

charter<sup>1</sup>—the Americans went as individuals intending to become permanent residents and land-owners, and the right to acquire title to land was of no less importance to them than the right to be protected by the armies and courts of justice of their country.

Following the first overland journeys of intending settlers, therefore, petitions began to be presented to Congress pointing out the situation of the settlers, urging relief, and urging as an essential means to that end an immediate adjustment with Great Britain, either by agreement or by taking forcible possession of the territory; and reports from the State and War Departments, reports from committees, and bills to provide for the protection of American citizens in Oregon, followed in increasing multiplicity. Congress, however, still did nothing, for the powers of Congress were limited. So long as the agreement with Great Britain remained in force, grants of land clearly could not be made, and the termination of the agreement or the making of a new one were necessarily executive acts. One thing indeed Congress might have done. It might have passed an act, similar to the British act of July 2, 1821 (1 and 2 Geo. IV, c. lxvi), extending the criminal and civil jurisdiction of the courts of the United States so as to apply to American citizens in the Oregon country; but even this was not done.

Lord Ashburton's mission in 1842 seemed to offer an excellent opportunity of effecting a compromise, and after his first conference with Webster he wrote home in April that he expected to settle the boundary by carrying the line down the Columbia. Unfortunately, his instructions forbade his agreeing to the line of 49° north, and failed to sug-

<sup>1</sup> By the original charter of the Hudson's Bay Company of May 16, 1669, all of the King's subjects who were not authorized by the corporation were forbidden to "visit, haunt, frequent, trade, traffic or adventure" within the territory allotted to *The Governor and Company of Adventurers trading into Hudson's Bay*. By crown grants of 1821 and 1838 (made after the merger with the Northwest Fur Company) "no British subjects, other than and except the said Governor and Company, and their successors, and the persons authorized to carry on exclusive trade by them, shall trade with the Indians during the period of this our grant, within the limits aforesaid," etc. See text of these documents in Greenhow, 465-476.

gest any basis of compromise as between the former offers of the two parties. It was apparent, of course, that a compromise of some sort must be found. Both parties had fully stated their arguments, but neither of them had found any clear legal basis upon which the title to the territory could have been adjudicated. The facts as to early discovery and occupation were not fully ascertainable. The rules of international law applicable to the case were vague and unsettled. Arbitration could not hopefully be looked to, for arbitrators could have done no more in such a case than make a bargain between the parties, which the parties could better make for themselves; and a partition of the country was therefore, in 1842, the only conceivable mode of settling the question, since neither party would have yielded the whole territory without a war.

Webster talked of accepting the Columbia River for the boundary, if an arrangement could be made by which Mexico would sell San Francisco Bay to the United States. Great Britain expressed no objection to that plan, but did not offer to help the United States to carry their point with the Mexican government. Webster, however, soon modified his views. He never professed to think that questions of strict legal right were involved, and he saw that an agreement for partition must of necessity be based upon a consideration of the respective convenience of the two parties. As a New Englander he was much concerned about the harbors on the Pacific; so that when the Wilkes exploring expedition returned in June, 1842, with their reports of the dangerous bar at the mouth of the Columbia and the excellent harbors in Puget Sound, his thoughts again reverted to the advantages of a line on 49° north.

Writing to Everett in the autumn, after the Ashburton negotiations had been ended and the treaty signed without any reference to the northwest boundary, Webster explained fully what difficulties there had been in the way. If an adjustment was to be made, he said, it was hard for him to see in what form or on what principle this could be done. The Columbia River, of course, offered a convenient line of

division, but then the navigation was very uncertain and inconvenient. If the United States were limited by the river, it would not have one tolerable harbor on the whole coast, as all the good harbors between the Russian settlements and California were on Puget Sound. England, no doubt, wanted a good harbor in the sound, but she might also want the privilege of transporting furs and other commodities down the river.

