.

He stated that if Mr Packenham had communicated the American proposition to the government here, as he was expected to have done, he, Lord Aberdeen, would have taken it up as the basis of his action, and entertained little doubt that he would have been enabled to propose modifications which might ultimately have resulted in an adjustment mutually satisfactory to both Governments; and he observed that if it had not been withdrawn, after Mr Packenham's note, he would have disavowed his rejection, and proceeded to treat it as an open proposition. He further said that he would be disposed even now, to do in substance the same thing, and submit a new proposal, if he could be certain that in withdrawing the proposition the President did not intend to terminate the negotiation, and to use Mr Packenham's mistake for that purpose. His great desire obviously was to escape from the difficulty, which in his view, the President's withdrawal of our proposition had interposed to a continuance of the negotiation, by a new proposal from this Government; and although, he did not state particularly what course it would be his duty to take, if this difficulty could not be surmounted, he intimated that, a last resort towards an amicable adjustment might probably be a proposition for arbitration. He did not conceal that his application to me was to ascertain officially the President's real intentions, and the motives by which, in withdrawing the proposition, he was actuated.

Although I had no right absolutely to conclude that the President had changed the views which at the time of my departure from the United States, he entertained as to the terms upon which he might ultimately assent to adjust this controversy; and although in your last note to Mr Packenham you repeated the President's hope that it might yet be finally adjusted in a manner not to disturb the peace, or interrupt the harmony subsisting between the two nations—which would almost necessarily imply further negotiation—, and in your private note [not, it seems, now available] to me expressed the opinion that a conciliatory course on the part of both Governments would be necessary for the preservation of peace; nevertheless, without a clearer insight into the actual state of affairs at home, and a better knowledge of the influence of public sentiment in the United States upon the President's mind, than your private letter afforded me; and in the absence not only of any positive instruction, but of an intimation of the course which in the present unexpected emergency I should be expected to pursue, I did not feel authorized to take any step, or say anything here, which could possibly interfere with or weaken any advantage the President had intended, or might desire to avail himself of, from the posture in which he had been placed. I thought it best to leave him entirely uncommitted to any course that might not be fairly deducible from your note to Mr Packenham, and at the same time, without inviting or suggesting to this Government to offer a new proposal, afford it no opportunity from my silence, or from anything I might say of throwing upon the President the responsibility of terminating the negotiation, if he should not desire to assume it.

I accordingly stated that I was compelled to regard the rejection of our overture by Mr Packenham, without reference here, and the course which the negotiation in consequence had taken at Washington, as dispensing, at least for the present, with any agency I might have been expected to take in it; that my recent despatches had acquainted me with the actual state of things, without contemplating, that in the present juncture, my interference could be needed or useful; and that anything I could say under these circumstances would not only be informal and unauthorized, but in a great degree conjectural.

I did not fail, however, to take the occasion to press upon Lord Aberdeen, the great difficulties with which, in the present state of public sentiment in the

United States, the President could concede, even, that which he had done in the proposition he had authorized. I adverted at some length, and with what force I could employ to the indignant feeling, produced with intelligent and patriotic men of all parties in the United States, by the interference of the Governments of Great Britain and France in opposition to our negotiations with Texas; and to the unsparing, and intemperate, and very reprehensible abuse incessantly poured out, against the Government, and people of the United States, by the whole English press, without exception. I assured him, that he could not be too forcibly impressed, with the effects which this treatment had already produced in the mind of every man among us, who had any attachment to his country, and to its institutions, and of the utter impossibility that these effects could be disregarded by any administration in its negotiations with this Government. When, therefore, under such circumstances, a concession offered by the President was rejected, and in a manner so abrupt and unceremonious, without even an attempt to modify its terms, it was difficult to imagine any other course that he could have taken, consistent with his own dignity, and the rights of his country. I proceeded to state, at the same time, that I had no reason to conclude, or to believe, that in taking this necessary step, the President supposed that the withdrawal of his offer would preclude this Government from making a new proposal, if it should think proper to do so.

At the instance of Lord Aberdeen, in the interview of Wednesday [October 1, 1845], it was understood, that we should reflect upon the subject until the day following, and our conversation was accordingly resumed yesterday at the Foreign office. Subsequent reflection had not varied the views, I had previously felt it my duty to present, and I had, therefore, only to restate them.

The subject in the interval had evidently been one of consultation with Sir Robert Peel; and Lord Aberdeen stated that for the present, he should in his public despatch to Mr Packenham, disapprove of the course he had adopted in regard to the proposition offered in your first note, and leave him in informal or private conversations with you, to ascertain, if practicable, the best mode, in which, if at all, the negotiation may be resumed, or, with what expectation of an amicable arrangement, some new proposal may be originated.

I deem it my duty to state, that from my intercourse with Lord Aberdeen, as well before, as since the date of your despatch Number 9, I have been led to suppose that this Government is sincerely disposed to pursue a conciliatory course, and is anxious to adjust the Oregon question upon terms mutually reasonable and satisfactory to both parties. The solicitude felt at the present posture of the negotiation would seem to make this clear. The frankness, and sincerity for which I have always found Lord Aberdeen distinguished forbid me to doubt his strong and uniform professions; and, in our interview yesterday, he assured me that in all his feelings Sir Robert Peel fully participated.

It was quite obvious to me, that Lord Aberdeen had become convinced in his own mind, though in what way, I do not pretend to conjecture, that the terms which it was his intention ultimately to propose, or assent to, would be accepted by the President, and that on this account, he particularly regretted the interruption in the negotiation without affording an opportunity for that purpose.

Although it was impossible for me, in the present posture of the affair, and in my peculiar situation to attempt to draw from him a distinct avowal of the terms he intended to propose, and what he hoped would be acceptable, I believe they are such, as I stated, in my first letter to the President [of August 4, 1845, cited and quoted in part above], after my arrival in London; and I still believe, that if such should be satisfactory at home, they might be obtained, without great difficulty, in the progress of the negotiation, if the President should think proper to continue it. That the proposition recently rejected, by Mr Packenham, would be ultimately accepted without modification, I have not the least ground to believe or conjecture.

When the foregoing report of McLane of his conversations with Aberdeen was read in Cabinet (October 21, 1845), Polk remained "well satisfied with the ground we occupied on the subject"; but he made one highly important statement to the effect that if any new "propo-

sition" were made by the British Government, "he would either reject it, or submit it to the Senate for their advice before he acted on [it], according to its character"; the procedure of the following June was thus early announced; but when Buchanan, sensing at once a possible way out, inquired if he might inform the British Minister of the decision to submit to the Senate "a proposition of a character to justify it", Polk refused permission; and the British Government "would not, he was sure, make any new proposition which we could accept" (Polk's Diary, I, 62-64).

The conflict of opinion between the President and the Secretary of State continued; Polk, in a conversation with Senator Thomas H. Benton, of Missouri (who believed in the British title to the mainland north of 49°), said that he "was now disposed to assert our extreme right to the whole country"; the view of Polk, on the basis of "the proposition having been rejected by the British Minister", was wholly unchanged by the statements made by Aberdeen to McLane; Buchanan favored a conciliatory course; he "repeated what he had often before said, that he was willing to settle the question [at] 49° degrees of North Latitude yielding the Cap of Vancouver's Island to Great Britain but not the free navigation of the Columbia River" (*ibid.*, 69-72, 75-76, October 24 and 28, 1845).

THE NOTE WITHDRAWN AND THE NOTE NOT DELIVERED

Aberdeen sought for a way to resume the negotiations; in his instruction of October 3, 1845 (Pakenham Papers, F.O. 115 : 89, No. 64), he wrote to the effect that a renewal of the offer to refer the Oregon question to the arbitration "of some independent and friendly State" seemed perhaps the only course open; but the possibility of obtaining the withdrawal of the two notes (Pakenham's of July 29 and Buchanan's of August 30, thus leaving the American proposal of July 12 as the latest communication between the Governments) was discussed by Aberdeen both orally and in writing with Sir Robert Peel (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 328-31); the latter had some doubts; but approved the private letter to Pakenham which Aberdeen wrote in the following terms on the date of the instruction last mentioned (*ibid.*, 326-28, October 3, 1845):

From the present state of the Oregon negotiation, I fear that we are almost under the necessity of regarding it as entirely closed; indeed it is clear that unless some vigorous effort be made to revive it, this must inevitably be the case.

I have officially expressed to you to-day my regret that you did not accept Mr. Buchanan's proposal for the purpose of reference to your own Government. You might have added that, although you had no authority to agree to such a proposal, and could not anticipate its success here, nevertheless the matter was too important finally to decide without giving us an opportunity of considering it, more especially as modifications might possibly be suggested which would render the proposal more acceptable. This would have done no harm, and would have left the matter in our own hands to deal with as should be found most expedient.

If Mr. Buchanan had replied to your note by simply refusing to make any further concession, we might have taken possession of his offer, and have replied by making some counter-proposition of our own. This would have been the natural

and regular course; but as Mr. Buchanan has now withdrawn his former proposal altogether, in consequence of its summary rejection by you, we are left without any certain basis upon which to proceed.

You appear to think that the United States Government expect much from Mr. M' Lane in the management of this negotiation; but Mr. M' Lane assures me that he is entirely without instructions. He is most anxious to contribute to the friendly settlement of the question, and, indeed, only came here in the hope of doing so. He therefore deeply regrets the present posture of the affair; and he tells me that the President and Mr. Buchanan are equally distressed at the character which it has now assumed. Should this really be the case, there is a possibility of the mischief being repaired, and the whole subject replaced in its former position. But this will require much delicacy and discretion in the management, and must not be attempted without reasonable hope of success.

After a good deal of reflection, it appears to me that the best and only chance of removing our present difficulty will be for you to go at once to Mr. Buchanan, and to tell him fairly that your own Government have regretted the course which you had adopted in rejecting his proposal, without transmitting it home for their consideration. You may add that you are ready to withdraw your former note of rejection, and to address another to him in place of it, of the nature which I have already pointed out. In this case he will of course withdraw his reply, and the negotiation will then resume its natural progress, as if nothing of the kind had occurred.

It will be essential, however, not to let them suppose that Mr. Buchanan's proposal will be accepted by us; on the contrary, they should understand that it will not; but it forms a basis which admits of such modifications as may possibly lead to a settlement, should both parties be really desirous to arrive at it. At all events, should we at last fail, we shall then recur to our offer of arbitration with a better effect.

The value of the suggestion which I have now made must very much depend upon the real feelings of the President and Mr. Buchanan. At present they occupy a position which perhaps they may be unwilling to abandon; for undoubtedly they will stand well towards the Congress and the country. But if Mr. M' Lane be correct in his description of their regret at the course which the matter has now taken, it is very possible that they may be willing to adopt a proceeding by which everything would be effectually rectified.

Under these circumstances I cannot give you any positive instructions, but must leave the matter to your own discretion. You must act according to your knowledge of the parties, and the real state of the case. Mr. M' Lane seemed to think that something of this kind might afford a solution of the difficulty; but I did not tell him that I should suggest this course to you, because I wished to leave you free, either to adopt it or not, as on full consideration you might think best. But I have no doubt that he will write in such terms to his Government as may predispose them to receive favourably a proposition of this nature.

P.S.—Should my suggestion happily prove successful, you will of course cancel my despatch No. [64].

Pursuant to the discretionary powers thus granted, Pakenham acted; his report, with the copy of his withdrawn note of October 25, follows (Pakenham Papers, F.O. 5 : 429, despatch No. 115, October 29, 1845):

In consequence of what is stated in Your Lordships Dispatch N^o 64 of 3^d October, I thought it my duty to make an effort, in as far as such an effort could be made without compromising the dignity of Her Majesty's Government to induce the American Secretary of State to retract His withdrawal of the proposal contained in His paper of 12th July last and thus to allow the Negotiation for a settlement of the Oregon Negotiation to go on to a natural conclusion.

What has passed on this occasion will, I think, satisfy Your Lordship that the present Government of the United States approached the Negotiation with no intention of settling the matter on fair terms,—by which I mean that their

deliberate plan was either to dictate their own terms, or to come to no arrangement at all; and thus that all regret at what has happened will be removed from the mind of Her Majesty's Government.

In my first conversation with Mr Buchanan, immediately after the arrival of the last Packet, He expressed the most conciliatory intentions on the point immediately under consideration, saying that although His Government might not like to go so far as to retract the withdrawal of His original proposal, they would at all events authorize me to say that anything that Her Majesty's Government might think proper to propose with a view to an arrangement would receive the most respectful consideration—this He told me was His own opinion, but that He could say nothing conclusive on the subject—until He should have consulted the President—and He requested me to see Him again in a day or two.

At our next interview He repeated pretty nearly the same language, as He had at first made use of, and when I asked Him if He had any objection to say something in writing to the same effect—He replied that if I liked to make a written overture for the reopening of the Negotiation, He would submit my communication to the President, confidentially, and show me, also confidentially, the Draft of the answer which the President might think proper to return, it being distinctly and expressly understood between us that according to what I might think of the proposed answer I might withdraw my letter, or leaving it on record, accept the answer returned to it.

The following day, I again called on Mr Buchanan—He told me that the President had not yet made up His mind how to proceed, but that on the morrow, that was to day, He would be prepared to show me the Draft of the intended Answer, conformably to what had been agreed between us.

To day I accordingly went to Him, when to my surprise, He told me that the President had determined that I might either withdraw my letter, or abide by the Answer, whatever it might be, that Mr Buchanan was to return to me.

It was obvious to me from this that the terms of the intended answer would be such as only to make matters worse than they are at present, and I therefore without hesitation withdrew my letter,—Mr Buchanan distinctly pledging Himself that it should be considered strictly as “non avenu”—and that no record whatever of it had been preserved.

I beg leave to submit a copy of the letter in question, in which I trust Your Lordship will find nothing to object to.

It is true that it says plainly enough that Her Majesty's Government were not prepared to accept the terms proposed by Mr Buchanan, as a settlement of the question; Upon this point I imagine that Her Majesty's Government did not wish to affect any reserve or concealment, but I gave Him to understand that if His proposal was allowed to subsist, it might lead to further Negotiation, and thereby facilitate the accomplishment of the object which both Governments have so much at heart.

Thus then the matter stands at present, and if such a state of things can scarcely fail to cause embarrassment and anxiety to Her Majesty's Government, I think there is ample consolation in the reflection that a Negotiation which began by an avowal that the President “would not have consented to yield any portion “of the Oregon Territory, had He not felt embarrassed, if not committed by the “acts of His Predecessors”, afforded no reasonable prospect of an arrangement such as Great Britain could agree to,—and therefore that the sooner the true state of the case was made evident, the better.

It now only remains for me to keep in reserve for any emergency that may arise, the offer which I am authorized again to make of referring the question at issue to arbitration of some independent and friendly State.

[Enclosure—British note of October 25, 1845, withdrawn]

I transmitted in due season to HMs Govt. the paper which I had the honor to receive from you on 16th July containing a proposal for the settlement of the Oregon Question.

I also transmitted a copy of the paper which I had the honor to present to you on the 30th of the same month in answer to your statement & proposal.

Owing to circumstances which will doubtless have been made known to you by the Minister of the United States in London, these papers had not been many days in the hands of HM's Govt. so as scarcely to allow time for that attentive examination of them which the importance of the subject required, when they were followed by your communication dated 30th Augt, in which you withdraw the proposal contained in the previous communication on the ground that it had been rejected by me without even a reference to my own Govt. This step on the part of the Govt. of the United States is much regretted by HM's Govt. because although they were not prepared to accede to the terms set forth in your proposal as a settlement of the question under Consideration—that proposal might have led to further negotiation, thereby facilitating the accomplishment of what both Govts have so much at heart, namely the satisfactory adjustment of the only question likely in any way to cause difficulty or embarrassment in the relations between the two Countries.

HM's Govt. will be glad to hear again from the Govt. of the United States on this subject.

And here it may not be out of place that I should request you for the sake of a more perfect understanding between us, to read again with attention that part of my statement in which I expressed to you my inability to accept your proposal—you will find Sir, that I did not say that I rejected the proposal; what I said was that I did not feel at liberty to accept it, & I think that in an examination of the question as it now stands the difference between the two expressions is of Essential importance.

Buchanan wrote unofficially to McLane on October 28, 1845, telling of the incident and enclosing copies of the note withdrawn and the undelivered answer (Moore, Works of James Buchanan, VI, 285-86; the enclosures are not there printed); and the account of Pakenham is further supplemented by the letter of Polk to McLane of October 29, headed "Private & unofficial", from which the following passages are excerpted (Library of Congress, Letter Book of James K. Polk, 1845-46, 57-65):

Mr Pakenham as I learn from *Mr Buchanan* has called several times at the Department of State,—and has manifested great uneasiness on the subject—as well as expressed an anxiety to renew the negotiation. *Mr Buchanan* has informed him—more than once that if the British Government had any proposition to submit, it would be respectfully considered by this Government. With this he does not seem to have been satisfied, and on Monday—the 27th Instant,—delivered to *Mr Buchanan* a formal note dated on the 25th and in the close of their conversation—remarked that it might be regarded as official or not as—might be afterwards determined on. I gave to this note much consideration,—and an answer was prepared,—but not be delivered unless *Mr Pakenham* first elected to have his note regarded as official and placed on the files of the Department. *Mr Buchanan* informs me that the note has just been withdrawn by *Mr Pakenham*—who preferred to consider it as unofficial. Of course he has not seen the answer which had been prepared,—or been informed of its contents further than he might infer them,—from a remark of *Mr Buchanan*—which he informs me he made to him, to the effect,—that in the present state of the negotiation we could not be expected to abandon the position we had taken. It was this remark I incline to think which induced him to withdraw his note, and to consider it unofficial. *Mr Buchanan* will forward to you for your *private information* a copy of his note,—and of the answer which had been prepared,—but which was not delivered. From the answer you will be able to understand fully—the ground which this Government will continue to occupy.

The more I have reflected on the subject, the more doubt I have had, whether the administration could have been sustained by the constitutional majority of the Senate—or by the Country,—if our proposition—as made in *Mr Buchanan's* note of the 12th of July—had been accepted. It is at all events certain that Great Britain will make no other proposition more favourable to the U. States

than that which was so promptly rejected by *Mr Pakenham*, and in the existing state of things it is equally certain that we could not accept one less favourable if indeed we should *now* agree to the original proposition. *Mr Pakenham's* object seems to be, to receive something from the Government—here, which will relieve her Majesty's Government—from the embarrassment,—produced by the rejection of our proposition,—and its subsequent withdrawal by us. In This he will not be gratified. There is nothing to prevent him from making any proposition—he may think proper to make, and when made, he has been informally informed that it would receive respectful consideration. He can have no assurance in advance what answer we would make to any proposition he may think proper to make. I am satisfied with our present position, which will be unchanged until the meeting of Congress unless—*Mr Pakenham*, shall address some other communication to this Government. If he does this, he must act voluntarily as he has a perfect right to do, and without waiting for an invitation from the U. States,—or receiving any assurances of what the answer would be. I can form no opinion whether the negotiation will be closed where it now stands or whether—the discussion will be continued. That will depend altogether on the British Government. In either event, with my present views I shall probably consider it to be my duty to lay the whole subject before Congress in my annual message. I shall of course recommend nothing which would violate the Convention of the 6th of August [1827] but may give my views strongly as I entertain them of our rights in the Oregon territory.

The remark of Buchanan which induced the British Minister to withdraw his note was one which Polk regretted; and the American answer of October 28 (which was not delivered and the contents of which Buchanan was not permitted to discuss) was worded “precisely” as Polk had directed (*Polk's Diary*, I, 78–82, October 29, 1845). A copy of that answer is available (*Library of Congress*, 73 *Polk Papers*, 1845–46, 6978–79); after a review of the facts, it contains this response:

Thus the question now stands and he [the President] cannot consent to change his position & to recall what has been already done.

Mr Pakenham in his note of the 25th instant states that her Majestys Government will be glad to hear again from the Government of the United States on this subject.

In reply to this suggestion the undersigned can only refer *Mr Pakenham* to what has already been stated by him in his notes of the 12th July and 30th August last.

Under these circumstances the undersigned is instructed by the President to inform *Mr Pakenham* that he cannot renew the former offer, nor submit any new proposition, and that it will remain for the British Plenipotentiary to decide what other or further steps if any he may think proper to take in the negotiation.

The paper, cited above, from which the foregoing paragraphs are excerpted, is a copy of the note in the handwriting of Colonel J. Knox Walker, private secretary to President Polk. It bears the following certification signed by Walker under date of October 31, 1845:

A true copy of the original draft taken by me from the original in the handwriting of *Mr Buchanan* except that part beginning “In reply to &c down to “in the negotiation” which is in the handwriting of the Prest.

All efforts of *Pakenham* during this period to bring about a resumption of the negotiation were accordingly fruitless; they were reported by Buchanan to *McLane* in London (D.S., 15 Instructions, Great Britain, 266–68, November 5, 1845); *Aberdeen* discussed them with

McLane, showing him two despatches from Pakenham, one of which contained "a statement of his [Pakenham's] subsequent attempts to induce you [Buchanan] to allow the President's proposition to stand as the basis of further negotiation, or to have some assurance of the answer which a new proposition from the British Government would receive. Mr. Pakenham's statement of the facts on these points corresponds substantially with the account you have given me of the same circumstances" (D.S., 56 Despatches, Great Britain, No. 24, December 1, 1845).

THE MESSAGE TO CONGRESS OF DECEMBER 2, 1845

The regular session of Congress (December 1, 1845) was approaching; both the diplomatic situation and the legal position of the Oregon country required that the Oregon question be submitted to Congress; the convention with Great Britain of August 6, 1827 (Document 56), was in force; for its abrogation, twelve months' notice by one party or the other was necessary; and neither Polk nor his advisers doubted that, for the giving of such notice by the United States, legislative authority was essential; moreover, the protection of the laws of the United States had not been extended to citizens resident in the Oregon country; and the number of American settlers there was increasing. The influence of the American settlements is discussed by Merk in "The Oregon Pioneers and the Boundary" (American Historical Review, XXIX, 681-99); that author points out, *inter alia*, that by 1845 there were no more than eight American families north of the Columbia; but the American settlers in the whole region numbered 6,000 or more (White, "Boundary Disputes and Treaties", in Canada and Its Provinces, VIII, 867-68). The story of the provisional government in the Oregon country is told by Bancroft (History of Oregon, I, chs. 12-22, *passim*; see also Carey, History of Oregon, chs. 28 and 29, 367-408).

The presidential message to Congress was discussed in Cabinet while it was being written, during the latter part of November; regarding the tone of the message, so far as it dealt with the Oregon question, Polk and Buchanan were naturally not in accord; the latter (seemingly to no avail) "proposed modifications . . . making the paper less firm and bold"; Buchanan appeared to be "greatly concerned lest the controversy about Oregon might lead to War" (Polk's Diary, I, 99-100, 101-2, November 20 and 25, 1845). Polk, as the event showed, was quite mistaken as to congressional sentiment on the Oregon question, particularly in the Senate; Buchanan was better informed (see *ibid.*, 107, November 29); Polk went so far as to hold the opinion that acceptance of the American proposal of July 12, 1845, "would have gone far to overthrow the administration" (*ibid.*; see also his expressions to the same effect in his letter to McLane of October 29, 1845, quoted above); subsequent debates and votes in the Senate made clear the error of that view.