"I suppose it is an object with her to retain the settlement at Vancouver<sup>1</sup> and the other small settlements further north, under her jurisdiction and protection. Does she want any more? I doubt whether she can contemplate any considerable colonization in the regions. I doubt exceedingly, whether it be an inviting country for agricultural settlers. At present there are not above seven hundred white persons on the whole territory, both sides the river, from California to latitude 54, north."<sup>2</sup>

Webster again reverted to the subject in another letter to Everett on January 29, 1843, where he discussed the possibility of a sale of all of Upper California to the United States, a part of the purchase money to be devoted to paying the claims of American citizens and a part to paying the claims of British subjects against Mexico.<sup>3</sup>

But Webster was not to remain much longer in the State Department, and Tyler thought (perhaps wisely) that the joint occupation might well be suffered to continue, and that time was on the side of the United States,<sup>4</sup> an opinion which Calhoun fully shared. Nevertheless, the subject of Oregon could not decently be ignored altogether, especially as the British government was now proposing a new negotiation;<sup>5</sup>

<sup>1</sup> Fort Vancouver, on the Columbia River.

<sup>2</sup> Webster to Everett, Nov. 28, 1842; *Webster's Private Corr.*, II, 154.

<sup>3</sup> See Schaefer, "The British Attitude toward the Oregon Question," *Amer. Hist. Rev.*, XVI, 293-294, note 61.

<sup>4</sup> Tyler to Calhoun, Oct. 7, 1845; *Amer. Hist. Assn. Rep.*, 1899, II, 1059.

<sup>5</sup> "It has appeared to Her Majesty's Government that both parties would act wisely in availing themselves of so auspicious a moment to endeavor to bring to a settlement the only remaining subject of territorial difference. . . . I speak of the line of boundary West of the Rocky Mountains. . . . You will propose to Mr. Webster to move the President to furnish the United States

and the President in his annual message in December, 1842, informed Congress that, although the difficulty might not for several years to come involve the peace of the two countries, he would not delay to urge on Great Britain the importance of an early settlement.

Aberdeen was very indignant at the President's way of putting it. "You must know by this time," he wrote to a friend, "why I expressed myself greatly dissatisfied with the message of the President. The manner in which he treated the subject of the Right of Search was really scandalous. His mention of the Oregon question was also most uncandid. When he talked of pressing us to enter into negotiation, he had in his pocket a most friendly overture from us, which he had already answered favourably."<sup>1</sup>

What Tyler intended, and what Webster would have liked, was to send the latter on a special mission to England, but the Committee on Foreign Affairs of the House of Representatives refused to report an appropriation for that purpose.<sup>2</sup> Webster next tried to persuade Everett to go on the new and important mission to China so that he might take his place, but without success. At last in May, 1843, Webster resigned; the interregnum under Legaré followed; Upshur was not appointed Secretary of State until the end of July, and it was not until October 8, 1843, that instructions were at last sent to Everett to open negotiations in London. But by that time Aberdeen had become tired of waiting and had arranged to send Pakenham, for many years the

Minister at this Court with such instructions as will enable him to enter upon the negotiation of this matter with such person as may be appointed by Her Majesty for that object; and you will assure him, at the same time, that we are prepared to proceed to a consideration of it in a perfect spirit of fairness, and to adjust it on a basis of equitable compromise."—(Aberdeen to Fox, Oct. 18, 1842; Sen. Doc. 1, 29 Cong., 1 sess., 139.)

<sup>1</sup> Aberdeen to J. W. Croker, Feb. 25, 1843; *Croker's Corr. and Diaries*, II, 189. The President had instructed Webster the previous autumn to say that he entirely concurred in the expediency of negotiations in regard to the Oregon territory; that he would express this opinion in his message to Congress, and that instructions would be sent to the American minister in London "at no distant day."—(Webster to Fox, Nov. 25, 1842; Sen. Doc. 1, 29 Cong., 1 sess., 140.)

<sup>2</sup> Adams's *Memoirs*, XI, 330, Feb. 28, 1843. The vote of the committee was 6 to 3 against the appropriation.

British minister to Mexico, to undertake the business in Washington.

When Pakenham reached his new post, early in the year 1844, the difficulties in the way of a compromise had been greatly increased. The state legislatures were beginning to pass militant resolutions, public opinion in the United States was becoming inflamed, and the Senate had been doing what it could to embarrass the negotiations by passing a bill (which failed in the House) for establishing forts and making grants of land in Oregon. The eternal question of slavery also began to complicate the question. McDuffie and Calhoun had opposed the Senate bill, and their action was attributed in the North to the unwillingness of South Carolina to see the area of freedom extended; so that when Calhoun, somewhat later, warned the country of the danger of war with Great Britain, he was fiercely attacked by the great abolitionist poet. In his lines "To a Southern Statesman" Whittier contrasted Calhoun's course in respect to Oregon and in respect to Texas. "Is this thy voice?" he asked:

"Is this thy voice whose treble notes of fear  
Wail in the wind? And dost thou shake to hear  
Actæon-like the bay of thine own hounds,  
Spurning the leash and leaping o'er their bounds,  
Sore baffled statesmen?"

It may be  
That the roused spirits of Democracy  
May leave to newer States the same wide door  
Through which thy slave-cursed Texas entered in."

Congress met in December, 1843, and the President's message once more called attention to the fact that the boundary of the Oregon territory was still in dispute; that propositions for settlement and final adjustment had been submitted to the British government without result; that the American minister in London had been instructed to bring the subject again to the consideration of the British government; and that every proper expedient would be resorted to in order to bring the negotiations to a speedy and

happy determination. In the meantime he had recommended that, inasmuch as many American citizens were either already established in the territory or were on the way thither for the purpose of forming permanent settlements, military posts be established along the line of travel so as to furnish protection against hostile tribes of Indians. "Our laws," he added, "should also follow them, so modified as the circumstances of the case may seem to require."

These suggestions involved doing no more than what the British government had, in effect, done for the Hudson's Bay Company and its servants; but they were by no means enough for Congress, and in March, 1844, Senator Semple, of Illinois, precipitated a debate by offering a resolution requesting the President to give notice terminating the joint occupation convention of 1827. Upon this a long and excited discussion arose in the Senate, in the course of which Senator Buchanan, of Pennsylvania, made a vehement speech advocating the passage of the resolution, asserting his belief that the United States "had a clear and conclusive title to the whole of the territory—to every foot of it—from the latitude of 42 to the latitude of 54.40 north," and asserting that the object of the British government was to delay as long as possible the settlement of a question which the American people would never suffer to sleep. This eloquence of Buchanan and other congressional orators was of course intended for its effect upon the coming presidential election, and, no doubt, was so received by the Senate and the country at large; but as the commercial states were manifesting uneasiness over the possibility of war with England, the motion for giving notice was defeated by a vote of 28 to 18.

When the nominating conventions of the two parties met in May, 1844, the question of Oregon was therefore still undecided, although the American government had repeatedly indicated a willingness to divide the territory with Great Britain upon the basis of the line of 49° north latitude. This would have given to the United States seven degrees of coast as against five and two-thirds degrees to Great Britain,

and would also have given to the United States both sides of the Straits of Juan de Fuca, the southern half of Vancouver's Island, and the whole of Puget Sound. To any such proposition, however, Great Britain thus far had shown no readiness to listen. The Whig convention, as has been seen, was silent on the subject of Oregon; but the Democratic platform, adopting the most extreme view, declared that "our title to the whole of the territory of Oregon is clear and unquestionable," and that no part of it ought to be ceded to England or any other power.

As the presidential campaign progressed, the irresponsible talk about "the whole of Oregon" and "Fifty-four-forty or fight" became louder and more dangerous. Public opinion, not correctly informed, became accustomed to the talk of war with England; and, on the other hand, the British public, who cared nothing whatever about Oregon for its own sake, were being daily irritated by violent and abusive language that was repeated with malicious pleasure by the British press. "Our cousin Jonathan is an offensive, arrogant fellow in his manner," wrote so friendly a critic as Lord Ashburton. "By nearly all our people he is therefore hated, and a treaty of conciliation with such a fellow, however considered by prudence or policy to be necessary, can in no case be very popular with the multitude."<sup>1</sup>