That portion of the annual message to Congress of December 2, 1845, which was devoted to the Oregon question reviewed the negotiations

from 1818 up to the close of the Tyler administration (March 4, 1845) and thus continued (Richardson, IV, 392-98):

When I came into office I found this to be the state of the negotiation. Though entertaining the settled conviction that the British pretensions of title could not be maintained to any portion of the Oregon Territory upon any principle of public law recognized by nations, yet in deference to what had been done by my predecessors, and especially in consideration that propositions of compromise had been thrice made by two preceding Administrations to adjust the question on the parallel of 49°, and in two of them yielding to Great Britain the free navigation of the Columbia, and that the pending negotiation had been commenced on the basis of compromise, I deemed it to be my duty not abruptly to break it off. In consideration, too, that under the conventions of 1818 and 1827 the citizens and subjects of the two powers held a joint occupancy of the country, I was induced to make another effort to settle this long-pending controversy in the spirit of moderation which had given birth to the renewed discussion. A proposition was accordingly made, which was rejected by the British plenipotentiary, who, without submitting any other proposition, suffered the negotiation on his part to drop, expressing his trust that the United States would offer what he saw fit to call "some further proposal for the settlement of the Oregon question more consistent with fairness and equity and with the reasonable expectations of the British Government." The proposition thus offered [on July 12, 1845] and rejected [on July 29] repeated the offer of the parallel of 49° of north latitude, which had been made by two preceding Administrations, but without proposing the surrender to Great Britain, as they had done, the free navigation of the Columbia River. The right of any foreign power to the free navigation of any of our rivers through the heart of our country was one which I was unwilling to concede. It also embraced a provision to make free to Great Britain any port or ports on the cap of Quadra and Vancouver's Island¹ south of this parallel. Had this been a new question, coming under discussion for the first time, this proposition would not have been made. The extraordinary and wholly inadmissible demands of the British Government and the rejection of the proposition made in deference alone to what had been done by my predecessors and the implied obligation which their acts seemed to impose afford satisfactory evidence that no compromise which the United States ought to accept can be effected. With this conviction the proposition of compromise which had been made and rejected was by my direction subsequently withdrawn [on August 30] and our title to the whole Oregon Territory asserted, and, it is believed, maintained by irrefragable facts and arguments.

The civilized world will see in these proceedings a spirit of liberal concession on the part of the United States, and this Government will be relieved from all responsibility which may follow the failure to settle the controversy.

All attempts at compromise having failed, it becomes the duty of Congress to consider what measures it may be proper to adopt for the security and protection of our citizens now inhabiting or who may hereafter inhabit Oregon, and for the maintenance of our just title to that Territory. In adopting measures for this purpose care should be taken that nothing be done to violate the stipulations of the convention of 1827 [Document 56], which is still in force. The faith of treaties, in their letter and spirit, has ever been, and, I trust, will ever be, scrupulously observed by the United States. Under that convention a year's notice is required to be given by either party to the other before the joint occupancy shall terminate and before either can rightfully assert or exercise exclusive jurisdiction over any portion of the territory. This notice it would, in my judgment, be proper to give, and I recommend that provision be made by law for giving it accordingly, and terminating in this manner the convention of the 6th of August, 1827.

¹ Now Vancouver Island; named "Quadra and Vancouver" by Captain George Vancouver, who in 1792 first discovered that it was separated from the mainland; the name "Quadra" has of late been bestowed on a small island east of Vancouver Island and separated therefrom by Discovery Passage, in latitude 50° (see Wagner, Spanish Explorations in the Strait of Juan de Fuca, 54-55).

It will become proper for Congress to determine what legislation they can in the meantime adopt without violating this convention. Beyond all question the protection of our laws and our jurisdiction, civil and criminal, ought to be immediately extended over our citizens in Oregon. They have had just cause to complain of our neglect in this particular, and have in consequence been compelled for their own security and protection to establish a provisional government for themselves. Strong in their allegiance and ardent in their attachment to the United States, they have been thus cast upon their own resources. They are anxious that our laws should be extended over them, and I recommend that this be done by Congress with as little delay as possible in the full extent to which the British Parliament have proceeded in regard to British subjects in that Territory by their act of July 2, 1821 [1 and 2 George IV, ch. 66], "for regulating the fur trade and establishing a criminal and civil jurisdiction within certain parts of North America." By this act Great Britain extended her laws and jurisdiction, civil and criminal, over her subjects engaged in the fur trade in that Territory. By it the courts of the Province of Upper Canada were empowered to take cognizance of causes civil and criminal. Justices of the peace and other judicial officers were authorized to be appointed in Oregon with power to execute all process issuing from the courts of that Province, and to "sit and hold courts of record for the trial of criminal offenses and misdemeanors" not made the subject of capital punishment, and also of civil cases where the cause of action shall not "exceed in value the amount or sum of £200."

Subsequent to the date of this act of Parliament a grant [of May 30, 1838, cited above] was made from the "British Crown" to the Hudsons Bay Company of the exclusive trade with the Indian tribes in the Oregon Territory, subject to a reservation that it shall not operate to the exclusion "of the subjects of any foreign states who, under or by force of any convention for the time being between us and such foreign states, respectively, may be entitled to and shall be engaged in the said trade." It is much to be regretted that while under this act British subjects have enjoyed the protection of British laws and British judicial tribunals throughout the whole of Oregon, American citizens in the same Territory have enjoyed no such protection from their Government. At the same time, the result illustrates the character of our people and their institutions. In spite of this neglect they have multiplied, and their number is rapidly increasing in that Territory. They have made no appeal to arms, but have peacefully fortified themselves in their new homes by the adoption of republican institutions for themselves, furnishing another example of the truth that self-government is inherent in the American breast and must prevail. It is due to them that they should be embraced and protected by our laws. It is deemed important that our laws regulating trade and intercourse with the Indian tribes east of the Rocky Mountains should be extended to such tribes as dwell beyond them. The increasing emigration to Oregon and the care and protection which is due from the Government to its citizens in that distant region make it our duty, as it is our interest, to cultivate amicable relations with the Indian tribes of that Territory. For this purpose I recommend that provision be made for establishing an Indian agency and such subagencies as may be deemed necessary beyond the Rocky Mountains.

For the protection of emigrants whilst on their way to Oregon against the attacks of the Indian tribes occupying the country through which they pass; I recommend that a suitable number of stockades and block-house forts be erected along the usual route between our frontier settlements on the Missouri and the Rocky Mountains, and that an adequate force of mounted riflemen be raised to guard and protect them on their journey. The immediate adoption of these recommendations by Congress will not violate the provisions of the existing treaty. It will be doing nothing more for American citizens than British laws have long since done for British subjects in the same territory.

It requires several months to perform the voyage by sea from the Atlantic States to Oregon, and although we have a large number of whale ships in the Pacific, but few of them afford an opportunity of interchanging intelligence without great delay between our settlements in that distant region and the United States. An overland mail is believed to be entirely practicable, and the importance of establishing such a mail at least once a month is submitted to the favorable consideration of Congress.

It is submitted to the wisdom of Congress to determine whether at their present session, and until after the expiration of the year's notice, any other measures may be adopted consistently with the convention of 1827 for the security of our rights and the government and protection of our citizens in Oregon. That it will ultimately be wise and proper to make liberal grants of land to the patriotic pioneers who amidst privations and dangers lead the way through savage tribes inhabiting the vast wilderness intervening between our frontier settlements and Oregon, and who cultivate and are ever ready to defend the soil, I am fully satisfied. To doubt whether they will obtain such grants as soon as the convention between the United States and Great Britain shall have ceased to exist would be to doubt the justice of Congress; but, pending the year's notice, it is worthy of consideration whether a stipulation to this effect may be made consistently with the spirit of that convention.

The recommendations which I have made as to the best manner of securing our rights in Oregon are submitted to Congress with great deference. Should they in their wisdom devise any other mode better calculated to accomplish the same object, it shall meet with my hearty concurrence.

At the end of the year's notice, should Congress think it proper to make provision for giving that notice, we shall have reached a period when the national rights in Oregon must either be abandoned or firmly maintained. That they can not be abandoned without a sacrifice of both national honor and interest is too clear to admit of doubt.

Oregon is a part of the North American continent, to which, it is confidently affirmed, the title of the United States is the best now in existence. For the grounds on which that title rests I refer you to the correspondence of the late and present Secretary of State with the British plenipotentiary during the negotiation. The British proposition of compromise, which would make the Columbia the line south of 49°, with a trifling addition of detached territory to the United States north of that river, and would leave on the British side two-thirds of the whole Oregon Territory, including the free navigation of the Columbia and all the valuable harbors on the Pacific, can never for a moment be entertained by the United States without an abandonment of their just and clear territorial rights, their own self-respect, and the national honor. For the information of Congress, I communicate herewith the correspondence which took place between the two Governments during the late negotiation.

The voluminous papers which accompanied the message (which dealt at length with other questions, including relations with Mexico) are printed with it in Senate Document No. 1, 29th Congress, 1st session, serial 470; the Oregon papers are at pages 138-92 thereof; they comprise two notes of November 1842 and the exchanges at Washington from February 24, 1844, to August 30, 1845; no instructions to McLane at London or despatches from him are included; the American note of August 30, 1845 (withdrawing the offer of the previous July 12), is the latest in date of the papers printed and was at the time the latest written communication which had passed between the two Governments on the Oregon question; but during the three months which had elapsed since the date of that note, the British Government had made known, both to McLane at London and to Buchanan at Washington, its desire to renew the negotiation on the basis of the American offer of July 12, 1845; there was not a hint of this fact, however, either in the papers which accompanied the message or in the message itself; indeed, the message spoke of the British "demands" and the rejection of the American offer as affording "satisfactory evidence that no compromise which the United States ought to accept can be effected", and of "all attempts at compromise" as "having failed".

THE BRITISH ATTITUDE

Lord Aberdeen wrote thus to Sir Robert Peel on October 17, 1845 (Selections from the Correspondence of George, Earl of Aberdeen, 1845, 385-87):

I am perfectly convinced that the question might be easily and satisfactorily settled with Mr. M'Lane in the course of half an hour. But then this has reference only to the merits of the question itself, and not to the circumstances by which it has been attended, and which have created the whole difficulty of the settlement. The interests involved are of no great moment, and it is this which renders the subject so well fitted for arbitration; but I fear that we must consider it improbable that it should ever be settled in any other manner.

If it should ever be possible to effect a settlement between ourselves upon terms, I think the following might perhaps be accepted, and I should be very unwilling to concede more. I would carry the 49th parallel of latitude, as the boundary, *to the sea*, and give to the United States the line of coast to the south of this degree. This would leave us in possession of the whole of Vancouver's Island and the northern shore of the entrance into the Straits of St. John de Fuca.

The navigation of the Columbia, to its most remote accessible point, should be common to both parties at all times; and all the ports between the Columbia and the 49th parallel, whether on the mainland or in the island, should be declared free ports.

I believe that this would give us everything really worth contending for, and it would seem to coincide with the notions of the Hudson's Bay Company, who have lately established their principal settlement on Vancouver's Island.

The bases thus suggested are very similar, it will be seen, to those put forward in the letter of Aberdeen to Peel of September 25, 1844 (cited and quoted in part above).

Another letter of Aberdeen to Pakenham, of December 3, 1845, includes this paragraph (*ibid.*, 507-9):

Notwithstanding the unpromising appearance of the present state of the negotiation, I feel satisfied that we are now nearer a settlement than ever. If we press arbitration, they must either accept it, or give us facilities for reopening the direct negotiation. If they do neither, they will be so manifestly in the wrong that I greatly doubt their receiving the necessary support, even from the most hostile portion of the American public. I expect a strong declaration from the President in his annual message, and even a recommendation to terminate the Treaty. I shall not at all regret this; for as the crisis becomes more imminent, the chance of settlement improves. I imagine the President and his Government are more afraid of the Senate than they are of us, and that much management is required to accomplish what they really desire. Mr. Polk may well doubt his power of obtaining the sanction of two-thirds of the Senate to any Convention which he could conclude with us. But many things may shortly occur to improve the prospect of affairs very considerably. The access of Indian corn to our markets would go far to pacify the warriors of the Western States.

The final sentence of the paragraph just quoted refers to the repeal of the Corn Laws. On this subject, see Merk, "The British Corn Crisis of 1845-46 and the Oregon Treaty", in *Agricultural History*, VIII, 95-123; and Martin, "Cotton and Wheat in Anglo-American Trade and Politics, 1846-1852", in *Journal of Southern History*, I, 293-319. Various "non-American" (including economic) factors in their relation to the Oregon negotiation are discussed in Sioussat, "James Buchanan", in *American Secretaries of State and Their Diplomacy*, V, 258-61, 399-400.

The attitude of the British Government at the time of the presidential message to Congress is thus described by McLane in his account (December 1, 1845) of a conversation "recently" had with Aberdeen (D.S., 56 Despatches, Great Britain, No. 24):

The principal object of Lord Aberdeen, in seeking the interview, appeared to me to be, to point out the embarrassment in which he thought the President's withdrawal of his proposition had placed this Government. It was quite evident, indeed he expressly said, that he was not prepared to accept the President's proposition, but desired only to make it the basis of further negotiation, and modified propositions from his Government, which he would have done notwithstanding the rejection of it by Mr Packenham, if it had not been withdrawn by the direction of the President. He complained of the withdrawal of the proposition as unusual if not unprecedented in Diplomacy, and seemed to consider it impossible in the present posture of the affair, to submit any proposition for a partition of the territory in dispute, unless he could have some assurance of the treatment which any proposition he might submit for that purpose would receive.

Under these circumstances, he could only regard the negotiation as having been terminated by the President; and the door to further attempts at compromise being thus closed, this Government had no alternative, in its desire to preserve the peaceful relations of the two countries, than to propose arbitration, and abide the consequences. Indeed I understood him to say very distinctly that this course would be pursued. It may be considered certain therefore that if he have not been already, Mr Packenham will by the present steamer be instructed to propose an arbitration: and that according to the answer that proposition may receive, the ultimate course upon the part of this Government will be defined.

I think it not improbable that if the offer be declined upon the ground upon which it is understood it was refused by Mr Calhoun, to wit, that a more satisfactory adjustment might be obtained through the medium of negotiation, this Government would then submit a new proposition, and so resume the negotiation; but that if it be refused on such terms as to warrant them in assuming that our Government has determined to insist upon the extreme claim, and to decline both negotiation and arbitration, this Government will treat the offer to arbitrate as its ultimatum, and abide the result. Of course these opinions are founded upon the observations of the Earl of Aberdeen in the conversation to which I have already alluded.

Although I am quite sure that the Earl of Aberdeen has no idea at present of accepting the compromise contained in the President's proposition, it would not surprise me if an arrangement upon that basis should prove acceptable to large and important classes in this country, indeed complained of principally by the Hudson's Bay Company, and those in its interest. That the Ministry would find it difficult, and hazardous to prefer war to such a settlement may well be imagined, although you may assume it to be certain that when war becomes inevitable it will receive the undivided support of the British people.

I believe the Government and People here are quite prepared for the re-assertion in the message of the President's opinions expressed in his inaugural address, and, perhaps, for a recommendation by him to terminate the joint occupation in the manner provided by the existing Treaty. And I also think that unless the recommendation in the message should be such as to discourage further negotiation, and to manifest a determination to insist upon our whole right, they would not lead to any immediate measures upon the part of this Government, or materially add to the embarrassment in which the relations between the two countries appear to be at present involved.

Thus while the British Government did not expect that an offer of arbitration of the Oregon question would be accepted, it was thought that perhaps the wording of the refusal of such an offer might open the door to a resumption of negotiations for compromise.

THE OFFER OF ARBITRATION

The offer of arbitration was duly made. The exchanges are printed in Senate Document No. 117, 29th Congress, 1st session, serial 473; also in House Document No. 105 of that session, serial 483; the notes of Pakenham are in D.S., 23 Notes from the British Legation, and those of Buchanan, in D.S., 7 Notes to the British Legation, 128-34.

Light is thrown upon the attitude of both Governments at this time by the full memorandum (in the handwriting of Buchanan) of the conversation which was had by the two Plenipotentiaries upon the presentation of the British offer of arbitration. Particularly is to be noted the renewed request that the negotiations might be resumed on the basis of the American offer of the previous July 12 (the text of the memorandum here is from Moore, Works of James Buchanan, VI, 350-53):

On Saturday afternoon, 27th of December, 1845, Mr. Pakenham called at the Department of State. After some brief preliminary conversation on other topics, he informed me that he had received instructions from his government relative to the Oregon question; without at the time informing me what they were. He then proceeded to express his desire that I should recall the withdrawal of our offer to settle the Oregon question by the 49th parallel of latitude, and suffer the negotiation to proceed on that basis, expressing the belief that it might then result in a satisfactory manner. I informed him that he had made one proposition to Mr. Calhoun, which had been rejected; that I had made a proposition which had been rejected by him and then withdrawn; that the whole negotiation had been submitted to Congress with the President's message; and after all this, it was too late to expect that the President would now retrace his steps. That what had been done must be considered as done.

He then said that if he were now to make a new proposition, he had no means of knowing whether it would be accepted: if he made a proposition it might be rejected.

I replied that the whole field was open to him, as it had been in the beginning; that it was as free to him as it had been to him at first, or was to me afterwards, to make any proposition he thought proper; that all I could say was that any proposition he might make would be respectfully considered by the President; but I said no more.

He then observed that as I was not willing to go further (as I understood him), he would, under his instructions, present me the offer of the British government to arbitrate the question. He said it was drawn up chiefly in the very language of Lord Aberdeen.

I then received the communication from him and read it over carefully. As soon as I had completed its perusal, he urged its acceptance strongly; expressed his great desire for the preservation of peace between the two countries, and said that it was impossible that war should grow out of such a question between two great nations. He said he was not worth much in the world; but would give half what he was worth to see the question honorably and amicably adjusted between the two nations.

I stated the strong desire, both on the part of the President and myself, that the question might be amicably and honorably adjusted. That we had every disposition that this result might be attained. I observed, however, that if ever this was accomplished, I thought it must be by negotiation, and not by arbitration; and especially such an arbitration as he proposed. That both the President and myself were firmly convinced of the validity of our title up to 54°40'; and yet his proposition to arbitrate assumed the right to a portion of the territory on the part of Great Britain, and left it to the arbitrator alone to decide in what manner the territory should be divided between the parties. That this

alone, I thought, would be a sufficient reason for the rejection of his proposition, even if others did not exist, of which he must be aware from our previous conversations on the subject; but I would consult the President, and give him an answer with as little delay as possible. He intimated rather than expressed a wish that his answer might be communicated to him in time for the packet (Monday). I told him that a proper respect for the British government required that the answer should be well considered; that the cabinet would not meet again before Tuesday, and I could not encourage him to expect the answer before Saturday next. He said he had no doubt my answer would be well considered. He hoped that in it I would not assert a claim to the whole territory, and Saturday next would be in time.

He then branched off, and said that the proposition was to refer the question to a state as well as a sovereign; he said that this had been done on purpose to get clear of the objection to crowned heads. I asked him to whom he thought it might be referred if not to a sovereign. He suggested the Republic of Switzerland, or the government of Hamburg or Bremen. I told him that whilst my own inclinations were strongly against arbitration; if I were compelled to select an arbitrator, it would be the Pope. That both nations were heretics, and the Pope would be impartial. This he appeared at first to take seriously,—he said the Pope was a temporal sovereign; but I thought he was disinclined to select him as an arbitrator. He perceived, however, that I was not in earnest, and suggested that the reference might be made to commissioners from both countries. I told him I thought it was vain to think of arbitration; because, even if the President were agreed to it, which I felt pretty certain he was not, no such treaty could pass the Senate. That the pursuit of arbitration would only involve the question in new difficulties. He then suggested the mediation of a third power in the adjustment of the question. I told him that was an idea which he had never suggested before, and on which I could say nothing. He observed that this, together with his suggestion of commissioners, came from himself and had not been embraced in his instructions. He said that a mediator who would interfere might share the fate of the man who interfered between two other men who were fighting, when both fell upon him and gave him a sound drubbing.

He remarked that the affair might remain just where it was, and the British government would not disturb it. He did not entertain serious apprehensions of war.

He then told me that he had met Judge [Stephen Arnold] Douglas at Mr. Cox's party the other evening, and had a good deal of conversation with him about his bill ["to protect the rights of American settlers in the Territory of Oregon, until the termination of the joint occupancy of the same" (see Congressional Globe, XV, 85, December 19, 1845)].

He objected to a promise of a grant of lands to actual settlers in Oregon, and to the erection of forts by the Government within it, as violations of the treaty. I told him I had formed no decided opinion as to the promise of grants of land; but as to the forts, it was very clear, in my opinion, that we had a right to erect them. We did not purpose to erect fortifications capable of enduring a siege in civilized warfare; but merely stockade forts to protect our emigrants from the savages. That the Hudson's Bay Company had erected many such forts, and we surely had the right under the treaty to do what they had done. He observed that the settlers might do this themselves as the Company had done. I replied that they were too poor; that this Company had the entire government in its hands; and surely we might do what they had done. I observed that this was ever the way with Great Britain, she was always fettered by monopolies; and if it were not for the Company they would at once give us our rights to the whole country up to 54°40'. He said that the Hudson's Bay Company had rights in Oregon which must be protected; but I understood him to admit that they did interpose an obstacle in the way of the settlement of the question. He said the British government would be glad to get clear of the question on almost any terms; that they did not care if the arbitrator should award the whole territory to us. They would yield it without a murmur. I said I had no doubt of this. They never played the part of the fox; but always of the lion. They would preserve their faith inviolate. He said they wished for peace; but intimated that this was not

our wish. I asked him why we should desire war. Would not their superiority at sea give them command of the coasts of Oregon. Yes, he said, that was true, but the war would not be confined to that region. That he would willingly make a bargain to fight it out with us there, if we would agree to that.

The note of Pakenham of December 27, 1845, offering arbitration, which was presented to Buchanan during the conversation recorded in the foregoing memorandum, was not only couched in very friendly terms, but used language which hinted at the hope of a reopened door to negotiation; but the answer of Buchanan, under date of January 3, 1846, referred to the assertion in Buchanan's note of the preceding August 30 (cited and quoted in part above) of the title of the United States to the whole of the Oregon country and rejected the proposal of arbitration without opening the way to further negotiation. The texts of the two notes follow:

[*Mr. Pakenham to Mr. Buchanan*]

WASHINGTON 27 December 1845.

An attentive consideration of the present State of Affairs with reference to the Oregon Question has determined the British Government to instruct the Undersigned, Her Britannick Majesty's Envoy Extraordinary and Minister Plenipotentiary again to represent in pressing terms to the Government of the United States, the expediency of referring the whole Question of an equitable division of that Territory, to the arbitration of some Friendly Sovereign or State.

Her Majesty's Government deeply regret the failure of all their efforts to effect a friendly settlement of the Conflicting claims by direct Negotiation between the two Governments.

They are still persuaded that great advantages would have resulted to both Parties from such a mode of settlement, had it been practicable, but there are difficulties now in the way in that course of proceeding which it might be tedious to remove, while the importance of an early settlement seems to become at each moment more urgent.

Under these circumstances Her Majesty's Government think that a resort to arbitration is the most prudent and perhaps the only feasible step which could be taken, and the best calculated to allay the existing effervescence of popular feeling, which might otherwise greatly embarrass the efforts of both Governments to preserve a friendly understanding between the two Countries.

The Government of the United States will see in the proposal which the Undersigned is thus instructed to make, a proof of the confidence of the British Government in the Justice of their own claim. They will also see in it a proof of the readiness of the British Government to incur the risk of a great sacrifice for the preservation of peace and of their friendly Relations with the United States. It is made in a spirit of moderation and firmness of which the world will Judge.

The British Government Confidently hope that the Government of the United States will not reject a proposal made with such a friendly intention, and for a purpose so holy.

There is nothing in it they are convinced not perfectly compatible with the strictest regard for the honor and just interests of both Parties, particularly when it is considered of what small value to either is the portion of Territory which, in reality, forms the subject of Controversy, compared with the importance of preserving a state of peace and goodwill between two such nations.

The Undersigned takes advantage of this opportunity to renew to the Hon. James Buchanan the assurance of His high consideration.

R PAKENHAM

The Hon^{ble} JAMES BUCHANAN
&c &c &c

[Mr. Buchanan to Mr. Pakenham]

DEPARTMENT OF STATE,
Washington, 3^d Jan^y, 1848.Right Hon^{ble} RICHARD PAKENHAM,
&c, &c, &c

The Undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. Pakenham, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, dated the 27th ultimo, by which, under instructions from his Government, he proposes to the Government of the United States "the expediency of referring the whole question of an equitable division of that (the Oregon) territory to the arbitration of some friendly Sovereign or State."

The Undersigned has submitted this note to the President, who, after having bestowed upon it that respectful consideration so eminently due to any proposition emanating from the British Government, has instructed him to give to it the following answer:

The British Government do not propose to refer to arbitration the question of the title to the Oregon territory, claimed by the two Powers, respectively. It is a proposition to refer to a friendly Sovereign or State, merely the partition or "equitable division" of that territory between the parties. It assumes the fact that the title of Great Britain to a portion of the territory is valid, and thus takes for granted the very question in dispute. Under this proposition, the very terms of the submission would contain an express acknowledgment of the right of Great Britain to a portion of the territory, and would necessarily preclude the United States from claiming the whole before the arbitrator. This, too, in the face of the note of the Undersigned to Mr. Pakenham of the 30th August last, by which the President had asserted, in the most solemn form, the title of the United States to the whole territory. Even if there were not other conclusive reasons for declining the proposition, this alone would be deemed sufficient by the President.

The President heartily concurs with the British Government in their regret that all attempts to settle the Oregon question by negotiation have hitherto failed. He cannot, however, concur with that Government in the opinion that a resort to arbitration, and especially to an arbitration on the terms proposed, would be followed by happier consequences. On the contrary, he believes that any attempt to refer this question to a third Power, would only involve it in new difficulties.

In declining this proposition, the President refers to the sentiment expressed in the note of the Undersigned of the 30th August last, to which allusion has already been made, that he "cherishes the hope that this long-pending controversy may yet be finally adjusted in such a manner as not to disturb the peace, or interrupt the harmony now so happily subsisting between the two nations."

The Undersigned avails himself of this occasion to renew to Mr Pakenham assurances of his distinguished consideration.

JAMES BUCHANAN.

After writing on January 6 that he would send the note of January 3 to his Government, Pakenham put forward on January 16 his suggestion of a reference to "some friendly Sovereign or State" (or perhaps to a mixed commission or a board of civilians and jurists) of "the question of Title in either of the two Powers to the whole Territory; subject of course to the condition that if neither should be found in the opinion of the Arbitrator, to possess a complete Title to the whole Territory, there should, in that case, be assigned to each that portion of Territory which would in the opinion of the arbitrating Power, be called for by a just appreciation of the respective claims of each"; but this proposal was also rejected by a note of February 4; and Polk required the omission from that note of certain

rather conciliatory paragraphs of Buchanan's draft (Polk's Diary, I, 208-9, February 4, 1846).

In the meantime McLane had been informed by an instruction of December 13, 1845 (D.S., 15 Instructions, Great Britain; 283-85; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 36), of the decision of Polk to submit to the Senate any new proposal of settlement which he thought of a character "such as to justify" it; that portion of the instruction was worded by Polk, contrary to the views of Buchanan, whose draft was specific both as to boundary and as to the Columbia River (Polk's Diary, I, 122-23, December 13, 1845), and who also wished to communicate to the British Government the decision mentioned (see *ibid.*, 119-20).

In the same instruction McLane was directed to discuss with Aberdeen the reported "warlike preparations" of Great Britain; and that portion of the instruction, with an extract from the despatch of McLane of January 3, 1846, containing only so much of his report of his conversation with Aberdeen of the previous December 30 as dealt with that subject, is printed in Senate Document No. 117, 29th Congress, 1st session, serial 473, pp. 2-4, and in House Document No. 105, same session, serial 483, pp. 2-4. From the despatch of McLane mentioned, the following, which is not printed in the Senate and House documents cited, is excerpted (D.S., 56 Despatches, Great Britain, No. 30):

Lord Aberdeen took the occasion at this interview to advert to the Message of the President and to the present posture of our relations. He repeated the sincere disposition of this Government, which I do not doubt is entertained, to maintain peace by means of an equitable compromise of the claims of the two Governments; and, although after the date of your two last despatches, I was in no situation to say what might have been calculated to draw from him with greater explicitness what he thought the compromise ought to be, I still think that some arrangement by which the rights of the Hudson's Bay Company might be continued for a series of years, as stated in my private letter to the President of the 4th of August last [cited and quoted in part above], would probably give sufficient novelty to the negotiation to enable this Government more readily to avoid what they deem the point of honor, and abate something of their former demands. This however, depends too much upon conjecture, to authorize me to hazard the opinion with greater certainty.

Lord Aberdeen also stated that Mr Pakenham had been specially instructed in the present state of the affair, to submit an offer of arbitration; and said that whether this Government would make any further effort at negotiation, in case this offer should be refused, would depend upon the manner and terms in which it should be declined; and he reaffirmed generally, the views upon this head, which I communicated in my Despatch Number 24, dated the 1st of December. He added that if the offer of arbitration should be rejected in terms calculated to forbid a renewal of the negotiation (and I here felt it my duty uniformly to discourage any expectation that an offer of arbitration could be accepted) it would be difficult to prevent a very general impression with the Government and People of this country that the United States were determined to produce hostilities.

He did not appear to think that the Message had increased the difficulties of the case; indeed I had ventured to prepare him for quite as strong a paper; and he admitted that the recommendations of the President were not inconsistent with a continuance of pacific relations. He is also prepared, I am quite sure, for the carrying out by Congress of the recommendations of the Message, and will not consider that as adding to the present embarrassments. He seemed

rather disposed to regard such measures, not only as consistent with our rights under the Treaty, but as reducing the subject to a more definite form, and expressed a confident hope that during the year which would be allowed for the termination of the joint occupancy, some means would be found, if both nations were sincerely desirous of peace, of avoiding ultimate difficulty.

TERMS DISCUSSED AT BOTH CAPITALS

Discussion of the terms of a possible British proposal, which, if made, would be deemed proper to submit to the Senate, continued between Polk and Buchanan (Polk's Diary, I, 135, December 23, 1845), and, even more important, perhaps, was had with Senators, including William Allen,¹ of Ohio, Chairman of the Senate Committee on Foreign Relations (*ibid.*, 139-41, December 24); the policy, as agreed on in Cabinet, was to refer to the Senate an offer of "the 49° or a proposition equivalent to it" (*ibid.*, 147, December 27); John C. Calhoun, Senator from South Carolina, former Secretary of State, and a leading figure in the Democratic Party, favored compromise² and supported the British title to the valley of the Fraser River (*ibid.*, 161-62, January 10, 1846); possibilities of a crisis in relations with Mexico led to orders to the Navy (*ibid.*, 171, January 17); and the news of the fall of the ministry of Sir Robert Peel,³ received on January 19 (*ibid.*, 180-81), not unnaturally gave rise to doubts whether a favorable opportunity for conventional settlement of the Oregon question had not passed.

Polk appears to have believed at this time that no agreement to divide the Oregon country was likely; he imagined a new and different basis of settlement, which was put forward in Cabinet on January 24, 1846, and elaborated in a letter to McLane four days later, who was authorized in his discretion to "sound" Lord Aberdeen as to its practicability (Library of Congress, Letter Book of James K. Polk, 1845-46, 286-99); McLane wrote "unofficially" to Buchanan on March 17, 1846 (Historical Society of Pennsylvania, Buchanan Papers), that "it would be altogether inexpedient to advert to any idea of connecting our commercial regulations with the Oregon question"; the record of the statement of Polk to the Cabinet is as follows (Polk's Diary, I, 191-92):

I brought the present state of the Oregon question again before the Cabinet. I suggested for consideration, the possibility of some new basis of adjustment. I stated that there was no probability that any division of the territory could be agreed upon, or would be acceded to by the people of the U.S., & that we had rejected the offer of arbitration which had been recently made by the British Minister. I then suggested as a possible basis of adjustment a Treaty of commerce by which each country should stipulate to relax their restrictive systems;

¹ Allen was opposed to any compromise and resigned from the Committee on Foreign Relations on June 15, 1846, in protest; see Polk's Diary, I, 471-72, and Congressional Globe, XV, 972.

² For the views of Calhoun, see his speech of March 16, 1846, in Congressional Globe, XV, 502-6, and more fully in Works of John C. Calhoun, IV, 258-90.

³ Sir Robert Peel resigned on December 9, 1845; but as Lord John Russell did not then succeed in forming a government, Peel and his Cabinet resumed office and remained in power for some six months longer.

by which British duties on American Breadstuffs, rice, cotton, tobacco, & other articles exported to Great Britain should be reduced to a moderate revenue standard; and that like reductions should be made by the U.S. on British manufactures imported into the U.S. I stated the reduction of our tariff would be a great object with Great Britain, and that to attain it that Government might be willing to surrender her claim to the whole Oregon territory, on receiving a round sum to enable her to indemnify her Hudson's Bay Company for the valuable improvements which they had made in Oregon. I stated that I did not know this was feasible, but it would relieve Great Britain of the point of Honor in the controversy, and that possibly she might accede to it, because she esteemed her commerce with the U.S. as of infinitely more value than she did the Oregon territory. Of course if such an adjustment could be made, it must first receive ratification of the Senate, and then the approval of Congress, who must pass a law revising our tariff of duties accordingly, and making the necessary appropriations to carry it into effect. I stated that I had [not] matured or fully considered the subject, but merely suggested it for deliberation between this time and the next meeting of the Cabinet.

The views of Buchanan now, in some degree, prevailed; the instruction to McLane of January 29, 1846 (D.S., 15 Instructions, Great Britain, 296-99; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 37-39), intimated a desire for a fresh proposal from the British Government, stated that the President would submit such a proposal to the Senate if he decided it to "be of a character to justify" that course, and authorized McLane, at his discretion, to inform Aberdeen in the sense of the instruction; all this did not amount either to a renewal of the negotiations or to a transfer of them, if renewed, to London; but it was ample authority for conversations tending to arrange for and even to formulate subsequent negotiations; the only statement in Polk's Diary (I, 197, January 27, 1846) regarding that important instruction is this: "Our relations with Mexico & Great Britain were subjects of conversation. Mr. Buchanan read a despatch which he had prepared to Mr. Slidell in Mexico. The character of a despatch to Mr. McLane at London was agreed on."

After a review of the reasons for the rejection of any proposal for arbitration of the Oregon question, that instruction concluded with these paragraphs:

Upon the whole, the pursuit of arbitration by the British Government can produce no other effect than to involve the question in new difficulties, and, perhaps, by the delay, render an amicable adjustment of it impossible. The fact is not to be disguised that the feeling of the country is becoming daily more unanimous and intense in favor of asserting our right to the whole territory; and the debates in Congress and their delay to act in accordance with the recommendations of the President, only serve to increase the popular excitement. Resolutions of State Conventions and State Legislatures are now in succession being adopted in favor of adhering to the line of 54°40'. If the British Government intend to make a proposition to this Government, they have not an hour to lose, if they desire a peaceful termination of the controversy.

Notwithstanding all you may have seen in the public papers, the notice [joint resolution authorizing abrogation of the convention of 1827], unless I am greatly mistaken, will pass Congress, in some form or other, by large majorities of both Houses, as well as the other measures recommended by the President.

There is one fact which, in your discretion, might cautiously and informally be made known to the British Government. The President will never abandon the position he has taken in his message. Clearly convinced of the right of the

United States to the whole territory in dispute, and relieved by the refusal of the British Government to accept his offer of compromise, from the embarrassment in which the acts of his predecessors had placed him, he would not now authorize the conclusion of a treaty on that basis. But the Senate, his constitutional advisers, are now in session. The question of peace or war may be involved in the issue. They are a branch of the war-making, as well as of the treaty-making power. In deference to the Senate, under these circumstances, he would, in the first instance, feel it to be his duty to submit such a proposition for their previous advice. It is manifest, therefore, that the British Government should at once present their ultimatum. If Mr. Pakenham should offer less, in the hope that, having thus recommenced the negotiation, he might, in its progress, induce me to say what the President would consent to accept, he must be disappointed. The President will accept nothing less than the whole territory, unless the Senate should otherwise determine. The only question which he will decide is, whether the new proposition, should any such be made, be of a character to justify its submission to the Senate for their previous advice.

I repeat that, under all the circumstances by which you may be surrounded, it is left to your sound discretion whether any such communication or intimation shall be made to Lord Aberdeen.

On the same date as that of the instruction last quoted (January 29, 1846), a significant conversation took place between McLane and Aberdeen; the interview was asked by the latter; the particular circumstance which afforded a reason for the invitation was the receipt in London of the text of Buchanan's note to Pakenham of January 3, 1846, declining the first proposal of the latter for arbitration; the Queen's speech had been delivered to Parliament a week earlier (January 22), and the debate in the Commons had indicated that "the rejection of the proposition [of July 12, 1845] by Mr Pakenham, without sending it to his Government, at least as the basis of negotiation is strongly disapproved by both parties" (D.S., 56 Despatches, Great Britain, No. 34, February 3, 1846; see Hansard, 3d series, LXXXIII, 152-54, January 23, 1846); in the despatch cited McLane gives an account of his conversation with Aberdeen, including its very frank disclosure of the extent of the British naval preparations; and he then, in language guarded but explicit, states the outline of "an adjustment" which he had "a strong conviction" was "entirely practicable"; that he was stating reasoned and well-grounded conclusions regarding the view of the British Government is obvious; relevant paragraphs of the despatch follow:

In consequence of the invitation contained in the accompanying note of the 28th January, I had an interview with the Earl of Aberdeen the day following. His object was to acquaint me, that by the Packet ship which left New York on the 8th of January, he had received a Despatch from Mr Pakenham, transmitting the answer, which by the direction of the President, the Secretary of State had given to the proposal for submission to arbitration of the Oregon question; and to explain the impression which that answer, and the recent proceedings, and debates in the House of Representatives had produced upon his mind.

He stated that the answer of the Secretary had added to the embarrassments previously existing; and, although I am yet convinced that he could have entertained little, if any hope that the proposal would have been accepted, he complained of the terms and manner in which it had been declined. He insisted that, by the terms of Mr Pakenham's proposition, a reference to arbitration would necessarily have involved a consideration of the title, and said, that the principal ground on which it had been rejected was of too technical a character, and not just to the spirit of peace, and the anxious desire to make an occasion for re-open-

ing the negotiation, in which he had directed it to be made. He apprehended that, from the nature of the answer, and the character of the recent debate in the House of Representatives, it would be difficult to prevent the conclusion that the President had determined to discourage any new proposition on the basis of compromise, and to concede nothing of the extreme demand; and he appeared not a little embarrassed to know what course it would be proper for this Government, in the present posture of the affair to pursue. He remarked further that, although he would not abandon the desire or the hope that an amicable adjustment might yet be effected, and peace preserved, he should nevertheless feel it his duty to withdraw the opposition he had hitherto uniformly made to the adoption of measures, founded upon the contingency of war with the United States, and to offer no obstacle in future to preparations which might be deemed necessary, not only for the defence and protection of the Canadas, but for offensive operations. In the course of the conversation, I understood that these would consist, independent of military armaments, of the immediate equipment of thirty sail of the line, besides steamers and other vessels of war; and this information Lord Aberdeen appeared to think, he was called upon to communicate, in consequence of assurances he had given me in a former interview, and contained in my Despatch of the 3rd of January.

Although I was not insensible of the delicacy of my position, in the present state of our relations, I felt it a duty to express my dissent from the view entertained by Lord Aberdeen of your answer to Mr Pakenham. The only question proposed by Mr Pakenham to be referred was an equitable division of the Oregon territory, and if in making a division, the arbitrator was not prohibited from considering the 'title' he would be under no obligation to do so; and that although he should be entirely satisfied that the title of the United States to the whole was indisputable, he would be compelled, nevertheless, to divide the territory between the two nations. I also reminded him of the assurance I had more than once given him that in my opinion the President could not consent to an arbitration; and that if under any circumstances that mode of settlement could be admissible, it could only be the question of title exclusively, and not of division.

Nor could I admit that in the other paragraphs in your letter, there was anything to discourage a renewal of the negotiation, or the making of a new proposal by this Government. It appeared to me, on the contrary, that the insertion of them, would have been unnecessary, unless as a proof of the President's disposition, while he was constrained to decline the offer of arbitration, not to close the door to a proposition of a different character, if this Government should think proper to make it.

Although it was quite obvious to me, in the course of the conversation, that if the proposal to refer had been declined upon terms which, in the opinion of Lord Aberdeen, had not discouraged a further attempt to renew the negotiation; he would, as I have heretofore anticipated, have promptly submitted another proposition, it was equally apparent that, in the present posture of the affair, he is not prepared to do so, at least immediately. Indeed, he did not conceal his impression that, he regarded his path as beset with difficulties, of too grave a character to be suddenly surmounted, and it is quite certain, I think, that nothing further will be attempted, until after the arrival of the Boston steamer of the 1st Instant.

Notwithstanding these difficulties, I still entertain the opinion that it would be in my power, without any improper commitment of the President to lead to a renewal of the negotiation by this Government, and to the submission, unless another mode would be more desirable, through its Minister at Washington, of a proposition adopting that directed by the President, on the 12th of July last, with some modifications not inconsistent, according to the sense I entertain of it, with our national honor. Of this I should feel quite certain, if I could officially know that the proposition would probably be acceptable at Washington; and I should attempt it informally, and upon my individual responsibility, with scarcely less confidence of success, if, while acting in that way, I could encourage a like result.

It is due, however, to my own position, and to those with whom I am brought into intercourse upon this subject to state, that the opinions I have thus expressed,

are not founded upon any direct communication from those in official station; but are rather the result of a series of facts and inferences, entitled, however, in my judgment at least, to not less weight.

After these observations, I owe it, more particularly to myself, to state that, believing from the history of our previous negotiations, as to the Oregon question, that it may now be settled upon the basis of compromise, and with reference to interests which have grown up during the joint occupation of the territory, without a violation of any duty which a public man owes to the rights and honor of his country, I would not be unwilling, taking the President's proposition of the 12th July as a basis, to urge a final adjustment of the question according to that proposition, but conceding to the Hudson's Bay Company a continuance of the privileges of joint occupation, including the navigation of the Columbia, for a period of seven or ten years longer; and I hope I may be allowed to add that, I would be willing to assume the responsibility of assenting to an adjustment by extending the boundary to the Pacific by the 49th parallel, and the strait of Fuca with free ports to both nations; or by extending the free navigation of the Columbia river for a longer period, provided similar advantages upon the St Lawrence could thereby be secured to the United States.

I believe that upon one of these grounds, perhaps upon either, an adjustment may be concluded, and I have a strong conviction, that the mode first indicated is entirely practicable.

I am, however, constrained at the same time to state, from all that has come to my knowledge here, that I have no reason to believe that more favorable terms, than those I have above adverted to, would under any circumstances be consented to by this Government.

The answer, of February 26, 1846, to the foregoing despatch was drafted by Buchanan and, in general, embodied his views (Polk's Diary, I, 244-46, 253, February 24 and 25, 1846); opening with a statement of the reasons for rejecting any arbitration of the Oregon question (some of which had been omitted, by direction of Polk, from the note of February 4 to Pakenham; see *ibid.*, 208-9), which McLane was authorized to "use as occasion may require", the instruction treated at some length as "three propositions" the terms outlined in the despatch of McLane of the previous February 3; two of these were approved (i.e., approved for submission to the Senate), namely (taking the parallel of 49° north latitude as the mainland boundary), the concession to the Hudson's Bay Company of privileges, including navigation of the Columbia River, for a period of years, and the yielding to Great Britain of the southern "cap" of Vancouver Island (but without "free ports to both nations"); but the alternative suggestion of McLane regarding the Columbia, an extension of navigation rights on that river for similar rights on the St. Lawrence, was rejected. Polk was now ready to submit to the Senate any proposal of the British Government which he thought not "wholly inconsistent with the rights and honor of the country"; it was admitted that the Senate debates (on the joint resolution for the abrogation of the convention of August 6, 1827, Document 56) showed the sentiment of that body to be in favor of settlement on the basis of 49° north latitude; the views in favor of compromise entertained by various Democratic Senators and "by the Whig party¹ generally" were being urged on Polk at this

¹ Of the 56 Senators, 25 were Whigs and 31 were of Polk's party; but there were factions in the Democratic majority.

time (see Polk's Diary, I, 246-56, February 24-27); and Polk was well aware that senatorial opinions, even beyond those expressed in debate, were known to the British Government. Relevant paragraphs of the instruction of February 26, 1846, follow (D.S., 15 Instructions, Great Britain, 299-308; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 40-44):

As a friend of peace with Great Britain, the President regrets that Lord Aberdeen should have determined to withdraw his opposition to the preparation of armaments, "founded upon the contingency of war with the United States." Should a fleet of "thirty sail of the line, besides steamers and other vessels of war," be equipped and appear on our coasts, such a demonstration,¹ as you well know, would set this country in a blaze. So far from intimidating the American People, the idea that it was intended to operate upon their fears, would arouse the national indignation to such a degree as to render any compromise of the question altogether hopeless. If Lord Aberdeen be, as I do not doubt he is, sincerely the friend of peace, he will reconsider his determination.

You strongly express the opinion, notwithstanding the existing difficulties, "that it would be in my [your] power, without any improper commitment of the President, to lead to a renewal of the negotiation by this [the British] Government, and to the submission, unless another mode would be more desirable, through its Minister at Washington, of a proposition adopting that directed by the President on the 12th July last, with some modifications not inconsistent, according to the sense I [you] entertain of it, with our national honor. Of this I [you] should feel quite certain if I [you] could officially know that the proposition would probably be acceptable at Washington."

The concluding paragraph of my despatch to you, of the 29th ultimo (N^o 22) which you will have received shortly after making this suggestion, is perhaps sufficient to indicate the course which the President would pursue, in case such an offer should be made through the British Minister at Washington.

The President, since the date of his message, has seen no cause to change his opinion, either in regard to our title to Oregon or to the manner in which it ought to be asserted. But the Federal Constitution has made the Senate, to a certain extent, a coördinate branch of the treaty-making power. Without their advice and consent, no treaty can be concluded. This power could not be entrusted to wiser or better hands. Besides, in their legislative character, they constitute a portion of the war-making, as in their Executive capacity they compose a part of the treaty making power. They are the representatives of the sovereign States of this Union, and are regarded as the best index of the opinion of their constituents. A rejection of the British ultimatum might probably lead to war, and as a branch of the legislative power, it would be incumbent upon them to authorize the necessary preparations to render this war successful. Under these considerations, the President, in deference to the Senate, and to the true theory of the constitutional responsibilities of the different branches of the Government, will forego his own opinions so far as to submit to that body any proposition which may be made by the British Government, not, in his judgment, wholly inconsistent with the rights and honor of the country. Neither is the fact to be disguised, that, from the speeches and proceedings in the Senate, it is probable that a proposition to adjust the Oregon question on the parallel of 49° would receive their favorable consideration.

But it is necessary to be more explicit.

In your despatch you have presented three propositions, either of which you believe the British Government would be willing to make, for the adjustment of the controversy: and you express "a strong conviction that the mode first indicated is entirely practicable." The first would offer an adjustment of the question on the basis of the President's proposition of the 12th July last; "but

¹ No such "demonstration" had even been hinted at by McLane in his despatch No. 34, of February 3, 1846, cited above, to which this instruction here refers; McLane answered that he was "not a little surprised at the interpretation you have given" (see D.S., 56 Despatches, Great Britain, No. 36, March 17, 1846).

conceding to the Hudson's Bay Company a continuance of the privileges of joint occupation, including the navigation of the Columbia for a period of seven or ten years longer." The proposition made by the President to which you refer was, "that the Oregon territory shall be divided between the two countries by the forty-ninth parallel of north latitude, from the Rocky Mountains to the Pacific Ocean; offering at the same time to make free to Great Britain any port or ports on Vancouver's Island, south of this parallel, which the British Government may desire."

The President would feel no hesitation in presenting to the Senate, for their previous "advice and consent," this proposition, modified according to your suggestion.