But if the multitude in Great Britain disliked Brother Jonathan's swagger and arrogance, the American public had equally good reason to dislike John Bull. For years before the election of 1844 volume after volume of travels in America which had appeared in England and been reprinted in America touched and irritated every sensitive fibre of national self-consciousness. The criticisms were not the less offensive because they were often just. The hearty contempt and abuse of Mrs. Trollope, Captain Hamilton, and Charles Dickens were sometimes less hard to bear than the patronizing condescension of other writers. Slavery was universally denounced in terms that exasperated the South; and the dirt, discomforts of travel, manner of speech,

<sup>1</sup> Ashburton to Croker, Nov. 25, 1842; Croker's *Corr. and Diaries*, II, 188

and rawness of a new country were held up to the ridicule of the world in a manner that could hardly fail to offend the whole nation. Most of these productions are forgotten, but one work of genius survives. It is perhaps not too much to say that the publication of *Martin Chuzzlewit* did more than almost any other one thing to drive the United States and England in the direction of war.

It was under such discouraging circumstances that Pakenham began his Oregon negotiations. He had written to Upshur soon after arriving in Washington of the anxiety of the British government to come to "an early and satisfactory arrangement" with respect to the boundaries of Oregon. Upshur had replied, asking Pakenham to call on the morning of the twenty-seventh of February, but on the day following their preliminary conversation Upshur was killed.<sup>1</sup>

Both Tyler and Calhoun were in favor of letting the discussion rest, but as the former remarked at a later day, "a clamour was raised in relation to the Subject throughout the country, which was loudest in the west, and nothing seemed to remain but that negotiation should be attempted."<sup>2</sup> It was not until the twenty-third of August, in the early days of the presidential campaign, that the discussion was begun. Calhoun's real purpose was to gain time; "to do nothing to excite attention," as he explained, "and leave time to operate."<sup>3</sup> The purpose of the British government was quite the opposite. They were, in reality, very indifferent as to the fate of Oregon, but they were very much concerned indeed as to a war with their best customer. "It is," wrote Everett, "the result of the closest consideration I have been able to give it, that the present government, though of course determined not to make any discreditable sacrifice of what they consider their rights, are really willing to agree to reasonable terms of settlement." But what Everett regarded as reasonable terms were much beyond

<sup>1</sup> Pakenham to Upshur, Feb. 24, 1844; Upshur to Pakenham, Feb. 26, 1844; Sen. Doc. 1, 29 Cong., 1 sess., 140.

<sup>2</sup> Tyler to Calhoun, Oct. 7, 1845; *Amer. Hist. Assn. Rep.* 1899, II, 1059.

<sup>3</sup> Calhoun to Mason, May 30, 1845; *ibid.*, II, 660.

what Pakenham's official instructions authorized him to agree to.<sup>1</sup> A negotiation begun under such circumstances was necessarily futile. The American representative only wanted to gain time; the British representative had nothing to offer but what he was well advised would be rejected. Nevertheless, the forms of a discussion were gone through with, and written statements of the claims of the parties having been exchanged, the conferences came to an end, without any conclusion having been reached, on September 24, 1844.<sup>2</sup>

Early in the following winter Pakenham notified Calhoun that, although he had submitted the written statements and the protocols of the conferences to the British government, he had not yet received instructions on the several points which had been chiefly discussed.<sup>3</sup> The British government, of course, had delayed instructions to Pakenham, because it was waiting to see precisely what was to be looked for from the new administration, and it did not have long to wait. The inaugural of President Polk was perfectly explicit on the subject of Oregon. He considered it, he said, his duty to assert and maintain the rights of the United States "to that portion of our territory which lies beyond the Rocky Mountains."

"Our title to the country of the Oregon," he continued, "is 'clear and unquestionable' and already are our people preparing to perfect that title by occupying it with their wives and children. . . . The world beholds the peaceful triumphs of the industries of the immigrants. To us belongs the duty of protecting them adequately wherever they may be upon our soil."

The President's use of quotation marks showed that he was merely reasserting before his own countrymen the dec-

<sup>1</sup> Everett to Upshur, Dec. 2, 1843; *State Dept. MSS.* As to Pakenham's instructions, see Aberdeen to Pakenham, Dec. 28, 1843; same to same (private), March 4, 1844; quoted in Schaefer's "British Attitude toward the Oregon Question," *Amer. Hist. Rev.*, XVI, 295.