It is necessary, however, that there should be a clear understanding of what is meant by "a continuance of the privileges of joint occupation." If this be understood as securing to the Hudson's Bay Company, during that limited period, no more than the privilege of enjoying all their existing establishments, together with that of hunting, fishing, and trading with the Indians, and using the harbors and rivers south of the parallel of 49°, this would not prevent the President from submitting such a proposition to the Senate. Of course similar privileges would be extended to American citizens north of 49°, if there be any such north of that parallel, which is doubtful. But no concession could be made to this company which would, in the mean time, deprive the United States of the power to establish a territorial Government over the whole country south of 49°, and to make grants of land south of this parallel. The President cannot, however, anticipate any possible change of circumstances which would induce him to submit such a proposition, if it should contain a surrender to Great Britain of the perpetual right to navigate the Columbia. A grant of the free navigation of the St. Lawrence to the United States would be no equivalent for such a concession. Indeed this has become comparatively valueless, in consequence of the construction of the railroads and canals leading to the harbors of New York and Boston, which have rendered these the great channels of import and export for the region within the United States watered by the St. Lawrence and its tributaries.

The President is desirous so to adjust the Oregon question as not to leave open any source from which might proceed new difficulties and new dangers, again to threaten the peace of the two countries. If the free navigation of the Columbia were granted to Great Britain, this would become a perpetual cause of strife and collision between the citizens and subjects of the two countries. It would be almost impossible, by any vigilance which could be exerted, to execute their respective revenue laws and prevent smuggling on either side of the river. Besides, there are several portages around the falls and rapids of this river and its branches, the use of which would be necessary to the enjoyment of its free navigation. This would introduce the subjects of Great Britain, with their merchandise, into the heart of the country, and thus greatly increase the mischief beyond what it would be if they were confined to the channel of the river. To estimate the evils which would attend such a concession, we have but to imagine what would have been the consequences had the British Government succeeded in securing for its subjects the free navigation of the Mississippi from its source to its outlet in the Gulf of Mexico.

The President would also consent, though with reluctance, to submit to the Senate the second proposition suggested by you, dividing the territory in dispute between the two countries, "by extending the boundary to the Pacific by the forty-ninth parallel and the Strait of Fuca"; but without the superadded words "with free ports to both nations." These words are indefinite, and he cannot infer from them the extent of your meaning. In case the first proposition to which you refer should be made by the British Government, the President would not object to the terms of his offer of the 12th July last "to make free to Great Britain any port or ports on Vancouver's Island south of this parallel, which the British Government may desire." If the cap of this island should, however, be surrendered to Great Britain, as would be the case under the second proposition, then he would consider the question in regard to free ports as terminated. I need not enlarge to you upon the inconvenience, not to say impossibility, under our system of Government, after one or more States shall have been established

in Oregon, (an event not far distant,) of making any of their ports free to Great Britain or any other nation. Besides, our system of drawbacks secures to other nations the material advantages of free ports without their inconveniencies.

There is one point which it is necessary to guard, whether the first or the second proposition should be submitted by the British Government. The Strait of Fuca is an arm of the sea, and under the public law all nations would possess the same right to navigate it, throughout its whole extent, as they now have to the navigation of the British Channel. Still, to prevent future difficulties, this ought to be clearly and distinctly understood. It is rendered the more necessary when we recollect that the Russian Government, not many years ago, asserted a claim to the exclusive navigation of the Northern Pacific Ocean, between its Asiatic and American territories, on the principle that it was "a close sea"!

From what I have said, you will perceive that the third proposition to which you refer would not meet the approbation of the President, even to the extent of submitting it to the Senate.

Thus, I have presented a frank and unreserved exposition of the views of the President on this important subject. To what extent you should communicate them to Lord Aberdeen is left entirely to your own discretion. The President relies with implicit confidence on your sound judgment, prudence, and patriotism.

A private letter of Buchanan to McLane of February 26, 1846, the same date as the foregoing instruction, includes these paragraphs (Moore, Works of James Buchanan, VI, 385):

By my Despatch you will be made distinctly acquainted with the ground which the President has determined to maintain on the Oregon question; and I do not perceive, after what has passed, how he could do more than submit a British proposition based on the parallel of 49 to the Senate. From all I can learn, there is not the least doubt but that either of the two propositions specified in my Despatch would receive the previous sanction of a constitutional majority of that Body. I say the *previous sanction*, for reasons which I have not the time to give you.

All that I apprehend is that the B.G. in their offer may insist on the perpetual free navigation of the Columbia. This would indeed be truly embarrassing; and all your diplomacy should be exerted to prevent it. The President would not present such a proposition to the Senate, unless he should greatly change his mind; and if he should, I do not believe that two thirds of that Body would give it their sanction.

In his despatch of March 3, 1846 (D.S., 56 Despatches, Great Britain, No. 35), written after the receipt of the instructions of January 29, but of course without knowledge of those of February 26, McLane, on the basis of his conversation with Lord Aberdeen of February 25, thus reported even more fully and specifically the terms of a possible agreement:

Nevertheless, deeming it of importance that I should, with the least possible delay, communicate any information in my power concerning the subject of your Despatch [instruction of January 29, 1846], I sought and obtained an interview with Lord Aberdeen on the 25th of February. Of course no allusion whatever was made to your Despatch; and, the conversation on my part was altogether informal, though for that reason, perhaps, less constrained than might otherwise have been necessary; so that while it was not less calculated to attain your object, it could not in the remotest manner improperly commit the President.

It is my duty to state that the difficulties in the way of a satisfactory adjustment of the Oregon question do not diminish; and that, in my opinion, the subject is not less critical than at the date of my last despatch.

It is very certain that this Government will make no further attempt to renew the negotiation, until your written answer to Mr Pakenham's second proposal to arbitrate, is received here, and that, whatever may be attempted afterwards

will depend very much upon the character of that answer. Lord Aberdeen again complained of the withdrawal of our proposition by the President, before knowing whether this Government would approve its rejection by Mr Packenham; and, considering that step as not only unusual, and inconsistent with the nature of our previous negotiations, he thought it was to be regarded as indicative of the President's indisposition to settle the question upon the basis of compromise. He stated that nothing being left, after the withdrawal of the proposition, on which to base a further overture, this Government had no alternative, consistent with national pride, than to propose arbitration; being ready, if that should be rejected as on a former occasion, or, in terms calculated to encourage a renewal of the negotiation, to submit a further proposition for that purpose. He continued to think it difficult, if not impossible, to regard your answer to Mr Packenham's first proposal to arbitrate in that light, especially as the answer had been given with a knowledge of the disapprobation with which Mr Packenham's rejection of our proposition had been received by his Government. Under these circumstances, he thought there was a greater necessity of waiting to ascertain upon what grounds, and in what terms, the second proposal to arbitrate would be refused; observing that inasmuch, as the answer would be given with a knowledge of the temper with which the President's message had been received in this country, it was not unreasonable to expect that it would be of a correspondent tone. If your answer be of this character, and such as, in the opinion of this Government, to encourage a renewal of the negotiation, I have no doubt that Mr Packenham will be instructed to submit a further proposition for an equitable division of the territory in dispute; and I think it altogether probable that the proposition when made will be in the nature of an ultimatum.

I understood Lord Aberdeen to state, however, that, if by your answer no sufficient encouragement be held out to renew the negotiation on the basis of compromise, it would not be possible for him to make a further attempt for that purpose, at least at Washington. Indeed, he said that, in that case, he thought it would only remain for him to consider whether he could escape from the embarrassment in which he would then be placed, by offering a proposition through me. To this intimation, I could only reply that as my instructions had not contemplated such a crisis, it would be time enough for me, to determine upon my course, when the necessity should actually arise.

From this statement, the President will have it in his power to consider and decide, whether he will deem it expedient in anticipation to furnish me with instructions best adapted, in his opinion, to the contingency to which I have adverted.

It was evident to me that Lord Aberdeen thought a termination of the negotiation upon the rejection of the several propositions to refer, would not be less favorable to this Government, than if it should follow any new proposal of compromise; and I have no doubt that in this view he will be fully sustained by the public opinion in England. It may be proper to observe here, that in acquainting you with the nature of the interview with Lord Aberdeen, I deem it sufficient to confine my remarks chiefly to the views entertained by this Government, as being of the greatest importance to be communicated to the President, without detailing at much length, the observations which I may have felt it my duty occasionally to make in reply.

In the course of the conversation the character of the partition contemplated by this Government, or, most likely to be acceptable to it, was more distinctly foreshadowed than on previous occasions. It is quite certain, I think that the proposition made by Mr Gallatin in 1826-7, unless with modifications will neither be renewed nor assented to, by Great Britain. Lord Aberdeen very distinctly said that, he would have a right, and deem it only proper to consider the several propositions made by the negotiators respectively at that time, as yet affording a basis for further negotiation; and supposing that neither Government could honorably accept now, the precise offer it then refused, he should insist that the respective propositions made on that occasion, should be treated as starting points; and that both nations should consent to such modifications, as while they effected an equitable partition would save the honor of each.

On the whole, therefore, I have little or no expectation that, this Government will offer, or assent to a better partition, than the extension of a line on the 49th

parallel to the straits of Fuca, and thence down the middle of the strait to the Pacific; and, if the line of the 49th parallel should intersect the Columbia, according to Mr Gallatin's proposition, at a point from which it is navigable to the ocean, with the free navigation of that river, at least for such period as may be necessary for the trade of the Hudson's Bay Company. They will also, I am quite sure, expect some arrangements for the protection of the present agricultural settlements of British subjects south of the 49th degree of latitude, and north of the Columbia. If the Columbia river be not navigable from the point at which it would be intersected by the extension of a line along the 49th parallel, I believe it quite certain that the navigation of the river would not be insisted upon. Proceeding upon the supposition which I could neither admit nor deny with positiveness, that the river was navigable from that point, Lord Aberdeen appeared to consider that the right of freely navigating it by British subjects, without limitation, as an essential condition: and when, reminding him of the explicit terms in which the President in his Message had declared that he could not concede that privilege, I expressed the opinion that if, after that declaration he persisted in treating it as a *sine qua non*, the question might be deemed at an end, he observed that, having by the Treaty of Washington [Document 99, Article 3] mutually conceded the free navigation of the St Johns', it was thought only reasonable that the same concession should apply to the Columbia, and that, although he was not then prepared to insist upon it as a *sine qua non*, he could entertain little expectation that any arrangement which did not allow to British subjects the free navigation of that river, could be made acceptable to his Government. He was at the same time more explicit (in reply to an observation from me) in declaring that it would be impossible, under any circumstances, to treat of the navigation of the St Laurence river in connection with that of the Columbia.

For myself, I have never considered that, independently of the supposed point of honor, there could be any substantial motive on the part of this Government, for insisting upon a stipulation for the free navigation of the Columbia, for a longer period than might be necessary for the trade of the Hudson's Bay Company with the Indians. Indeed it appears to me, to say nothing of the shallowness, and other obstructions of the river, that the importance of any conventional stipulation for the free navigation of it, even during that period, is greatly exaggerated. I would never for a moment allow any doubt to be expressed of our right, according to the soundest principles of natural law, to the free navigation of the St Laurence; and although Great Britain may not consent by conventional stipulation, to recognize it, she will never venture practically to deny it, any more than she would resume the practice of impressment, without the certainty of war. As long however, as she persists in retaining the right of control over the St Laurence, she would be enabled by that means at any time to counteract any interdiction by the United States, of the free navigation of the Columbia, and, it may be presumed, at no greater hazard than she would now continue to insist upon it, as an indispensable condition to the settlement of the Oregon question. I confess I cannot help thinking that this consideration deserves to be seriously weighed by both Governments, in the importance they may respectively attach to any stipulation for the free navigation of the Columbia. However may this be, I will not believe, until it can no longer be doubted, that Great Britain will, at the certain consequence of war insist upon the navigation of the Columbia, for a longer period than may be really required for the reasonable accommodation of those rights of her subjects, which have grown up during the joint occupancy. To that extent, she might consider a just protection of such rights as involved in the point of honor; and I should hope we might make the concession, to a reasonable extent, without any sacrifice of our own rights or honor. Is it probable that, within a period of ten or fifteen years, it would be an object with the United States, on any ground whatever, to assert the right of navigating such a river as the Columbia to the exclusion of the trade of all other nations?

In connection with this part of the subject, I take leave to suggest that, immediate steps should be taken, as far as may be practicable, to ascertain the actual state of the branches of the Columbia river on the 49th parallel. Without being able to obtain very accurate information here, I have always been under an impression that from that point neither branch was navigable, unless for small canoes, and that, between the 49th parallel and the ocean, there were some inter-

vening rapids, which would make it necessary for those attempting to use it, to and from the sea, to occupy parts of our territory as portages. If this should prove to be so, there would not remain a shadow of claim to the use of the river; indeed, as I have already remarked, I am quite sure that it would not be insisted upon.

It was very obvious, from the whole tenor of the conversation in the interview with Lord Aberdeen, that he had taken up an impression, for reasons which, perhaps, were not fully disclosed, that independently of the propriety of waiting to see your answer to Mr Pakenham's last proposal, some further delay, before attempting to renew the negotiation, would not be disadvantageous; and would rather promote than defeat a satisfactory adjustment; and my opinion to the contrary, which I expressed and strongly supported, as well for the reasons stated in your Despatch, as for others, did not seem to shake his impression. He has doubtless, sources of information in the United States, upon which it is to be expected, he will place more or less reliance. I rather think also, that he has been led to regard it as doubtful, whether the notice to terminate the joint occupation will be authorized by Congress without material modifications; and he expects that the measures of commercial relaxation, now in progress here, will have a beneficial effect upon public opinion in the United States, and render it more disposed to preserve the advantages of peace. He took occasion also to express his confident hope, and indeed, his belief that, notwithstanding the rejection of Mr Pakenham's proposals to arbitrate, yet, rather than take the responsibility, under all the circumstances of the case, of involving the two nations in war, our Government would ultimately agree to arbitration, in some form or other. It was very evident that his confidence upon the point had been encouraged by advices from the United States, and that it could hardly fail to exert no small influence upon his mind. I, therefore, deemed it my duty, in pursuance of your Despatch, to assure him, that from my knowledge of the sentiments of the President, and of a majority of the Senate, a submission of the question to arbitration, under any circumstances, was altogether hopeless, and ought not again to be thought of.

It is not improbable, either, although no allusion was made to the subject, that our present and probable difficulties with Mexico, may serve to recommend further delay, if in fact, they should not influence the ultimate demands upon the part of this Government.

I must however, repeat the opinion that, whatever may be the result of any present expectation, and according to any view it may take of the question, this Government will not be likely to propose, or assent to a basis of partition, different from that I have already stated in the foregoing part of this Despatch. If there be a disposition on the part of our Government to treat upon that basis, I have great confidence that the negotiation would result in an amicable settlement of the question. If, on the contrary, it be their determination to insist upon the whole; or, in no event, to surrender the Southern point of Vancouver's Island, and, for no length of time to allow the navigation of the Columbia, then, it is my duty to say that, in my opinion an amicable adjustment of the question may be considered as absolutely hopeless; and, that no time should be lost in placing the country in a state of preparation for the crisis, that would inevitably follow, and as I believe, not remotely.

While in general the terms of possible accord stated in the foregoing despatch (received in Washington on March 21) were similar to those set forth in the despatch of February 3 (which the instruction of February 26 had answered in some detail), the language was more definite and precise. The conditions of adjustment deemed essential by the British Government were now almost as certainly known at Washington as if they had been stated in corresponding language in a diplomatic note. What was open in them was the extent and term of the right of navigation of the Columbia River; and there was a

clear and explicit warning from McLane that if that right was not to be yielded to any extent or for any period and if the line of 49° north was to be insisted on across Vancouver Island to the Pacific, the result would be war.

However, no further communication to McLane regarding terms of settlement was deemed necessary at Washington. The recorded comment of Polk on the despatch of March 3 is merely that "the delay of Congress to act upon the recommendations of my message on the Oregon question had operated prejudicially in England" (Polk's Diary, I, 294, March 21, 1846); and the answering instruction, of March 28, went no further than to refer to the previous instruction of February 26, to authorize McLane "to receive and transmit to this Department any proposition made" by Aberdeen, although "in no event will the President consent to transfer the negotiation to London", and to give some information regarding the navigability of the Columbia River and its branches north of the parallel of 49° (D.S., 15 Instructions, Great Britain, 308-10, March 28, 1846; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 44-45).

Polk remained firm in his insistence that he "could make no proposition" (Polk's Diary, I, 313, March 30, 1846), as he said in answer to Calhoun, who remarked that "a question of etiquette ought not to prevent either from reopening the negotiation by a new proposition"; but Polk remained also committed to refer to the Senate for advice any British proposal which approximated the American offer of the previous July 12; and that he had in mind the terms suggested by McLane in his latest despatch is shown by his conversation with Senator Benton of April 9, 1846 (*ibid.*, 324-25):

Col. Benton introduced the Oregon question, submitting a map¹ which he had brought with him published by Congress with [the report of] Capt Wilkes's exploring Expedition in 1841, on which was marked in dotted lines the parallel of 49°. Col. B. repeated the opinion which he had before expressed to me that our title was best to the valley of the Columbia & he would fight for it before he would give it up. He thought the British title best to Fraser's River. His opinion was that the basis of 49° was the proper line of settlement. I repeated what I once before said to him, that if Great Britain offered that line, or if she offered it retaining to herself the Southern cap of Vancouver's Island & the temporary navigation of the Columbia River for a term of years, that in either case I would submit the proposition to the Senate in Executive Session and take their advice before I acted on it. Col. B. said that in either case he would advise its acceptance. I expressed to him as I have uniformly done to others that the Notice should be given speedily & regretted the delay. I told Col. B. that I had no expectation that Great Britain would make any proposition until Congress passed the Notice; that as long as she calculated on our divisions she would make no movement & there would be no prospect of a settlement.

As has been seen, the discussions at London between Aberdeen and McLane had fixed the essential conditions of a British offer within rather narrow limits. Public debates on the Oregon question in the

¹ "Map of the Oregon Territory by the U.S. Ex. Ex. Charles Wilkes Esqr. Commander. 1841", which is in the atlas of Wilkes, Narrative of the United States Exploring Expedition. It will be observed that one line of dashes and dots upon this map follows the parallel of 49° from the eastern edge of the map to the crest of the Rocky Mountains but not west of that point; a similar line follows the parallel of 54°40' from the crest of the Rocky Mountains to the sea.

Senate had made it known that the preponderating sentiment in that body was in favor of an adjustment on the basis of a mainland boundary of 49° north latitude; and as the papers laid before the House of Lords on April 7, 1846, showed (London Times, April 8, 1846; Blue Book, 1846, "Correspondence Relative to the Negotiation of the Question of Disputed Right to the Oregon Territory, on the Northwest Coast of America; Subsequent to the Treaty of Washington of August 9, 1842", 68-69, 71; see also D.S., 56 Despatches, Great Britain, No. 41, April 17, 1846), and as McLane's despatches had reported, the British Government did not waver in its decision to make a fresh proposal if and when an occasion deemed suitable arose. It had been hoped at London that such an opportunity would be afforded by the American answer (February 4, 1846) to the second British proposal of arbitration (January 16, 1846; strictly not a proposal, but a suggestion of Pakenham later approved by Aberdeen; D.S., 56 Despatches, Great Britain, No. 41, April 17, 1846); but because of the wording of that answer (received in London on March 3) and also because of the Senate debates, the British Government decided to await the vote of the Senate on the resolution for the termination of the convention of 1827 before making its offer (*ibid.*, especially the postscript of April 18; also No. 36, of March 17, and No. 37, of April 3, 1846).

In Washington, however, it could not at the time be certainly known that the British Government would make a proposal; and the message of March 24, 1846 (Richardson, IV, 426-28), in response to a Senate inquiry, recommended an increase of naval and military forces by reason of both the Oregon question and relations with Mexico; and, while communication with the British Government had continued by means of the important conversations had at London between McLane and Aberdeen, Polk was able, with literal accuracy, to inform the Senate on April 13 (*ibid.*, 429) that "no correspondence" on the Oregon question had taken place¹ "since the date of the last documents" transmitted to both Houses with the messages of February 7, 1846, namely, those in which arbitration was twice offered and refused (December 27, 1845, to February 4, 1846; Senate Document No. 117, 29th Congress, 1st session, serial 473; House Document No. 105, same session, serial 483).

The President was to place the responsibility of decision on the Senate; the views of the British Government and of the Senate regarding an adjustment of the Oregon question were very similar; but the British Government was awaiting a vote of the Senate, and the President, willing to chance a change of administration at London, was awaiting a proposition from the British Government; the "point of etiquette" delayed any move, while war between the United States and Mexico was approaching (May 13, 1846; 9 Statutes at Large, 9-10; the decision of Polk for war was definite four days earlier; Polk's Diary, I, 384-87).

¹ See Webster's comment that there might have "been correspondence between the Department of State and the American Minister in London" (Congressional Globe, XV, 660, April 13, 1846).

NAVIGATION OF THE COLUMBIA RIVER

As has been said, the one point (of the proposal to be made) still open at London was the extent of the right of navigation of the Columbia River; a demand for such a right, if both permanent and general, was liable to be rejected by Polk without reference to the Senate; limitations either of scope or of time were possible; McLane was arguing for both; after interviews with Aberdeen on April 28 and 29, he wrote on the subject as follows (D.S., 56 Despatches, Great Britain, No. 43, May 3, 1846):

His object in desiring to see me appeared to be chiefly to acquaint me with the receipt of despatches by the New York Packet of the fifth April, and to recur to the impracticability of an attempt, on his part, to reopen the negotiation for the partition of the Oregon by a new offer, before he learned the vote of the Senate upon the resolutions of notice; and also to repeat his regret that so much delay should have intervened.

There is no doubt, however, that as soon as he is informed of the Senate's vote he will immediately proceed finally to consider the subject and direct Mr Pakenham to submit a further proposition upon the part of this Government; and when in the course of the conversation I intimated the possibility that the Senate's resolutions might vary from those of the House of Representatives and therefore, require to be reconsidered by that body, he consented, in that case, to proceed without waiting for the further action of the House. I thereupon suggested that, as there could be no doubt that the resolutions had already passed the Senate, Mr Pakenham should be immediately instructed to offer in this contingency his proposition. This suggestion, however, did not appear to receive His Lordship's approbation; and I confess that, under all the circumstances, I could think of no other means which I thought it prudent to propose, or in which I could, with propriety, acquiesce in order to effect an earlier proceeding.

The precise terms, in detail, of the new proposition which Mr Pakenham will be instructed to offer did not transpire during my interview with Lord Aberdeen, and, I am inclined to believe, have not yet been definitively settled in his own mind. The demand to the permanent right of freely navigating the Columbia river, however, was adverted to and the grounds of the demand, as well as the objections to its' allowance were pretty fully considered. It is unnecessary for me to refer to them *in extenso* in this place, and I will content myself with remarking that, in the end, Lord Aberdeen promised to take the subject into his serious consideration and consult Sir Robert Peel; he did not conceal his apprehensions, however, that this might prove a point of great and serious difficulty. I refer to this point, at present, mainly to reassure you of my conviction that it is regarded here as in some degree involving their pride and honor, and therefore more difficult to be compromised than any other; and that the expectation is entertained, probably, and naturally, from advices received from their Minister at Washington, that ultimately there will be less hesitation on the part of the Senate in yielding this point than I have uniformly represented. I do not think I can be mistaken in this.

Indeed Lord Aberdeen again recurred to the main position, he has uniformly maintained, that he had the right to consider the offers in the negotiation of eighteen hundred and twenty six and eighteen hundred and twenty seven as subsisting, and as affording the basis or starting points of the present negotiation; and that beyond what was then offered each party, as a salvo to the honor and pride of the other, should now be required to make some further concession than was formerly proposed. And he referred to the speeches of certain Senators during the recent discussion at Washington as sustaining the same view.

THE BRITISH PROPOSAL, MADE AND ACCEPTED

The joint resolution for abrogation of the convention of August 6, 1827 (Document 56), as amended by the Senate, passed that body on April 16, 1846. In its earlier form it had been adopted in the House of Representatives on February 9. The final vote in both Houses was on April 23; presidential approval followed on April 27; and these proceedings were known in London by May 15. A conference between McLane and Aberdeen was at once had (some time between May 15 and 18; May 17 was Sunday); McLane reported thereon as follows (D.S., 56 Despatches, Great Britain, No. 44, May 18, 1846):

I have now to acquaint you that, after the receipt of your Despatches on the fifteenth Instant by the "Caledonia", I had a lengthened conference with Lord Aberdeen; on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose formed the subject of a full and free conversation. I have now to state that instructions will be transmitted to Mr Pakenham by the Steamer of tomorrow, to submit a new and further proposition on the part of this government, for a partition of the territory in dispute.

The proposition, most probably, will offer substantially.—

First—To divide the territory by the extension of the line on the parallel of forty nine to the sea; that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Arro and Straits of Fuca to the Ocean, and confirming to the United States, what indeed they would possess without any special confirmation, the right freely to use and navigate the Strait throughout its' extent.

Second—To secure to the British subjects occupying lands, forts, and stations any where in the region North of the Columbia and South of the forty ninth parallel, a perpetual title to all their lands and stations of which they may be in actual occupation; liable, however, in all respects as I understand, to the jurisdiction and sovereignty of the United States as citizens of the United States. Similar privileges will be offered to be extended to citizens of the United States who may have settlements North of the forty ninth parallel; though I presume it is pretty well understood that there are no settlements upon which this nominal mutuality could operate. I have no means of accurately ascertaining the extent of the present British settlements between the Columbia and the forty ninth parallel. They are not believed by Lord Aberdeen to be numerous, however; consisting, as he supposes, of a few private farms and two or three forts and stations. I have already, in a previous despatch taken the liberty to remind you, that by their charter the Hudson's Bay Company are prohibited from acquiring title to lands, and that the occupations to be affected by this reservation have been made either by the Squatters of that company or by the Puget's Sound Land Company for the purpose of evading the prohibition of the Hudsons Bay Charter. They are in point of fact, also, according to Captain Wilkes account, cultivated and used chiefly by the persons employed in the service of the former company, and as auxiliary to their general business of hunting and trapping, rather than with a view, as it has been generally supposed, of colonizing or of permanent settlement.

Lastly—The proposition will demand for the Hudson's Bay company the right of freely navigating the Columbia river. It will, however, as I understand disclaim the idea of sovereignty or of the right of exercising any jurisdiction or police whatever on the part of this government or of the Company, and will contemplate only the right of navigating the river upon the same footing and according to the same regulations as may be applicable to the citizens of the United States. I have already acquainted you that Lord Aberdeen has very positively and explicitly declined to treat of the navigation of the St Lawrence in connexion with that of the Columbia; and that even if it were desirable to us to propose to offer one for the other, he would on no account enter into any negotiation in regard to the St. Laurence!

From the date of a private letter to the President in August, I have seen no cause to change the opinion that, in any attempt to divide the Oregon territory, the obligation felt by this government to protect the rights of their subjects which may have been acquired, or have grown up, during the joint-occupation would most probably interpose the greatest difficulty in the way of an amicable adjustment. And it is now obvious that the proposed reservation of the right to the Hudson's Bay Company of freely navigating the Columbia, and that in favor of the British occupants North of the river, proceed from this source; although, it is probable that more or less pride may be felt at giving up now, without what they may deem an adequate equivalent, what has been hitherto tendered by our negotiators.

In fact, except in the surrender to the United States of the title of the lands not occupied by British subjects between the Columbia and the forty-ninth parallel, and also the surrender of the jurisdiction over the river and the country within the same limits, I am afraid it may with some plausibility be contended that there is no very material difference between the present proposition and that offered to Mr Gallatin by Messrs Addington and Huskisson the British Negotiators in eighteen hundred and twenty seven.¹

It is scarcely necessary for me to state that the proposition as now submitted, has not received my countenance. Although it has been no easy task, under all the circumstances, to lead to a reopening of the negotiation by any proposition from this government, and to induce it to adopt the parallel of forty nine as the basis of a boundary, nevertheless, I hoped it would have been in my power to give the present proposition a less objectionable shape, and I most deeply lament my inability to accomplish it. I have, therefore, felt it my duty to discourage any expectation that it would be accepted by the President, or, if submitted to that body, approved by the Senate.

I do not think there can be much doubt, however, that an impression has been produced here, that the Senate would accept the proposition now offered, at least without any material modification, and that the President would not take the responsibility of rejecting it without consulting the Senate. If there be any reasonable ground to entertain such an impression, however erroneous, an offer less objectionable, in the first instance at least, could hardly be expected.

It may be considered certain also, in my opinion, that the offer now to be made is not to be submitted as an ultimatum; and is not intended as such; though I have reason to know that Mr Pakenham will not be authorized to accept or reject any modification that may be proposed on our part; but that he will, in such case, be instructed to refer the modification to his Government.

It is not to be disguised that since the President's Annual Message, and the public discussion that has subsequently taken place in the Senate, it will be difficult if not impossible to conduct the negotiation in its future stages without reference to the opinion of Senators, or free from speculation as to the degree of controul they may exercise over the result. Whatever therefore might be prudent and regular in the ordinary course of things, I think it of the utmost importance, upon the present occasion, if the President should think proper to propose any modification of the offer to be made by Mr Pakenham, that the modification should be understood as possessing the concurrence of the co-ordinate branch of the Treaty power.

It is not easy to conjecture, with any certainty, the extent to which this government might be induced to modify the proposition, even if they should be assured that the Senate no less than the President demanded it. It must not escape observation that, during the preceding administration of our government, the extension of the line on the forty ninth parallel to the Strait of Fuca, as now proposed by Lord Aberdeen, was actually suggested by my immediate predecessor

¹ It is true enough, in a sense, that the "material" differences between the British proposals of 1826 and of 1846 are those which McLane states in this paragraph by way of exception; but the territorial extent of the "surrender of the jurisdiction" was great, coming to, say, 44,000 square miles, or more than half the present State of Washington, and including the region of Puget Sound; and the lands in that area "occupied by British subjects" were less than 1 percent thereof.

[Edward Everett] as one he thought his government might accept; and that in regard to those English subjects who would be left within American jurisdiction by adopting that boundary, he considered the provisions of the second article of Jay's Treaty [Document 16] as a precedent for a convenient mode of dealing with them. By the second article of Jay's Treaty, however, British subjects would not only be secured in the absolute title to all their lands and effects as fully as by Lord Aberdeen's proposition, but would be allowed the option to continue as British subjects and without any allegiance to the government of the United States, which according to Lord Aberdeen's offer, as I understand it, they would not possess. In point of fact, therefore, the substantial points of the present offer, and those which may be expected to be regarded as most objectionable, are little more than the embodiment of the various offers or suggestions which at different times have, in some form or other, proceeded from our own negotiations.

I have myself always believed, if the extension of the line of boundary on the forty ninth parallel by the Strait of Fuca to the Sea would be acceptable to our Government, that this demand of a right freely to navigate the Columbia river could be compromised upon a point of time; by conceding it for such period as might be necessary for the trade of the Hudson's Bay Company North or South of the forty ninth parallel. Entertaining great confidence in that opinion, and deeming it only reasonable, I confess that from an early period I have used every argument and persuasion in my power to reconcile Lord Aberdeen to such a limitation; and although I am quite aware that with a portion of the British public an importance it by no means deserves is attached to the navigation of the Columbia river, and that in others it is undeservedly regarded as a point of pride, I have been disappointed by the pertinacity with which it has been at so much risk insisted upon. Feeling very sure, however, that the present offer is not made or intended as an ultimatum, I think it only reasonable to infer an expectation on the part of those who are offering it not only that modifications may be suggested but that they may be reasonably required. And, therefore, I still entertain the opinion that, although, from a variety of causes, in part, perhaps from an expectation that in the United States this point may not be absolutely insisted upon, and in part from deference to interests and impressions at home, they could not be induced in the first instance to make an offer with such a qualification, yet if the adjustment of the question should be found to depend upon this point only they would yield the demand to the permanent navigation of the river, and be content to accept it for such a number of years as would afford all the substantial advantages to those interests they have particularly in view that could be reasonably desired. If the only question upon which the adjustment of the Oregon question depended should be whether the navigation of the Columbia river should be granted for a period sufficient to subserve all the purposes of British subjects within the disputed territory, or whether the right should be extended indefinitely, to a particular class of British subjects I must believe that no English Statesman, in the face of his denial of a similar privilege to American citizens in regard to the St. Lawrence, would take the hazard upon this point alone of disturbing the peace of the world. Indeed, if the same Ministry from whom the present offer proceeds should continue masters of their own proposition, by remaining in office until the qualification I am adverting to would have to be dealt with, I should feel entire confidence in the belief I have now expressed.

I regret to say, however, that I have not the least expectation that a less reservation than is proposed in favor of the occupants of Land between the Columbia and the forty ninth parallel would be assented to. I may repeat my conviction, founded upon all the discussions in which I have been engaged here, that in making partition of the Oregon territory, the protection of those interests which have grown up during the joint occupation is regarded as an indispensable obligation on the score of honor, and as impossible to be neglected. I am quite sure that it was at one time in contemplation to insist upon the free navigation of the Columbia river for British subjects and British commerce generally, and that it has been ultimately confined to the Hudson's Bay company after great resistance and in the end most reluctantly. Being so confined, however, it would be only reasonable to limit the enjoyment of the right to a period beyond

which the company might have no great object to use the river for the purposes of their trade. But the interests of the British subjects who have settled upon and are occupying lands North [south] of the forty ninth are considered as permanent, and entitled, when passing under a new jurisdiction, to have their possession secured. This at least is the view taken of the subject by this government, and not at all likely, in my opinion to be changed.

I may add too, that I have not the least reason to suppose it would be possible to obtain the extension of the forty ninth parallel to the sea, so as to give the southern cape of Vancouver's Island to the United States.

The statement in the foregoing despatch of the terms of the forthcoming British proposal (which became the Oregon Treaty) proved to be substantially accurate; from a reading of McLane's despatch, one would not think that he had seen the text of the British proposal, but rather that he had merely heard its terms described; but Aberdeen states positively that he showed the project to McLane (instruction to Pakenham of June 29, 1846; Pakenham Papers, F.O. 115:91, No. 30; Washington Papers, V, 235-36; quoted below). In any case, it is certain that McLane received no copy of the draft; and in one respect he erred in describing its terms; the treaty has no clause of "nominal mutuality" in favor of nonexistent American settlers north of the line, as McLane thought; but that matter was one of no consequence, either at the time or later.

That McLane wrote with a map in mind (perhaps with one before him; possibly, but not probably, one seen at his conference with Aberdeen) is indicated by his mention of Birch's Bay (properly Birch Bay) and of the "Canal de Arro" (properly Haro); probably that map was one of the two maps of Wilkes of 1841 and 1845, respectively (the former has been cited; the latter is in part reproduced in Washington Papers, V, facing p. 11), for thereon "Haro" is "Arro" and Birch Bay (a small indentation of the mainland coast a few miles south of 49°) is shown as a body of water extending from Vancouver Island to the mainland; thus it appears to be an "arm of the sea", as McLane called it (see *ibid.*, 200-1). The *loci* mentioned are shown on the map facing page 100.

It appears, moreover, that at his conference with Aberdeen, McLane put forward a suggestion to modify the draft by limiting the right of navigation "to a term of years", to which the British Secretary of State for Foreign Affairs "positively declined to accede" (*ibid.*, 235-36).

McLane's despatch of May 18, 1846, reached Washington on June 3; perhaps Polk was somewhat influenced by the disapproving comments of McLane, who not only was critical of the absence of any express limitation of the term of the right of navigation of the Columbia River in favor of the Hudson's Bay Company, but who also attached undue importance to the clauses for the protection of possessory rights and titles (Articles 3 and 4). Polk wrote as follows (Polk's Diary, I, 444-45, June 3, 1846):

If Mr. McLane is right in the character of the proposition which will be made, it is certain that I cannot accept it, and it is a matter of doubt in my mind whether it [will] be such as I ought to submit to the Senate for their previous advice before acting upon it. If I reject it absolutely and make no other proposition

the probable result will be war. If I submit it to the Senate and they should advise its acceptance I should be bound by their advice & yet I should do so reluctantly. I had a conference on the subject [with Mr. Buchanan]. He was not prepared without further reflection, as he said, to give his advice on the subject.

A discussion of the despatch in Cabinet took place the next day (*ibid.*, 447-49), when the policy was considered and objections were made to the absence of any express term for the right of navigation of the Columbia. Another meeting of the Cabinet, on June 6, had before it the text of the British proposal, delivered that day (*ibid.*, 451-55); different opinions as to the legal effect of Article 2 were put forward:

The proposition also contained two reservations, . . . secondly, that the navigation of the Columbia River shall be free, not to British subjects generally but to the Hudson's Bay company and to British subjects trading with that company. As the Hudson's Bay company will under its present charter cease to exist in the year 1859, a question arose whether if the charter of the company should be extended for an additional term of time this reservation as to the right to navigate the Columbia would extend beyond the life of the present company under the existing charter. Mr. Walker and Mr. Marcy expressed the opinion that the right reserved would be limited to the existence of the company under the existing charter. Mr. Buchanan expressed a different opinion, and a discussion of some length on this point arose between Mr. Buchanan and Mr. Walker. I inclined to the opinion that Mr. Walker was right on the point, but was not clear on the subject and so expressed myself.

The advice of the Cabinet was taken as to "whether the proposition should be rejected, or whether I should submit it to the Senate for their previous advice"; of the Cabinet of six, four advised the latter course (Robert J. Walker, Secretary of the Treasury; William L. Marcy, Secretary of War; George Bancroft, Secretary of the Navy; and Cave Johnson, Postmaster General; the Attorney General, John Y. Mason, was absent, but had expressed the same view; see *ibid.*, 448-49); the decision reached was in accord with that advice; and McLane was so informed in a brief instruction of the same date transmitting a copy of the proposal (D.S., 15 Instructions, Great Britain, 312, No. 33, June 6, 1846); but in the discussion in Cabinet Buchanan did not assent to the counsel of his colleagues present until Polk had remarked "that the substance of my message would be, if I submitted the proposition to the Senate, a reiteration of my opinions as expressed in my annual message of the 2d of December last, but in view of the action of my predecessors and of the debates and proceedings of Congress at its present Session, I submitted it to the Senate for their previous advice, accompanied with a distinct statement that if the Senate advised its acceptance with or without modifications I should conform to their advice; but if they declined to express an opinion, or by the constitutional majority to give their advice, I should reject the proposition" (Polk's Diary, I, 453-54); and this was after it had been "agreed that if the proposition was rejected without submitting it to the Senate that in the present position of the question I could offer no modification of it, or other proposition, and that if it was rejected and no other proposition made, war was almost inevitable". The position taken by Buchanan regarding

the British proposal is harshly criticized by Polk as inconsistent; and there was a "very painful and unpleasant" interview between Polk and Buchanan (June 8) and another long Cabinet meeting (June 9) before the presidential message sent to the Senate on June 10 was in its final form (see Polk's Diary, I, 453-62, *passim*; in 74 Polk Papers in the Library of Congress there are three drafts of the message: the "first rough draft" at pp. 7217-20, a second draft, later "modified and copied", at pp. 7225-28, and the draft "read in Cabinet" on June 9, at pp. 7221-24; *inter se* they do not greatly differ; the second and third drafts are very similar; the language of the message sent to the Senate was taken or adapted from the draft read; but therefrom were omitted passages on the circumstances and terms of the proposal submitted and of earlier offers, shortening the message by a full moiety).

The protocol drawn up when the British draft treaty was presented to Secretary of State Buchanan, June 6, 1846, reads as follows (D.S., 23 Notes from the British Legation; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 13):

A conference was held at the Department of State on the 6th June 1846, between the Hon: James Buchanan, Secretary of State, the American Plenipotentiary, and the Right Honorable Richard Pakenham, the British Plenipotentiary, when the negotiation respecting the Oregon Territory was resumed. The British Plenipotentiary made a verbal explanation of the motives which had induced Her Majesty's Government to instruct him to make another proposition to the Government of the United States for the solution of these long existing difficulties. The Secretary of State expressed his satisfaction with the friendly motives which had actuated the British Government in this endeavor.

Whereupon the British Plenipotentiary submitted to the Secretary of State the draft of a Convention (marked A) setting forth the terms which he had been instructed to propose to the Government of the United States for the settlement of the Oregon question.

JAMES BUCHANAN
R. PAKENHAM

Beyond the bare and formal record of the protocol, there is this account by Pakenham of his two meetings with Buchanan on June 6, 1846 (despatch No. 68, June 7, 1846; not in Pakenham Papers; printed in Washington Papers, V, 232-33):

Her Majesty's Government will necessarily be anxious to hear as soon as possible the result of my first communications with the United States Government, in pursuance with your Lordship's instructions of the 18th of May, on the subject of Oregon.

I accordingly take advantage of the departure of the Great Britain steamship to acquaint your Lordship that I had yesterday morning a conference, by appointment, with Mr. Buchanan, when the negotiation for the settlement of the Oregon Question was formally resumed.

As the best explanation which I could offer of the motives which had induced Her Majesty's Government to instruct me to make a fresh, and, as your Lordship hoped, a final, proposition for the solution of these long-existing difficulties, I read to Mr. Buchanan an extract from your Lordship's dispatch No. 18, beginning with the words, "In this state of affairs, it is a matter of some anxiety and doubt what steps," &c., to the end of the dispatch. It seemed to me that there was nothing in the observations contained in this part of your Lordship's instructions which might not be advantageously made known to the American Government.

Your Lordship's language appeared to make a good deal of impression upon Mr. Buchanan. After I read to him the extract which I had prepared from the dispatch, he requested to be allowed to read it over himself, in my presence, with which request I of course complied. I thought it best not to leave a copy of it in his hands, having in view the possible, although not probable, failure of the negotiation which might render it desirable to deliver to him a copy at length of the dispatch, with a view to its ultimate publication.

I then laid before him a copy of the draught of a Convention which accompanied your Lordship's dispatch No. 19, which Mr. Buchanan said he would immediately submit to the President for his consideration. A minute of what passed between us was then drawn up and signed, with the draught of the proposed Convention formally annexed to it.

Mr. Buchanan frankly told me that, in his opinion, the only part of the proposed arrangement likely to occasion any serious difficulty, was that relating to the navigation of the Columbia, for he said that the strongest objection existed to granting the perpetual freedom of the navigation of that river. I did not fail to point out to him the great difference which existed between a perpetual and general freedom of navigation, and the qualified right of navigation contemplated in your Lordship's proposition. He admitted the force of my observations in this sense, but I collect, from what fell from him on this point, that an attempt will be made to limit the proposed concession to the duration to the existing charter of the Hudson's Bay Company.

At 4 o'clock yesterday evening I again met Mr. Buchanan, by appointment, when he told me that the President had come to the determination to submit our whole proposition to the Senate for their advice, and that it would accordingly be sent to the Senate at an early day with a Message, which Message might, and probably would, suggest some modifications of it. What these modifications might be, Mr. Buchanan said, had not yet been determined; but I imagine they will not involve anything essentially hostile to the adoption of the proposed arrangement, or which may not be overcome by friendly negotiation and explanation between the two Governments.

As relates to the Senate, my Lord, when we consider the moderate and conciliatory spirit in which the entire question of Oregon has been treated by a large majority of that body since the opening of the present session of Congress, I think it may be fairly expected that their advice to the President on the reference which is about to be made to them will rather favor than impede an early and satisfactory termination of the Oregon difficulties.

I should add that, in addition to what Mr. Buchanan said about the navigation of the Columbia, he gave it as his opinion that it would be necessary, and even advisable, with the view to avoid future misunderstanding, to define, or provide for the early definition of, the limits of the farms and lands now in the occupation of the Puget Sound Agricultural Company, and which it is proposed shall be confirmed to the Association in perpetuity. To such a proviso, if conceived in a spirit of liberality and fairness, I imagine that Her Majesty's Government will have no objection. But upon this point, as well as what relates to the navigation of the Columbia, I will act with due caution, and, to the best of my humble judgment and ability, in conformity with the spirit and intention of your Lordship's instructions, as set forth in your Lordship's dispatch No. 19.

In the foregoing report of Pakenham reference is made to two instructions which he had received (Nos. 18 and 19, of May 18, 1846), and one of which (No. 18) had been in large part read to and by Buchanan; the texts of these instructions follow (from Pakenham Papers, F.O. 115 : 91; also in Washington Papers, V, 226-29):

[Instruction No. 18]

In the critical state of the Negotiation for the Settlement of the Oregon Boundary, it has become my duty carefully to review the whole course of our proceedings, and to consider what further steps in the present juncture it may be proper to take with the view of removing existing difficulties, and of promoting, if possible, an amicable termination of the question.

I willingly abstain from renewing a discussion, the matter for which is already exhausted, and from repeating arguments with which you have long been familiar; but I think it is not too much to assert that, to any observer, looking impartially at the different stages of this Negotiation, it will appear that the conduct of Great Britain has throughout been moderate, conciliatory, and just. Can it truly be said that the Government of the United States have advanced to meet us in the path of mutual concession?

The terms of the settlement proposed by the British Plenipotentiaries to Mr Gallatin in the year 1826 were much more advantageous to the United States than those which had been offered to Mr Rush in the previous negotiation of 1824; and on your own departure from this Country you were authorized still further to augment these advantageous conditions. The United States, on the other hand, have not only recently made, through Mr Buchanan, a proposal less favourable to Great Britain than that formerly offered by Mr Gallatin; but when this was rejected by you, they withdrew it altogether.

In truth, the pretensions of the United States have gradually increased during the progress of these Negotiations. Acting in manifest violation of the spirit of the Conventions of 1818, and 1827, it is now formally and officially asserted that the right of the United States to the whole Territory in dispute is "clear and unquestionable". The principle however of these Conventions plainly recognized the claims of both parties, as indeed was fully admitted by the American Plenipotentiary himself; and it was only on failure of the attempt to effect an equitable partition of the Territory, that the joint occupancy was established.

Such pretensions, whatever may have been their effect in the United States, cannot in any manner invalidate or diminish our own just claims. With respect to these, we have never varied. We have always maintained that we possessed the right to establish ourselves in any part of the Country, not previously occupied; but we have fully acknowledged in the United States the existence of the same right; and we have also at all times been ready, by an equitable compromise and partition, to put an end to a species of occupation which is but too likely to lead to disputes and collision.

Despairing of arriving at any agreement by means of direct negotiation, we have been urgent in pressing the reference of the whole matter to an Arbitration. We have been willing to submit, either the abstract title of the two parties, or the equitable division of the Territory, to the judgement of any Tribunal which could justly inspire confidence, and which might prove agreeable to the United States. All this, however, has been peremptorily refused; the progress of the Negotiation has been entirely arrested, and in fact it now remains without any admitted or intelligible basis whatever.

The United States have recently expressed their determination to put an end to the Convention which for the last thirty years has regulated the mode of occupation of Oregon by the Subjects of both Countries; but as this power was reserved to each party by the terms of the Convention, the decision cannot reasonably be questioned. Neither is there anything necessarily unfriendly in the act itself; but, as both parties would thus be replaced in their former position, each retaining all its claims, and asserting all its rights, which each would freely exercise, it is obvious that, in proportion as the Country became settled, local differences would arise which must speedily lead to the most serious consequences.

In this state of affairs it is matter of some anxiety and doubt what steps, with a view to an amicable settlement of the question, may be most consistent with the dignity and the interests of Great Britain. After all the efforts we have made, and the course we have pursued, we might perhaps most naturally pause, and leave to the United States the office of renewing a negotiation which had been interrupted under such circumstances. But Her Majesty's Government would feel themselves to be criminal, if they permitted considerations of diplomatic punctilio or etiquette to prevent them from making every proper exertion to avert the danger of calamities which they are unwilling to contemplate, but the magnitude of which scarcely admits of exaggeration.

I think that an opportunity has now arisen when we may reasonably lay aside those formal considerations by which, under ordinary circumstances, we might have been precluded from making any fresh overture or demonstration on this subject.