<sup>2</sup> Protocols of the conferences are printed in Sen. Doc. 1, 29 Cong., 1 sess., 143-145; statements of claims, *ibid.*, 146-161.

<sup>3</sup> Pakenham to Calhoun, Jan. 15, 1845; Calhoun to Pakenham, Jan. 21, 1845; *ibid.*, 161-162.

larations of the Baltimore convention; but the voice of a president, as he soon discovered, resounds loudly through the world, and his words seemed to proclaim him unalterably opposed to any compromise with Great Britain. That impression was heightened by the appointment as Secretary of State of Mr. Buchanan, who had so vehemently asserted in the Senate the "clear and conclusive title" of the United States to every foot of the territory of Oregon from latitude 49° to latitude 54° 40', and had so fiercely proclaimed the unchanging purposes of the American nation. The loud talk of Western senators, and of the Democrats generally, during the presidential campaign, naturally attracted very unfavorable attention in England; and the opposition party in Parliament took up the President's message, with a view to attacking and discrediting Peel's government. On the fourth of April, 1845, simultaneous assaults were made by the leaders—Lord John Russell in the House of Commons, and Lord Clarendon in the House of Lords.

Sir Robert Peel, for the government, could only say in the Commons that negotiations were still progressing, and that he did not despair of a favorable result. He did, however, express great regret that the President should have referred in a public address to any other contingency than that of a friendly termination of all difficulties; and he ended by declaring that her Majesty's government considered that "we too have rights respecting this territory of Oregon which are 'clear and unquestionable.' . . . We are resolved—and we are prepared—to maintain them."<sup>1</sup>

In the House of Lords, Aberdeen explained that the time had not yet come for publishing the diplomatic correspondence. Negotiations were proceeding, and so lately as the nineteenth of February, President Tyler, in a message to the Senate, had expressed himself as hopeful of an early and amicable conclusion. President Polk's inaugural address was not an official act of which foreign countries could take note. Her Majesty's government intended to continue negotiations in a manner consistent with justice,

<sup>1</sup> Hansard, LXXIX, 178.

reason, moderation, and common-sense. They were willing to make the greatest sacrifices to maintain peace, but there were limits which must not be passed. "We too, my lords," he concluded, amid the loud cheers of the House, "have rights which are 'clear and unquestionable,' and these rights, with the blessing of God and your support, we are ready to maintain."<sup>1</sup>

It was only too clear that the utterances of the President and his Secretary of State—not to speak of the other orators in Congress and out, or of the newspapers throughout the country—had succeeded in stirring up a dangerous spirit in England. The ownership of the Oregon territory was, in itself, a minor matter, but questions of national honor were beginning to be asked which might easily excite a feeling under whose influence the subject could never have been amicably settled.

Under such very unfavorable conditions of temper on both sides, the interrupted conferences in relation to Oregon were resumed in the middle of the summer of 1845, and at the first of these, Buchanan presented his statement of the legal grounds upon which the United States claimed all that portion of the Oregon territory between the valley of the Columbia River, and the southern line of Alaska, which, he said, rested on discovery, exploration, and possession. But the President, Buchanan continued, found himself embarrassed, if not committed, by the acts of his predecessors, who had uniformly proceeded upon the principle of compromise in all their negotiations. He had, therefore, determined to pursue the present negotiation upon the same principle, and to make one more effort to adjust this long-pending controversy, and he again proposed the line of the forty-ninth parallel of north latitude.<sup>2</sup>

To this communication Pakenham returned a long reply, in which he said that he did not feel at liberty to accept Buchanan's proposal, for the reason that it offered less than what had been tendered by the American government, and declined by the British government in 1826, and he

<sup>1</sup> *Ibid.*, 115.

<sup>2</sup> Sen. Doc. 1, 29 Cong., 1 sess., 145, 163-169.

ended by the unlucky statement, that he trusted "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."<sup>1</sup> Having thus slammed the door in Buchanan's face, Pakenham comfortably waited for the next move by the American government, and so matters rested during the remainder of the summer of 1845.

<sup>1</sup> Pakenham to Buchanan, July 29, 1845; *ibid.*, 170-177.