In complying with the recommendation of the President to terminate the Convention under which the Oregon Territory is at present occupied, the Legislature of the United States have accompanied their decision by Resolutions of a pacific and conciliatory character; and have clearly signified to the Executive Government their desire that this step should not lead to the rupture of amicable negotiations for the settlement of the question. I can scarcely doubt that the Government of the United States will be duly influenced by the desire thus unequivocally expressed by Congress; and it is in this hope and belief that I now proceed to instruct you to make another, and, I trust, final, proposition to the American Secretary of State, for the solution of these long existing difficulties.

I avail myself of this opportunity the more readily, because, although Her Majesty's Government have strongly pressed a reference of the whole subject to arbitration, they are by no means insensible to the inconvenience attending such a mode of proceeding, and would willingly avoid it if possible. Nothing indeed, but the apprehension that an amicable settlement by means of direct negotiation was entirely hopeless, would have led them so decidedly to adopt this course; and they are still of opinion that, with such a prospect of failure before them, it would be their duty to adhere as earnestly as ever to this recommendation. Nor can they believe that any Christian Government could ultimately persevere in rejecting a proposal of this nature, whatever might be their objections to its adoption, and in the face of the civilized world deliberately recur to the dreadful alternative of War.

The Boundary having been fixed by the Convention of 1818 between the possessions of Great Britain and the United States, and the line of demarcation having been carried along the 49th parallel of Latitude for a distance of eight hundred or a thousand miles through an unfrequented and unknown Country, from the Lake of the Woods to the Rocky Mountains, it appeared to the Government of the United States that it was a natural and reasonable suggestion that this line should be continued along the same parallel, for about half that distance, and through a Country as little known or frequented, from the Rocky Mountains to the Sea. And indeed, with reference to such a Country, the extension of any line of Boundary already fixed might equally have been suggested, whether it had been carried along the 49th or any other parallel of Latitude.

On the other hand, however, it may justly be observed that any division of Territory in which both parties possess equal Rights, ought to proceed on a principle of mutual convenience, rather than on the adherence to an imaginary geographical line; and in this respect it must be confessed that the Boundary thus proposed would be manifestly defective. It would exclude us from every commodious and accessible Harbour on the Coast; it would deprive us of our long established means of water communication with the Interior for the prosecution of our Trade; and it would interfere with the possessions of British Colonists resident in a district in which it is believed that scarcely an American Citizen, as a Settler, has ever set his foot.

If, therefore, the 49th parallel of Latitude be adopted as the basis of an agreement, it will be incumbent upon us to obviate these objections, which, I trust in great measure, may be successfully accomplished.

You will accordingly propose to the American Secretary of State that the line of demarcation should be continued along the 49th parallel from the Rocky Mountains to the Sea Coast; and from thence in a Southerly direction through the centre of King George's Sound¹ and the Straits of Juan de Fuca, to the Pacific Ocean; leaving the whole of Vancouver's Island, with its Ports and Harbours, in the possession of Great Britain.

You will also stipulate that from the point at which the 49th parallel of Latitude shall intersect the principal Northern Branch of the Columbia River, called

¹ A misnomer for the Gulf of Georgia, now Georgia Strait (see Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, p. 64; this same document, with the addition of a title page, table of contents, index, and list of errata, was printed under the title, "The Northwest Boundary. Discussion of the Water Boundary Question: Geographical Memoir of the Islands in Dispute: and History of the Military Occupation of San Juan Island: Accompanied by Map and Cross-sections of Channels . . .").

Macgillivray's River in the Maps, the Navigation shall be free and open to the Hudson's Bay Company and to the Subjects of Great Britain trading with the said Company, until its junction with the Columbia; and from thence to the mouth of said River, with free access into and through the same, British Subjects with their Goods, Merchandize, and produce, to be dealt with as Citizens of the United States; it being always understood, however, that nothing shall interfere to prevent the American Government from making any Regulations respecting the Navigation of the River not inconsistent with the terms of the proposed Convention.

In the future appropriation of land, the possessory Rights of all British Settlers will of course be respected. The Hudson's Bay Company should be confirmed in the occupation of Fort Vancouver, and the adjacent Lands of which the Company have been in possession for many years. They would also retain such other Stations as were necessary for the convenient transit of their Commerce along the line of the Columbia; but all other Stations or trading Posts, connected with their present exclusive rights of hunting, and of traffick with the Natives, within the territory South of the 49th Degree of Latitude, would in all probability forthwith be abandoned.

The Puget Sound Agricultural Company have expended considerable Sums of money in the cultivation and improvement of land on the North of the Columbia River. They occupy two extensive Farms, on which they possess large stocks of Cattle and Sheep. These parties would also be entitled to be confirmed in the quiet enjoyment of their land; but if the situation of the Farms should be of publick and political importance, and it should be desired by the Government of the United States, the whole property might be transferred to them at a fair valuation.

I think that these proposals for an adjustment of the whole question at issue would be honourable and advantageous to both parties. It can scarcely be expected that either of them should now acquiesce in conditions less favourable than had been previously offered; and it may reasonably be presumed that each will at the present moment be prepared to make larger concessions than heretofore for the sake of peace. By this settlement, in addition to the terms proposed to us by Mr Gallatin in 1826, we should obtain the harbours necessary for our Commerce; as well as an increased security for our Settlers and their possessions; and, in lieu of the detached District, with its single Harbour, offered by the British Plenipotentiaries on that occasion, the United States would acquire the whole Coast with its various Harbours, and all the Territory North of the Columbia, as far as the 49th Degree of Latitude.

I am not disposed to weigh very minutely the precise amount of compensation or equivalent which may be received by either party in the course of this negotiation, but am content to leave such estimate to be made by a reference to higher considerations than the mere balance of territorial loss or gain. We have sought peace in the spirit of peace; and we have acted in the persuasion that it would be cheaply purchased by both Countries at the expense of any sacrifice which should not tarnish the honour, or affect the essential interests of either.

I have now therefore only to instruct you to inform the American Secretary of State that you have been authorized, and are prepared, to conclude a Convention without delay, founded on the conditions set forth in this Despatch.

[Instruction No. 10]

With reference to my Despatch N^o 18, of this date, I transmit to you herewith the Draft, or project, of a Treaty, such at least in its essential parts as Her Majesty's Government are prepared to conclude with the United States for the final settlement of the Oregon Question.

That project may be understood to embody all the conditions which are considered by us as indispensable. The wording of the Articles may be altered as may be deemed expedient; but their substance must be preserved; nor can any essential departure from that substance be admitted on the part of Great Britain.

The preamble may be considered as open to any alteration which may be proposed and which you may think expedient. In the project which I have sent you

the definition of the Territory adopted in the Convention of 1827 has been adhered to. That definition appears to be the most suitable, and open to the least objection.

If the United States' Government should agree to our terms such or nearly such as they are now proposed, you will do well to hasten as much as possible the conclusion of the Treaty, since the present constitution of the Senate appears to offer a greater chance of the acquiescence of that important Body in those Conditions than might be presented at any future period.

If, on the other hand, the President should decline to accept those Terms, and should make any counter proposition essentially at variance with their substance, you will express regret that you possess no power to admit any such Modification, and without absolutely rejecting whatever proposal may be submitted on the part of the United States, you will refer the whole matter to your Government.

In addition to the foregoing instructions of May 18, 1846, and under the same date, Aberdeen wrote a letter to Pakenham on the subject of the British proposal; the text of that communication, except for one immaterial postscript, follows; in respect of the form of the treaty, though not of the substance, Pakenham was vested with considerable discretion; and there is one highly interesting paragraph regarding the navigation clause of Article 2 (Selections from the Correspondence of George, Earl of Aberdeen, 1845-48, 218-21; a copy of this volume is in the Library of Congress):

Protracted as the debate in the Senate has been, it has at last had a good termination; and the difference of opinion which followed with the House of Representatives, has rather had a beneficial effect than otherwise, in consequence of the firmness of the Senate, and the conciliatory character of the resolutions as finally adopted.

I have already informed you that I only waited for the vote of the Senate in order to renew our propositions for the settlement of the Oregon question; and accordingly, by the present packet, I send you full instructions, as well as the principal articles of a Convention to be laid before the President for his acceptance, and to which we propose to adhere.

I am indifferent about the form of the preamble. That which I send appears to be suitable and proper; but, if the American Government desire anything different, you are perfectly at liberty to modify it in any manner you may think right and may find to be expedient.

The language of the three articles may also be varied in any manner which may be more acceptable, provided the substance be retained. It is very possible that the expressions may be improved, but the conditions themselves will not admit of any alteration.

Without calling this Convention an *ultimatum*, it will, in fact, be so as far as you are concerned; although you will, of course, send home for consideration any proposition which may be made at variance with these conditions. You will make no difficulty, however, in admitting at once other articles which may be proposed, and which are not in opposition to those now sent to you, if they should appear to you to be unobjectionable. We do not profess to send you a complete Convention, but only such articles as, in substance, we consider to be indispensable.

There is only one alteration of importance which you may admit without reference, and which, to prevent misapprehension, I will now mention to you. In the article which relates to the Columbia river, it is stipulated that the navigation shall be free and open to the Hudson's Bay Company, and to all subjects of Great Britain trading with the said Company. As the Hudson's Bay Company are really the only persons interested in the matter, it has been thought best to name them, as in some degree accounting for the concession of the navigation in consequence of their rights of possession and acquired interests in the territory; but if, for any reasons which I cannot anticipate, the American Government should prefer to grant the navigation generally to British subjects, without naming the

Hudson's Bay Company, you will make no objection. The greater term will include the less.

It is our desire and hope that you may be able to conclude this Convention without delay. I think the American Government must be prepared for the conditions we have proposed, by the despatches of Mr. McLane on different occasions, as I have had much discussion with him, and have no doubt that he will do his best to ensure the acceptance of our terms. It seems generally to be apprehended with good reason that, if Congress should rise without our having previously come to any agreement, there is very little hope of any amicable settlement hereafter. Time, therefore, is even of more importance with you than with us; and we have accordingly been careful to make our proposal as moderate as possible, in order to facilitate its prompt acceptance. Nevertheless, I think it probable that, in consequence of his former declarations, the President will not venture to incur the responsibility of accepting the Convention; but that the best we can hope is his referring the whole matter to the Senate. In this case, with the temper which appears to exist in that body, I should be sanguine in the belief that the requisite majority of two-thirds may be found.

It is just possible, notwithstanding Mr. McLane's assurances of the pacific disposition of the President, that he may take upon himself to reject our proposals, and not to make any reference to the Senate. Where so much is done under the influence of popular excitement, and with a view to produce some effect in domestic policy, we can never be quite certain of the principle upon which the President may ultimately act. Should he follow this course, it will be for you to consider how far it may be prudent and useful to present a copy of my despatch to Mr. Buchanan, with a view to its production on a motion being made for that purpose in the Senate. This, however, I should be inclined to think would only be desirable in the event of the negotiation being suspended altogether. But you will know best what ought to be done, according to the temper of the Senate and of the public.

There is another consideration which ought not to be entirely laid aside, although much delicacy will be required in adverting to it. You must be aware, from your own correspondence, from the public press, and from the apparent state of parties, that the existence of the present Government in this country is very precarious. I have not thought it necessary to conceal this state of things from Mr. McLane, who, of course, will report it to his Government. It will not be at all necessary for you to touch upon the subject; on the contrary, you should be perfectly silent on this head; but if Mr. Buchanan or the President should endeavour to discover your opinion, you will at once admit the fact, and leave them to make what use they may think proper of the information so confirmed.

Should we remain in office, I will not venture to say what might be the chance of any material alteration of our propositions being accepted. It would be extremely difficult for us to acquiesce in any such, should it be attempted; but I think it would be quite impossible for my successor, even if he were so inclined, to make any greater concessions than those which I have proposed. A reference to England, therefore, which, if made to me, would be of very doubtful success, would, if received by another, be nearly equivalent to a rupture of the negotiation. This is a consideration which, in addition to the early termination of the Session of Congress, ought to make the American Government, if really desirous of an amicable settlement, endeavour to conclude the matter with you, upon the basis of the proposals now sent, rather than incur the risk of a fresh reference to this country. I repeat, however, that I would not have you touch at all upon this subject, unless you should be spoken to, with the view of obtaining from you a confirmation of that which I have no doubt Mr. McLane will report.

I should be glad if you would write to me privately, and let me know if any communication of this kind has taken place between you and the American Government, and whether you think that these considerations may have exercised any influence upon their final decision.

P.S.—It has occurred, as being barely possible, that some state of things may have arisen in the United States, which, in your judgment, would render it desirable for you to withhold our proposals from being made to the Government. I cannot conceive this; but still, if you should be conscientiously convinced that, if

I possessed a knowledge of the same facts, it would not be my desire that the proposals should be made, I beg that you will exercise your own discretion, and suspend them accordingly.

I repeat, that I think it in the highest degree improbable that such should be the case; at the same time, as you may feel reluctant not to comply with precise instructions, I wish to give you full liberty on the subject.

Regarding the influence of the then prospective change of administration in Great Britain upon the decision of the Government of the United States, three further letters are quoted (*ibid.*, 297, 299-301):

[*Mr. Pakenham to Lord Aberdeen, June 7, 1846*]

It is right that Your Lordship should know that, in the course of our conversation yesterday, Mr. Buchanan observed, of course without any allusion on my part to such a topic, that he should deeply regret the failure of our present efforts to effect a settlement of the Oregon question, because he had heard, he said, from Mr. McLane that, in the actual state of politics in England, the existence of the present administration must be considered as precarious; and he was convinced, he went on to say, that it would not be easy that another Government should be formed more disposed to act with fairness, moderation, and liberality towards the United States.

For every reason, he said that he should lament the retirement of the Queen's confidential advisers,—but more especially with reference to the question of Oregon,—should any delay or difficulty occur in the negotiation now on foot. This makes me believe that the President and his Ministers will be anxious not to lose the favourable opportunity now offered to them, of setting at rest for ever a question which has been so long a sore and an annoyance to both Governments.

I must add, that the opinion expressed by Mr. Buchanan on the point above referred to is that which appears to prevail among men of all parties in the United States, and to be that most generally inculcated by the public press.

[*Mr. Pakenham to Lord Aberdeen, June 13, 1846*]

[Extract]

The Oregon question is settled at last, and I for one am heartily glad of it.

The positive impatience shown by Mr. Buchanan, to sign and conclude, convinces me that the fear lest any complication should arise out of the Mexican war has done a great deal in inducing the American Government to accept Your Lordship's proposal without alteration. The bare suggestion of a reference to England was sufficient to overcome every difficulty that was talked of. If it had not been for this circumstance, I am far from being satisfied that the matter would have been so promptly and easily settled.

[*Lord Aberdeen to Mr. Pakenham, June 30, 1846*]

[Extract]

I entertain no doubt that it was not the apprehension of any embarrassment in consequence of the Mexican War which led to this decision; but that it was entirely owing to the impending change of the administration in this country, and a desire to settle the whole affair with us before our departure. Mr. McLane told me he had informed his Government, we should not be in office on the 1st July, and that, if they desired to bring the negotiation with us to a successful conclusion, no time was to be lost. The conduct of my predecessor and expected successor [Viscount Palmerston], with regard to the Ashburton Treaty, had filled Mr. McLane with

the greatest alarm, which, I presume, was shared by the Government of the United States. Be the cause of their decision what it may, it is a most fortunate and happy event.

Whether the Oregon question would have had a different ending if a Whig administration had come into power at London before the settlement was reached, can be no more than a matter for speculation; on the subject of "British Party Politics and the Oregon Treaty" there is a highly interesting and instructive article by Professor Frederick Merk (*American Historical Review*, XXXVII, 653-77); the reasons for the failure of Lord John Russell to form a government in December 1845 are there given; the hostile attitude of both Lord John Russell and Viscount Palmerston to an Oregon settlement are described, with mention of Russell's speech in April 1845, following Polk's inaugural address; the views of Palmerston continued unaltered, as shown by his letter of February 2, 1846, to Russell, which is there quoted; but the attitude of Russell had earlier changed, as is indicated by his speech of January 12, 1846, at Glasgow, an excerpt from which is given, by his comment on Pakenham in the Commons on January 23, and by this very significant passage in his letter to Palmerston of February 3 (quoted *ibid.*, 658): "My opinion upon the whole is that we may well and with due regard to our own interests give up the Columbia river, and I have let Aberdeen know privately that he will have no opposition from me on that ground." See also, by the same author, "British Government Propaganda and the Oregon Treaty", in *American Historical Review*, XL, 38-62.

POSSIBLE MODIFICATIONS

As the British proposal was accepted, its terms were written as the terms of the treaty; but that proposal had not been presented as an ultimatum; and McLane reported in his despatch of July 3, 1846, that some modifications might have been obtained; that despatch also throws light on the discussions at London of the right of navigation of the Columbia River (D.S., 56 Despatches, Great Britain, No. 58):

I received on the twenty ninth of June your despatch number thirty four, dated the thirteenth of the same month; acquainting me with the proceedings and resolution of the Senate in regard to the British proposition for the partition of the territory of Oregon.

I communicated the substance of your Despatch to Lord Aberdeen, in the course of the morning of the same day; and I may now assert with even greater confidence (if not with absolute certainty) than I did in my despatch of the eighteenth of May, that if the President and Senate had proposed, as a modification of the British proposition, to limit the right of navigating the Columbia river to a term of years it would have been conceded before Ministers announced [on June 29; Hansard, LXXXVII, 1039-41] their resignation to the two houses of Parliament. I think it is equally certain that the proposed variations of the articles of the Convention from the statement in my Despatch of the eighteenth of May, referred to in your Despatch¹ of the sixth of June, might also have been reconciled without difficulty; and, indeed, Lord Aberdeen thought one of them, that relating to the omission to secure the possessions of our citizens North of the forty ninth parallel, would be rectified by Mr Pakenham himself, without reference to his government.

¹ As to this "Despatch", see below.

It is quite obvious, however, that in my previous conversations with Lord Aberdeen, I had overrated the difficulty which a demand to the permanent navigation of the Columbia river would interpose; and that Mr Pakenham was better informed of the opinions and practicabilities at Washington than I was. Lord Aberdeen is of course better satisfied that he relied less upon my assurances than upon those received from other quarters; though, for myself, I rather think the settlement is one with which both nations may be satisfied. And I will moreover confess that, but for the nature of your several communications, I should have regarded, and did regard, the stipulation as it stands much more desirable even for us, than a concession of the free navigation of the river for a long term of years to British subjects and British commerce generally.

Lord Aberdeen was not disposed, however, to assent to the meaning the Senate desire to affix to the article as it stands relative to the navigation of the Columbia river; though he said it would remain a question of construction to be considered and decided when the occasion for it might arise. I still believe the question is not regarded here, as one of great importance. I deem it my duty, at the same time, to state that in the course of the discussions here in relation to that article of the convention the duration of the Charter of the Hudson's bay company was not particularly adverted to.

The right freely to navigate the river was first demanded indefinitely and for British subjects and British commerce generally, as it had been offered in eighteen hundred and twenty six-seven. It was mainly urged on the ground that having been offered before it would be derogatory on the part of Great Britain to yield it now, and that it was necessary as affording only proper protection to those rights which had grown up during the joint-occupancy. I endeavoured to effect a compromise of the point by conceding the navigation for such period only as it would be absolutely needed for the proper enjoyment of those rights which had so grown up: and I had reason to believe at one time that it had been determined to make the proposition with that limitation. Subsequently, however, it became apparent that a change for some reason had taken place, and I did not doubt that information from Washington had been received here which made it difficult if not impossible that the British Ministry should in the first instance offer to accept the navigation of the river for a limited period. In this posture of the affair, I suggested and earnestly pressed, without, however, committing myself to its acceptance or approval, that the right of navigating the river should be confined to the purposes and trade of the *Hudson's Bay Company*, for which it had been said it was chiefly intended, and this suggestion, after some discussion and after a reconsideration of the subject by the Cabinet, was adopted. My object in urging this restriction was twofold; first by restricting the privilege to a particular Company, and denying it to British subjects and British Commerce generally, I supposed if we insisted upon confining it to a term of years, it would be more difficult for this government to risk a rupture in favor of a right so confined to a particular trade and a particular class of subjects; and, secondly, that as the operations of the Hudson's Bay Company would be of temporary duration the privilege would in point of fact be of no long continuance.

In the foregoing despatch McLane refers to "the proposed variations of the articles . . . referred to in your [Buchanan's] Despatch of the sixth of June", which he thinks "it is equally certain . . . might also have been reconciled without difficulty"; to understand this, one must have in mind that the "Despatch" of June 6, 1846, is not the instruction No. 33 of that date (cited above), which officially informed McLane of the decision reached that day to submit the British proposal to the Senate, but is Buchanan's private letter of June 6, 1846, wherein Buchanan wrote as follows (Moore, Works of James Buchanan, VII, 3-4):

I have but little time to scribble you a private letter before the closing of the Mail to go by the Great Britain.

The President has determined to submit Lord Aberdeen's projet to the Senate. He has no alternative as you know between this & its absolute rejection.

The proviso to the first article would seem to render it questionable whether both parties would have the right to navigate the Strait of Fuca, as an arm of the Sea, north of the parallel of 49°; neither does it provide that the line shall pass through the Canal de Arro, as stated in your Despatch. This would probably be the fair construction.

The articles relating to the possessions of British occupants South of 49° is vague & indefinite; & in order to prevent disputes between the two Governments hereafter as to the extent of these possessions, it would seem to be a prudent precaution to provide some means of ascertaining the rights of these occupants respectively. There is no reciprocal provision in the treaty for American settlers North of 49°. There may be none there; but yet such a provision would give the Convention a fairer appearance.

The right of the Hudson's Bay Company to the navigation of the Columbia presents the important difficulty. It is considered doubtful by the President and several members of the Cabinet whether under the terms of the projet this right would not expire upon the termination of the existing charter of that Company in 1859.

The President's message will re-iterate the opinions expressed in his annual message in favor of our title to 54°40'; but in consideration of & in deference to the contrary opinions expressed by the Senate, his Constitutional advisers, he submits the projet to them for their previous advice. He may probably suggest some modifications.

What the Senate may do in the premises is uncertain. There undoubtedly is in that Body a Constitutional majority in favor of settling the question on the parallel of 49 to the Straits of Fuca. The question of the perpetual navigation of the Columbia is & ought to be the point of difficulty. Should the Senate modify this article so as to limit the right to the termination of the existing charter of the Hudson's Bay Company, I can scarcely suppose that this modification would be rejected by the British Government.

Thus, according to McLane, there were four modifications of the treaty which might have been obtained; three of them were the "proposed variations" of the Buchanan letter just quoted, namely: (a) a more specific description of the water boundary, so as to mention Haro Strait; (b) a statement of the right to navigate the Strait of Fuca (i.e., the waters connecting therewith) north of 49°; and (c) a reciprocal provision for American settlers north of the boundary.

The first of those three "variations", if made, would have been of real importance; for, while the line would be just as it now is, there would have been no controversy for a quarter of a century over the San Juan water boundary and no reference of the question to arbitration (see Washington Papers, V, *passim*); during that arbitration mention was made of Buchanan's letter of June 6, 1846, but its text was not in evidence (*ibid.*, 205; a copy of the letter was before Secretary of State Cass when he wrote to George M. Dallas, Minister at London, on October 20, 1859, that therein Buchanan "expressly mentions the Canal de Haro as the channel intended by the treaty"; see D.S., 17 Instructions, Great Britain, 229, 243; Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, pp. 231, 236).

McLane also says, almost "with absolute certainty", that if the President and Senate had proposed a limitation of a term of years of the right of navigation of the Columbia (Article 2), it would have been conceded at once; his mention of the "meaning" attributed by the Senate to Article 2 refers to the following paragraphs in the instruc-

tion of June 13, 1846, written after the first resolution of advice of the Senate of June 12 but before the final resolution of advice and consent of June 18 (D.S., 15 Instructions, Great Britain, 312-13):

I have learned from the best sources that the Senate gave this advice under the conviction that, by the true construction of the second article of the projet, the right of the Hudson's Bay Company to navigate the Columbia would expire with the termination of their present license to trade with the Indians, &c., on the Northwest Coast of America, on the 30th May, 1859. In conversation with Mr. Pakenham to-day, I communicated this fact to him, and requested him to state it in his despatch to Lord Aberdeen.

The treaty will be signed and sent to the Senate on Monday next [June 15]: and it is more than probable that they will, in some form or other, place upon their records their understanding of its true construction in this particular.

It had been proposed in the Senate during the proceedings of June 11 and 12 to add a proviso to Article 2 of the draft treaty to the effect that the right of navigation thereby secured should be expressly limited in time so as to expire either by 1859 or (as the motion was finally drafted) by 1863; but an amendment in that sense to the Senate resolution of advice had been negatived by 10 yeas to 31 nays (see Executive Journal, VII, 88, 89); according to the view expressed by Buchanan, this was for the reason that such a proviso was deemed unnecessary.

Pakenham, in a conversation with Buchanan on June 13, 1846, explicitly refused to assent to the suggested interpretation (Washington Papers, V, 234-35, despatch No. 77, of June 13, 1846; the two final paragraphs there printed do not appear in Pakenham Papers, F.O. 5:449, which contain only an "extract" from that despatch; but the entire despatch is in Selections from the Correspondence of George, Earl of Aberdeen, 1845-48, 298-99); Aberdeen had been equally clear in his conference with McLane on June 29, as reported by the latter in his despatch of July 3 (quoted above); and added to this is the instruction of June 29 to Pakenham, which follows (from Pakenham Papers, F.O. 115:91, No. 30; also in Washington Papers, V, 235-36):

Her Majesty's Government have received this day with the greatest satisfaction your Despatch N^o 77 of the 13th instant, in which you announce the acceptance by the Senate of the Draft of Treaty for the settlement of the Oregon Question which was conveyed to you in my Despatch N^o 19 of the 18th of May, and also the intention of the President to proceed forthwith to the completion of the proposed Convention.

In your Despatch you state that Mr Buchanan had observed to you that the privilege of navigating the Columbia River which, by the second Article of the Convention is secured to the Hudson's Bay Company and to British Subjects trading with the same, was understood by the Senate to be limited to the duration of the License under which the Company now carry on their operations in the Country West of the Rocky Mountains; to which observation you very properly replied that the Article proposed by Her Majesty's Government spoke for itself.

Nothing in fact can well be clearer than the language of that Article. In drawing it up, I had not the smallest intention of restricting the British right to navigate the Columbia in the manner supposed, nor can I comprehend how such a supposition could have been entertained by the Senate, for I have reason to know that Mr M^o Lane fully and faithfully reported to his Government all that passed between himself and me respecting the navigation of the Columbia. In every

conversation that we held on the subject of the proposed Treaty, I not only declared to M^r McLane that we must insist on the permanent right being secured to us to navigate the Columbia, but I even shewed him the project of the Treaty and on his expressing an apprehension that the provision contained in the second Article would not be accepted, unless the right of navigation were limited to a term of years, I positively declined to accede to this suggestion.

I think it right to state these facts, in order to obviate any misapprehensions which might possibly hereafter be raised on the construction of the 2^d Article of the Oregon Treaty.

JULY 1st 1846

P.S. Since writing this Despatch, I have held a conversation with M^r McLane, in which he has freely and fully confirmed all that I have stated above with reference to his own understanding of the intent of the 2^d Article of the Oregon Treaty.

Thus Aberdeen insisted that his proposal did not and was not intended to include any limitation of time in Article 2 and that his understanding in that respect was well known to McLane. It is not in the least inconsistent with such insistence that Aberdeen would, according to McLane, have conceded such a time limitation if it had been put forward by the President and Senate in response to the British proposal.

THE JOINT RESOLUTION OF APRIL 27, 1846

Article 2 of the convention of August 6, 1827 (Document 56), reads as follows:

It shall be competent, however, to either of the Contracting Parties, in case either should think fit, at any time after the Twentieth 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.

Abrogation of that convention of August 6, 1827, became a necessary part of the Oregon policy of Polk after the negotiations for a settlement of the Oregon question had been interrupted by the withdrawal (on August 30, 1845) of the American proposal; congressional authority for the giving of the requisite notice was deemed necessary by Polk and his advisers (but there was dissent at the time; see the minority report of the House Committee on Foreign Affairs in Congressional Globe, XV, 138-39, January 5, 1846; for other subsequent views on the point, see Crandall, *Treaties, Their Making and Enforcement*, 2d ed., 458-62); and such authorization was requested in the annual presidential message of December 2, 1845 (quoted in part above).

The ensuing debates in Congress were naturally not limited in scope to the 1827 convention and its abrogation; they extended to the Oregon question and to the Oregon policy of the United States in their widest sense; the congressional proceedings were of great, perhaps controlling, influence in the settlement reached; they were public and reports of them were sent to London by every mail; they were prolonged, as the proposed resolution pended in the Senate for more than

two months and the date of final enactment was nearly five months later than the presidential request; the attitude of the National Legislature counted, of necessity, both with the British Foreign Office and with the American Executive; and from an early stage there was no doubt that a large majority in the Senate favored agreement on the Oregon question on the basis of the line of 49°; moreover, the attitude of the British Government was sufficiently well known to the Senate to be there a factor of importance; that attitude had not been as fully disclosed as would have been the case had McLane's despatches been communicated; but press reports from England^d the discussions in Parliament, and doubtless also senatorial conversations in Washington with Buchanan and Pakenham had given the substance of the Oregon policy of Great Britain at the time.

Pakenham was in touch with various Senators. He reported to Aberdeen on December 29, 1845, that Senator William S. Archer, of Virginia, with William Wilson Corcoran, prominent banker of Washington, had urged him to propose the 49th parallel as a boundary, together with provision that the whole of Vancouver Island should go to Great Britain and that the right of free navigation of the Columbia should be conceded, at least for a term of years; and he stated that they had assured him such an offer would be sent to the Senate, where it would be approved (Pakenham Papers, F.O. 5 : 430, despatch No. 138, and confidential despatch, unnumbered). By the same time he had learned from Senator Benton, of Missouri, that the latter would favor such a settlement (*ibid.*). On February 26, 1846, he reported that the disposition of the Senate "is becoming every day more pacifick" and that Calhoun and Webster had both told him only a few members of the Senate would vote against "an accommodation . . . on the principle of equitable partition and compromise" (*ibid.*, F.O. 5 : 446, despatch No. 19, and confidential despatch, unnumbered). He was consulted by certain Senators, unnamed, regarding a suggested resolution expressing the sense of the Senate in favor of the resumption of negotiations on the basis proposed by Gallatin in 1826; he advised Aberdeen that "until something in this way shall have taken place . . . no further proposition should be made on the part of England" (*ibid.*); and he pointed out that even the most moderate members of the Senate would insist on the 49th parallel as the basis of any arrangement, so that "the advocates of a peaceful settlement of the question are now universally designated as 49. Men, in contradistinction to those who go for the whole of Oregon even at the risk of War, and are called 54.40 men" (*ibid.*, F.O. 5 : 447, despatch No. 34, March 29, 1846).

Certainly Polk was disappointed both with the delay in Congress (Polk's Diary, I, 338, 348, April 18 and 23, 1846) and with the form of the resolution as finally passed (*ibid.*, 341, April 20, 1846):

I would have preferred a naked notice; that next to that I preferred the House Resolutions; but it being now ascertained by repeated votes in the Senate that neither could be had, I decidedly preferred the Senate form of notice to no notice at all.

At the same time Aberdeen was waiting for the passage of the resolution by the Senate as an opening for the making of the British proposal (see McLane's despatches of April 17 and May 3, 1846, both cited above and the latter quoted in part) and was naturally pleased with the conciliatory wording of the preamble of the resolution in its final form (in his instruction No. 18 to Pakenham, of May 18, 1846, quoted above, see the paragraph beginning, "In complying with the recommendation").

The Oregon debates of 1846, during the first session of the Twenty-ninth Congress, are in Congressional Globe, XV, and appendix, *passim*; one speech of Senator Lewis Cass, of Michigan, is in *ibid.*, XVI, appendix, 26-31. The joint resolution for "notice" originated in the House of Representatives and as there passed on February 9, 1846, was as follows (*ibid.*, XV, 350):

JOINT RESOLUTION of notice to Great Britain to "annul and abrogate" the convention between Great Britain and the United States, of the sixth of August, eighteen hundred and twenty-seven, relative to the country "on the northwest coast of America, westward of the Stony mountains," commonly called Oregon.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States cause notice to be given to the Government of Great Britain, that the convention between the United States of America and Great Britain, concerning the territory on the northwest coast of America west of the Stony or Rocky mountains, of the sixth day of August eighteen hundred and twenty-seven, signed at London, shall be annulled and abrogated twelve months after giving said notice.

Resolved, That nothing herein contained is intended to interfere with the right and discretion of the proper authorities of the two contracting parties to renew or pursue negotiations for an amicable settlement of the controversy respecting the Oregon territory.

In the Senate, where the vote on third reading was 40 yeas to 14 nays (*ibid.*, 683, April 16, 1846), the form of the resolution was greatly changed; its introductory passages were framed in friendly language, and its clause for the notice was authorizing and not mandatory (for the Senate form, see *ibid.*, 691); following amendments by the House to the Senate form (*ibid.*, 691-92), which the Senate refused (*ibid.*, 693), and a conference, the resolution was finally passed, in very nearly the Senate form, on April 23 (*ibid.*, 716-17, 720-21), and became law on April 27, 1846. It reads as follows (9 Statutes at Large, 109-10; collated here with the original):

Joint Resolution concerning the Oregon Territory.

Whereas, by the convention concluded the twentieth day of October, eighteen hundred and eighteen, between the United States of America and the King of the United Kingdom of Great Britain and Ireland, for the period of ten years, and afterwards indefinitely extended and continued in force by another convention of the same parties, concluded the sixth day of August in the year of our Lord one thousand eight hundred and twenty-seven, it was agreed that any country that may be claimed by either party on the northwest coast of America westward of the Stony or Rocky Mountains, now commonly called the Oregon territory, should, together with its harbors, bays, and creeks, and the navigation of all rivers within the same, be "free and open" to the vessels, citizens, and subjects

of the two powers, but without prejudice to any claim which either of the parties might have to any part of said country; and with this further provision, in the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, that either party might abrogate and annul said convention on giving due notice of twelve months to the other contracting party—

And Whereas it has now become desirable that the respective claims of the United States and Great Britain should be definitely settled, and that said territory may no longer than need be remain subject to the evil consequences of the divided allegiance of its American and British population, and of the confusion and conflict of national jurisdictions, dangerous to the cherished peace and good understanding of the two countries:

With a view therefore that steps be taken for the abrogation of the said convention of the sixth of August, eighteen hundred and twenty-seven, in the mode prescribed in its second article, and that the attention of the governments of both countries may be the more earnestly directed to the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to the said territory:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized, at his discretion, to give to the government of Great Britain the notice required by the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, for the abrogation of the same.

JOHN W DAVIS
Speaker of the House of Representatives,
 G. M. DALLAS.
President of the Senate.

Approved April 27th 1846:

JAMES K. POLK

Webster thus spoke his view of the part played by the Senate (The Writings and Speeches of Daniel Webster, IV, 20-21, December 2, 1846):

Now, Gentlemen, the remarkable characteristic of the settlement of this Oregon question by treaty is this. In the general operation of government, treaties are negotiated by the President and ratified by the Senate; but here is the reverse,—here is a treaty negotiated by the Senate, and only agreed to by the President. In August, 1845, all effort of the administration to settle the Oregon question by negotiation had come to an end; and I am not aware that, from that day to the absolute signature of the treaty, the administration, or its agents at home, or its agents abroad, did the least thing upon earth to advance the negotiation towards settlement in any shape one single step; and if it had stood where they left it, it would have remained unsettled at this moment. But it was settled. The discussions in Congress, the discussions on the other side of the water, the general sense of the community, all protested against the iniquity of two of the greatest nations of modern times rushing into war and shedding Christian blood in such a controversy. All enforced the conviction, that it was a question to be settled by an equitable and fair consideration, and it was thus settled.

No one, perhaps, was more intimately in touch with the progress of events at Washington in 1845-46 (outside of the interchanges between the President and his advisers) than was the British Plenipotentiary; and while naturally to be thought perhaps biased and not impartial, his portrayal of the effect of the Senate attitude on the administration policy (written after publication of the instructions of Buchanan) is worthy of quotation (despatch No. 106, August 13, 1846; not in Pakenham Papers; Washington Papers, V, 236-37):

The injunction of secrecy having been removed by a resolution of the Senate, I have the honor herewith to transmit three numbers of the Union, official newspaper, containing, in an authentic form, (Union of 7th August,) the papers relative to the conclusion of the Oregon negotiation which I had the honor to transmit in an unauthorized form with my dispatch No. 100, and also (Unions of 8th and 10th August) two Messages from the President to the Senate, the first communicating for approval the Treaty signed here on the 15th of June, the second communicating documents not before communicated to the Senate relative to the Oregon Territory, in answer to a resolution of the Senate of the 17th June last.

Among the papers thus made public, the one which I should most particularly recommend to your Lordship's attention, is a dispatch from Mr. Buchanan to Mr. MacLane, dated the 12th of July, 1845, (Union of 8th August,) setting forth the terms on which the President was willing, at that time, to settle the Oregon question, but evidently with little or no expectation that those terms would be accepted by Great Britain, I might almost say with an expectation scarcely concealed that they would be rejected, when, to use Mr. Buchanan's own words, the President would "be relieved from the embarrassment in which he has been involved by the acts, offers, and declarations of his predecessors," and be justified in going to war for the whole territory.

The remarkable thing in this dispatch is the confidence which it betrays that, in the course which the President had made up his mind to follow with reference to the Oregon question, he would receive the countenance and support of the Senate and the country, even to the extremity of a war with England. The result has shown that, in this expectation, he did not do justice either to the wisdom and integrity of the Senate, or to the intelligence and good sense of the American people.

Within a few days after the opening of the late session of Congress it became evident that Mr. Polk's policy respecting Oregon was viewed with no favor by a large majority of the Senate, nor was the war cry raised by the more ardent partisans of the Administration responded to in any part of the country.

In process of time this conclusion forced itself on the mind of the President and his advisers, and hence your Lordship will find in the ulterior dispatches of Mr. Buchanan to Mr. MacLane a far more moderate and subdued tone, until at last they exhibit a positive and conciliatory desire to settle the question by compromise, the title of the United States to "the whole of Oregon" having apparently been forgotten.

If further proof were wanted of the anxiety of this Government to be extricated from the mistaken position in which they had placed themselves, it would be found in the alacrity in which the terms last proposed by Her Majesty's Government for the settlement of the controversy were accepted.

Sufficient time has now elapsed since the promulgation of the Treaty to enable us to judge of the light in which the transaction has been viewed throughout the country, and it is gratifying to say that it has been everywhere received with satisfaction and applause.

No evidence whatever of a contrary feeling has come within my observation, except it be among the disappointed advocates of a war policy, who had staked their political fortune upon the adoption of extreme measures, and even in these quarters, I am bound in truth to say that the irritation is rather against the President and his ministers for having, as they say, deceived and betrayed them, than from any express condemnation of the Treaty itself.

THE NOTICE OF ABOGATION

In Polk's Diary (I, 353-54) is the following entry for Saturday, April 25, 1846:

The Cabinet held a regular meeting to-day; all the members present. I brought before the Cabinet the subject of the Joint Resolution of Congress authorizing me "in my discretion" to give to the Government of Great Britain notice to abrogate the Convention of the 6th of August, 1827, concerning the Oregon Territory. I stated that I had determined to give the notice without delay, and that in my judgment it was proper to give it to the British Government in England and not to the British Plenipotentiary here. In this the Cabinet were agreed. Mr. Buchanan had suggested to me on yesterday that the notice should

be given to the Earl of Aberdeen, Her Britannic Majesty's Minister for Foreign affairs. To this I had objected upon the ground that as the Executive Chief Magistrate of the U.S. I could hold no communication with a subordinate minister of the Government of Great Britain, but that any communication from the President must be addressed directly to the Sovereign of that country. In this the Cabinet were agreed, Mr. Buchanan having yielded his suggestion made to me on yesterday. It was agreed that Mr. Buchanan should prepare the form of notice, to be submitted to the Cabinet at their next meeting so as to be in time to be transmitted to Mr. McLane at London by the Steamer of the 1st proximo, to be by him delivered to the constituted authorities of the Government of Great Britain.

Polk was quite right in saying that the President of the United States properly communicates formally only with the sovereign or chief of state of another country; but he was mistaken in supposing that the notice of abrogation was required to be signed by the President. The authorization of Congress naturally and as a matter of course named the President (and not any subordinate) as empowered to act; but it was no more necessary for the President to sign the notice himself than it was for him to proceed to London to deliver it; a note directed by the President to be written and delivered by McLane to Aberdeen would have served every purpose; such a course would have been in accord with later practice; but this was the first occasion in our history of the abrogation of a treaty of the United States by notice from this Government; so there was at the time no American precedent as a guide.

Pursuant to the views of the President, the instrument of notice was in solemn and elaborate form, under the Great Seal, signed by the President, countersigned by the Secretary of State, and addressed to Queen Victoria, as follows (D.S., 1 Communications to Foreign Sovereigns and States, 337-39; Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 47-48; the form prepared by Buchanan was longer; see Polk's Diary, I, 360, April 27, 1846):

To Her Majesty VICTORIA,

Queen of the United Kingdom of Great Britain and Ireland, &c., &c., &c.

Whereas the Congress of the United States have adopted a "Joint Resolution concerning the Oregon Territory, of which the following is a copy:

[Here follows the text of the joint resolution]

Now, therefore, after a careful consideration of the premises, I, James K. Polk, President of the United States, in the exercise of the authority and discretion vested in me by the said "Joint Resolution concerning the Oregon Territory", and in pursuance of the second article of the Convention of the sixth of August, eighteen hundred and twenty-seven, therein mentioned, do hereby, in behalf of the United States, give notice to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, that at the end of twelve months from and after the delivery of these presents, by the Envoy Extraordinary and Minister Plenipotentiary of the United States at London, to Her Britannic Majesty, or to Her Majesty's Principal Secretary of State for Foreign Affairs, the said Convention shall be entirely annulled and abrogated.

In testimony whereof, I have caused the seal of the United States to be hereunto affixed. Given under my hand at Washington, this (L.S.) twenty-eighth day of April, A.D. 1846, and of the Independence of the said States the seventieth.

JAMES K. POLK.

By the President:

JAMES BUCHANAN,
Secretary of State.

The instruction to McLane transmitting the instrument of notice was of the same date, April 28, 1846; Polk had a hand in its drafting (*ibid.*, I, 360-61); its material paragraphs follow (D.S., 15 Instructions, Great Britain, 292-94; Senate Document No. 489, 29th Congress, 1st session, serial 478, p. 46):

I herewith transmit a notice for the abrogation of the Convention of the 6th August, 1827, between Great Britain and the United States, in accordance with the terms prescribed in its second article. This paper you will deliver to Her Britannic Majesty in person, or to Her Majesty's Principal Secretary of State for Foreign Affairs, after you shall have ascertained which of these modes of presenting it will be most in accordance with Her Majesty's wishes. A duplicate of the same is transmitted, to be placed on file in the archives of your Legation.

As the abrogation of this Convention is an act of an important and solemn character, the delivery of the notice ought to be attested with all due formality. The mode is left entirely to your own discretion; but I would suggest that it might be made the subject of a protocol in triplicate, one copy of which should remain with the British Government, another with the Legation in London, and the third be transmitted to this Department.

In the remarks which you may have occasion to make on the delivery of the notice, the language of the preamble to the "joint resolution concerning the Oregon Territory" must necessarily be your guide. It is true that the President would have preferred a naked resolution, authorizing him to give the notice; and he believes that if such a resolution had been adopted by Congress during the month of December last, the controversy might have been adjusted both more speedily and upon better terms for the United States. He was content, nevertheless, with the resolution as it originally passed the House of Representatives: and in the form finally adopted he considers it preferable to a failure of the measure. However, Congress have spoken their will upon the subject in their joint resolution, and to this it is his and your duty to conform.

Upon a careful review of my despatch to you (N^o 23,) of the 26th February last, the President finds nothing to change. It will still continue to be the guide of your conduct. In that despatch, I have distinctly declared that "the President has at all times been prepared to receive and to treat with the utmost respect any proposal for a compromise [of the Oregon question] which might emanate from the British Government. Whilst he has not deemed it proper to invite such a proposal, he has ever manifested an anxious desire to preserve amicable relations with Great Britain." These sentiments of the President you may communicate to Lord Aberdeen on delivering the notice.

In the present state of the negotiation, it is clear that, "in the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to said territory", the first proposal ought to proceed from the British Government. It is deemed unnecessary to enforce so plain a proposition by arguments as these will readily occur to your own mind, should this become a question, which, however, cannot be anticipated.

The foregoing instruction, with its enclosures, was received at London on May 15, 1846, "late in the day". McLane naturally found it impossible to follow the suggestion that the notice be delivered to Queen Victoria "in person" or to have the delivery "made the subject of a protocol in triplicate"; and before any action by McLane was feasible the British proposal for adjustment of the Oregon question had been formulated (May 18) and forwarded to Washington by the packet of May 19, so that the later paragraphs of the instruction became superfluous.

McLane's despatch of May 24 gives an account of his interview with Aberdeen on May 20 and of the procedure adopted; the text of that

despatch and of its enclosures, the note of McLane to Aberdeen of May 20 (delivered May 21) and the reply of the latter of May 22, follow (D.S., 56 Despatches, Great Britain, No. 48, and enclosures; only the note of Aberdeen is printed in Senate Document No. 489, 29th Congress, 1st session, serial 478, pp. 49-50; that note is here collated with the original, enclosure to despatch No. 49, May 27, 1846):

I wrote on the eighteenth Instant, acknowledging the receipt of your Despatch, Number twenty seven, dated the twenty eighth of April, in which you transmitted the notice from the President abrogating the convention of August eighteen hundred and twenty seven between Great Britain and the United States, and instructing me as to the mode of delivering it. At the same time I informed you that I intended on the day following, the nineteenth, to proceed in the execution of your instructions.

I did not obtain an interview with Lord Aberdeen, however, until the twentieth Instant. On that occasion I showed him the notice in the form in which it had been transmitted to me and acquainted him with such parts of your Despatch as would best explain the wishes of the President, and, as I thought, might without impropriety be communicated.

It will be observed, that as the notice was to be delivered to Her Majesty, or to the Principal Secretary of State for Foreign affairs, according to Her Majesty's wishes, neither that, nor the suggestion in your letter of making the delivery the subject of a protocol in triplicate could be determined without the concurrence of Her Majesty's government.

Of course, it would have been more agreeable to me, without any reference to regularity, to have conformed in all respects to the suggestions in your Despatch. Lord Aberdeen, however, was quite explicit not only in requiring that the notice should be delivered to the Principal Secretary of State for Foreign Affairs, but, in his objection to making the delivery the subject of a Protocol in triplicate

He said that, according to common usage, in cases of terminating a treaty by notice from one of the contracting parties to the other, the notification from the government dissolving the treaty was made through the regular Functionary of communication with Foreign Governments of the other contracting Party; he referred particularly to a recent case¹ of a proceeding by the Government of Brazil to terminate the Treaty with Great Britain by notice for that purpose, in which, although it became a question whether the *casus fœderis* had arisen, the same course, in deference to common precedent, was pursued; and he insisted upon the adoption of the same ceremony upon the present occasion. Otherwise he apprehended that, if called upon, he would find it difficult to give a satisfactory explanation of the departure from the accustomed form.

Being entirely satisfied that the mode of delivering the notice thus indicated would be in every respect valid and authentic, with or without consent, I confess that the preference given to it by this government appeared to me rather to recommend than discourage its' adoption.

It was finally understood under these circumstances, that I should communicate the notice in a note to the Principal Secretary of State for Foreign Affairs, referring to my having previously acquainted him with the transmission of the notice from my Government, and with the special instructions and suggestions accompanying it; that I should also refer to the objections he had made to the adoption of the mode I had suggested under your instructions, and to the pref-

¹ The "recent case" concerned the slave trade convention between Brazil and Great Britain of July 23, 1817, with an additional article thereto of September 11, 1817 (British and Foreign State Papers, IV, 85-116); another relevant convention is that of November 23, 1826 (*ibid.*, XIV, 609-12), especially the first article thereof; for the correspondence of 1845, see *ibid.*, XXXIV, 688-90, 692-98, 502-3, 527, 537.

erence he had ultimately given to the established form in similar cases, and that, conforming to that custom and his preference of it, I should ask an acknowledgement of the receipt of my note and of the notice for the purpose for which it had been given.

Accordingly, on the same day of the interview I prepared my communication enclosing the Notice as transmitted to me, and the following day delivered both at the Foreign Office: on the twenty second I received from the Earl of Aberdeen his reply of the same date in which he acknowledges on the part of Her Majesty's Government the receipt of the said notice, and declares that, in conformity with its' tenor, Her Majesty's Government will consider the Convention of the sixth of August eighteen hundred and twenty seven abrogated accordingly from the twenty first of May eighteen hundred and forty seven.

I hereto annex copies of the whole; and by the first safe private opportunity will transmit the original of the Earl of Aberdeen's reply, to be filed in the archives of the Department. The notice, in duplicate, transmitted from the department, is filed in the archives of this Legation, and a full record of the correspondence with the Earl of Aberdeen carefully made.

It would seem to me that the nature of Lord Aberdeen's answer, if nothing else, would render the mode of delivering the notice as satisfactory as any that could have been suggested; and I have to express the hope that the President will take the same view of it.

[*Mr. McLane to Lord Aberdeen*]

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has already had the honor to acquaint the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign affairs, that the Undersigned has received from his government a notice from the President of the United States, given in pursuance of a joint resolution of both Houses of Congress, for the abrogation of the Convention of the sixth of August eighteen hundred and twenty seven between Great Britain and the United States, in accordance with the terms prescribed in it's second article; which notice addressed to Her Majesty, and signed by the President; countersigned by the Secretary of State and sealed with the seal of the United States, is in the following words—

[Here follows the notice in full]

The Undersigned has also stated to the Earl of Aberdeen that he has been especially instructed to deliver the notice in the foregoing form to Her Britannic Majesty in person, or to Her Majesty's Principal Secretary of State for Foreign Affairs, after the Undersigned shall have ascertained which of these modes will be most in accordance with Her Majesty's wishes.

The undersigned has also acquainted the Earl of Aberdeen with the suggestion of the Secretary of State of the United States that the delivery of the notice might be made the subject of a Protocol in Triplicate, one copy of which should remain with the British Government, another with the Legation of the United States at London, and the third be transmitted to the Department of State at Washington:

And the undersigned having been informed by the Earl of Aberdeen, in answer to these communications, that the delivery of the notice to Her Britannic Majesty in person would be irregular; and that in conformity with the usage in such cases, the notice should be delivered to Her Majesty's Principal Secretary of State for Foreign affairs, by note addressed to him by the undersigned for that purpose, and not in the mode suggested by the Secretary of State of the United States;

The undersigned therefore, conforming to the mode preferred by His Lordship, as the most regular and most in conformity with the usage in such cases, has the honor to enclose to the Earl of Aberdeen, Her Majesty's Principal Secretary of State for Foreign affairs, the said notice from the President of the United States, for the abrogation of the convention aforesaid, in the form in which it has been

transmitted to the undersigned from His Government; and to request that the Earl of Aberdeen will acknowledge the receipt of this note, and the delivery of the notice for the purpose for which it is delivered.

The undersigned takes the opportunity to renew to the Earl of Aberdeen the assurance of his distinguished consideration.

(signed) LOUIS M^oLANE

38 HARLEY STREET CAVENDISH SQUARE
20 May 1846.

[Lord Aberdeen to Mr. McLane]

The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has had the honour to receive the Note of Mr M^oLane, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, dated the 20th, and delivered in on the 21st, instant, inclosing a Document dated the 28th day of April, signed by the President of the United States of America, and countersigned by the Secretary of State, in which, after reciting a joint resolution concerning the Oregon Territory which has been adopted by the Congress of the United States, the President, in conformity with the terms of that resolution, gives to Her Britannick Majesty's Government the notice required by the second Article of the Convention of the 6th of August 1827 between Great Britain and the United States, for the abrogation of the same.

The Undersigned acknowledges accordingly, on the part of Her Majesty's Government, the receipt of the said notice, and declares that, in conformity with its tenour, Her Majesty's Government will consider the Convention of the 6th of August 1827 abrogated accordingly from the 21st day of May 1847.

The Undersigned has the honour to renew to Mr M^oLane the assurances of his high consideration.

ABERDEEN

FOREIGN OFFICE, May 22. 1846.
LOUIS M^oLANE Esq.

However, by the entry into force of the Oregon Treaty on July 17, 1846, with its definitive boundary clauses, the convention of August 6, 1827, was superseded and the "joint occupation" of the Oregon country was legally at an end; the abrogation of the convention of 1827 was thus rendered of no future importance.

There was destined, however, to be another "joint occupation", military in character, of a very small area of the Oregon country; during the controversy over the water boundary local friction developed on San Juan Island (of about fifty square miles, lying east of Haro Strait), where the Hudson's Bay Company had established a station and where there were living "twenty-five Americans, with their families" (Senate Executive Document No. 29, 40th Congress, 2d session, serial 1316, p. 148); this resulted in the so-called "pig war" of 1859 (the sole casualty being one pig), and was followed by an arrangement for the stationing on San Juan Island of small detachments (seemingly not more than 100 strong) of United States infantry and of British marines; papers regarding the occupation are in *ibid.*, 143-270; see also British and Foreign State Papers, L, 796-801, and LV, 743-90; the joint military occupation of San Juan Island continued until November 1872 (Washington Papers, V, 270-71). For the geographical position of the island, see the map facing page 100.

THE EXCHANGE OF RATIFICATIONS

The United States instrument of ratification of the Oregon Treaty was sent to London by General Robert Armstrong, consul at Liverpool, as bearer of despatches (D.S., 15 Instructions, Great Britain, 314-15, June 22, 1846); the instruction to McLane was of the same date (*ibid.*, 315-16), and he was furnished with the usual full power (D.S., 3 Credences, 178, June 20, 1846). The papers reached London on July 11.

In the meantime, on July 6, 1846, the Government of Sir Robert Peel had been succeeded by that of Lord John Russell, with Viscount Palmerston as Secretary of State for Foreign Affairs; and it was with the latter that McLane exchanged the ratifications on July 17. The notes leading up to the appointment for the purpose are quoted as of some procedural interest (D.S., 56 Despatches, Great Britain, No. 65, July 17, 1846, enclosures; the latter of the two is an original):

[*Mr. McLane to Lord Palmerston*]

The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor to acquaint Lord Viscount Palmerston, Her Majesty's Principal Secretary of State for Foreign Affairs, that the Treaty concluded on the fifteenth ultimo between the United States and Great Britain for the adjustment of the Oregon question has been ratified by the President on the part of the United States; and that the Undersigned has received the President's ratification in order that it may be exchanged against that of Her Britannic Majesty.

The Undersigned has also the honor to acquaint Lord Palmerston that he has been authorized by special power from the President to exchange the ratifications of the Treaty with such person as may be duly empowered for that purpose on the part of Her Majesty's government.

The treaty as concluded, and ratified by the President appearing to be in all respects identical with the projet submitted on the part of Her Majesty's Government, the ratification on the part of Her Majesty may be anticipated as not likely to occasion any hesitation; and the undersigned has been instructed to express a desire on the part of the President that he should be able before the adjournment of Congress to acquaint that Body with the final consummation of an act which, he cherishes the hope, may be regarded as establishing the foundation of a cordial and lasting amity between the two countries. The undersigned has the honor to state also that in order to comply with the President's wishes, it will be necessary that the undersigned should be enabled, by a previous exchange of the ratifications, to transmit the ratification on the part of Her Majesty to his government by a Special Messenger whom he proposes to despatch from London for that purpose on the eighteenth Instant; and he has the honor therefore, to request that Lord Viscount Palmerston would be pleased to take such steps as may appear to him to be proper for the completion of the requisite ceremonials in season for that purpose.

The Undersigned takes the occasion to renew to Lord Viscount Palmerston the assurance of his distinguished consideration.

(Signed) LOUIS M^cLANE

38 HARLEY STREET July 13th 1846

[*Lord Palmerston to Mr. McLane*]

Lord Palmerston presents his Compliments to Mr M^cLane, and will be happy to have the honour of receiving him at the Foreign Office on Friday next [July 17] at Three O'Clock, for the purpose of exchanging the Ratifications of the Treaty

for the settlement of the Oregon Boundary. It will be necessary to collate the respective Ratifications previously to their being exchanged; and if Mr McLane should not wish to do this himself, he will perhaps have the goodness to send the Secretary of his Legation to the Foreign Office for the purpose, with the President's Ratification, half an hour before the time fixed for the exchange.

FOREIGN OFFICE July 15. 1846

ARTICLES 3 AND 4

The act of September 27, 1850, "to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the said Public Lands" (9 Statutes at Large, 496-500), contained, in sections 4 and 11, provisions regarding treaty rights to lands in the Territory of Oregon; that territory then included "all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude" (*ibid.*, 323-31, act of August 14, 1848).

Under the treaty with Great Britain signed at Washington July 1, 1863, the possessory rights of the Hudson's Bay Company and the property of the Puget's Sound Agricultural Company referred to in Articles 3 and 4 of the Oregon Treaty were, pursuant to the award of September 10, 1869, acquired by the United States for the respective sums of \$450,000 and \$200,000. An account of the claims of the two companies and of the proceedings had is in Moore, *International Arbitrations*, I, 237-70; see also the papers of the "British and American Joint Commission for the Final Settlement of the Claims of the Hudson's Bay and Puget's Sound Agricultural Companies", printed in 1865-69 in fourteen volumes, including an index.

The arbitral decision of the German Emperor regarding the water boundary (referred to below) was dated October 21, 1872; there was approved on June 20, 1874, "An act to ascertain the possessory rights of the Hudson's Bay Company and other British subjects within the limits which were the the subject of the award of His Majesty the Emperor of Germany under the treaty of Washington of May eight, eighteen hundred and seventy-one, and for other purposes", providing in part as follows (18 Statutes at Large, pt. 3, 129-30):

That a commissioner be appointed by the President of the United States, to make, and report to the Secretary of the Interior, a list of all British subjects who, on the fifteenth day of June, eighteen hundred and forty-six, were in the occupation of land, lawfully acquired, within the limits which were the subject of the award of His Majesty the Emperor of Germany, together with a description of the land actually occupied by each at said date; and said commissioner shall proceed to the vicinity of the land in question, and there receive proof of the occupancy of such land and of the mode by which such occupancy was acquired, after first giving reasonable notice as to the said matters to be so reported by him. Such proof shall consist of oral testimony, under oath and such documentary proofs as the said occupants may present. The testimony of all witnesses shall be reduced to writing and all documentary proof offered by the parties and received by the commissioner shall be attached to the deposition of the party offering such proofs, which testimony and proofs shall be submitted by said commissioner with his report, and such report shall be subject to review

by the Secretary of the Interior, whose action thereon shall be final. For the purposes of this act, the said commissioner shall have authority to subpoena witnesses and to administer oaths and take testimony.

SEC. 3. That all British subjects whose claims shall be approved by the Secretary, as provided in section one of this act, shall be allowed to purchase from the United States the land so designated at any time within one year from such approval, at the ordinary minimum price per acre where the lands are situated outside railroad limits, and at double minimum price where the lands are within railroad limits.

The statute cited had been recommended by the Secretary of the Interior (Columbus Delano) following representations made by the British Minister, Sir Edward Thornton (see the annual report of the former dated October 31, 1873, in House Executive Document No. 1, pt. 5, 43d Congress, 1st session, serial 1601, pp. xiii-xiv; see also the notes of December 4, 1873, in D.S., 16 Notes to the British Legation, 271-72, and 96 Notes from the British Legation).

On September 23 (or 24), 1874, Hazard Stevens was appointed Commissioner under the statute; his mission was duly performed, but no claims were presented; the following is from the annual report of the Secretary of the Interior (Zachariah Chandler) of October 31, 1875 (House Executive Document No. 1, pt. 5, 44th Congress, 1st session, serial 1680, p. iv; see also the annual report dated October 31, 1874, in House Executive Document No. 1, pt. 5, 43d Congress, 2d session, serial 1639, p. xvii):

The commissioner appointed by you, under the act of 20th June, 1874, to make and report to this Department a list of all British subjects who, on the 15th of June, 1846, were in the occupation of land, lawfully acquired, within the limits of the award of His Majesty the Emperor of Germany, together with a description of the land actually occupied by each person at said date, satisfactorily performed his duties. He reported that, after due notice given by publication for a period of more than thirty days, in a newspaper having extensive circulation on the islands in question, and by posting conspicuously the notice in all the post-offices in the archipelago, he proceeded in person to Victoria, British Columbia, where he was informed by the chief factor of the Hudson Bay Company that said company would present no claim under said act. He then proceeded to San Juan and Lopez, but no British subject presented any claim under the act. You accordingly, on the 3d of August last, issued a proclamation terminating the withdrawal made by your previous proclamation of 4th February, 1873, which was issued in order to protect the rights of British subjects under the treaty of 15th June, 1846. Said termination took effect on the 30th ultimo, and the lands are now open to disposal as other public lands, except such as have been reserved by your orders for military and light-house purposes.

The two proclamations mentioned in the report of the Secretary of the Interior are so entitled; but in substance and wording, aside from the titles, they are Executive orders; neither is under seal and each is countersigned by the Commissioner of the General Land Office. The originals have not been found; printed copies are in the files of the Department of the Interior and the texts which follow are from photostats thereof in the archives of the Department of State:

No. 777.

By the President of the United States.

PROCLAMATION.

Whereas, by the award of the Emperor of Germany, under date of October 21, 1872, certain territory heretofore held by joint occupation of Great Britain and the United States, including the island of San Juan and other islands, in the district of lands subject to sale at Olympia, Washington Territory, is decided to belong to the jurisdiction of the United States; and

Whereas, it appears that there are many subjects of Great Britain now in occupancy of portions of the said territory, whose rights and possessory titles are claimed to be protected by the provisions of the Treaty with Great Britain, made at Washington June 15, 1846, and by certain arrangements for the joint occupation of said territory existing between the Government of the United States and the Government of Her Britannic Majesty;

Now, therefore, it is hereby ordered that all tracts or parcels of land included in the said award be withheld from sale or disposal of any nature, under preemption, homestead, or other laws of the United States, until after the claims of the occupants above mentioned shall have been adjusted and public notice thereof given.

Given under my hand, at the City of Washington, this fourth day of February, A.D. 1873.

U. S. GRANT,
President of the United States.

By the President:

WILLIS DRUMMOND,
Commissioner of the General Land Office.

(No. 808.)

By the President of the United States.

PROCLAMATION.

Whereas, by proclamation of the President of the United States of the 4th day of February, 1873, it was ordered that all tracts or parcels of land included in the award of the Emperor of Germany under date of October 21, 1872, deciding certain territory formerly held by joint occupation of Great Britain and the United States, including the island of San Juan and other islands in the district of lands subject to sale at Olympia, Washington Territory, to belong to the jurisdiction of the United States, should be withheld from sale or disposal of any nature under preemption, homestead, or other laws of the United States, until after the claims of parties whose rights and possessory titles in said territory were claimed to be protected by the provisions of the Treaty with Great Britain made at Washington June 15, 1846, and by certain arrangements for the joint occupation of said territory existing between the Government of the United States and the Government of Her Britannic Majesty, should have been adjusted and public notice thereof given; and, *whereas*, pursuant to the Act of Congress of June 20, 1874, a Commissioner was duly appointed and proceeded to the vicinity of the lands in question, gave reasonable notice of his readiness to receive proof in support of such claims, and none were presented; Now, therefore, it is hereby ordered that from and after the 30th day of October, 1875, the withdrawal of all tracts or parcels of lands from sale or disposal under the proclamation aforesaid shall cease and determine, and said lands thereafter be open to disposal as other public lands of the United States.

Given under my hand, at the City of Washington, this *Third* day of *August*, A.D. 1875.

U. S. GRANT,
President of the United States.

By the President:

S. S. BURDETT,
Commissioner of the General Land Office.

THE BOUNDARY AS NOW DEMARCATED

The boundary between the United States and Canada from the summit of the Rocky Mountains to the Pacific Ocean is to be considered in two portions, the land boundary and the water boundary.

The land boundary, running eastward from Georgia Strait (Point Roberts) to the summit of the Rocky Mountains, was first demarcated between 1857 and 1862; on the part of the United States specific provision for that demarcation was made by the act of August 11, 1856 (11 Statutes at Large, 42). By that original demarcation the boundary was, as now, located by a series of straight lines running between monuments, and not following the curve of the parallel. For an account of that first demarcation, see Baker, Survey of the Northwestern Boundary of the United States, 1857-1861; also Klotz, "The History of the Forty-ninth Parallel Survey West of the Rocky Mountains" (in Geographical Review, III, 382-87). The forthcoming report of the International Boundary Commission on the boundary from the Gulf of Georgia to the northwesternmost point of the Lake of the Woods will include a history of the first demarcation of this portion of the boundary.

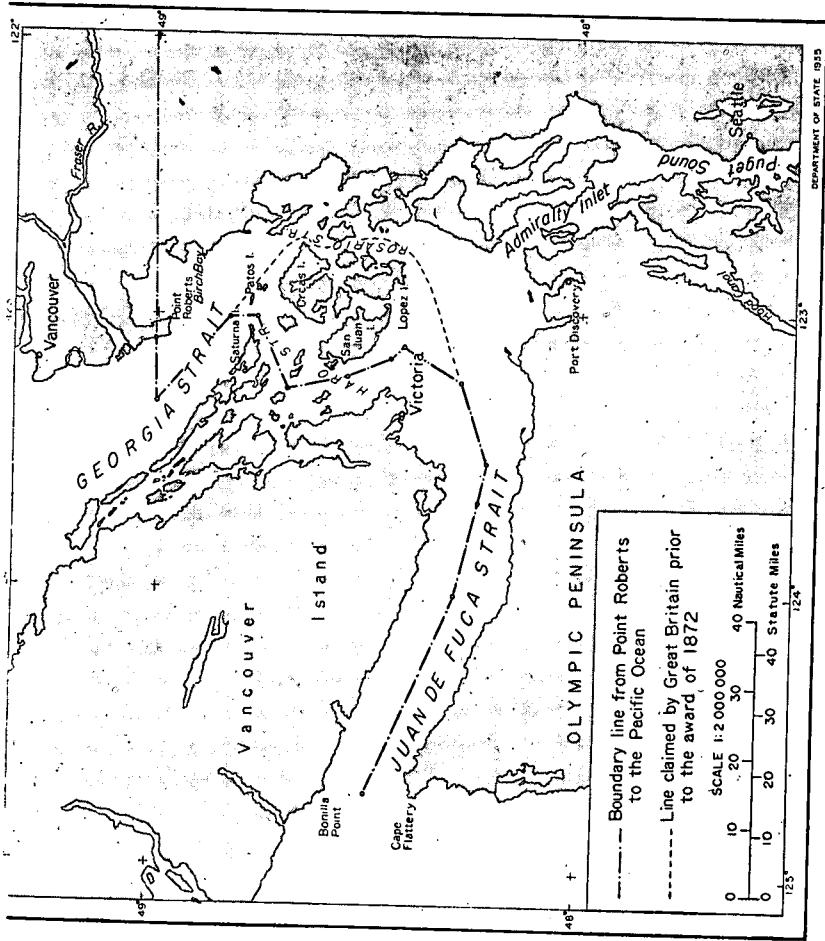
A protocol approving and adopting the seven maps of the original demarcation, certified and authenticated by the Commissioners of the two Governments, was signed at Washington on February 24, 1870.

The existing land boundary is shown by the present maps of the International Boundary Commission entitled "International Boundary from the Gulf of Georgia to the Northwesternmost Point of the Lake of the Woods". The series comprises fifty-nine maps (sheets 1 to 59, inclusive) on a scale of 1:62,500, and there are also an index sheet and a profile sheet. The line eastward from Point Roberts to the summit of the Rocky Mountains is shown on sheets 1 to 19, inclusive; the summit of the Rocky Mountains appears on sheet 19. The charts are signed by the Commissioners of the United States and of His Britannic Majesty pursuant to Articles 6 and 7 of the treaty signed at Washington April 11, 1908. Sheets 1 to 19 were published in 1913.

The originals of those maps are on file in the Office of the United States Section of the International Boundary Commission; copies are obtainable from that office; the original maps will be submitted to the two Governments when the final report of the Commission on that portion of the boundary is presented.

The water boundary, westward from Point Roberts along the 49th parallel and continuing thence through Georgia Strait and through the Straits of Haro and Juan de Fuca to the Pacific Ocean, a distance of 150 miles, was the subject of an extended diplomatic controversy, the history of which is treated in Moore, International Arbitrations, I, 196-236, with numerous citations (see the map facing this page; also Paulin, *op. cit.*, plate 96 C and pp. 71-72).

Prolonged discussions led to no agreement between the two Governments prior to the convention for the submission of the dispute to



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the arbitration of the President of the Swiss Confederation, which was signed at London on January 14, 1869, by Reverdy Johnson and Lord Clarendon as the respective Plenipotentiaries of the United States and Great Britain (Foreign Relations, 1868, pt. 1, 404-5); but that convention failed to go into force, as it was "not favorably regarded by the Senate" (Moore, *op. cit.*, 224).

By the provisions of Articles 34-42 of the Treaty of Washington of May 8, 1871, the question as to whether the line should be drawn southerly through Rosario Strait, which was the contention of the British Government, or through Haro Strait (Canal de Haro), as claimed by the United States, was submitted to the German Emperor for decision (see Washington Papers, V, *passim*). The decision of the German Emperor that the line should be drawn through Haro Strait was rendered on October 21, 1872; and a protocol describing the line, accompanied by signed charts on which the same was drawn, was signed at Washington on March 10, 1873 (see Moore, *op. cit.*, 226-35).

The line of the water boundary was reestablished pursuant to the treaty with Great Britain signed at Washington April 11, 1908; the elaborate report of the International Boundary Commission was published in Washington in 1921 (Joint Report upon the Survey and Demarcation of the Boundary between the United States and Canada from the Western Terminus of the Land Boundary along the Forty-ninth Parallel, on the West Side of Point Roberts, through Georgia, Haro, and Juan de Fuca Straits, to the Pacific Ocean); with that report is a copy of the Joint Chart of the International Boundary between United States and Canada from the Forty-ninth Parallel to the Pacific Ocean; the chart is on a scale of 1:200,000; the original report and two identic original charts, signed by the Commissioners of the United States and of His Britannic Majesty, are in the archives of the Department of State; the detailed description of the boundary is at pages 37-41 of the report, which includes historical and geographical appendices; from its introduction (p. 7) the following general statement of the line is excerpted:

the line as now reestablished consists of twelve straight line courses, the ends of which are fixed by reference marks on the shore. It has a total length of 150 statute (130¼ nautical) miles. Beginning at the western terminus of the land boundary along the forty-ninth parallel on the west side of Point Roberts (a peninsula extending south from the mouth of the Fraser River, B.C.), the line runs westward to the middle of Georgia Strait; thence southeastward through Georgia Strait to a point off Saturna Island; thence southward between Saturna and Patos Island, through Haro Strait, to Middle Bank Shoal; thence southward, then northwestward through Juan de Fuca Strait to the terminus at the Pacific Ocean.

